

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Senate Committee on
Agriculture and
Environmental
Resources
(SC-AER)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
- 97hr_SC-AER_CRule_97-043_pt04
-
- Committee Hearings ... CH
-
-
- Committee Reports ... CR
-
-
- Executive Sessions ... ES
-
-
- Hearing Records ... HR
-
-
- Miscellaneous ... Misc
-
-
- Record of Comm. Proceedings ... RCP
-



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Invited Testimony of George J. Kraft

Director/Hydrogeologist/Associate Professor
Central Wisconsin Groundwater Center
UW-Extension/Stevens Point

Regarding Proposed Revisions to ATCP 31

October 1, 1997

The proposed rule revision inadequately protects Wisconsin's groundwater and misses the intent of Wisconsin's groundwater law. The Committee on Agriculture and Environmental Resources should consider revising the proposal to make it more consistent with the intent of the groundwater law.

Overview

Groundwater is a critical resource: Two-thirds of Wisconsin's population use groundwater for drinking and domestic use, while 94% of Wisconsin cities and villages rely on groundwater as a municipal water source. Evidence indicates that the quality of Wisconsin's groundwater has declined over the past 30-40 years, largely due nitrate and pesticide pollution.

The purpose of the proposed changes to ATCP 31 is to set up a general process for lifting pesticide prohibitions in areas where a pesticide is currently prohibited. Prohibitions usually originate when the use of a pesticide has caused an exceedence of the state's "Enforcement Standard" (ES) in a drinking water well.

The theory behind prohibition lifting is that perhaps with certain changes in use of the pesticide (such as reduced application rates), less of the pesticide will leach into groundwater. ATCP 31 provides the regulatory framework for lifting bans.

Flaws in DATCP policy lead to flaws in proposed ATCP31

DATCP's "special" pesticide enforcement; violating intent of groundwater law

DATCP's enforcement of Wisconsin's groundwater law with respect to field-applied pesticides is different from the way we regulate virtually all other activities and potential pollution

sources in two key ways. First, in general, other pollution sources are required to meet standards at the water table or at a property boundary. Second, the Preventive Action Limit is used as a caution light telling agencies and regulated entities to take actions to make sure the Enforcement Standard is not exceeded.

In the case of a landfill, for instance, if test wells near the property boundary should exceed the PAL, the owner has to take corrective action to ensure that the ES will not be violated, and may have to do remedial work to bring the pollution level below the PAL.

In contrast, DATCP waits to enforce the groundwater law until the ES is exceeded in someone's drinking water well before taking actions. By this time, it is possible for polluted groundwater to have traveled miles beyond the property boundary or field from which it originated. In addition, DATCP does nothing to reduce pollution levels when the PAL is exceeded.

DATCP's policies amount to using the ES as a degradation standard, something that was explicitly not the intent of the groundwater law.

Some strange consequences of DATCP's policy

DATCP's pesticide enforcement policy allows some pretty odd things (DATCP officials are in agreement that these are true):

1. All wells in the state could be polluted with any number of pesticides at up to 99.9% of the enforcement standard.
2. All groundwater in the state, except for that which is being pumped for drinking water, would be allowed to be polluted above the enforcement standard by any number of pesticides. This makes no allowances for future generations and for the needs of fish and wildlife.

Suggestions for fixing proposed ATCP 31

Some sort of recision process seems reasonable, but current ATCP 31 language needs to be changed to make it consistent with the intent of Wisconsin groundwater law and with common sense. A sounder ATCP 31 requires a recognition from DATCP that (1) the groundwater law requires state agencies to protect the groundwater resource, not just domestic wells from which they have samples and (2) they have to exercise better scientific judgement than what their proposed black-and-white procedure calls for.

Specific suggestions

1. ATCP 31.08 (4) (a).

What it does: States under what circumstances DATCP may consider rescinding prohibitions, which, in part, is when at least 3 consecutive groundwater samples taken from points of standards application (usually drinking water wells), have dropped below some level to be determined future pesticide specific codes.

Issues (1): DATCP needs to remember the agency is supposed to be protecting the groundwater resource, not just water supply wells.

Suggested fix (1): A clause should be added stating to the effect:

"4. [The department may repeal or modify a site-specific prohibition when] ... the department determines, based on credible scientific evidence, that pesticide concentrations have dropped below [whatever the trigger level is determined to be] in the prohibition area."

Issue (2): DATCP has a proposal out for public hearing which would set the "trigger level" for rescission at 50% of the Enforcement Standard for atrazine. The 50% level is a new number, not in statute. Some argue that Wisconsin should specifically require the use of the Preventive Action Limit as the trigger level, rather than adopt some brand new standard. This proposal by DATCP continues the agency's policy of using the ES as a degradation standard.

2. ATCP 31.08 (4) (a) 3.

What it does: This clause requires that DATCP determine renewed use is not likely to cause a renewed violation of the enforcement standard.

Issue: It does not say where standards have to be met!

Suggested fix: Since DATCP policies currently allow all wells in the state to be polluted right up to the ES, and all other groundwater in the state to be polluted above the ES ("using the enforcement standard as a degradation standard"), specific language is needed requiring that

". . . renewed use is not likely to cause a renewed violation of the enforcement standard at [either the water table or a field boundary]."

3. ATCP 31.08. (4) (b).

What it does: This clause states that the department "may" require monitoring at points of standards application.

Issue: Since points of standards application will generally be drinking water wells, "may" is

too soft.

Suggested fix: Change "may" to "shall".

4. ATCP 31.08. (4) (b)1.

What it does: Deals with frequency of well monitoring.

Issue: Proposed language requires monitoring only in the second and fifth years after repealing prohibitions. **This is clearly inadequate** in protecting health and characterizing the quality of groundwater. Other potential pollution sources (such as engineered landfills) are required to perform quarterly monitoring to reflect uncertainties in travel times to wells, seasonal fluctuations, changes, and changes in management practices.

Suggested fix: Language should be inserted requiring monitoring sufficient to characterize the fluctuations in pesticide levels over time.

5. ATCP 31.08. (4) (b)2.

What it does: States that the department may require pesticide use modifications to achieve and maintain compliance with the PAL at points of standards application and points down gradient.

Issue: While most agencies interpret "compliance with the PAL" as requiring actions which reduce contaminant levels below the PAL, DATCP has in the past interpreted "compliance with the PAL" taking more samples or studying the problem. This is insufficient.

Suggested fix: First, this section needs to explicitly state that "pesticide concentrations shall be kept below the PAL at points of standards application," if this is the intent. Second, since department policy is very lenient in using drinking water wells as the point of standards application, instead of property or field boundaries, perhaps property boundaries, field edges, or the water table should be explicitly stated as the place where the PAL will be met.

A note on maintaining fair and level process

Wisconsin is known for having open, balanced process. I'm sure that due to circumstances, but no-one's specific intent, the process for developing this rule has at least the appearance of being slanted toward industry. Consider that the only group having had to approve this proposed rule has been the agriculture board. The board consists of 6 members from the agricultural industry and two consumer advocate representatives. There is no explicit environmental advocate. I'm sure that board members try to do their best to remain objective, but each of us is tainted by our past experiences and upbringing, so an appearance of slant toward industry exists. In the past, we've had a checks and balance role played by the Public

Intervenor. In the intervenor's absence, more creative ways have to be found in Wisconsin to avoid the appearance of bias process.

Conclusion

I recommend that this proposal be sent back to DATCP with instructions that they develop a better rescission proposal in keeping with the intent of the groundwater law. DATCP should ensure balanced process, representing both environmental and industry interests, for writing a new rescission process.

SENATE AGRICULTURAL COMMITTEE
ASSEMBLY BILL #5
SENATE BILL #20

I'M DISCUSSED AND UPSET WITH
THE FACT THAT A PROHIBITION AREA
COULD BE PROPOSED. THERE IS
NO REASON FOR MY HOME TO
BE PUT IN A PROHIBITION AREA
WHEN ALL THE WELLS ARE CLEAN.
THIS WAS ALL STARTED BECAUSE OF
A POINT SOURCE WHERE THERE
WAS A SPILL. WHY SHOULD WE
BE PENTALIZED?

LAND & HOMEOWNER:

RODNEY TAYLOR

11543 G. R. H.

LANCASTER WIS

53813-9575



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive
Madison, Wisconsin 53704-6777

PO Box 8911
Madison, WI 53708-8911

HEARING TESTIMONY

PROPOSED CHANGES TO CHAPTER ATCP 31, GROUNDWATER PROTECTION RULE (Clearinghouse Rule No. 97-043)

before the

SENATE AGRICULTURE AND ENVIRONMENTAL RESOURCES COMMITTEE

October 1, 1997

Chairman Clausing and Committee Members:

My name is Nicholas J. Neher and I am Administrator of the Agricultural Resource Management Division of the Wisconsin Department of Agriculture, Trade and Consumer Protection.

Chapter ATCP 31 provides a generic mechanism for the department to prohibit the use of pesticides in local areas where use of the pesticide has been found to contaminate groundwater at concentrations greater than an established groundwater enforcement standard. This mechanism has been used by the department to prohibit the use of specific pesticides to protect groundwater in several areas of the state. Use prohibition areas have been created for pesticides including aldicarb, atrazine and metolachlor. These prohibitions have been implemented through the development of pesticide specific rules.

The current rule does not, however, provide a clear mechanism to repeal an existing prohibition area, even if it can be shown that renewed use will not lead to renewed contamination in violation of the standard. The proposed rule provides such a mechanism. The proposal was developed by the department in consultation with an advisory group made up of groundwater experts. The proposed process provides three generic criteria that must be met before repeal of a prohibition area can be considered. These criteria require that scientific data provide the basis to show that:

1. The well(s) originally contaminated above the standard are now in compliance with the standard.
2. Surrounding wells in the local area are also in compliance with the standard.
3. Renewed use of the pesticide is not likely to result in violation of the standard.

The attachment describes the provisions of the proposed rule in greater detail. Repeal of a pesticide specific prohibition area would require an amendment to the appropriate pesticide specific rule. In summary, the proposal provides a science based mechanism to repeal existing use prohibition areas while maintaining protection of the groundwater resource.

Thank you for your attention to this important matter.

Survey of Job Openings in the Milwaukee Metropolitan Area: Week of October 20, 1997

The week of October 20, 1997, an estimated 31,874 full and part-time jobs were open for immediate hire in the four-county Milwaukee metropolitan area. These openings are the result of company expansions, labor shortages in difficult to fill positions, seasonal fluctuations, and normal turnover among the 780,700 employed workers in the area. Estimates of job openings are based on semi-annual surveys of area employers conducted by the University of Wisconsin-Milwaukee Employment and Training Institute and the UWM Institute for Survey and Policy Research, as part of a collaborative Labor Market Project with the City of Milwaukee, Milwaukee Area Technical College, Milwaukee Public Schools, and Private Industry Council of Milwaukee County. The project is supported by the government partners, the Helen Bader Foundation and the Milwaukee Foundation.

TOTAL OPENINGS

- In October employers were seeking an estimated 20,182 full-time workers and 11,692 part-time employees. Employers reported 2,949 more full-time job openings than one year ago and 140 fewer part-time openings.
- The largest numbers of full-time openings were concentrated in service industries (36 percent of total openings), manufacturing (23 percent), and retail and wholesale trade (20 percent). Job openings in service industries were 1,764 higher than a year ago and openings in manufacturing were up by nearly 1,600.
- Employers reported 522 fewer full-time openings in Waukesha, Ozaukee and Washington counties than a year ago. The WOW counties accounted for 39 percent of full-time and 42 percent of part-time openings in the metropolitan area.

EDUCATION AND TRAINING REQUIREMENTS

- The high demand for trained workers continues. Two-thirds (67 percent) of full-time openings required education, training or occupation-specific experience beyond high school. The survey showed an estimated 10,758 full-time jobs for experienced or technically trained workers, with 66 percent of these jobs identified as difficult to fill. Employers also reported that 58 percent of the 2,063 jobs for persons with four-year college degrees (or more) were difficult to fill.
- Full-time openings for four-year college graduates included jobs for engineers, computer programmers and systems analysts, sales supervisors, salaried managers, insurance sales staff and social workers. Frequently listed positions requiring certification, licensing or an associate degree included computer programmers, truck drivers, technicians (health and non-health), computer systems analysts, certified nursing assistants, salaried managers and automobile mechanics.



UNIVERSITY OF WISCONSIN • MILWAUKEE
UNIVERSITY OUTREACH

- The number of entry level jobs with no education or experience requirements was up compared to last year. In October employers reported 4,317 full-time openings in this category, compared to 2,989 openings last year.

Difficult-to-Fill Full-Time Job Openings with 100 or More Openings

4-Year College Degree or More	Certification, License, AA Degree, or Experience Req.	High School Completion, No Experience Required	No Experience or Education Required
computer programmers systems analysts sales supervisors salaried managers engineers	computer programmers systems analysts technicians (non-health) truck drivers welders and cutters salaried managers nursing aides + orderlies sales supervisors helpers/mechanics/repairers vehicle washers/cleaners automobile mechanics child care workers sales reps-manuf./wholesale health technologists/technicians sales workers lathe/turning machine set-up financial services sales	assemblers traffic, shipping and receiving clerks	printing machine operators assemblers groundskeepers/gardeners machinist apprentices stock handlers and baggers machine operators -- manufact.

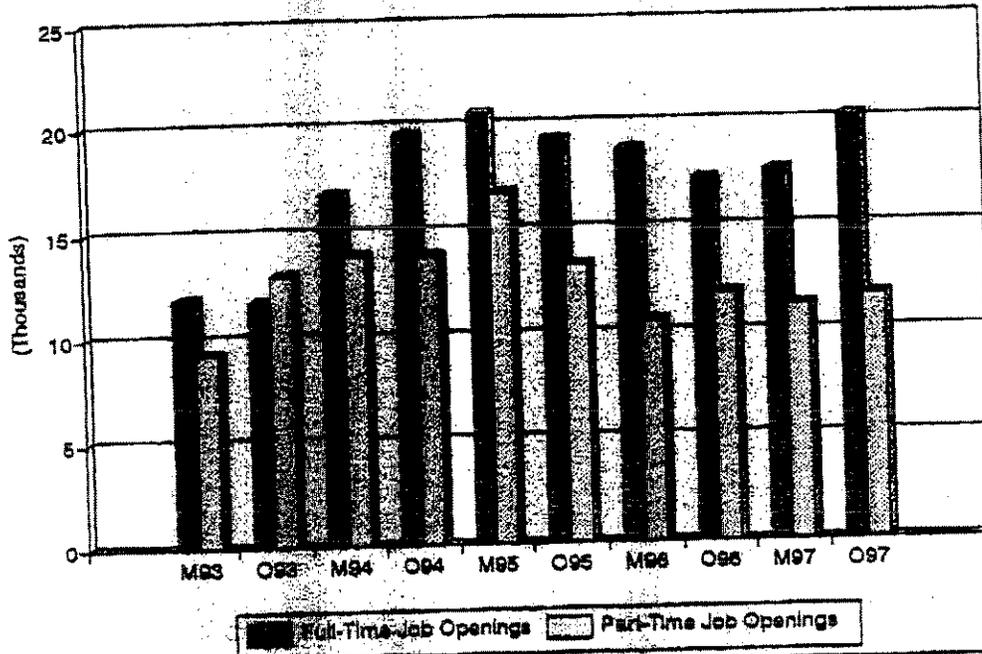
WAGE RATES

- The federal minimum wage was raised from \$4.25 to \$4.75 an hour on October 1, 1996, and to \$5.15 in September 1997. The majority of Milwaukee area employers were paying at or above \$5.15 for entry level work before the federal wage changes. Wages for the remaining entry-level positions have continued to climb -- likely in response to both the minimum wage law and the tight labor market. In October 1997 only 19 percent of full-time openings with no education or experience requirements paid less than \$6.00 an hour, compared with 40 percent of such openings in May 1996 before the minimum wage change. In October 1997 none of the full-time openings requiring high school completion but no experience or training paid under \$6.00, compared with 14 percent of such openings in May 1996.
- In October 1997, 78 percent of full-time openings could support two persons above the poverty level, compared with only 48 percent of openings in May 1996 prior to the minimum wage change. Entry-level jobs offered wages sufficient to support three persons above poverty for 56 percent of openings in October 1997 compared with 31 percent of such openings in May 1996. However, only 16 percent of the full-time job openings with no education or experience requirements offered health insurance and family-supporting wages for four-person families.

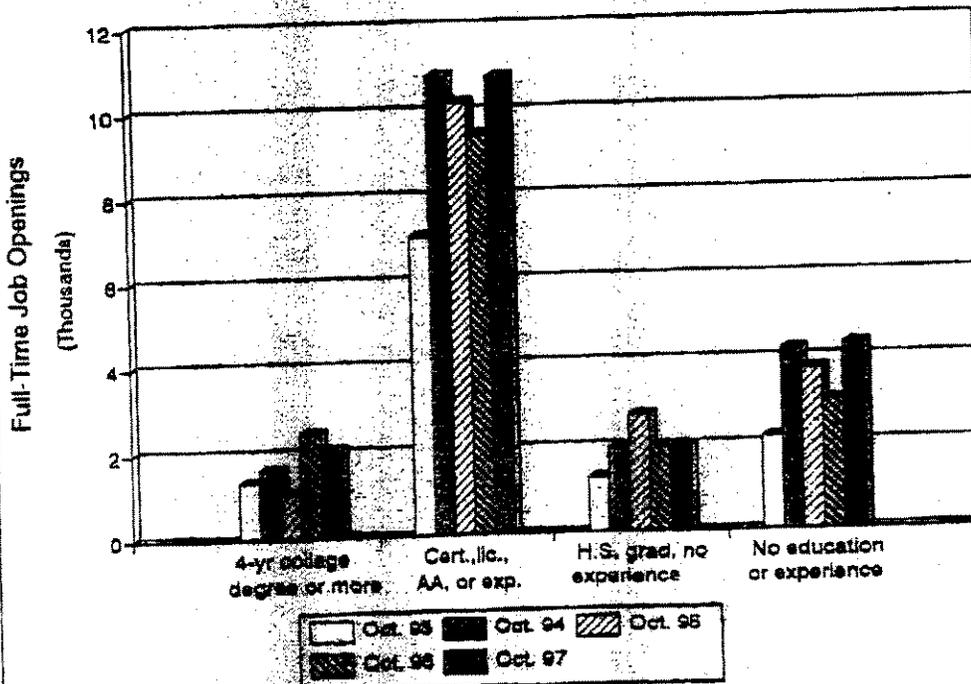
LABOR MARKET SUPPLY AND DEMAND

- Labor shortages were evident in Waukesha, Ozaukee and Washington counties where very low unemployment levels (1.9 to 2.5 percent) showed 6,500 unemployed adults compared to 7,963 full-time and 4,920 part-time job openings. Even in Milwaukee County the total number of jobs available (11,833 full-time and 6,532 part-time) was about equal to the number of officially counted unemployed job seekers (18,100). However, in the central city of Milwaukee Community Development Block Grant/Enterprise Community neighborhoods, full-time job openings (1,850) fell far short of the estimated 9,200 unemployed persons considered actively seeking work in October 1997.

Full-Time and Part-Time Job Openings Milwaukee SMSA: May/Oct. 1993-1997

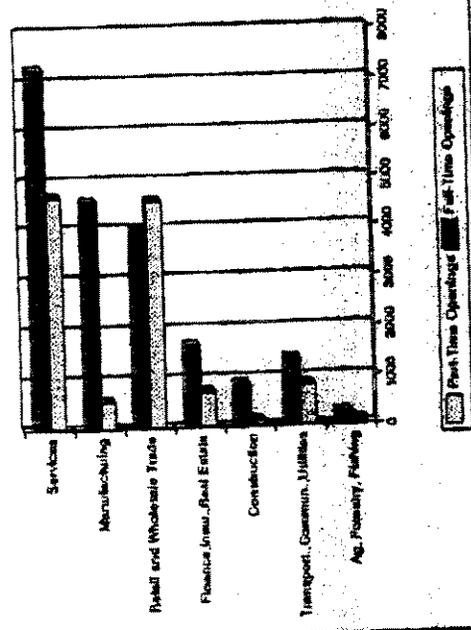


Requirements for Full-Time Job Openings Milwaukee SMSA: Oct. 1993 - Oct. 1997

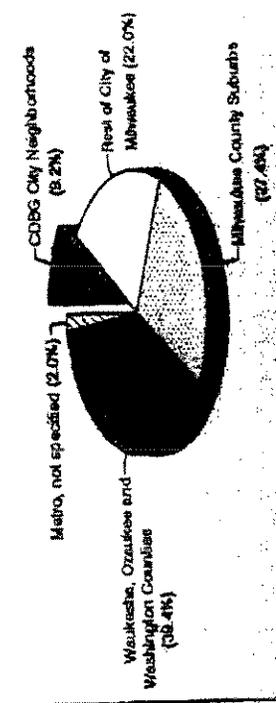


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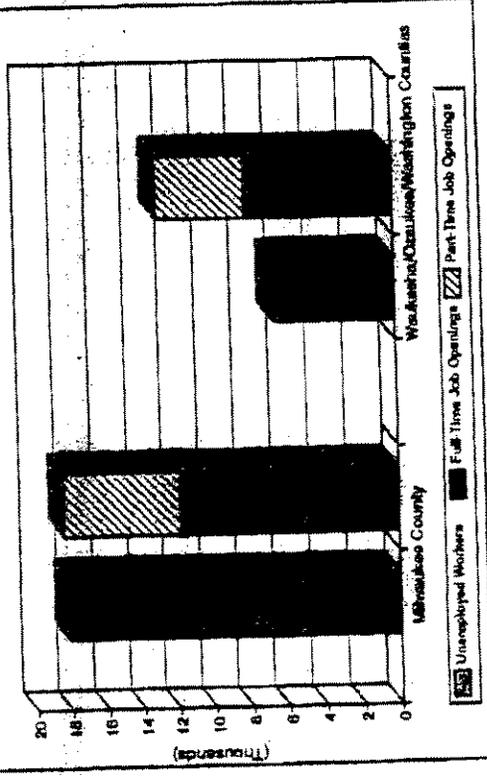
Job Openings by Type of Industry
Milwaukee SMSA: October 1997



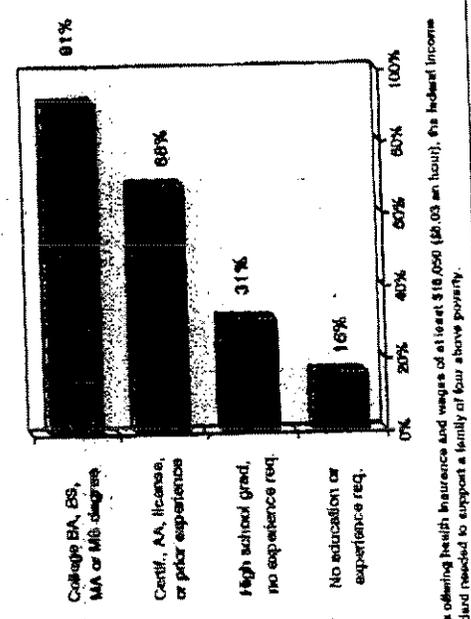
Work Sites for Full-Time Job Openings
Milwaukee SMSA: October 1997



Job Openings vs. Unemployed Workers
Milwaukee SMSA: October 1997



Percent of Job Openings Paying Family Wages and Health Insurance*: Oct. 1997



*Jobs offering health insurance and wages of at least \$16,000 (\$6.03 an hour), the federal income standard needed to support a family of four above poverty.

Source: University of Wisconsin-Milwaukee Employment and Training Institute.

Summaries of prior employer surveys, research reports and policy papers are available on the Internet at www.uwm.edu/Dept/ETI/. Copies of the complete October 20, 1997, job openings study are available for \$15.00, including postage and handling, from the Employment and Training Institute, University of Wisconsin-Milwaukee, 161 W. Wisconsin Avenue, Suite 6000, Milwaukee, WI 53203. Phone (414) 227-3388.

III. Wage Rates by Job Qualifications

The number of jobs available at a given wage rate is dependent upon many factors, including the education and skills required for the types of openings available, the number of job seekers available and interested in the kind of work, and wage contracts with current workers. Most wages for job openings were directly related to prior education, training and experience. Wage rates were highest for full-time job openings requiring a minimum of a four-year college bachelor's degree, with 72 percent offering wages of more than \$14.00 per hour. Full-time jobs requiring prior occupational experience, certification, licensing or an associate degree showed a much wider range of wage rates with 33 percent of job openings at the \$14.00 or more per hour, and 59 percent offering \$10.00 an hour or more.

Over half (55 percent) of the full-time jobs requiring a high school diploma but no occupation-specific experience or training paid \$7.00 to \$8.99 an hour. About 18 percent of job openings for high school graduates without specific experience or training paid \$6.00-6.99 per hour, and none paid less than \$6.00 an hour. Those jobs requiring no previous experience or minimum education level usually fell into the lowest wage occupations, with 20 percent paying less than \$6.00 an hour and 51 percent paying \$6.00-7.99 an hour. Only 4 percent of these jobs offered \$10.00 or more per hour.

Most part-time jobs requiring no previous experience or postsecondary education offered less than \$7.00 per hour wages. Of the part-time jobs open for college graduates, 43 percent paid \$12 or more per hour and only 24 percent paid less than \$10 per hour.

Minimum Wage Impact

On October 1, 1996, the federal minimum wage was raised from \$4.25 to \$4.75 an hour. On September 1, 1997, the minimum wage rose another forty cents to \$5.15 an hour. The majority of Milwaukee area employers were paying at or above \$5.15 for entry level work before the federal wage changes. Wages for the remaining entry-level positions have continued to climb -- likely in response to both the minimum wage law and the tight labor market. In October 1997 only 20 percent of full-time openings with no education or experience requirements paid less than \$6.00 an hour, compared with 40 percent of such openings in May 1996 before the minimum wage change. None of the full-time openings requiring high school completion but no experience or training paid under \$6.00 an hour in October 1997, compared with 14 percent of such openings in May 1996.

Similarly, while 70 percent of part-time job openings with no education or experience requirements paid less than \$6.00 in May 1996, only 34 percent of these entry-level jobs offered pay below \$6.00 in October 1997. Of part-time job openings for high school graduates with no experience or training, 41 percent offered less than \$6.00 in May 1996, compared with 24 percent in October 1997.

NOV 03 1997

October 31, 1997

State Senator Alice Clausing
Room 420 South, State Capitol
P.O.Box 7882
Madison, WI 53707-7882

Dear Senator Clausing,

At the meeting in your office on Tuesday, I tried to show—with graphs—that the department's (DATCP) research methods used to determine degradation levels under the revised "generic rule" are flawed and that the determination of the 50% level as the degradation level for Atrazine is a primary example of that.

My one graph shows a hypothetical decrease in the level of Atrazine in wells when the ban was imposed and that is consistent with the department's findings. The graph shows the concentration dropping to a level where the fluctuations are dampening out, which level the department is saying should serve as the degradation level. I am saying that this should not be used as the degradation level because the department has completed only half of the experiment. The other part of the experiment (second chart) is to lift the ban and reapply Atrazine at the "least effective amount" to determine what will happen to the curve. If the curve remains at the same level, that level becomes the degradation level. If it rises to a new level (below the enforcement level) and stays there, then, that level becomes the degradation level. The level thus determined will be a natural degradation level for the chemical being tested for that soil type.

In the case of Atrazine, the 50% level the department proposes was not arrived at using a valid experimental model. If the 50% level turns out to be the right level using the experimental model I 'm proposing, then the department would have arrived at that level purely by accident.

I recommend that the "generic rule" revisions be amended to include the protocol that will be used to determine degradation levels for any chemical tested in the future. I also suggest that the department go back and complete the experiment and determine the degradation level for Atrazine in a manner that can be defended scientifically and do that for all chemicals that require testing in the future. I also suggest that the PAL be used as the degradation level until acceptable degradation levels can be determined.

I worked as a scientist in an Air Force research laboratory in Dayton, Ohio. At the lab. we had a protocol committee that reviewed research proposals for their efficacy such as

1. Are we asking the right questions for the purpose intended?

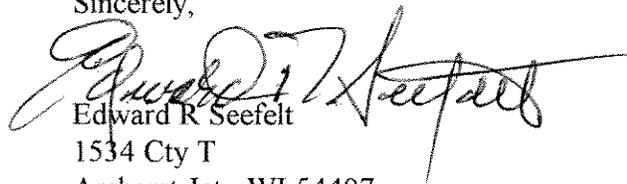
2. Will the experimental design and the statistical analysis provide the answer to the questions being asked?

If the answer was no to either question, the research proposal was not approved.

In this instance the department has asked the question, how will the appropriate degradation level for any chemical be determined? They have not shown that their research design will answer that question. Therefore again I suggest that the PAL be used as the degradation level until that question is answered.

Thank you!

Sincerely,

A handwritten signature in black ink, appearing to read "Edward R. Seefelt", written in a cursive style.

Edward R Seefelt

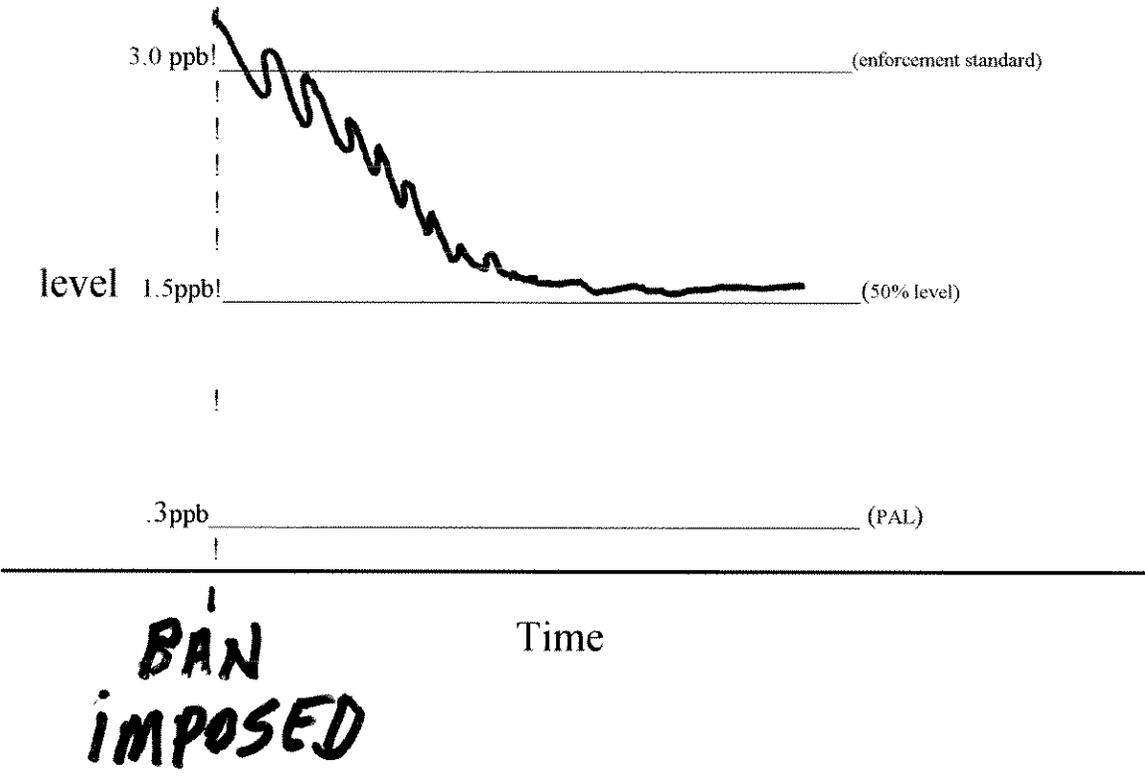
1534 Cty T

Amherst Jct., WI 54407

1 715 677 3805

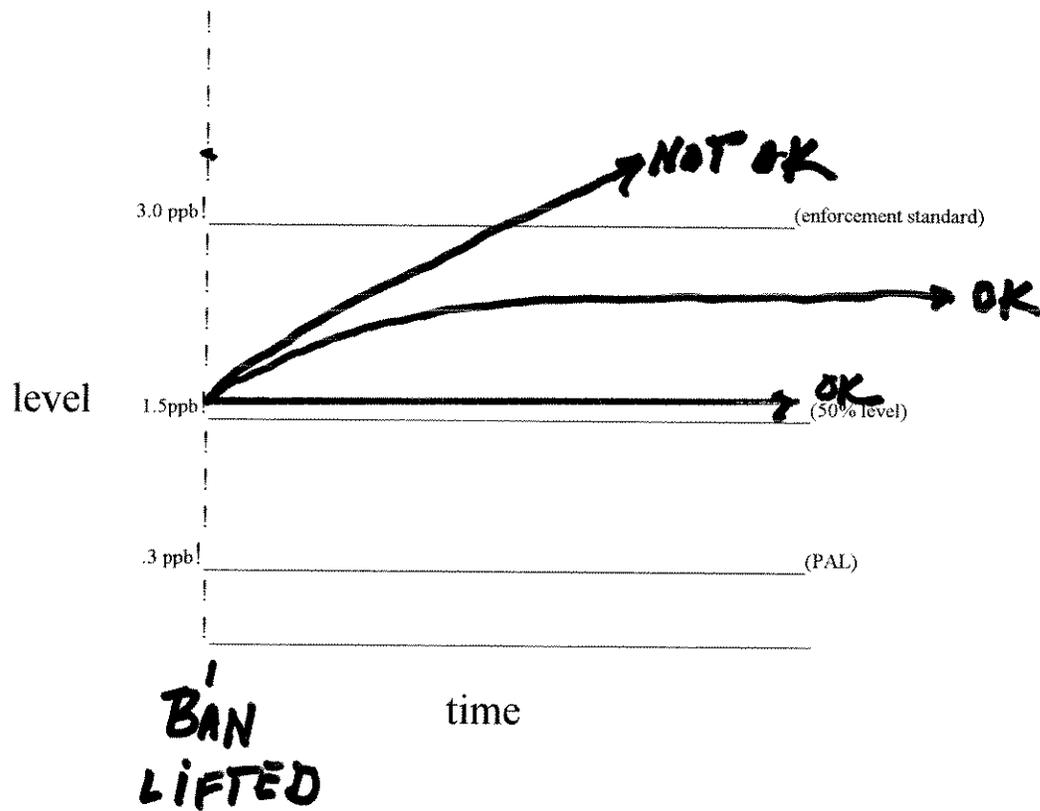
Two graphs that show an experimental design approach to determining the appropriate degradation levels for chemicals (pesticides etc.) that pose a health risk in the aquifer.

The curve of the first graph shows a decrease in the concentration of a chemical in the aquifer that had been over the enforcement standard. The curve shows larger oscillations at the upper end and smaller oscillations as it decreases until it levels off. (The department wishes to use this level as the degradation standard which is discussed in the letter)



The second graph shows a method for determining the degradation level for a given soil type using the "least amount effective" of the chemical. The result will show a natural degradation level above which the chemical will not rise or if it crosses the enforcement standard, then the chemical cannot be used in that soil type

In the second graph, hypothetical outcomes are shown as a result of the lifting of the ban





State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

2811 Agriculture Drive
Madison, Wisconsin 53718-6777

PO Box 8911
Madison, WI 53708-8911

FAX COVER SHEET

DATE	11-24-97
TO	Randy - Senator Clausings's Office
FROM	Nick Nehor
SUBJECT	

Wisconsin Department of Agriculture, Trade and Consumer Protection
Agricultural Resource Management Division
Telephone: 608/224-4500
Fax: 608/224-4656

 1 PAGES TO FOLLOW

If any pages need to be resent, please call the sender at the above number.
Otherwise, we will assume this transmittal has been completely received.

Thank you

MESSAGE:

Proposed Modifications to ATCP 31

Add the following paragraph to the NOTE on pp. 6-7:

"The repeal of a prohibition area does not affect any responsibility which the department has under s. ATCP 31.07 to take other appropriate action to minimize the concentration of the pesticide substance where technically and economically feasible, and to restore and maintain compliance with the preventive action limit. The department may also reinstate a repealed prohibition area if groundwater testing at a point of standards application shows an increasing trend of atrazine contamination, suggesting that contamination may again attain or exceed the enforcement standard.

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