



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Randy Romanski, Secretary

DATE: December 20, 2010

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 130 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Mike Sheridan
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
PO Box 8952
Madison, WI 53708-8952

FROM: Randy Romanski, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Atrazine Restrictions for 2010
(Clearinghouse Rule #10-110)

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 101 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.

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Rule Content

Based on new groundwater sampling data, this rule proposes to add a new atrazine prohibition area in Sauk County adjacent to the existing lower Wisconsin River Valley prohibition area, and expand and join two existing atrazine prohibition areas in Columbia County. The proposed rule will add approximately 8,640 acres where the use of atrazine is prohibited. By adding one new atrazine prohibition area in Sauk County and joining two existing atrazine prohibition areas in Columbia County, the total number of atrazine prohibition areas in Wisconsin will remain at 101.

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

DATCP held two public hearings on this rule. The hearings were held at the Prairie du Sac Town Hall on October 26, 2010, and at the Pardeeville Public Library on October 27, 2010. DATCP also accepted written testimony until November 12, 2010. A total of 16 people filled out "Public Hearing Appearance Cards" at the hearings. One attendee provided oral testimony and three attended for informational purposes only. A total of 39 people, including advocacy groups, provided written comment on the proposed rule change, with 28 registering in favor of the proposed rule change and 11 registering in opposition. A summary of hearing comments and DATCP's response is attached to this memo. There were no public appearances on this rule at the meeting of the Board of Agriculture, Trade and Consumer Protection that approved the rule change.

Changes from Hearing Draft

Based on a comment made in the public hearings, DATCP amended a paragraph in the Final Draft Environmental Impact Statement to clearly state that atrazine is not considered to be a human carcinogen.

Response to Rules Clearinghouse Comments

No comments were made by the Rules Clearinghouse.

Fiscal Impact

Administration and enforcement of this proposed rule will involve some new costs for DATCP. Staff time will be needed to monitor compliance (0.1 FTE, costing 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 \$2,000 in analytical services.

Total costs are estimated at \$9,800. 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 proposed rule will affect 20 to 30 farmers in these areas 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 impact on the affected farmers. This proposed rule may also have a slight impact on distributors and applicators of atrazine herbicides, crop consultants and equipment dealers, but the impact will not be significant. A complete *Business Impact Analysis* is attached.

Environmental Impact

This proposed rule will not have any adverse environmental impacts, and will help to protect and restore groundwater quality in Columbia and Sauk counties. The attached *Environmental Impact Statement* provides background information related to DATCP’s overall regulation of atrazine herbicides. This proposed 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).
- 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.