

WISCONSIN LEGISLATIVE COUNCIL STAFF

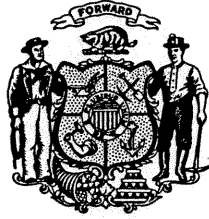
LCRC
FORM 2

AUG 31 1999

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
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(608) 266-2982



David J. Stute, Director
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AUG 31 REC'D

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-117

AN ORDER to repeal and recreate ATCP 30.24 (5) (b) and (c) and portions of ATCP 30 Appendix A; and to create ATCP 30.24 (5) (d) and portions of chapter ATCP 30 Appendix A, relating to pesticide product restrictions.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

07-26-99 RECEIVED BY LEGISLATIVE COUNCIL.

08-17-99 REPORT SENT TO AGENCY.

RS:DLL:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 99-117

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

In the statement of statutory authority, the citation to s. 94.69 (9), Stats., should be corrected. This section of the statutes contains only two subsections.

5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. ATCP 30.24 (5) (d), the word "in" should be inserted between the words "authorization" and "writing."

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
2 following order to repeal and recreate ATCP 30.24(5)(b) and (c) and portions of ATCP 30
3 Appendix A; and to create ATCP 30.24(5)(d) and portions of ATCP 30 Appendix A; relating
4 to pesticide product restrictions.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

Statutory authority: ss. 93.07(1), 94.69(9), 160.19(2), and
160.21(1), Stats.

Statutes interpreted: ss. 94.69, 160.19(2) and 160.21(1),
Stats.

In order to protect Wisconsin groundwater, current rules under ch. ATCP 30, Wis. Adm. Code, restrict the statewide rate at which atrazine pesticides may be applied. Current rules also prohibit the use of atrazine in areas where groundwater contamination levels attain or exceed state enforcement standards. Based on new groundwater test data, this rule expands the number of areas in which atrazine use is prohibited.

This rule also corrects an outdated statutory reference in current rules related to the pesticide aldicarb. This is merely a technical change which does not alter current law.

Atrazine Prohibition Areas

Current rules prohibit the use of atrazine where atrazine contamination of groundwater equals or exceeds the current groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 101 designated areas, including major prohibition areas in the lower Wisconsin river valley and much of Dane and Columbia counties.

This rule enlarges one current prohibition area, and creates 2 new prohibition areas. This will result in a new total of 103 prohibition areas throughout the state. This rule includes maps describing each of the new and expanded prohibition areas.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface which complies with ss. ATCP 29.45, Wis. Adm. Code.

Technical Correction; Aldicarb Rule

This rule corrects an outdated statutory reference in the department's current aldicarb rule. Currently, under s. ATCP 30.24(5)(b), Wis. Adm. Code, the department may grant an exemption from an aldicarb use prohibition if certain conditions are met. The current rule identifies those conditions by reference to a statute which has since been repealed. This rule eliminates the outdated statutory reference, and identifies the conditions in the rule itself. This rule does not change the substance of the current rule.

1 **SECTION 1.** The cover page of ATCP 30 Appendix A is repealed and recreated in
2 the form attached.

3 **SECTION 2.** Prohibition area map numbered 95-01-01, contained in ATCP 30
4 Appendix A, is repealed.

5 **SECTION 3.** The attached prohibition area maps, numbered
6 00-01-01, 00-50-01, and 00-56-01 are created in ATCP 30 Appendix A.

7 **SECTION 4.** ATCP 30.24(5)(b) and (c) are repealed and recreated to read:

8 ATCP 30.24(5)(b) A person prohibited from using aldicarb under par. (a)1. may
9 request an exemption from the prohibition. Except as provided in par. (d), the department may
10 not grant an exemption unless the department finds all the following:

1 1. That the concentration of aldicarb at each point of standards application used in
2 determining the need for the prohibition has been below the enforcement standard for at least 2
3 years in a stable or declining pattern.

4 2. That, to a reasonable certainty, by the greater weight of the credible evidence,
5 application of pesticides containing aldicarb in the prohibition area will not result in
6 noncompliance with the enforcement standard at any point of standards application used in
7 determining the need for the prohibition. In making this determination, the department shall
8 consider whether the prohibition was based in whole or in part on the use of pesticides
9 containing aldicarb prior to April 1, 1983.

10 (c) The department may require a person requesting an exemption under par. (b) to
11 submit proof that the exemption requirements under par. (b) are met. The division
12 administrator or the administrator's designee shall issue the exemption, if any, in writing.
13 Every exemption shall contain a specific statement of facts and conclusions which form the
14 basis for the exemption. An exemption under par. (b) does not constitute an exemption from
15 any other provision of this section.

16 **SECTION 5.** ATCP 30.24(5)(d) is created to read:

17 ATCP 30.24(5)(d) Notwithstanding par. (a), the department may authorize the
18 controlled application of aldicarb to a limited portion of a prohibition area for research
19 purposes approved by the department. The division administrator or the administrator's

5

1 designee shall issue the authorization ⁱⁿ writing, and shall describe the scope and basis of the
2 authorization.

3 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first
4 day of the month following publication in the Wisconsin administrative register, as provided
5 under s. 227.22(2)(intro.), Stats.

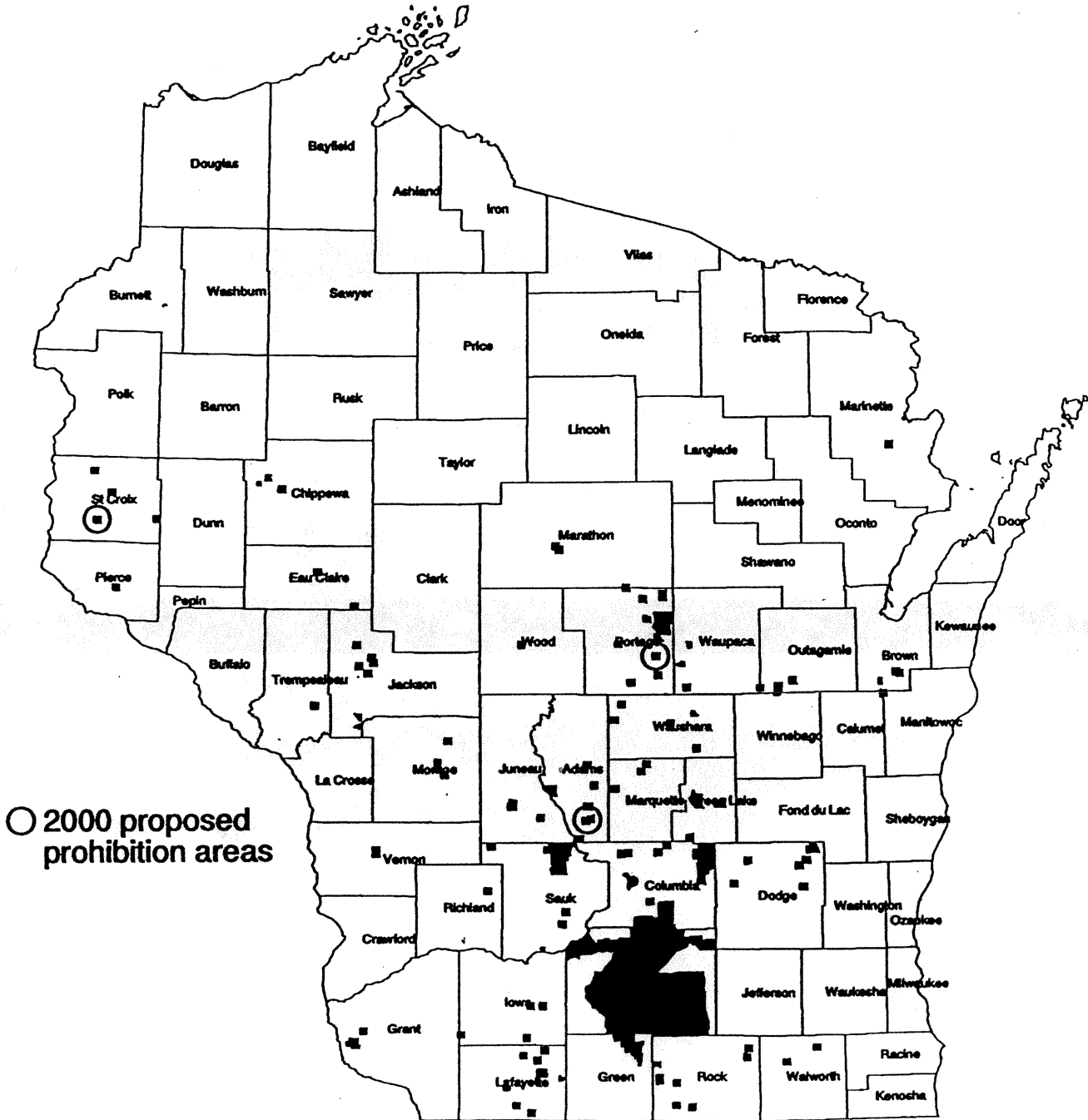
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Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Chapter ATCP 30 Appendix A Atrazine Prohibition Areas



Refer to the detailed map of each prohibition area for its exact boundaries

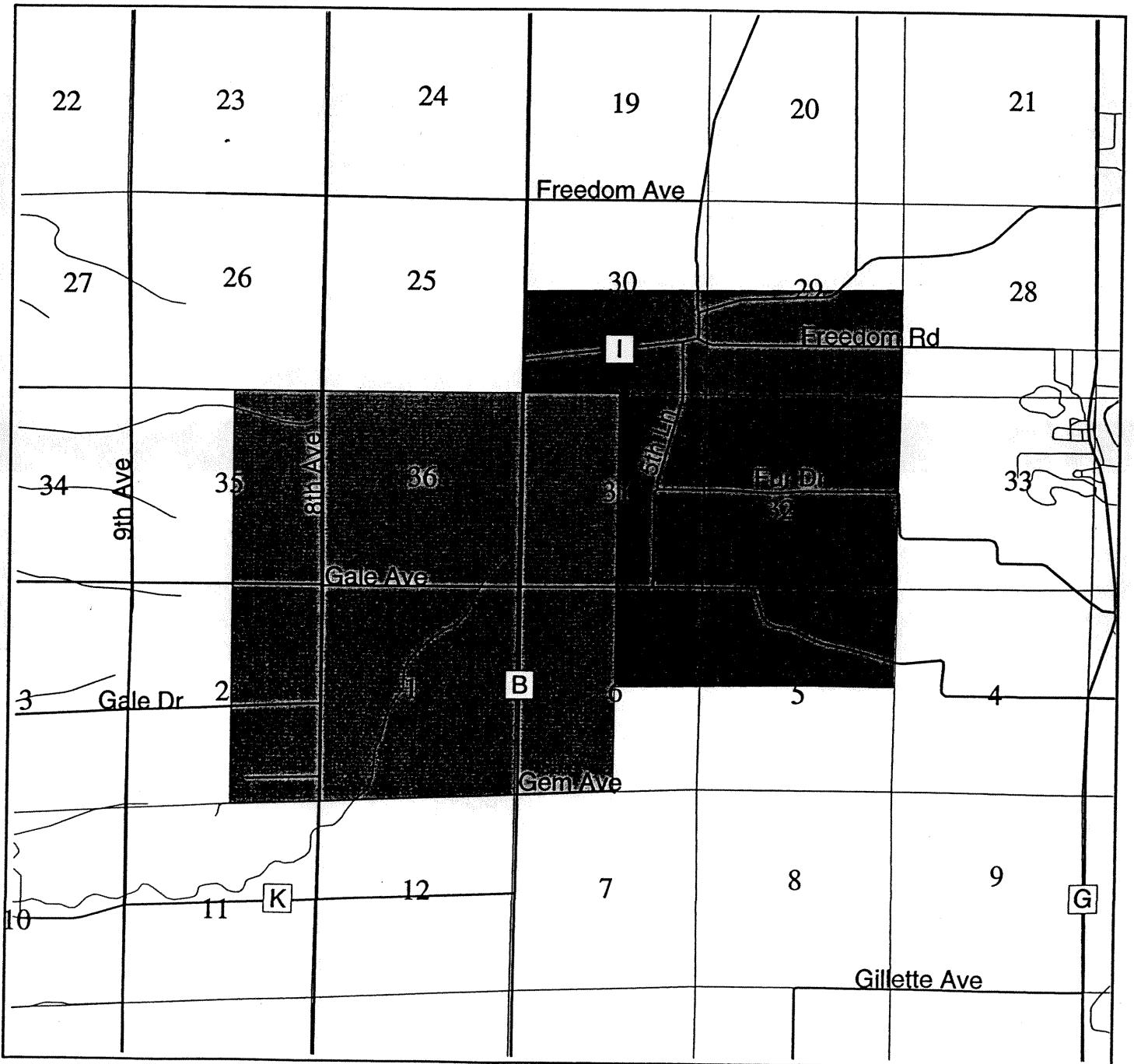
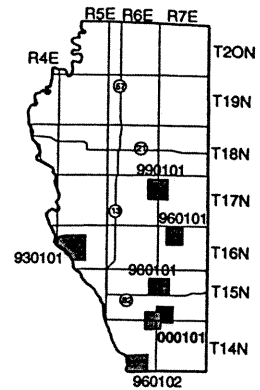
2000 Draft Rule

Adams County, Towns of Dell Prairie, Jackson, New Haven & Springville

T14-15NR6-7E PA 00-01-01*

All uses of atrazine are prohibited on lands within the shaded regions. There are six prohibition areas in Adams County. Refer to each map for specific locations.

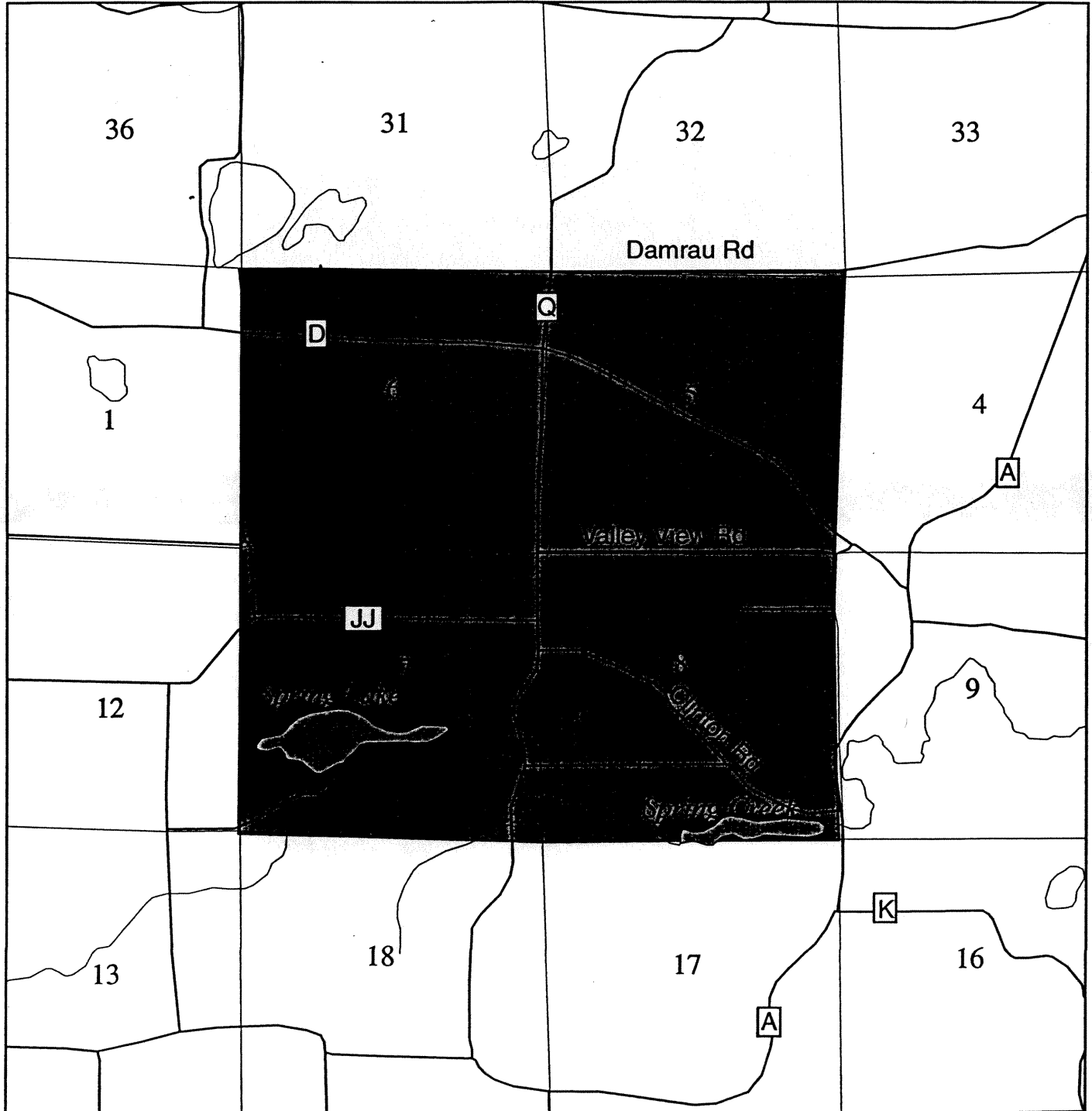
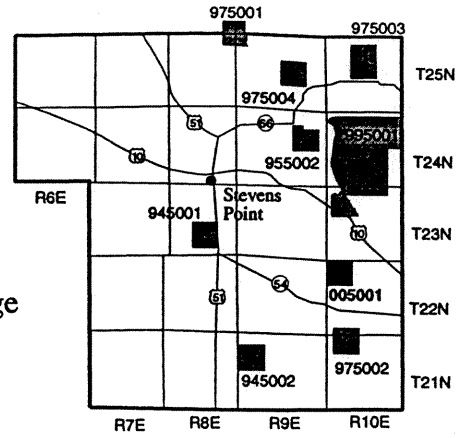
*Note: This PA is an expansion of PA 95-01-01.



Portage County Town of Lanark T22N R10E PA 00-50-01

All uses of atrazine are prohibited on lands within the shaded regions. There are nine prohibition areas in Portage County. Refer to each map for specific locations.

DRAFT



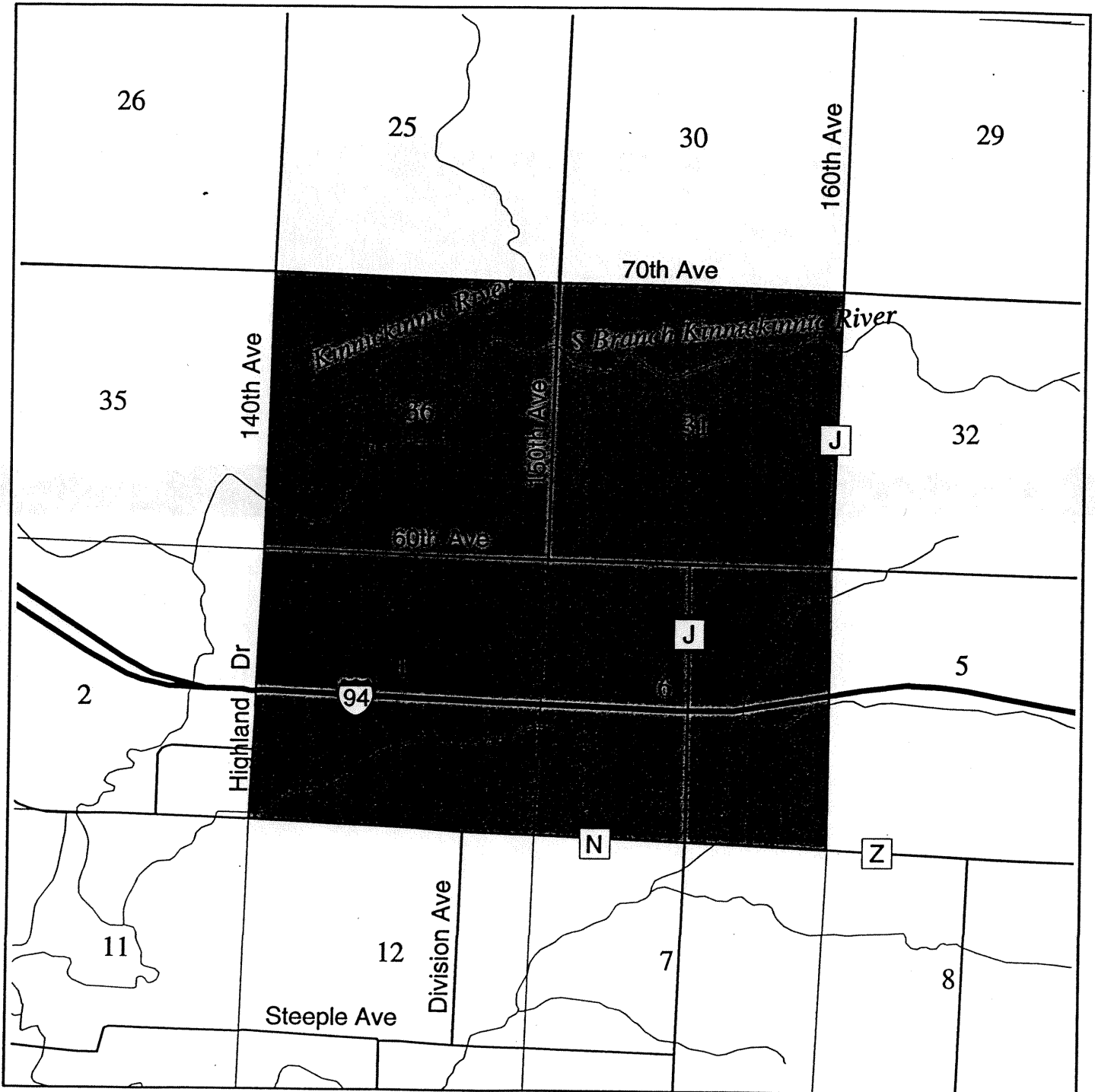
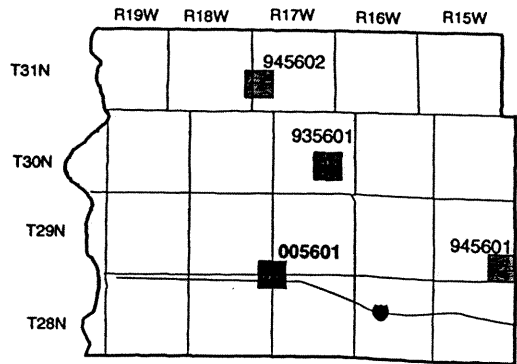
St. Croix County

Towns of Hammond, Kinnickinnic,
Pleasant Valley & Warren

T28-29N R17-18W PA 00-56-01

All uses of atrazine are prohibited on lands within the shaded regions. There are four prohibition areas in St. Croix County. Refer to each map for specific locations.

DRAFT



FISCAL ESTIMATE

DOA-2048 (R 10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.
Proposed Amendment
ATCP 30
Amendment No. (If Applicable)

Subject Creation of Additional Atrazine Prohibition Areas and Creation of Procedures to Repeal Prohibition Areas

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Increase Existing Appropriation Increase Existing Revenues

Decrease Existing Appropriation Decrease Existing

Decrease Costs

Revenues

Create New Appropriation

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:

Towns Villages Cities

Counties Others _____

School Districts WTCS Districts

Fund Source Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations s.20.115(7s)

Assumptions Used in Arriving at Fiscal Estimate

State Government

The rule will be administered by the Agricultural Resource Management (ARM) Division of the Department of Agriculture, Trade and Consumer Protection (DATCP). The following estimate is based on enlarging 1 existing prohibition area (PA), and creating 2 additional PAs.

Administration and enforcement of the proposal will involve new costs for the department. Specialist and field investigator staff time will be needed for inspections and enforcement in the new PAs (0.1 FTE, cost approximately \$4,000). Enforcement activities will be conducted in conjunction with current compliance inspections but at increased levels to ensure compliance with the additional prohibition areas. Compliance activities will be especially important in the first few years as growers, commercial applicators, dealers, and agricultural consultants in the PAs require education to comply with the new regulations.

Soil sampling conducted in the additional PAs to determine compliance with the rules will require an estimated \$1,000 in analytical services. In addition, a public information effort will be needed to achieve a high degree of voluntary compliance with the rule. Direct costs to produce and distribute the informational materials will be \$3,000.

(Continued on page 2)

Long - Range Fiscal Implications

Agency/prepared by: (Name & Phone No.)

DATCP
Jim Vanden Brook (608) 224-4501

Authorized Signature/Telephone No.

Donald Akamatsu for
Barbara Knapp (608) 224-4746

Date

06/08/99

Assumptions Used in Arriving at Fiscal Estimate (Continued)

State Government

Total Annual Costs: \$8,000

The Department anticipates no additional costs for other state agencies. Water sampling programs within the Department of Natural Resources and local health agencies may receive short term increased interest by individuals requesting samples.

On Local Units of Government

The rule does not mandate that local government resources be expended on sample collection, rule administration or enforcement. The rule is therefore not expected to have any fiscal impact on local units of government. County agricultural agents will likely receive requests for information on provisions of the rule and on weed control strategies with reduced reliance on atrazine. This responsibility will probably be incorporated into current extension programs with no net fiscal impact.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF HEARING

JUL 28 1999

RULES RELATED USE OF ATRAZINE PESTICIDES

JUL 28 REC'D

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to chapter ATCP 30, Wis. Adm. Code, relating to the use of atrazine pesticides. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. The department also invites comments on the draft environmental impact statement which accompanies the rule. Following the public hearings, the hearing record will remain open until September 17, 1999 for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4505. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **August 20, 1999** either by writing to Paula Noel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608/224-4505) or by contacting the message relay system (TTY) at 608/224-5058. Handicap access is available at the hearings.

Three hearings are scheduled:

August 31 1999, Tuesday
Best Western
1616 Crestview Dr.
Hudson, WI 54016
(715) 386-2394

afternoon session: 1:00 - 4:00 p.m.
evening session: 6:30 - 8:00 p.m.

September 1, 1999, Wednesday
Comfort Suites
300 Division North St.
Stevens Point, WI 54801
(715) 341-6000

afternoon session: 1:00 - 4:00 p.m.
evening session: 6:30 - 8:00 p.m.

September 2, 1999, Thursday
Black Wolf Lodge
1400 Black Wolf Dr.
Wisconsin Dells, WI 53965
(608) 253-2222

afternoon session: 1:00 - 4:00 p.m.
evening session: 6:30 - 8:00 p.m.

Written comments will be accepted until September 17, 1999.

Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 94.69(9), 160.19(2), and
160.21(1), Stats.

Statutes interpreted: ss. 94.69, 160.19(2) and 160.21(1),
Stats.

In order to protect Wisconsin groundwater, current rules under ch. ATCP 30, Wis. Adm. Code, restrict the statewide rate at which atrazine pesticides may be applied. Current rules also prohibit the use of atrazine in areas where groundwater contamination levels attain or exceed state enforcement standards.

Based on new groundwater test data, this rule expands the number of areas in which atrazine use is prohibited.

This rule also corrects an outdated statutory reference in the department's current **aldicarb** (not atrazine) rules. Currently, under s. ATCP 30.24(5)(b), Wis. Adm. Code, the department may grant an exemption from an aldicarb use prohibition if certain conditions are met. The current rule identifies those conditions by reference to a statute which has since been repealed. This rule eliminates the outdated statutory reference, and identifies the conditions in the rule itself. This rule does not change the substance of the current aldicarb rule.

Atrazine Prohibition Areas

Current rules prohibit the use of atrazine where atrazine contamination of groundwater equals or exceeds the current groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 101 designated areas, including major prohibition areas in the lower Wisconsin river valley and much of Dane and Columbia counties.

This rule repeals and recreates 1 current prohibition area to expand the area, and creates 2 new prohibition areas, resulting in a new total of 103 prohibition areas throughout the state. The rule includes maps describing each of the new and expanded prohibition areas.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface which complies with ss. ATCP 29.151(2) to (4), Wis. Adm. Code.

FISCAL ESTIMATE

The rule will be administered by the Agricultural Resource Management (ARM) Division of the Department of Agriculture, Trade and Consumer Protection (DATCP). The following estimate is based on enlarging 1 existing prohibition area (PA), and creating 2 additional PAs.

Administration and enforcement of the proposal will involve new costs for the department. Specialist and field investigator staff time will be needed for inspections and enforcement in the new PAs (0.1 FTE, cost approximately \$4,000). Enforcement activities will be conducted in conjunction with current compliance inspections but at increased levels to ensure compliance with the additional prohibition areas. Compliance activities will be especially important in the first few years as growers, commercial applicators, dealers, and agricultural consultants in the PAs require education to comply with the new regulations.

Soil sampling conducted in the additional PAs to determine compliance with the rules will require an estimated \$1,000 in analytical services. In addition, a public information effort will be needed to achieve a high degree of voluntary compliance with the rule. Direct costs to produce and distribute the informational materials will be \$3,000.

Total Annual Costs: \$8,000

The Department anticipates no additional costs for other state agencies. Water sampling programs within the Department of Natural Resources and local health agencies may receive short term increased interest by individuals requesting samples.

On Local Units of Government

The rule does not mandate that local government resources be expended on sample collection, rule administration or enforcement. The rule is therefore not expected to have any fiscal impact on local units of government. County agricultural agents will likely receive requests for information on provisions of the rule and on weed control strategies with reduced reliance

on atrazine. This responsibility will probably be incorporated into current extension programs with no net fiscal impact.

The complete fiscal estimate is available upon request.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Businesses Affected:

The amendments to ATCP 30 Appendix A will affect small businesses in Wisconsin. The greatest small business impact of the rule will be on users of atrazine -- farmers who grow corn. The proposed prohibition areas contain approximately 6,000 acres. Assuming that 50% of this land is in corn and that 50% of these acres are treated with atrazine, then 1,500 acres of corn will be affected. This acreage would represent between 5 and 20 producers, depending on their corn acreage. These producers are small businesses, as defined by s. 227.114 (1)(a), Stats. Secondary effects may be felt by distributors and applicators of atrazine pesticides, crop consultants and equipment dealers. Since the secondary effects relate to identifying and assisting farmers in implementing alternative weed control methods, these effects will most likely result in additional or replacement business and the impacts are not further discussed in this document.

Specific economic impacts of alternative pest control techniques are discussed in the environmental impact statement for this rule.

Reporting, Recordkeeping and Other Procedures Required for Compliance:

The maximum application rate for atrazine use in Wisconsin is based on soil texture. This may necessitate referring to a soil survey map or obtaining a soil test. While this activity is routine, documentation would need to be maintained to justify the selected application rate. A map delineating application areas must be prepared if the field is subdivided and variable application rates are used. This procedure is already required under the current atrazine rule.

All users of atrazine, including farmers, will need to maintain specific records for each application. This procedure is already required under the current atrazine rule.

Atrazine cannot be used in certain areas of the State where groundwater contamination exceeds the atrazine enforcement standard in s. NR 140.10 Wis. Adm. Code.

Professional Skills Required to Comply:

The rule affects how much atrazine can be applied and on which fields. Because overall use of atrazine will be reduced in the State, alternative weed control techniques may be needed in some situations. These techniques may include different crop rotations, reduced atrazine rates, either alone or in combination with other herbicides, or combinations of herbicides and mechanical weed control measures.

While alternative weed control techniques are available, adoption of these techniques on individual farms will in some cases require assistance. In the past this type of assistance has been provided by University Extension personnel and farm chemical dealers. In recent years many farmers have been using crop consultants to scout fields, identify specific pest problems and recommend control measures. The department anticipates these three information sources will continue to be used as the primary source of information, both on whether atrazine can be used and which alternatives are likely to work for each situation.

Notice to Department of Development

The department has given notice of this proposed rule to the Wisconsin department of development, as required by s. 227.114(5), stats.

DRAFT ENVIRONMENTAL IMPACT STATEMENT

The Department has prepared a draft environmental impact statement (EIS) for proposed 2000 amendments to rules on the use of pesticides containing atrazine. Copies are available from the Department on request and will be available at the public hearings. Comments on the EIS should be directed to the Agricultural Resource Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI, 53708 in care of Jeff Postle. Phone 608/224-4503. Written comments on the EIS will be accepted until September 17, 1999.

Dated this 23 day of July, 1999.

By

Ben Brancel
Ben Brancel, Secretary

NOV 24 1999

Docket No. 99-117

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION


NOTICE OF SUBMISSION OF PROPOSED RULES TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 99-117 to the presiding officer of each house of the legislature for standing committee review. The proposed rule repeals portions of chapter ATCP 30; and creates portions of chapter ATCP 30 relating to pesticide product restrictions.

Dated this 23rd day of November, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By



Ben Brancel, Secretary



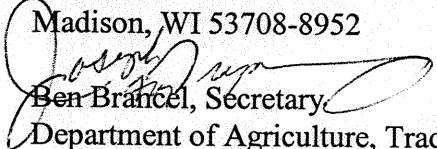
State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

Date: November 24, 1999

To: The Honorable Fred Risser
President, Wisconsin State Senate
Rm. 220 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Rm. 211 West, State Capitol
P.O. Box 8952
Madison, WI 53708-8952

From: 
Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

Re: **Proposed Amendments to ch. ATCP 30, Wis. Adm. Code, Relating to
Groundwater Protection. Clearinghouse Rule No. 99-117**

Pursuant to ss. 227.19 (2) and (3), Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) hereby transmits the above rule for legislative committee review. We are enclosing three copies of the final draft rule, together with the following report. Pursuant to s. 227.19 (2), Stats., the department will submit a notice of this referral to the Revisor of Statutes for publication in the administrative register.

1. **BACKGROUND**

Current DATCP rules under ch. ATCP 31, Wis. Adm. Code, establish "generic" standards for regulating pesticides in groundwater. DATCP adopts separate "substance-specific" rules for individual pesticides such as atrazine subject to these "generic" standards. This rule amends DATCP's current "substance-specific" rule related to atrazine use restrictions under ch. ATCP 30.

This rule also corrects an outdated statutory reference in current rules related to the pesticide aldicarb. This is merely a technical change and does not alter current law.

Groundwater Law

Under Wisconsin's "Groundwater Law" (ch. 160, Stats.), the Department of Natural Resources (DNR) adopts numerical standards for contaminants in groundwater. DNR adopts an

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Honorable Scott Jensen
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Page 2

enforcement standard ("red light") and a lower preventive action limit ("yellow light") for each contaminant substance. Chapter NR 140, Wis. Adm. Code, contains current groundwater standards.

DATCP is required to take regulatory action to limit pesticide contamination of groundwater. If pesticide contamination exceeds the enforcement standard ("red light") at any location, DATCP must ordinarily prohibit applications of that pesticide at that location. If contamination does not exceed the enforcement standard, DATCP may not ordinarily prohibit pesticide applications unless DATCP finds that lesser actions will not effectively control groundwater contamination. However, DATCP must take other regulatory steps which are designed, to the extent technically and economically feasible, to minimize pesticide contamination of groundwater and maintain compliance with the preventive action limit ("yellow light").

Atrazine Rules

Atrazine is the most widely used agricultural herbicide in Wisconsin. It has been found in more than 8,000 wells throughout the state, with over 375 wells having levels above the enforcement standard. Chapter ATCP 30, Wis. Adm. Code, is designed to carry out the department's obligations under the Groundwater Law. Current rules restrict the use of atrazine herbicides statewide to protect Wisconsin groundwater. Current rules also prohibit atrazine use on over one million acres of land, and set maximum statewide use rates at about half the rates allowed under the federal label.

Under current rules, DATCP must normally prohibit atrazine use in a local area if atrazine is found in groundwater at or above the state enforcement standard of 3.0 parts per billion that DNR has established for atrazine. The use prohibition remains in effect until the conditions specified under s. ATCP 30.375 for the repeal of a prohibition area are met.

2. RULE CONTENTS

This rule creates 2 new prohibition areas in Portage and St. Croix Counties and enlarges 1 existing prohibition area in Adams County. The new prohibition areas are located where atrazine contamination of groundwater has exceeded the state enforcement standard. As a result of these changes, atrazine use will be prohibited on an additional 6,000 acres.

This rule also corrects an outdated statutory reference in the department's current aldicarb (not atrazine) rules. Currently, under s. ATCP 30.24(5)(b), Wis. Adm. Code, the department may grant an exemption from an aldicarb use prohibition if certain conditions are met. The current rule identifies those conditions by reference to a statute that has since been repealed. This rule

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November 24, 1999
Page 3

eliminates the outdated statutory reference, and identifies the conditions in the rule itself. This rule does not change the substance of the current aldicarb rule.

3. RULE MODIFICATIONS AFTER PUBLIC HEARING

On July 14, 1999 the DATCP Board authorized public hearings on Ch. ATCP 30. Three hearings were held in August and September 1999, in Hudson, Stevens Point and Wisconsin Dells. The DATCP Board approved a final draft rule on November 9, 1999 without modification.

4. HEARING TESTIMONY

APPENDIX A contains a summary of hearing testimony along with a list of persons attending, testifying or submitting written comments for the hearing record.

5. RESPONSE TO RULES CLEARINGHOUSE COMMENTS

The Legislative Council Rules Clearinghouse made two comments on the hearing draft rule. The comments related to form and grammar and were corrected in the final draft rule.

6. FISCAL ESTIMATE:

A fiscal estimate on the proposed rule is attached as APPENDIX B.

7. REGULATORY FLEXIBILITY ANALYSIS:

No comments were received during the public comment period on the draft regulatory flexibility analysis. A copy of the final analysis is attached as APPENDIX C.

8. ENVIRONMENTAL IMPACT STATEMENT:

In accordance with s. 1.11, Stats. and ch. ATCP 3, Wis. Adm. Code, DATCP prepared an environmental impact statement (EIS) on the proposed atrazine rule (copy attached as APPENDIX D). The EIS finds that promulgation of the proposed rule will have no significant adverse environmental impacts. Alternative herbicides, because of differences in mobility and persistence, generally are less likely than atrazine to contaminate groundwater. The major effect the proposed rule is expected to have on the environment is a decrease in groundwater

Honorable Fred Risser
Honorable Scott Jensen
November 24, 1999
Page 4

contamination by atrazine across the state and within the prohibition areas. This reduction in groundwater contamination will benefit both the natural and human environments.

Final Draft

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
2 following order to repeal and recreate ATCP 30.24(5)(b) and (c) and portions of ATCP 30
3 Appendix A; and to create ATCP 30.24(5)(d) and portions of ATCP 30 Appendix A; relating to
4 pesticide product restrictions.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

Statutory authority: ss. 93.07(1), 94.69(1), 160.19(2), and
160.21(1), Stats.

Statutes interpreted: ss. 94.69, 160.19(2) and 160.21(1),
Stats.

In order to protect Wisconsin groundwater, current rules under ch. ATCP 30, Wis. Adm. Code, restrict the statewide rate at which atrazine pesticides may be applied. Current rules also prohibit the use of atrazine in areas where groundwater contamination levels attain or exceed state enforcement standards. Based on new groundwater test data, this rule expands the number of areas in which atrazine use is prohibited.

This rule also corrects an outdated statutory reference in current rules related to the pesticide aldicarb. This is merely a technical change which does not alter current law.

Atrazine Prohibition Areas

Current rules prohibit the use of atrazine where atrazine contamination of groundwater equals or exceeds the current groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 101 designated areas, including major prohibition areas in the lower Wisconsin river valley and much of Dane and Columbia counties.

This rule enlarges one current prohibition area, and creates 2 new prohibition areas. This will result in a new total of 103 prohibition areas throughout the state. This rule includes maps describing each of the new and expanded prohibition areas.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface which complies with ss. ATCP 29.45, Wis. Adm. Code.

Technical Correction; Aldicarb Rule

This rule corrects an outdated statutory reference in the department's current aldicarb rule. Currently, under s. ATCP 30.24(5)(b), Wis. Adm. Code, the department may grant an exemption from an aldicarb use prohibition if certain conditions are met. The current rule identifies those conditions by reference to a statute which has since been repealed. This rule eliminates the outdated statutory reference, and identifies the conditions in the rule itself. This rule does not change the substance of the current rule.

1 **SECTION 1.** The cover page of ATCP 30 Appendix A is repealed and recreated in the
2 form attached.

3 **SECTION 2.** Prohibition area map numbered 95-01-01, contained in ATCP 30
4 Appendix A, is repealed.

5 **SECTION 3.** The attached prohibition area maps, numbered
6 00-01-01, 00-50-01, and 00-56-01 are created in ATCP 30 Appendix A.

7 **SECTION 4.** ATCP 30.24(5)(b) and (c) are repealed and recreated to read:

8 ATCP 30.24(5)(b) A person prohibited from using aldicarb under par. (a)1. may request
9 an exemption from the prohibition. Except as provided in par. (d), the department may not grant
10 an exemption unless the department finds all the following:

1 1. That the concentration of aldicarb at each point of standards application used in
2 determining the need for the prohibition has been below the enforcement standard for at least 2
3 years in a stable or declining pattern.

4 2. That, to a reasonable certainty, by the greater weight of the credible evidence,
5 application of pesticides containing aldicarb in the prohibition area will not result in
6 noncompliance with the enforcement standard at any point of standards application used in
7 determining the need for the prohibition. In making this determination, the department shall
8 consider whether the prohibition was based in whole or in part on the use of pesticides containing
9 aldicarb prior to April 1, 1983.

10 (c) The department may require a person requesting an exemption under par. (b) to
11 submit proof that the exemption requirements under par. (b) are met. The division administrator
12 or the administrator's designee shall issue the exemption, if any, in writing. Every exemption
13 shall contain a specific statement of facts and conclusions which form the basis for the
14 exemption. An exemption under par. (b) does not constitute an exemption from any other
15 provision of this section.

16 **SECTION 5.** ATCP 30.24(5)(d) is created to read:

17 ATCP 30.24(5)(d) Notwithstanding par. (a), the department may authorize the controlled
18 application of aldicarb to a limited portion of a prohibition area for research purposes approved
19 by the department. The division administrator or the administrator's designee shall issue the
20 authorization in writing, and shall describe the scope and basis of the authorization.

1 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day
2 of the month following publication in the Wisconsin administrative register, as provided under s.
3 227.22(2)(intro.), Stats.
4

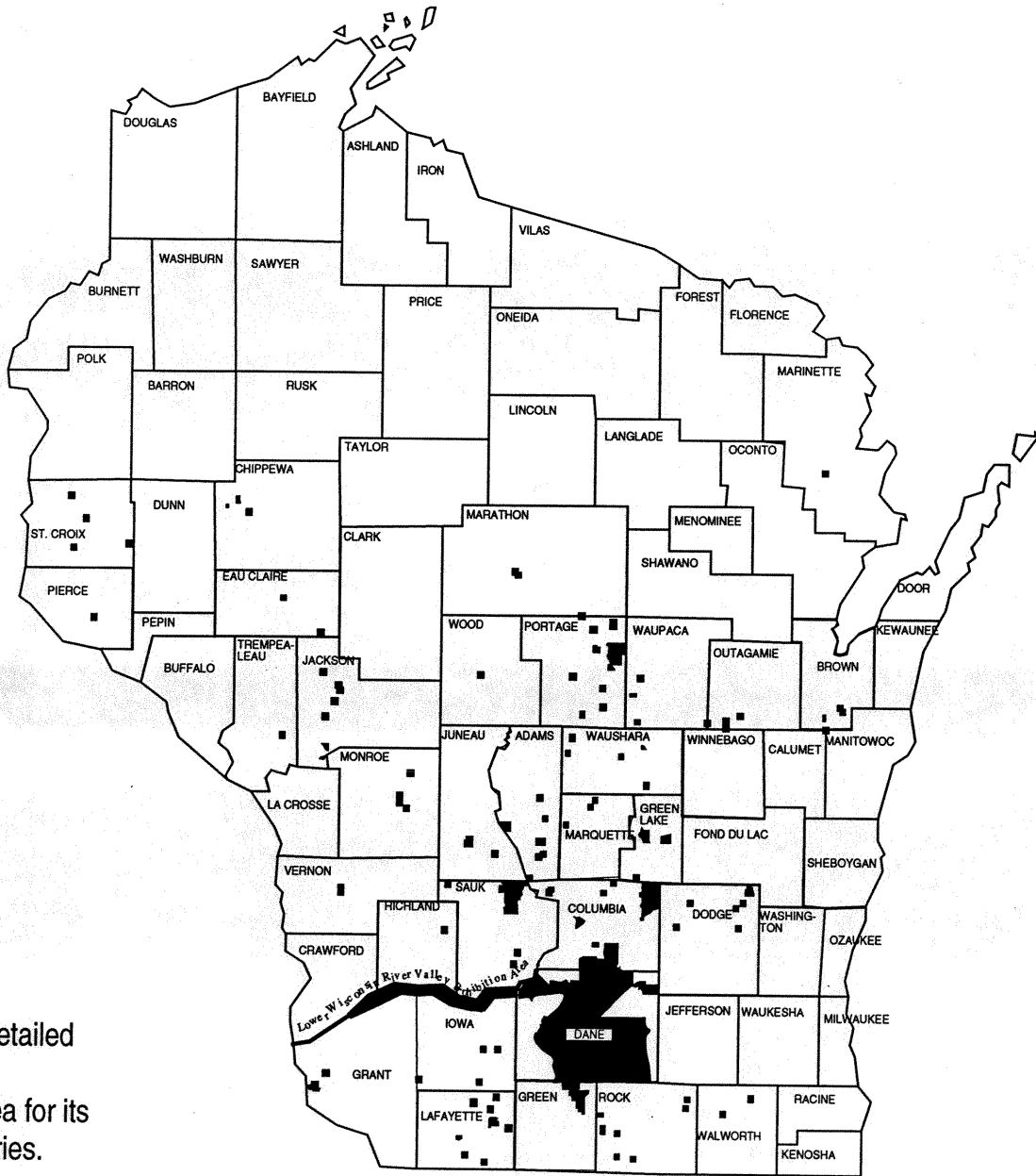
Dated this ____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Chapter ATCP 30

Atrazine Prohibition Areas



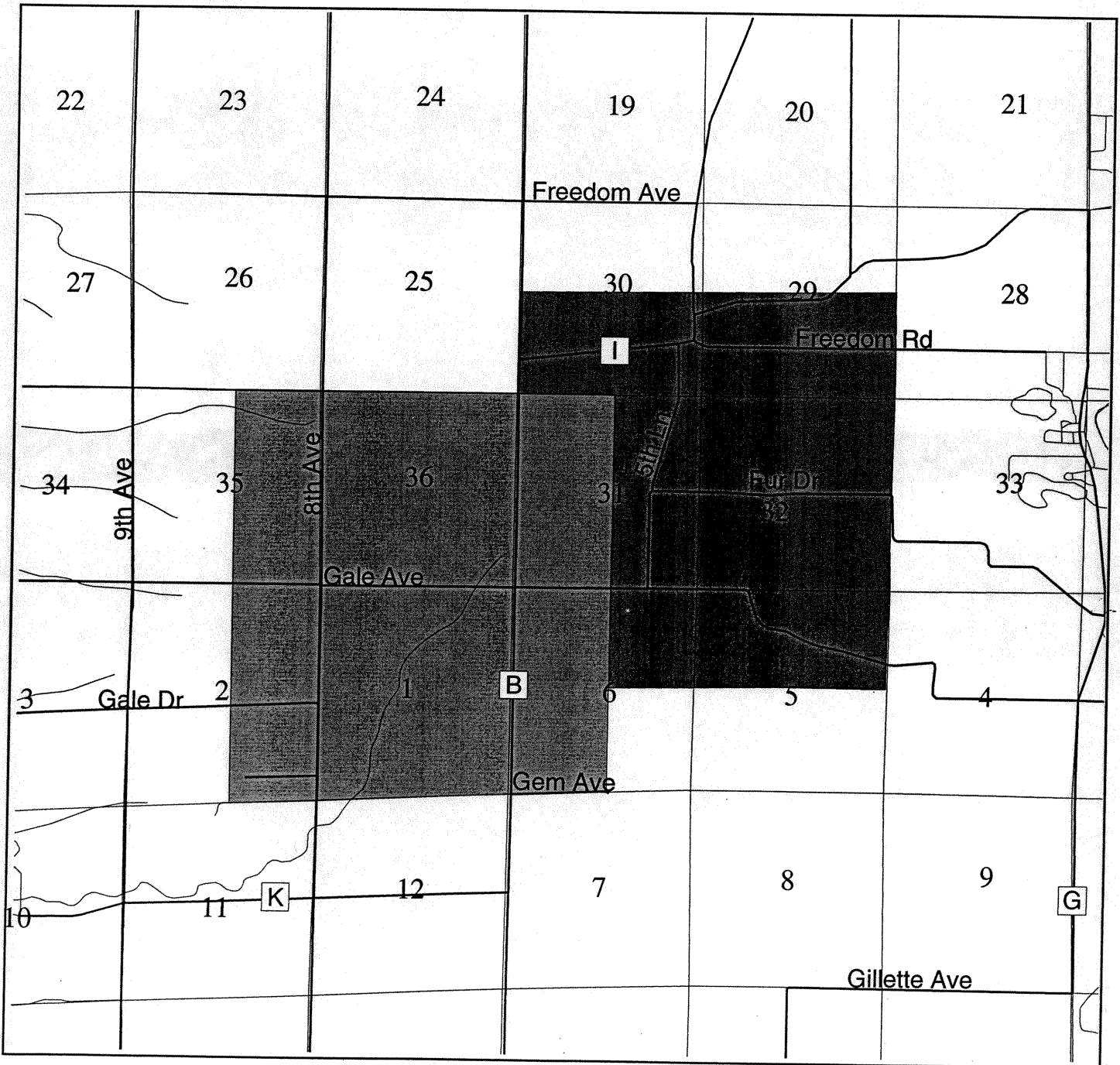
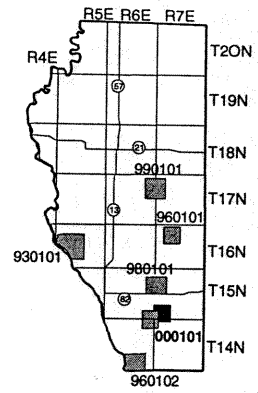
Refer to the detailed map of each prohibition area for its exact boundaries.

Adams County, Towns of Dell Prairie, Jackson, New Haven & Springville

T14-15N R6-7E PA 00-01-01*

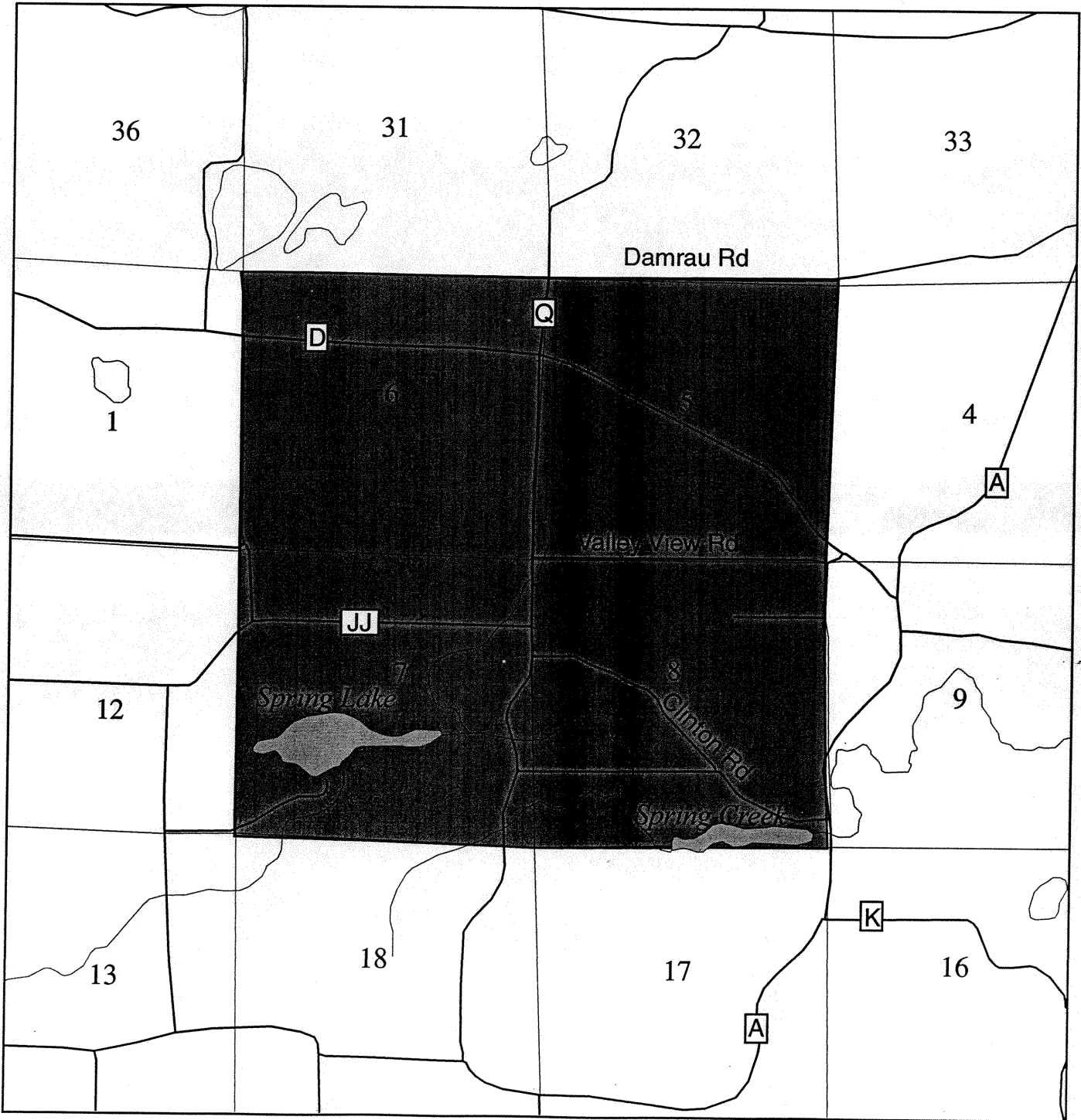
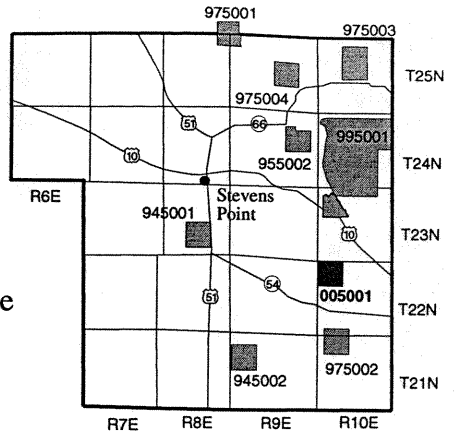
All uses of atrazine are prohibited on lands within the shaded regions. There are six prohibition areas in Adams County. Refer to each map for specific locations.

***Note:** This PA is an expansion of PA 95-01-01.



Portage County Town of Lanark T22N R10E PA 00-50-01

All uses of atrazine are prohibited on lands within the shaded regions. There are nine prohibition areas in Portage County. Refer to each map for specific locations.

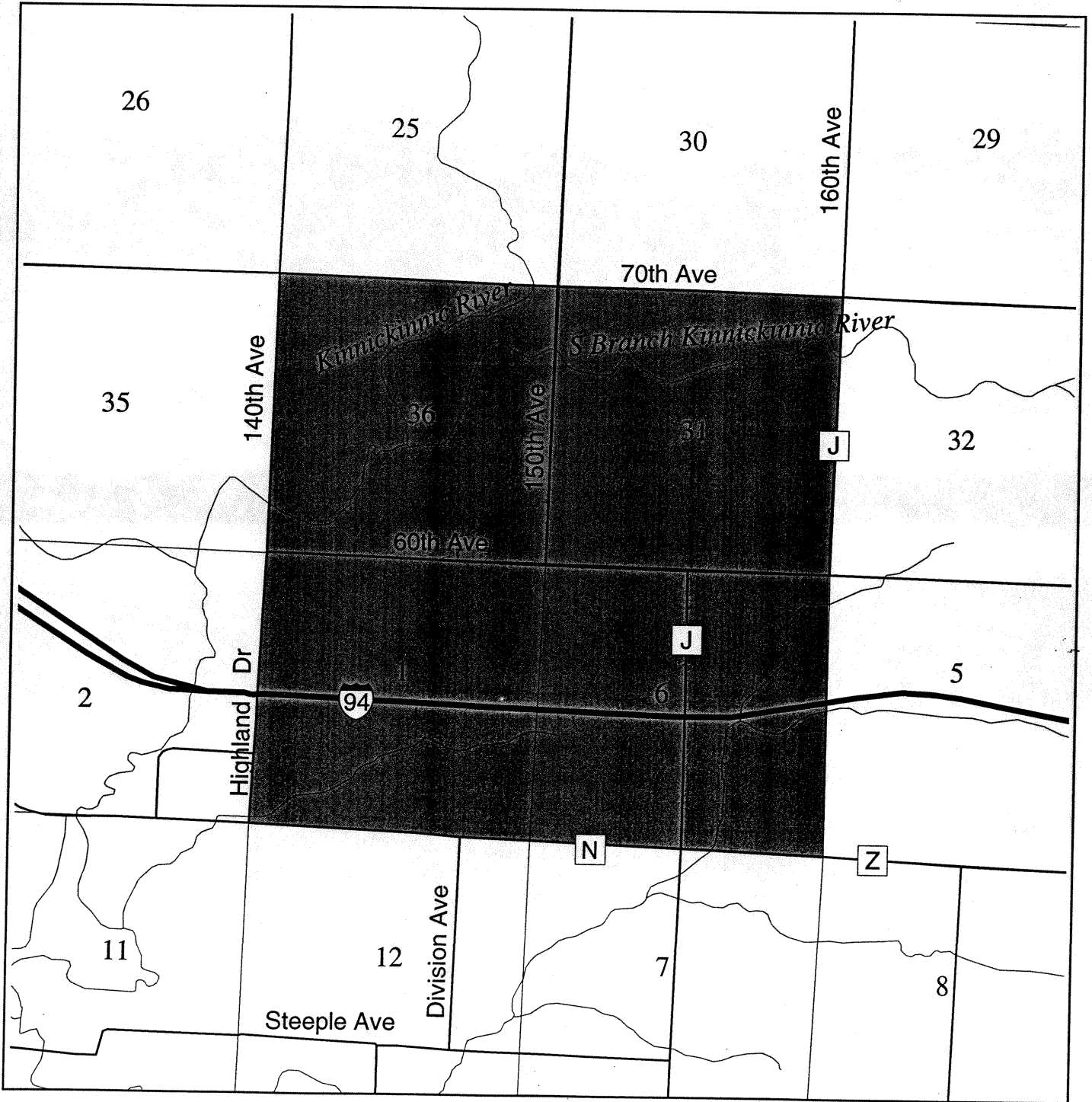
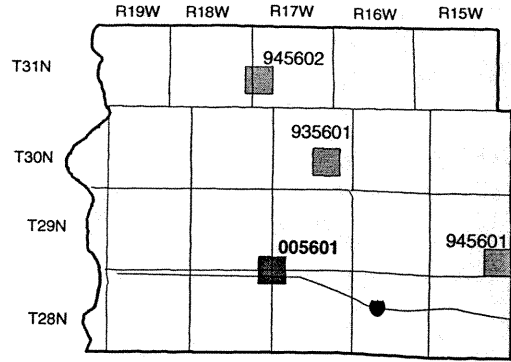


St. Croix County

Towns of Hammond, Kinnickinnic,
Pleasant Valley & Warren

T28-29N R17-18W PA 00-56-01

All uses of atrazine are prohibited on lands within the shaded regions. There are four prohibition areas in St. Croix County. Refer to each map for specific locations.



SUMMARY OF ORAL TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

INTRODUCTION

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) held public hearings in Hudson, Stevens Point and Wisconsin Dells to record oral testimony on proposed 2000 changes to Chapter ATCP 30, Wis. Adm. Code. (Wisconsin's "Atrazine Rule"). DATCP also accepted written testimony until September 17, 1999. DATCP is proposing revisions to ATCP 30 to create two new and one expanded atrazine prohibition areas (PAs).

Each hearing session started with a ½ hour presentation at which DATCP staff explained the proposed changes and answered questions. Other informational materials available at each hearing included: state and county maps showing all of the data that DATCP has of atrazine concentrations in private water supply wells, maps of each proposed atrazine PA, and a description of the three steps required to repeal an atrazine prohibition area. A number of DATCP groundwater reports, general reference materials, and other information were also available.

A total of 24 people attended the public hearings, of which 4 provided oral testimony and filled out an appearance/opinion card. Seven of the other 20 attendees completed cards to register their opinion of the proposed changes to ATCP 30 but did not provide oral testimony. Thirteen attendees were present for informational purposes only and did not provide any input. Four people submitted written testimony as part of the hearing process.

A summary of testimony participation is shown in Table 1. A list of the suggested modifications to the proposed ATCP 30 is also attached, followed by a summary of each participant's oral or written testimony.

TESTIMONY SUMMARY

The majority of participants who provided testimony (oral and written) were supportive of the proposed PAs. The participants who supported the proposed PAs generally felt that DATCP should be more proactive in establishing PAs to ensure that groundwater is adequately protected from atrazine contamination. One participant called for a statewide ban of atrazine use. Two participants opposed a specific new or expanded PA. One participant cited increased costs and the other cited a study showing that atrazine is safe. Many of the people who registered "for informational purposes only", attended the public hearings to learn about ATCP 30 or worked for the media.

**SUMMARY OF ORAL TESTIMONY
PROPOSED AMENDMENTS TO ATCP 30**

TABLE 1. TESTIMONY SUMMARY

POSITION	PUBLIC HEARINGS (# participants)	WRITTEN TESTIMONY (# participants)	ALL TESTIMONY (# participants)
Support	10	3	13
Oppose	1	1	2
Information Only	13	0	13
Totals	24	4	28

SUGGESTED MODIFICATIONS TO PROPOSED PROHIBITION AREAS

Several of those who presented oral or written testimony suggested modifications to the proposed PAs. In addition to specific comments about the proposed PAs, the attendees expressed general concerns about other issues related to pesticide regulation and/or groundwater contamination. These included atrazine groundwater standards, general health effects and costs of pesticides and nitrates in groundwater, and DATCP's need to promote practices that reduce or eliminate pesticide use and prevent groundwater contamination. The suggested modifications are listed below:

- Allow ½ pound rate of atrazine in PAs. A half-pound of atrazine can be effective in combination with other products.
- Change the PA boundary of the St. Croix County PA based on the presence of a stream.
- Ban atrazine use statewide.

PUBLIC HEARING TESTIMONY

Table 2 shows public hearing attendance and indicates the positions taken by hearing participants regarding the proposed ATCP 30 revisions. A summary of each speaker's testimony, by hearing location, follows.

**SUMMARY OF ORAL TESTIMONY
PROPOSED AMENDMENTS TO ATCP 30**

TABLE 2. PUBLIC HEARING ATTENDANCE

POSITION	HUDSON 8/31/99		STEVENS POINT 9/1/99		WISCONSIN DELLS 9/2/99		ALL HEARINGS 1998	
	SPOKE	CARD ONLY	SPOKE	CARD ONLY	SPOKE	CARD ONLY	SPOKE	CARD ONLY
Support	0	4	2	2	0	2	2	8
Oppose	1	0	0	0	0	0	1	0
Info Only	1	7	0	2	0	3	1	12
Subtotal	2	11	2	4	0	5	4	20
	4 Support 1 Oppose <u>8 Info Only</u> 13 Total Attendees		4 Support 0 Oppose <u>2 Info Only</u> 6 Total Attendees		2 Support 0 Oppose <u>3 Info Only</u> 5 Total Attendees		10 Support 1 Oppose <u>13 Info Only</u> 24 Total Attendees	

Hudson – August 31, 1999

A total of 13 people attended the public hearing in Hudson on proposed changes to ATCP 30. Of these 13 people:

- 4 registered in support of the proposal
- 1 registered in opposition to the proposal
- 7 registered as “informational purposes only”
- 2 of the 13 attendees spoke, one in opposition to the proposal and one neither in favor nor opposition to the rule

The following is a summary of oral testimony provided at the hearing:

1. Greg Kerr: Mr. Kerr is concerned that the prohibition area will increase the cost of production for farmers. He stated that the cost of production could increase \$5-15 dollars. He also feels the contamination could be from an old point source since the other wells that were tested had relatively low concentrations of atrazine. Mr. Kerr thinks ½ pound of atrazine should be allowed in PAs which he feels is effective in combination with other products.

SUMMARY OF ORAL TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

2. Dave Flakne: Mr. Flakne requested that we look at the river in the proposed PA to see if it is a significant groundwater discharge area that could change the boundaries of the PA. He also suggested that perhaps this is contamination from an old point source since the well also contains alachlor and cyanazine amide. He wants the department to closely follow the reevaluation of the toxicology of atrazine. He feels new information suggests that the standard for atrazine should be 15-20 ppb.

Stevens Point - October 1, 1999

A total of 6 people attended the public hearing in Stevens Point on proposed changes to ATCP 30. Of these 6 people:

- 4 registered in support of the proposal
- 2 registered as "informational purposes only"
- 2 of the 6 attendees spoke in favor of the proposal

The following is a summary of the oral testimony provided at the Stevens Point:

1. Sue Anderson Ms. Anderson appreciates the public hearings and the opportunity to learn and voice her opinion. She is very strongly in favor of the proposed PA and encourages the department to err on the safe side when considering a PA. She wants the department to continue to hold the public hearings and appreciates the chance to meet face-to-face.
2. Beth Akemann Ms. Akemann previously had an experience with a contaminated well. She is a mother of three and is expecting her fourth child. She described the water cycle and how adverse health effects can accumulate over time. Therefore, she believes it is important to be able to choose clean water, and that no one has the right to pollute others and nature. Currently, a small segment of the community (growers) is affecting the larger community, and this is not right. Toxic substances should not be allowed to enter groundwater.

Wisconsin Dells - October 2, 1999

A total of 5 people attended the public hearing in Wisconsin Dells on proposed changes to ATCP 30. Of these 5 people:

- 2 registered in support of the proposal
- 3 registered as "informational purposes only"
- No one provided oral testimony

SUMMARY OF WRITTEN TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

Four people submitted written testimony on the proposed amendments to Chapter ATCP 30, Wis. Admin. Code. The written record was open until September 17, 1999. In general, three people supported the proposal, and one was opposed. The following is a summary of the comments that we received:

1. Richard J. Bauer: Mr. Bauer strongly opposes the proposed PA. He does not agree with this and other restrictions that are being imposed on farmers. He cites an international study that he feels proves that atrazine is a safe chemical. He feels that DATCP is in serious breach of its duties.
2. Arnold and Jeff Lueck: The Luecks feel that atrazine should be banned in the proposed PA because there are other herbicides that can be used. They farm in the proposed PA and have used other herbicides that work better and do not contaminate the groundwater.
3. Hanna Wolf: Hanna is alarmed that atrazine has been found in drinking water wells in St. Croix County. Because of the unknown dangers, she feels farmers should look into other alternatives to control weeds. She wants the proposed PA to be approved.
4. Robert Keller: Mr. Keller is in favor of a statewide ban on the use of atrazine. He wonders what are the cumulative effects of atrazine, nitrates, and all the other chemicals that are poured onto the soils of Wisconsin. He feels our current "band aid" approach to the atrazine problem has failed. He wants a total ban and more testing on the cumulative effect of various chemicals on human health and well being.

FISCAL ESTIMATE

DOA-2048 (R 10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No. Proposed Amendment ATCP 30
Amendment No. (If Applicable)

Subject Creation of Additional Atrazine Prohibition Areas and Creation of Procedures to Repeal Prohibition Areas

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Source Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations s.20.115(7s)

Assumptions Used in Arriving at Fiscal Estimate

State Government

The rule will be administered by the Agricultural Resource Management (ARM) Division of the Department of Agriculture, Trade and Consumer Protection (DATCP). The following estimate is based on enlarging 1 existing prohibition area (PA), and creating 2 additional PAs.

Administration and enforcement of the proposal will involve new costs for the department. Specialist and field investigator staff time will be needed for inspections and enforcement in the new PAs (0.1 FTE, cost approximately \$4,000). Enforcement activities will be conducted in conjunction with current compliance inspections but at increased levels to ensure compliance with the additional prohibition areas. Compliance activities will be especially important in the first few years as growers, commercial applicators, dealers, and agricultural consultants in the PAs require education to comply with the new regulations.

Soil sampling conducted in the additional PAs to determine compliance with the rules will require an estimated \$1,000 in analytical services. In addition, a public information effort will be needed to achieve a high degree of voluntary compliance with the rule. Direct costs to produce and distribute the informational materials will be \$3,000.

(Continued on page 2)

Long - Range Fiscal Implications

Agency/prepared by: (Name & Phone No.)

DATCP
 Jim Vanden Brook (608) 224-4501

Authorized Signature/Telephone No.

Donald Akamatsu for
 Barbara Knapp (608) 224-4746

Date

06/08/99

Assumptions Used in Arriving at Fiscal Estimate (Continued)

State Government

Total Annual Costs: \$8,000

The Department anticipates no additional costs for other state agencies. Water sampling programs within the Department of Natural Resources and local health agencies may receive short term increased interest by individuals requesting samples.

On Local Units of Government

The rule does not mandate that local government resources be expended on sample collection, rule administration or enforcement. The rule is therefore not expected to have any fiscal impact on local units of government. County agricultural agents will likely receive requests for information on provisions of the rule and on weed control strategies with reduced reliance on atrazine. This responsibility will probably be incorporated into current extension programs with no net fiscal impact.

FISCAL ESTIMATE WORKSHEET

1999-SESSION

Detailed Estimate of Annual
Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm.Rule No. Amendment No.
ATCP 30

Subject

Creation of Additional Atrazine Prohibition Areas and Expansion of Existing Prohibition Areas

I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Cost:

Annualized Fiscal Impact on State funds from:

A. State Costs by Category

Increased Costs

Decreased Costs

State Operations - Salaries and Fringes

\$ 4,000

\$ -

(FTE Position Changes)

(0.1 FTE)

(- FTE)

State Operations - Other Costs

\$ 4,000

-

Local Assistance

-

Aids to Individuals or Organizations

-

TOTAL State Costs by Category

\$ 8,000

\$ -

B. State Costs by Source of Funds

Increased Costs

Decreased Costs

GPR

\$

\$ -

FED

-

PRO/PRS

-

SEG/SEG-S

\$ 8,000

-

III. State Revenues -

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$ -

GPR Earned

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

TOTAL State Revenues

\$

\$ -

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ 8,000

\$ 0

NET CHANGE IN REVENUES

\$ 0

\$ 0

Agency Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

DATCP

Donald Akamatsu for
Barbara Knapp (608) 224-4746

06/08/99

Jim Vanden Brook - (608) 224-4501

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE & CONSUMER PROTECTION

Chapter ATCP 30, Wis. Adm. Code
Pesticide Product Restrictions

Final Draft Regulatory Flexibility Analysis

Businesses Affected:

The amendments to ATCP 30 Appendix A will affect small businesses in Wisconsin. The greatest small business impact of the rule will be on users of atrazine -- farmers who grow corn. The proposed prohibition areas contain approximately 6,000 acres. Assuming that 50% of this land is in corn and that 50% of these acres are treated with atrazine, then 1,500 acres of corn will be affected. This acreage would represent between 5 and 20 producers, depending on their corn acreage. These producers are small businesses, as defined by s. 227.114 (1)(a), Stats. Secondary effects may be felt by distributors and applicators of atrazine pesticides, crop consultants and equipment dealers. Since the secondary effects relate to identifying and assisting farmers in implementing alternative weed control methods, these effects will most likely result in additional or replacement business and the impacts are not further discussed in this document.

Specific economic impacts of alternative pest control techniques are discussed in the environmental impact statement for this rule.

Reporting, Recordkeeping and Other Procedures Required for Compliance:

The maximum application rate for atrazine use in Wisconsin is based on soil texture. This may necessitate referring to a soil survey map or obtaining a soil test. While this activity is routine, documentation would need to be maintained to justify the selected application rate. A map delineating application areas must be prepared if the field is subdivided and variable application rates are used. This procedure is already required under the current atrazine rule.

All users of atrazine, including farmers, will need to maintain specific records for each application. This procedure is already required under the current atrazine rule.

Atrazine cannot be used in certain areas of the State where groundwater contamination exceeds the atrazine enforcement standard in s. NR 140.10 Wis. Adm. Code.

Professional Skills Required to Comply:

The rule affects how much atrazine can be applied and on which fields. Because overall use of atrazine will be reduced in the State, alternative weed control techniques may be needed in some situations. These techniques may include different crop rotations, reduced atrazine rates, either

alone or in combination with other herbicides, or combinations of herbicides and mechanical weed control measures.

While alternative weed control techniques are available, adoption of these techniques on individual farms will in some cases require assistance. In the past this type of assistance has been provided by University Extension personnel and farm chemical dealers. In recent years many farmers have been using crop consultants to scout fields, identify specific pest problems and recommend control measures. The department anticipates these three information sources will continue to be used as the primary source of information, both on whether atrazine can be used and which alternatives are likely to work for each situation.

Dated this 18th day of October, 1999.

By E. Chapman for Nick Neher
Nicholas J. Neher, Administrator
Agricultural Resource Management Division

FINAL DRAFT ENVIRONMENTAL IMPACT STATEMENT

FOR

PROPOSED 2000 AMENDMENTS TO RULES ON THE
USE OF PESTICIDES CONTAINING ATRAZINE

Prepared by

Wisconsin Department of Agriculture,
Trade and Consumer Protection

October 1999

ABSTRACT

The Atrazine Rule, Ch. ATCP 30, Wis. Adm. Code, was promulgated in March 1991 to protect groundwater in Wisconsin. This rule restricted the use of atrazine on a statewide basis and established one atrazine management area (AMA) and six prohibition areas (PAs) in which the use of atrazine was further restricted or prohibited.

Amendments to the Atrazine Rule were promulgated in March 1992. These amendments established five additional AMAs and created a total of 11 PAs in areas of the state where groundwater contamination was known to be more acute. The 1992 AMAs were located in portions of Columbia, Dane, Green, Lafayette, and St. Croix Counties.

Additional amendments to the atrazine rule were promulgated in March 1993. These amendments created 45 new PAs and enlarged 9 PAs. Two of the previous 11 PAs were absorbed into the Lower Wisconsin River Valley PA resulting in a total of 54 PAs. The amendments also lowered the maximum allowable atrazine application rates for the entire state to 0.75 pound/acre for coarse textured soils and 1.0 or 1.5 pounds/acre for medium/fine textured soils. The 1.5 pound/acre rate is allowed on medium/fine textured soils if no atrazine was applied in the previous year. If a rescue treatment is needed on sweet or seed corn, an additional amount of atrazine can be applied provided the total annual application does not exceed 1.5 pounds/acre on coarse soils and 2.0 pounds/acre on medium/fine soils.

Additional amendments were promulgated in 1994, 1995, 1996, 1997, 1998 and 1999. These amendments created 50 new PAs, rescinded 3 PAs and enlarged 18 existing PAs where the Enforcement Standard (ES) for atrazine had been attained or exceeded.

In 1998, Ch. ATCP 30, Wis Adm. Code, was expanded to include rules restricting the use of a number of pesticides in addition to atrazine. These additional rules were previously located in Ch. ATCP 29, Wis Adm. Code. All pesticide use restrictions are now contained within Ch. ATCP 30, Wis. Adm. Code, and it has been renamed "Pesticide Product Restrictions".

Under this proposal, all statewide provisions in the current atrazine rule remain in effect: routine application rates are limited to 0.75 - 1.5 pounds/acre, atrazine applications are limited to the time period April 15 through July 31, atrazine use in conjunction with irrigation requires an irrigation management plan, atrazine use and mixing-loading require certification, and record keeping is required of persons applying atrazine.

The proposed rule would create two new PAs and enlarge one existing PA where the Enforcement Standard (ES) for atrazine has been attained or exceeded. This action is based on groundwater samples for atrazine that the department has received in the last year. The two proposed new PAs are based on a single well exceeding the ES. The proposed expansion of an existing PA is due to new findings of atrazine above the ES near an existing PA boundary.

The Environmental Impact Statement (EIS) contains: a description and discussion of the proposed rule; background information on atrazine, including information on the use of atrazine and findings of atrazine residues in groundwater; a discussion of the environment and persons affected by the proposed rule; and the significant economic effects of the proposed action. The EIS also discusses and compares possible alternative actions.

This EIS finds that promulgation of the proposed rule would not create any new adverse environmental impacts from the use of alternative herbicides. Alternative herbicides, because of differences in mobility and persistence, generally have less potential to contaminate groundwater as compared to atrazine. The major effect the proposed rule is expected to have on the environment is a reduction in additional groundwater contamination by atrazine across the state and in the PAs. This reduction in additional groundwater contamination will benefit both the natural and human environments.

Specific questions on the EIS or the proposed atrazine rule should be directed to the Division of Agricultural Resource Management, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, Wisconsin, 53708-8911. Phone 608/224-4503.

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CHAPTER 1 - THE PROPOSED RULE

Background

The Atrazine Rule, Ch. ATCP 30, Wis. Adm. Code, was promulgated in March 1991 to protect Wisconsin's groundwater. This rule restricted the use of atrazine on a statewide basis and established one atrazine management area (AMA) and six prohibition areas (PAs) in which the use of atrazine was further restricted or prohibited. Statewide, atrazine application rates were limited to 1.0 - 2.0 pounds/acre depending on surface soil texture and whether atrazine was used the previous year. The AMA established in the Lower Wisconsin River Valley limited atrazine application rates to 0.75 pounds/year.

Amendments to the Atrazine Rule were promulgated in March 1992. These amendments established five additional AMAs and eight additional PAs in areas of the state where sample results received by the Department by April 1, 1991 showed more acute contamination. The maximum atrazine application rates in the AMAs were 0.75 pounds/acre for coarse soils and 1.0 pounds/acre for medium and fine soils.

Additional amendments to the Atrazine Rule were promulgated in March 1993. These amendments further limited the use of atrazine statewide and included 54 atrazine PAs areas where the groundwater ES for atrazine had been exceeded. Because the new statewide restrictions were similar to the restrictions in the existing AMAs, the existing AMAs were not included in the rule.

Specifically, the 1993 rule amendments established statewide maximum allowable atrazine application rates of 0.75 pounds/acre for coarse textured soils and 1.0 or 1.5 pounds/acre for medium/fine textured soils. The 1.5 pounds/acre rate is allowed on medium/fine textured soil if no atrazine has been applied the previous year. If a rescue treatment is needed on seed and sweet corn, an additional amount of atrazine can be used as long as the total annual amount of atrazine use does not exceed 1.5 pounds/acre on coarse textured soils and 2.0 pounds/acre on medium/fine textured soils.

Additional amendments to the Atrazine Rule were promulgated in 1994, 1995, 1996, 1997, 1998 and 1999. These amendments created 50 new PAs, enlarged 18 existing PAs, and rescinded 3 PAs. These actions were based on groundwater sample results for atrazine and metabolites that the Department received during this period. The total number of acres in atrazine prohibition areas by 1999 was over 1.2 million acres.

In 1998, Ch. ATCP 30, Wis Adm. Code, was expanded to include rules restricting the use of a number of pesticides in addition to Atrazine. These additional rules were previously located in

Ch. ATCP 29, Wis Adm. Code. All pesticide use restrictions are now contained within Ch. ATCP 30, Wis. Adm. Code, and it has been renamed "Pesticide Product Restrictions".

The Proposal

Statewide Limitations

Under this proposal, all statewide provisions in the current Atrazine Rule remain in effect: routine application rates are limited to 0.75 - 1.5 pounds/acre; atrazine applications are limited to the time period April 15 through July 31; atrazine use in conjunction with irrigation requires an irrigation management plan; atrazine use and mixing-loading requires certification; and record-keeping is required for persons applying atrazine.

Prohibition Areas

Currently, 101 PAs totaling over 1.2 million acres are included in ATCP 30. The proposed rule amendments would create two new PAs (Portage and St. Croix Counties) and enlarge one existing PA (Adams County). The total land area in the proposed PAs is approximately 6,000 acres. This proposed action is based on groundwater sample results for atrazine and metabolites that the Department has received in the last year. The proposed two new PAs are based on a single well exceeding the ES. The proposed expansion of an existing PA is due to a newly discovered exceedence of the atrazine Enforcement Standard (ES) near the existing PA boundary. A map showing existing and proposed PAs is shown in Figure 1.

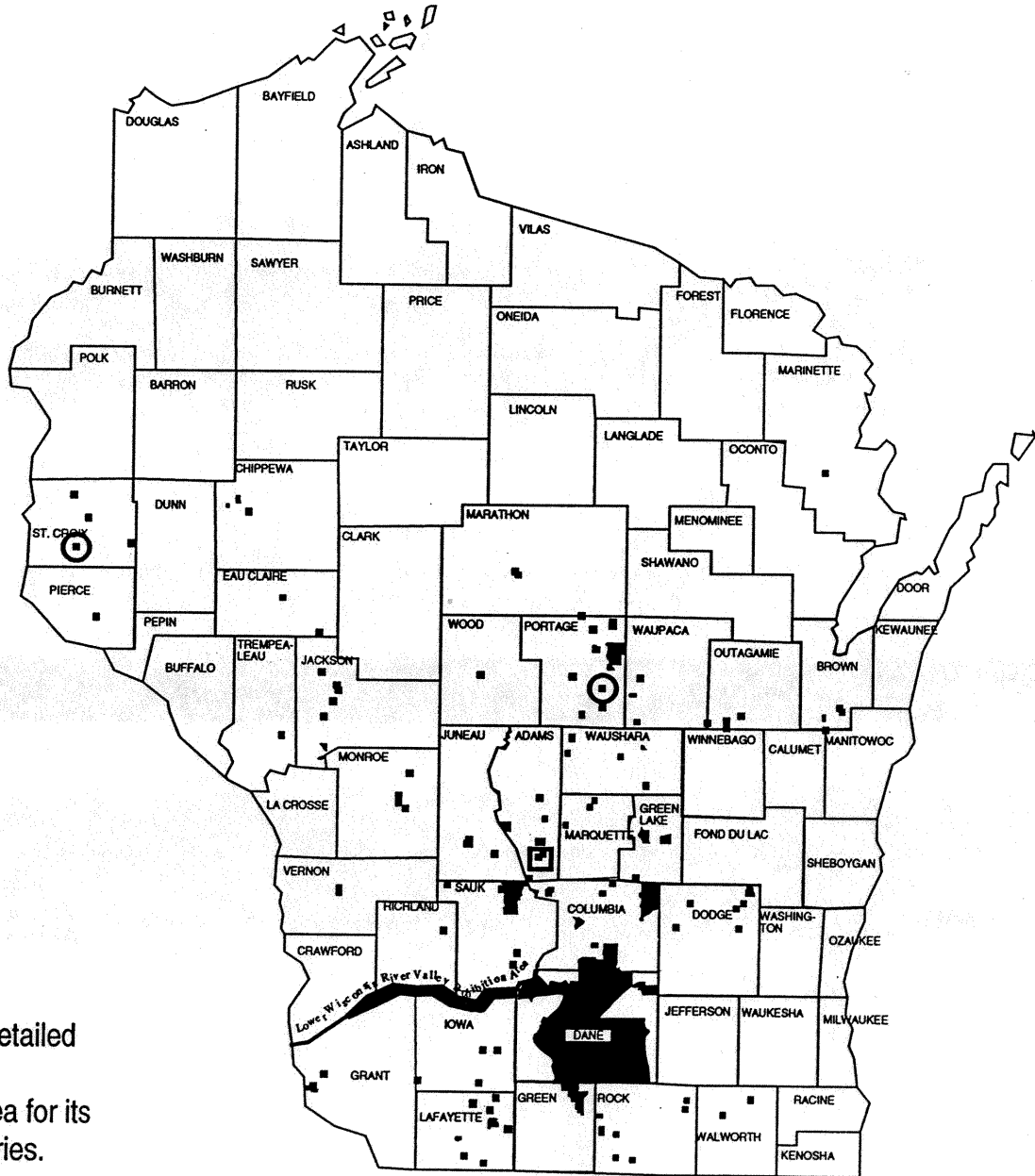
Within every prohibition area, atrazine applications are prohibited. The proposed rule also prohibits atrazine mixing or loading in existing and new prohibition areas unless conducted over a spill containment surface which complies with ss. ATCP 29.151 (2) to (4).

Discussion

How the Proposed PAs were Selected and Delineated

At well sites that exceed the ES for atrazine, an investigation is conducted to determine the source of the atrazine contamination in groundwater. As part of the investigation, each well

Figure 1
Atrazine Prohibition Areas



Refer to the detailed map of each prohibition area for its exact boundaries.

- Surrounds an expanded prohibition area
- Surrounds a new prohibition area

State Agencies

DATCP would administer and enforce the proposed rule. Initially, a significant outreach effort will be needed to inform the regulated community of the new PAs. An increase in compliance and enforcement activities by DATCP will also be needed in the PAs.

Groundwater monitoring will need to continue to allow evaluation of the rule over time. Overall, a significant expenditure of staff, money and analytical services will be required.

DNR has authority to sample wells and is likely to continue these efforts. DHFS is expected to continue its cooperation with DNR and DATCP by offering information on possible health effects of atrazine and issuing health advisories regarding the use of water from contaminated wells.

CHAPTER 6 - ALTERNATIVES TO THE PROPOSED ACTION

No Action Beyond the Existing Rule

Under this option, no new PAs would be delineated. The existing Chapter ATCP 30 promulgated in April 1999 would continue to apply to all areas of the state.

Advantages

An advantage of this option is that no additional rulemaking or compliance actions would be required for the Department. Also, from a weed control perspective, growers in the proposed PAs could continue using atrazine at the existing statewide levels.

Disadvantages

The main disadvantage of this option is that it would not provide adequate groundwater protection in the areas where exceedences of the atrazine ES have been found. A lack of response would not meet the department's mandates under the Groundwater Law.

Statewide Prohibition

Under this option atrazine use would be completely eliminated. No atrazine could be used for any crop in any part of the state. A prohibition on atrazine use could be imposed for the 2000 growing season or phased-in over 2-3 years. This is obviously the most restrictive action the Department could take in response to atrazine contamination in groundwater. This action should receive consideration because the NR 140 groundwater ES includes atrazine and the three chlorinated metabolites. Sampling results for atrazine and metabolites have indicated that this new ES is being exceeded much more frequently than the old ES that was based solely on parent atrazine.

Advantages

The biggest advantage of this option is that it would provide the highest degree of groundwater and public health protection from contamination by atrazine. No additional atrazine would be