



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: December 22, 2008

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220, South, State Capitol
PO Box 7882
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The Honorable Michael Huebsch
Speaker, Wisconsin State Assembly
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FROM: Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Atrazine Restrictions for 2009
(Clearinghouse Rule #08-090)

The Department of Agriculture, Trade and Consumer Protection ("DATCP") is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

DATCP rules regulate atrazine use statewide, and prohibit atrazine use in certain areas, in order to protect groundwater. This rule expands current atrazine prohibition areas based on new groundwater sampling data.

Background

Atrazine is a widely used agricultural herbicide that has been found in groundwater throughout the state. Current DATCP rules under ch. ATCP 30, Wis. Adm. Code, limit atrazine application rates throughout the state to ½ the current federal label rate. The current rules also *prohibit* the use of atrazine where atrazine contamination of groundwater has attained or exceeded the state groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 102 designated areas, including major prohibition areas in the lower Wisconsin River Valley and much of Dane and Columbia counties. DATCP updates prohibition areas on an annual basis, as necessary, based on new groundwater findings.

Agriculture generates \$51.5 billion for Wisconsin

Rule Content

Based on new groundwater sampling data, this rule expands and joins two current atrazine prohibition areas in Columbia County. The expansion will increase the total statewide acreage of atrazine prohibition areas by approximately 1,830 acres. By joining two prohibition areas, this rule will reduce the total number of prohibition areas from 102 to 101. This rule includes maps describing the revised 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 that complies with s. ATCP 29.45, Wis. Adm. Code.

Public Hearings

The Board approved the hearing draft rule on August 6, 2008. The department held two public hearings on October 23, 2008 in Poynette, Wisconsin. A total of five people attended the hearings. No one provided oral testimony. Of those who attended the hearings, three were supportive of the rule and two were at the meetings for informational purposes only. Two people also provided written testimony in favor of the rule via e-mail.

Changes from the Hearing Draft

Based on the comments received during the public hearings, the department did not include any changes to the hearing draft. Based on the Clearinghouse Report to the Agency, the department made three changes to the hearing draft. There were no major substantive changes.

Response to Rules Clearinghouse Comments

DATCP modified the final draft rule to address all of the comments from the Legislative Council Rules Clearinghouse. Changes have been made to a map included in the rule (Appendix A to Chapter 30) that inadvertently depicted the proposed atrazine prohibition area with an incorrect shading pattern. One of the two maps depicting the atrazine prohibition area with improper shading (09-11-01) was inadvertently included in the rule package and has been removed. Also, in Section 3 of the rule, "number" has been replaced with "numbered".

Fiscal Impact

Administration and enforcement of this rule will involve some new costs for DATCP. Staff time will be needed to monitor compliance (0.1 FTE, cost approximately \$7,800). Compliance monitoring will be coordinated with current compliance monitoring activities. Soil sampling and testing may be used to monitor compliance, and may require an estimated \$1,000 in analytical services.

Total costs are estimated at \$8,800. DATCP expects to absorb these costs within its current budget. There will be no additional costs to any other state agencies or local governments. A complete *Fiscal Estimate* is attached.

Business Impact

This rule will affect four or five farmers in the expanded prohibition area who currently use atrazine to control weeds in corn. Those farmers, who are “small businesses,” will no longer be able to use atrazine. However, other effective weed control products are available, so the rule will not have a significant effect on the affected farmers. This rule may also have a slight effect on distributors and applicators of atrazine herbicides, crop consultants and equipment dealers, but the effect will not be significant. A complete *Business Impact Analysis* is attached.

Environmental Impact

This rule will not have any adverse environmental impacts, and will help to protect and restore groundwater quality in Columbia County. The attached *Environmental Impact Statement* provides background information related to DATCP’s overall regulation of atrazine herbicides. This rule is consistent with the state groundwater law, and with the overall protocol for atrazine regulation that has been in effect since 1991.

Federal and Surrounding State Regulations

Federal Regulations

Pesticides and pesticide labels must be registered with the federal Environmental Protection Agency (“EPA”). Persons may not use pesticides in a manner inconsistent with the federal label.

The maximum atrazine application rate in Wisconsin is ½ of the maximum federal rate. However, the current federally-registered atrazine label suggests that atrazine should not be used on permeable soils with groundwater near the soil surface. Wisconsin has clearer, more definite restrictions on atrazine use, based on actual findings of groundwater contamination in this state.

EPA is proposing federal rules that would require states to have pesticide management plans for pesticides that have the potential to contaminate groundwater. Wisconsin’s current regulatory scheme for atrazine pesticides would likely comply with the proposed federal rules.

Surrounding State Programs

Wisconsin atrazine regulations are stronger than those in adjacent states:

- Iowa restricts atrazine application rates to 1/2 the federal label rate in 23 counties (7 with county-wide restrictions and 16 with restrictions in some townships).

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- Minnesota has a program of voluntary use limitations when surface water or groundwater contamination exceeds a level of concern. This program suggests pesticide use restrictions or management practices to reduce surface water or groundwater contamination. To date, this program has not been implemented anywhere in Minnesota.
- Illinois and Michigan have no atrazine regulations.