

Chapter Ag 29

PESTICIDE USE AND CONTROL

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Note: See chapters NR 80 and 107, Wis. Adm. Code for pesticide rules of the department of natural resources. See also chapter NR 181, Wis. Adm. Code, pertaining to disposal of hazardous wastes.

Ag 29.01 Definitions. (1) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(2) "Accident" means an unexpected or undesirable event caused by the use or presence of a pesticide, adversely affecting persons, property or the environment.

(3) "Agricultural commodity" means any plant or part of a plant, or animal or animal product, produced by a person primarily for sale, consumption, propagation or other use by humans or animals, as defined in s. 94.67 (2), Stats.

(4) "Calibration of equipment" means the measurement of dispersal or output of application equipment, and the adjustment of such equipment to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

(5) "Certified applicator" means a person certified by the department to use or supervise the use of restricted-use pesticides as a private or commercial applicator, as defined in s. 94.67 (4), Stats.

(6) "Commercial applicator" means a person, whether or not a private applicator with respect to some uses, who uses or supervises the use of pesticides for any purpose on any property other than as a private applicator. The term does not apply to persons applying pesticides other than restricted-use pesticides for household purposes in and around their own homes.

(7) "Compatibility" means that property of a pesticide which permits it to be used or combined with another pesticide or chemical without undesirable results being caused by the combination.

(8) "Competent" means qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and associated responsibility.

(9) "Common exposure route" means a likely way by which a pesticide may reach or enter an organism.

(10) "Commercial applicator for hire" means a commercial applicator using or applying pesticides in the performance of pest control work as an independent contractor for hire.

(11) "Distributor" means a person engaged in the sale of pesticides for resale and includes a person who sells at both wholesale and retail, as provided in s. 94.67 (11), Stats.

(12) "Display" means the exposure or holding open to public view of pesticides in any sales room or business area from which sales are made and to which the public has access.

(13) "Environment" includes water, air, land and all plants and persons and other animals living in or on the water, air, or land and the interrelationships which exist among them, as defined in s. 94.67 (12), Stats.

(14) "Federal act" means the federal insecticide, fungicide, and rodenticide act, as amended (7 USC 136 et seq.) and regulations issued under that act.

(15) "Immediately adjacent land" means, with respect to the advance notification requirement under s. Ag 29.15 (4) (b), land which is directly contiguous to land on which pesticides may be applied, or which is separated only by a road, railway, or utility right-of-way, or by a government-owned land corridor or waterway having a width of not more than 66 feet.

(16) "New product" means a pesticide product which is not a federally registered product.

(17) "Non-target organism" means a plant or animal other than the one against which the pesticide is applied.

(18) "Ornamental" means trees, shrubs, and other plantings grown for their decorative effect in or around homes, buildings, parks, streets, or roadways.

(19) "Person" means an individual, partnership, corporation, association, and any other business association or entity. The term includes counties, municipalities and townships.

(20) "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living persons or other living animals, declared to be a pest under the federal act or this chapter.

(21) "Pesticide" means any substance or mixture of substances labeled or designed or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant, as defined in s. 94.67 (25), Stats. For purposes of use, storage, transportation, disposal and display under this chapter, the term includes pesticide-fertilizer mixtures and seeds, seed pieces and other plant parts intended for planting or propagation which have been treated with a pesticide.

2. The time allotted to each topic;

3. The name, address, title and professional qualifications of each instructor;

4. The number of credit hours proposed for the course, in each category or subcategory of pesticide application; and

5. The name, address and telephone number of the person responsible for coordinating the course.

(7) **CERTIFICATION CARDS.** (a) A certification card shall be issued by the department to a private or commercial applicator when the applicator has satisfied all the conditions required for certification. Such certification card shall be carried on the applicator's person while purchasing a restricted-use pesticide or engaging in any phase of the use and application of restricted-use pesticides.

(b) Duplicates of the certification card may be issued by the department to the certified applicator if the applicator's card is lost, stolen, mutilated or destroyed upon payment of costs for duplicating the card.

(8) **SCOPE AND APPLICATION.** (a) This section is applicable to all commercial and private applicators of restricted-use pesticides. It does not apply to persons conducting laboratory type research involving restricted-use pesticides, and physicians or veterinarians using or applying restricted-use pesticides as drugs or medications in the treatment of persons or animals during the course of their normal practice.

(b) This section does not exempt persons certified to use or supervise the use of restricted-use pesticides from other provisions of this chapter as contained in ss. Ag 29.01 to 29.11, or ch. NR 80, Wis. Adm. Code, or other laws or regulations applicable to the use and application of pesticides.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; renum. from Ag 29.15 (2) to (6), (8) and (9), cr. (6), Register, March, 1982, No. 315, eff. 4-1-82.

Ag 29.17 Aldicarb use restrictions; reporting requirements. (1) **PURPOSE.** The purpose of this section is to minimize the quantity of aldicarb and its degradation products in groundwater, in order to prevent aldicarb residues in groundwater from reaching a level exceeding 10 ppb. The general restrictions in this section are based on the judgment that label restrictions implemented in 1982 on timing, amount and frequency of aldicarb use are adequate measures to prevent further deterioration of groundwater quality. Prohibitions, therefore, are intended to afford an opportunity for groundwater quality recovery by assuring that additional aldicarb applications be suspended according to these rules in the most critically affected areas. Should substantial evidence become available, through research or field monitoring, that, as a result of applications made since 1982, the label restrictions enumerated in this rule or label changes made subsequent to 1982 do not adequately minimize the quantity of aldicarb and its degradation products in groundwater in order to meet the purpose of this section, the rule will be amended. The department shall evaluate the need for further actions, including but not limited to monitoring, research, label restrictions, use restrictions and moratoria, when groundwater samples are found to contain aldicarb residues at a level from 2 to 10 parts per billion. Based upon that evaluation, prior to each growing season, the department shall implement those actions

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within its authority, necessary to meet the purpose of this rule. In the event the department concludes that further moratoria are required, such moratoria shall be implemented by amending the rule.

(2) **GENERAL RESTRICTIONS.** (a) *Amount and frequency of use.* Pesticides containing the active ingredient aldicarb shall not be applied at a rate exceeding 2 lbs. of aldicarb active ingredient per acre, or to the same application site more than once in any 2 successive years. Sites treated with aldicarb in 1982 may not be treated with aldicarb in 1983.

(b) *Use by certified applicators only.* Pesticides containing the active ingredient aldicarb are classified as restricted-use pesticides, to be applied only by commercial applicators certified in the pest control category pertaining to the type of application being made, certified private applicators, or persons acting under the direct supervision of the certified applicator.

(c) *Timing of application.* Pesticides containing the active ingredient aldicarb shall not be applied on potatoes sooner than 28 days after the date of planting or later than 42 days after the date of planting. Potatoes from fields treated with aldicarb shall not be harvested sooner than 50 days after the date of treatment.

(3) **REPORT OF INTENDED APPLICATION.** (a) No person may apply a pesticide containing the active ingredient aldicarb unless a report of intended application has been filed with the department at least 30 days before the pesticide is applied. Reports of intended application shall be made on forms provided by the department, and shall specify:

1. The name, address, and applicator certification number of the person making the application.
2. The name and address of the person contracting for the application, if any.
3. The type of crop on which the pesticide is to be applied, and the pests intended to be controlled by the application.
4. The specific location at which the pesticide is to be applied, including town, range, section and quarter-quarter section.
5. The approximate date on which the pesticide is to be applied.
6. The size of the area to be treated, and the amount of pesticide to be applied.
7. The history of aldicarb applications, if any, to the intended application site for the previous 3 years, specifying the year of each prior application.

(b) No person, other than a person identified on the report of intended application, may perform or supervise the application of a pesticide containing the active ingredient aldicarb. This does not apply to persons working under the direct supervision of the certified applicator.

(c) No person may apply a pesticide containing the active ingredient aldicarb except at the location identified in the report of intended application.

(d) No person may falsify information submitted under this subsection.

(4) SUMMARY SPECIAL ORDERS PROHIBITING ALDICARB USE IN CERTAIN AREAS. (a) Whenever the department receives a report of intended application under sub. (3), the department shall review the report to determine whether the intended application is subject to prohibition by summary special order, based on the prohibition criteria set forth under sub. (5). If the department finds that aldicarb applications to all, or a portion of the intended application site are subject to prohibition, it shall issue a summary special order under s. 94.71 (3) (c), Stats., and s. Ag 29.15 (2) (d), prohibiting aldicarb applications to the affected portions of the intended application site. Summary special orders shall expire on March 1 of the year following the year of intended application. Summary special orders shall prohibit all applications of aldicarb to the site for the duration of the order period. No person shall apply a pesticide containing the active ingredient aldicarb in violation of a summary special order issued under this subsection.

(b) A summary special order, if issued, shall be issued within 14 days after the date on which the report of intended application is received by the department. If a report of intended application is received on or before February 15 of the year of intended application, a summary special order may be issued at any time on or before March 1, based on new groundwater sample analyses received by the department more than 14 days after the receipt of the report of intended application. No summary special order shall be issued after March 1 of the year of intended application, except where the report of intended application is received after February 15 of that year.

(c) Summary special orders shall be issued to each person identified in the report of intended application. Orders shall be signed by the plant industry division administrator or designee, and be served in person or by certified mail, return receipt requested. Summary special orders are subject to a subsequent right of hearing before the department upon request, as provided in s. 94.71 (3) (c), Stats. Hearings shall be held within 14 days of the date on which the request for hearing is received by the department, unless the requesting person and the department agree to a later hearing date. Hearings shall be limited to the issue of whether the department has correctly interpreted and applied this subsection and sub. (5).

(5) APPLICATIONS SUBJECT TO PROHIBITION BY SPECIAL ORDER; CRITERIA. (a) *General criteria.* Aldicarb applications are subject to prohibition by summary special order under sub. (4) if the intended application site is located within a township quarter-quarter section lying wholly or in part within one mile of a sample point at which aldicarb residues have been detected in groundwater at a level exceeding 10 parts per billion. Groundwater sample analyses used as a basis for a summary special order shall be received by the plant industry division of the department, in completed form, on or before the date of the summary special order, but no earlier than March 1 of the year immediately preceding the year of intended application. For the purposes of this section, the groundwater sample point shall be taken as the center point of the township quarter-quarter section in which the actual sample point is located. Survey boundaries are those established by the United States public lands surveys.

(b) *Individual exemptions.* 1. An aldicarb application which is subject to prohibition by summary special order may be exempted by the department, upon request, if:

a. The application site is separated by a groundwater recharge divide or discharge boundary from the sample point at which aldicarb residues have been detected in groundwater at a level exceeding 10 parts per billion; or

b. The application site is a single continuous field covering at least 160 acres, or covered by a center-pivot irrigation system having a radius of at least ¼ mile, if no more than one quarter-quarter section of land within the field is subject to the aldicarb use prohibition.

2. Persons requesting an exemption under this paragraph shall submit proof that the exemption prerequisites are met. Exemptions shall be issued in writing, signed by the plant industry division administrator or designee. Exemptions shall include a specific statement of the facts and conclusions which form the basis for the exemption.

(c) *Sample requirements.* Groundwater samples under par. (a) shall be properly drawn, by or under the supervision of the Wisconsin department of natural resources, the Wisconsin department of health and social services, or the department. Samples may be drawn from:

1. A potable water supply well; or

2. Any other well, including a test well, provided that the well construction and method of sampling are adequate to insure that soil and water located in the unsaturated zone of the soil profile are excluded from the well, and from the groundwater sample. Samples shall not be drawn from a high capacity irrigation well, or any well located within 300 feet of a high capacity irrigation well. For samples other than those drawn from a potable water supply well, the sample collection record shall include the date of well construction, the depth of the water intake screen, the depth of the well casing, and the method and date of sampling. The department shall exclude all samples, other than samples drawn from potable water supply wells, for which this information is not available.

(d) *Publication of map descriptions.* The department shall, at least annually, publish maps or other documents describing land areas where aldicarb applications may be subject to prohibition by summary special order, based on the criteria set forth in par. (a) and groundwater sample analyses received by the department as of the map publication date. Maps or descriptions published under this paragraph are for tentative informational purposes only, and do not have the force and effect of law, apart from a special order under sub. (4). A disclosure to this effect shall be included on all maps and descriptions published under this paragraph. Maps and descriptions shall clearly indicate the date of their publication.

(6) **DISTRIBUTORS AND RETAIL DEALERS OF ALDICARB; RECORDKEEPING AND REPORTING REQUIREMENTS.** Distributors and retail dealers shall keep records of aldicarb distributions and sales, specifying the amount of aldicarb product included in each sale or distribution, and the name and address of the purchaser or recipient. During each week in which aldicarb sales or distributions are made by a distributor or dealer, the distributor or dealer shall file a written report with the department, specifying the amount of aldicarb product sold or distributed during that week to each

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purchaser or recipient, and the name and address of each purchaser or recipient. Reports may be in the form of actual invoice copies or written sales or distribution summaries.

(7) NOTICE OF CONTAMINATION FINDINGS. (a) Whenever a groundwater sample taken in accordance with sub. (5) (c) is found to contain aldicarb residues at a level of one part per billion or more, the department shall give written notice of the sample findings to:

1. The Wisconsin department of health and social services.
2. The county health department or county nurse, and the county extension agent for the county in which the groundwater sample was drawn.
3. All persons who have filed reports of intended application for aldicarb applications to be made in township quarter-quarter sections located wholly or in part within one mile of the sample point.

(b) Notice under par. (a) shall specify the township and quarter-quarter section in which the groundwater sample was taken, and the level of aldicarb residues found in the sample. Notice shall include such explanations and precautionary statements as may be considered appropriate by the department.

(8) GREENHOUSE AND RESEARCH APPLICATIONS; EXEMPTION. This section does not apply to greenhouse applications of aldicarb, or to research applications made pursuant to an experimental use permit issued by the department.

History: Emerg. cr. eff. 3-15-82; cr. Register, March, 1983, No. 327, eff. 4-1-83.

Ag 29.18 Authority. This chapter is adopted under authority of ss. 93.07 (1), 94.69 and 94.705 (2), Stats., and enforced under s. 94.71, Stats.

History: Cr. Register, March, 1982, No. 315, eff. 4-1-82; renum. from Ag 29.17, Register, March, 1983, No. 327, eff. 4-1-83.