

1985 Assembly Bill 436

Date of enactment: April 10, 1986
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1985 Wisconsin Act 206

AN ACT to create 94.709 of the statutes, relating to regulating the use of aldicarb and providing for a study.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 94.709 of the statutes is created to read:

94.709 Use of aldicarb. (1) DEFINITIONS. In this section:

(a) "Enforcement standard" has the meaning given under s. 160.01 (2).

(b) "Point of standards application" has the meaning given under s. 160.01 (5).

(c) "Preventive action limit" has the meaning given under s. 160.01 (6).

(d) "Prohibition area" means an area in this state in which the use of aldicarb is or has been prohibited in accordance with a rule promulgated by the department on or after April 1, 1983.

(2) ADDITIONAL CONTIGUOUS PROHIBITION AREA REQUIRED. If any prohibition area is contiguous with or overlaps 2 or more other prohibition areas, the department shall establish a new prohibition area which shall include each quarter quarter section any part of which lies within a 2-mile radius of each point of standards application used in determining the need for each of the original prohibition areas.

(3) PERMISSION FOR USE IN PROHIBITION AREA. Any person who wishes to apply any pesticide containing aldicarb in a prohibition area shall apply to the department for permission. Except as provided under sub. (4), the department may not grant permission unless the department determines all of the following:

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

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

(4) EXCEPTION FOR RESEARCH PURPOSES. If the condition specified in sub. (3) (a) applies, the department may also grant a request under sub. (3) for the controlled application of pesticides containing aldicarb in

a limited portion of a prohibition area for the purpose of facilitating research approved by the department.

(5) PROMOTION OF RESEARCH. (a) The department shall take steps to promote research on all of the following:

1. The extent of pesticide transport to groundwater in sandy soil.

2. Pesticide migration in groundwater.

3. Scientifically valid and economical techniques for accurately predicting whether pesticide use is likely to cause enforcement standards to be exceeded at points of standards application.

4. The potential for use of aldicarb in prohibition areas in light of federal labeling requirements that have taken effect since January 1, 1983.

5. The effect of department rules regulating aldicarb application that took effect April 1, 1983, and the adequacy of those rules in maintaining compliance with the enforcement standard at points of standards application.

6. Any other topic that may be necessary or helpful in understanding the environmental fate of pesticides in areas of this state with the potential for groundwater contamination.

(b) The department shall submit an annual report to the governor and to the chief clerk of each house of the legislature, for distribution to the standing committees that deal with environmental and agricultural issues, on its research promotion efforts and any available results of research under par. (a).

(6) APPLICABILITY. This section does not apply after December 31, 1988.

SECTION 2. **Nonstatutory provisions.** (1) STUDY.

(a) The secretary of agriculture, trade and consumer protection shall, before July 1, 1986, appoint a committee under section 15.04 (1) (c) of the statutes to study this state's experience with the regulation of pesticides and nitrates, including pesticides containing aldicarb, since the enactment of 1983 Wisconsin Act 410 and to evaluate the methods used for monitoring the use of pesticides. The committee shall include, but is not necessarily limited to, representatives from the standing committees in both houses of the legislature that deal with agricultural and environmental issues, representatives of the university of Wisconsin system with expertise in pesticide research and representatives of the department of agriculture, trade and consumer protection, the department of natural resources, agribusiness groups, trade associations representing

commerce and industry, including the paper industry, and environmental organizations. The committee shall include persons whose income is near wholly derived from their personal operation of farms.

(b) The committee, after considering the results of any relevant research, shall report its findings to the secretary of agriculture, trade and consumer protection before January 1, 1988. The report shall include recommendations on all of the following:

1. The information that state agencies should gather and procedures to follow in promulgating rules to regulate pesticide use under chapter 160 of the statutes, including specific recommendations for assuring that academic, commercial, agricultural, environmental and administrative concerns are incorporated in the rule-making procedure.

2. The appropriate placement of points of standards application, as defined under section 160.01 (5) of the statutes, for determining whether to establish a prohibition area, as defined under section 94.709 (1) (d) of the statutes.

3. The applicability of the concept of and the appropriate boundaries for 3-dimensional design management zones with respect to rules promulgated under section 160.21 (2) (c) of the statutes.

4. The applicability of procedures and techniques used in the regulation of aldicarb to the regulation of other pesticides that have a reasonable probability of being detected in groundwater.

5. More efficient means of data gathering, analysis and reporting related to pesticide use.

6. The desirability of regulating nitrate use and possible methods of regulation.

7. Necessary changes in administrative rules.

(c) The secretary of agriculture, trade and consumer protection shall provide copies of the report to the department of natural resources and to the chief clerk of each house of the legislature for distribution to each member of those standing committees that deal with agricultural and environmental issues.

(2) RULES. (a) Before January 1, 1987, the department of agriculture, trade and consumer protection shall, as provided under section 160.19 of the statutes, review its rules relating to the use of aldicarb and shall determine whether it is technically and economically feasible to minimize the level of aldicarb in groundwater and to maintain compliance with the preventive action limit at points of standards application and, if it determines that it is necessary to amend any rules, shall initiate the rule-making procedure to do so.

(b) If the department of agriculture, trade and consumer protection determines, as a result of the study required under subsection (1), that it is necessary to amend its rules relating to pesticide use, it shall submit the amended rules to the legislative council clearinghouse under section 227.029 (1) of the statutes before July 1, 1988.

(3) PROHIBITION ON ENFORCEMENT OF EMERGENCY RULE. From the effective date of this subsection to July 31, 1986, notwithstanding section 227.027 (1) of the statutes, the department of agriculture, trade and consumer protection may not promulgate or enforce any emergency rule governing the use of aldicarb. This subsection does not limit the authority of that department to promulgate or enforce any other rule relating to the use of aldicarb.