State of Wisconsin
Governor Scott Walker

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

DATE: December 17, 2012

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

SUBJECT: **Pesticide Use and Control (Clearinghouse Rule #12-003)**

Introduction

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.

Background

DATCP regulates the sale and use of pesticides in this state. This rule modifies current rules related to pesticides. Among other things, this rule:

- Repeals the provision that veterinarians and veterinary technicians who use pesticides for animal treatment be required to obtain individual commercial applicator licenses. This change will make the current rule consistent with a recent law change that removes the requirement for veterinary clinics to obtain special veterinary clinic pesticide use permits.

- Modifies an existing pesticide applicator certification category to include pesticide applications to natural areas, which is of interest to those committed to rehabilitating or maintaining natural areas and also is an area of business growth for pesticide applicators.

- Allows regulated persons to give certain notices and submit certain permit applications by electronic transmission to customers, if customers choose to receive important pesticide safety information in that way. It also reduces paperwork for some businesses by eliminating duplicative recordkeeping requirements and clarifies that certain paperwork will be submitted to the department primarily by electronic means.

- Updates current rules related to structural pesticide applications, including rules related to perimeter barrier applications and application notices.

- Harmonizes current rules with existing rules related to fertilizer and pesticide bulk storage.

- Updates current rules related to non-agricultural chemigation systems. The rule also provides minimum requirements for the installation and use of urban pesticide misting systems.

- Creates labeling requirements for rodenticide bait stations that are set out by commercial applicators, which often are placed outdoors in areas that are accessible to animals and the public.

- Modernizes the rules related to spill containment and spill containment surfaces. The rule also clarifies that spill containment surface repairs shall be made according to good engineering practices and manufacturer specifications.

- Removes obsolete pesticide license fee provisions to avoid confusion when reading the rule.

- Amends the administrative rule note regarding worker protection provisions by removing the summary of federal requirements, in anticipation of a change to federal worker protection standards.

- Makes a number of other minor drafting changes designed to update, clarify and correct current rules.

Rule Content

This rule updates administrative rules relating to pesticide use and control. Some of the key changes include the following:

Veterinary Clinics Applying Pesticides

2009 Wis. Act 139 repealed a statutory provision that required veterinary clinics to have a biannual DATCP permit to use, repackage or prescribe pesticides as part of a veterinary treatment. This rule modifies current rules to reflect that statutory change. This rule also clarifies that veterinarians and certified veterinary technicians are not required to have an individual commercial applicator license in order to use a pesticide as part of a veterinary treatment.

Applying Pesticides to Natural Areas; Applicator Certification

Under current rules, commercial pesticide applicators must be certified for competence in relevant application categories. This rule expands the existing "right-of-way" category to include applications to natural areas. The category is now titled, "right-of-way and natural area pest control." Applicators applying pesticides to natural areas must have relevant knowledge related to the restoration and maintenance of natural areas and the treatment of common pests affecting natural areas.

Pesticide Mixing and Loading Sites; Spill Containment

DATCP recently updated its rules in ch. ATCP 33 related to fertilizer and pesticide bulk storage. This rule updates related pesticide rules in ch. ATCP 29 to make them consistent with ch. ATCP 33, including construction and maintenance standards for pesticide mixing and loading sites. The updated standards include standards related to construction materials, sumps, spill containment and cleanup.

Urban Pesticide Misting Systems

Under the existing rule, chemigation systems generally are defined as systems that mix pesticides with irrigation water and apply the pesticide irrigation water mixture to plants. These types of pesticide application systems must meet certain standards and posting requirements. Existing standards and posting requirements apply to chemigation systems, but the current rule exempts devices or systems used only to apply residential lawn and garden pesticides. In the past, chemigation systems were developed primarily for use in agriculture.

New forms of non-agricultural chemigation systems are being installed at residential and commercial sites for the purpose of controlling pests such as mosquitoes. These urban pesticide misting systems are considered to be a type of chemigation but do not use irrigation water and are not used to apply water to lands, crops or plants. These chemigation systems disperse a mixture of pesticides and water into the air in the form of a mist to kill or control pests such as mosquitoes. In this rule, the definition of "non-agricultural chemigation system" is created and includes urban pesticide misting systems. The rule establishes standards and posting requirements specifically for these types of systems.

Perimeter Barrier Applications

This rule creates a definition for "perimeter barrier applications" and establishes that these are pesticide applications made on or within ten feet of a building or structure to discourage pests. The rule also clarifies the notification requirements for these applications.

Worker Protection Provisions

The United States Environmental Protection Agency (EPA) currently is revising its federal regulations concerning its Worker Protection Standard (WPS) for Agricultural Pesticides. DATCP summarizes the current federal worker protection requirements in a note to s. ATCP 29.61. This rule amends the note by removing the federal requirements, in anticipation of the change to the federal standards.

Electronic Notifications

Many of the notification requirements throughout the rule require written notification to customers. In this proposed rule, DATCP is explicitly permitting the use of electronic notifications if the customer agrees to that method of notification. DATCP is also allowing persons to apply for special pesticide permits via electronic methods in order to decrease the time it takes to submit, review and issue these permits. DATCP is also clarifying the rules related to the landscape registry to allow explicitly for electronic registration and publication.

Rodenticide Bait Stations

Many rodenticide bait stations used by commercial applicators are not labeled or have labeling that becomes unreadable due to being outside and exposed to the elements. The concern is that human or non-target species exposure to unknown products may delay timely medical assistance. This rule establishes labeling requirements for rodenticide bait stations used by commercial pesticide applicators. This rule also establishes that rodenticide bait stations must be labeled on the interior or exterior with the company responsible for maintaining the bait station and the EPA registration number of the pesticide(s). This information must be readily accessible and remain legible while the rodenticide bait station is in service.

Other Changes

The rule makes a number of other minor drafting changes designed to update, clarify and correct current rules, including deleting outdated time frames.

Public Hearings

DATCP held two public hearings on this rule. The hearings were held on the following dates at the following locations:

February 21, 2012 Appleton
February 29, 2012 Madison

Written comments were accepted until March 30, 2012. A total of thirty people attended the hearings. Of those thirty people, twenty-seven submitted registration cards and twelve provided oral testimony. An additional eighteen people submitted written comments by mail or email.

Comments included the following:

- 15 comments related to including natural areas in an existing pesticide certification category. Most comments supported clarifying the existing rule to include natural areas in an existing category, but preferred putting it in the right-of-way category as opposed to the turf and landscape category.

- 25 comments related to labeling of bait stations. The majority of the comments supported the department's proposal with changes, including allowing labeling on the inside of the bait station and changing the name of the regulation to more clearly specify it applied only to rodenticide bait stations.

- 7 comments related to electronic notifications. The majority of the comments supported the department's proposal with changes.

- 1 comment supporting each of the perimeter barrier and spill containment proposals.

- 2 comments that did not specify a position but provided comments about pesticide control under power lines and federal rodenticide regulations.

DATCP's Rule Changes in Response to
Public Hearings and Rules Clearinghouse Comments

In response to the public hearing comments, DATCP modified two proposals.

- The initial hearing draft rule added natural area certification to the turf and landscape (3.0) pesticide applicator certification category. This final draft rule reflects the public hearing comments received and adds natural area to the right-of-way (6.0) certification category. The new category will be titled, "right-of-way and natural area pest control".

- The final draft rule also modifies the bait station labeling proposal. The initial hearing draft rule required exterior labeling of pesticide bait station. The final draft rule clarifies that the labeling is required only to rodenticide bait stations, and also permits labeling to either the interior or the exterior.

Other minor drafting changes were made as a result of Rules Clearinghouse and public hearing comments. All recommendations suggested by the Clearinghouse were incorporated into the rule.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Fiscal Impact

DATCP plans to absorb any costs of the agency's implementation of this rule in its budget. Because regulation of pesticide use is a state function, local governments should not have any implementation or compliance costs. (*See attached Fiscal Estimate and Economic Impact Analysis.*)

Business Impact

This rule will impact certain businesses, including small businesses. This rule is expected to add minimal, if any, costs to affected pesticide applicators and pesticide application businesses. Moreover, this rule will not have a significant effect on local markets, on the sale or distribution of pesticide products, or on the overall economy of this state. Pesticide application businesses may experience cost savings as a result of clarifying existing regulations, improving regulatory consistency and modifying administrative requirements, including the ability to provide certain notices and submit certain permit applications by electronic means. (*See attached Business Impact Analysis.)*

Environmental Impact

The majority of these rule changes are administrative in nature and are not expected to affect the environment. Administrative changes include the removal of the administrative rule licensing requirements for veterinarians and veterinary technicians due to a recent law change, clarifying an administrative rule note describing the worker protection standard (which is set by federal regulations), harmonizing this rule with ch. ATCP 33 (Bulk Storage of Pesticides and Fertilizers), enabling more efficient communication between pesticide application businesses and customers and a more efficient permit application process, removing duplicative recordkeeping requirements, and removing obsolete rule provisions, including references to past fee holidays. The substance of these rule changes will not directly affect the natural environment but may reduce duplicative recordkeeping and unnecessary paperwork by pesticide businesses and the department. (*See attached Environmental Assessment.*)

Federal and Surrounding State Programs

Federal Programs

The EPA regulates pesticides at the federal level under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and through the use of pesticide product labels. The EPA has delegated authority to Wisconsin to enforce federal pesticide regulations and to assure proper use and handling of pesticides in this state. Wisconsin's pesticide regulations must be at least as stringent as EPA's regulations. Ch. 94, Stats., and ch. ATCP 29, Wis. Adm. Code, implement Wisconsin's delegated pesticide authority.

EPA recently established new regulations related to bait stations for 10 rodenticides. The regulations were developed after a review of incidents and accidental deaths related to rodenticide use. The new regulations restrict the sale of some rodenticides to certified applicators, limit the distance from a structure that a rodenticide may be placed, permit only "closed-system" rodenticide bait stations to be sold to non-certified applicators, and phase out the use of certain rodenticides altogether. Wisconsin pesticide applicators must already comply with the EPA regulations. In addition to the EPA regulations, this proposed rule would require operators to label the interior or exterior of the rodenticide bait station with contact and product information, in order to assist emergency responders in the case of an accidental ingestion by non-target animals or persons.

EPA currently is revising its federal WPS regulations. The proposed new standard is scheduled to be released for public comment in mid-2013. Section ATCP 29.61, Wis. Adm. Code, adopts the federal WPS by reference and summarizes the current WPS requirements in a note. This rule amends the note by removing the summary of current WPS requirements, in anticipation of the change in federal standards.

Surrounding State Programs

Surrounding states, including Michigan, Minnesota, Illinois and Iowa are also delegated authority by EPA to enforce federal pesticide regulations. Each state also has state-specific pesticide regulations, similar to Wisconsin's regulations. The state-specific regulations must be at least as stringent as EPA's regulations but may be more or less stringent than Wisconsin's regulations, depending on the topic.

Chemigation

Nearly all states have chemigation laws, including Illinois, Michigan and Minnesota. EPA has minimum standards in place for states that do not have their own regulations, such as Iowa. Minnesota's chemigation regulations are more stringent than Wisconsin's regulations and require applicators obtain a chemigation permit annually before chemigating. This rule updates Wisconsin's chemigation laws to reflect developments in industry practices.

Urban pesticide misting systems are an emerging application method. Surrounding states have existing regulations that govern the use of these systems (including label, drift, and pesticide applicator certification requirements), although they do not apply only to this specific type of application. Wisconsin's proposed requirements to monitor windspeed and prevent time-delayed applications complement label requirements and will help ensure applicators avoid serious pesticide use violations and help protect human and companion animal health.

Natural Area Certification

No surrounding states have a separate certification category for "natural area" applications. Some surrounding states include these applicators in the "turf and landscape" certification category. Surrounding states also include these applicators in the "field and vegetable crop" certification category, when the natural areas are in a grassland-type setting. At the suggestion of

Wisconsin's pesticide industry, and due to similarity of types of pests and pesticide application methods, the rule includes natural area applications in the current "right-of-way" category. The expanded certification category in the rule will be called "right-of-way and natural area pest control".

Rodenticide Bait Station Labeling

Many states are considering modifying their rodenticide bait station requirements in response to EPA's new rodenticide regulations. Iowa does not require rodenticide bait station labeling but does require notification to the Department of Agriculture prior to use of certain hazardous rodenticides (which is more stringent than what this rule proposes). Minnesota, Illinois and Michigan do not require exterior labeling of rodenticide bait stations at this time. Other states, including California, New York and Tennessee, require exterior labeling of rodenticide bait stations. This proposed rule permits either interior or exterior labeling of rodenticide bait stations.

Electronic Information

Surrounding states allow electronic transmittal of information between commercial application businesses and customers, as Wisconsin is proposing.

Data and Analytical Methodologies

To develop this rule, DATCP evaluate federal rules, other state rules and programs and industry trends.

Standards Incorporated by Reference

This rule does not incorporate standards by reference.