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_pt05*
- *Committee Hearings ... CH*
-
- *Committee Reports ... CR*
-
- *Executive Sessions ... ES*
-
- *Hearing Records ... HR*
-
- *Miscellaneous ... Misc*
-
- *Record of Comm. Proceedings ... RCP*
-

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

January 28, 1998

Honorable Alice Clausing
Room 308
100 N. Hamilton
Madison, WI 53703

Dear Senator Clausing,

On October 29, 1997 department staff met with you regarding your request for the department to consider modifications to Clearinghouse Rule 97-043, relating to standards for repealing site-specific prohibitions against the use of pesticides found in groundwater. In a subsequent phone conversation with you I related the modifications that the department would include in the rule proposal.

The department agreed to insert a note after the proposed 31.08(4)(b)2. The note explains that the repeal of a prohibition area does not limit the department's responsibility to take reasonable action to minimize contamination to achieve compliance with the preventive action limit. Further, the department may reinstate a repealed prohibition area if testing shows an increasing trend of pesticide contamination.

The note reads:

"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 The department may also reinstate a repealed prohibition area if groundwater testing at a point of standards application shows an increasing trend of pesticide contamination, suggesting that contamination may again attain or exceed the enforcement standard."

Please contact me at (608) 224-5012 or Nick Neher at (608) 224-4567 if you have questions.

Sincerely,

Joseph E. Tregoning
Deputy Secretary

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	1/28/98
TO	Randy
FROM	Jim VandenBrook
SUBJECT	Pesticide Prohibition Repeal Process

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:

Randy,

As per my phone message, here is the letter Ned Zuelsdorff will bring to the hearing this afternoon. Call if you have questions.

Thanks Jim VandenBrook

224 4501

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Sincerely,

Joseph E. Tregoning
Deputy Secretary

Wisconsin Rural Development Center, Inc.

116 W. Main St.
Mount Horeb, WI 53572
(608) 437-5971

STATEMENT OF WILLIAM H. WENZEL
WRDC EXECUTIVE DIRECTOR
IN OPPOSITION TO SENATE CLEARINGHOUSE RULE 97-043

My name is Bill Wenzel and I am the Executive Director of the Wisconsin Rural Development Center (WRDC) - a nonprofit, membership organization comprised primarily of family farmers, conservationists and rural citizens. I am here today to speak in opposition to proposed Senate Clearinghouse Rule 97-043 relating to *standards for repealing site-specific prohibitions against the use of pesticides found in groundwater*. I want to thank the Committee for providing me with the opportunity to express my objections to this proposed Rule.

We commend the Wisconsin Department of Agriculture, Trade & Consumer Protection (DATCP) for undertaking a long and exhaustive process that led to the promulgation of this proposed Rule. However, it is our contention that 97-043 is fatally flawed for its failure to comply with the mandates of the federal Food Quality Protection Act (FQPA) of 1996. Our specific objection is that the proposed ATCP 31.08(4)(a)3 establishes a standard far less stringent than that required by the FQPA. Our reading of the FQPA leads us to the conclusion that states cannot preempt the requirements of the federal Act and, therefore, makes the proposed Rule unenforceable.

In enacting the FQPA in 1996 the Congress, by unanimous vote in both Houses, required the EPA to review and adjust tolerances in food to meet a *basic safety standard* of "no reasonable harm to children". This standard has been defined as "one in one million risk of cancer and a one hundred fold safety factor for non-cancer effects". In meeting this standard, the EPA is further required to regulate exposure to *toxicologically similar active ingredients* as if the products were one active ingredient under the "common mechanism" provisions of FQPA. This provision will be important when debate begins on the reintroduction of Atrazine into prohibition areas as the active ingredient is "toxicologically similar" to that in cyanamide and simazine. The *no reasonable cause of harm to infants standard* and the *common mechanism provision* are applicable to proposed Rule 97-043 because under the FQPA , the EPA is required to set tolerances by assessing the "aggregate exposure" not only from foods but from other known sources, *including drinking water*.

Since the proposed Rule in ATCP 31.08(4)(a)3. requires only that the *department determine, based on credible evidence, that renewed use of the pesticide in that prohibition area is not likely to cause a renewed violation of the enforcement standard* it is contrary to the clear mandates of the FQPA. Since the FQPA preempts states from setting tolerances different that those that meet the full requirements of the Act unless they fit into 4 broad exceptions not applicable here, ATCP 31 should be referred back to the DATCP with specific instructions to promulgate a new Rule which complies with the FQPA.

Failure to establish a process which complies with the standard for FQPA is likely to lead to ludicrous results. As noted earlier in my testimony the EPA is scheduled to conduct a review of "common mechanism" pesticides - which includes the triazines: atrazine, cyanamide and simazine. Many experts have hypothesized that this review will lead to the cancellation of the registration of those products. If the proposed ATCP Rule 31 is implemented, Wisconsin could be reintroducing Atrazine at the same time that the EPA is canceling its registration and prohibiting its use.

It should also be noted that under the provisions of FQPA water treatment facilities will be required to purify drinking water to the tolerance levels established by the EPA in accordance with the Act. If we proceed to establish standards for pesticide use different than those in the FQPA, Wisconsin runs the risk of having to spend millions of dollars in drinking water treatment to eliminate pesticides that were reintroduced into areas where drinking water had been previously contaminated and its use prohibited.

WRDC believes that to approve the proposed rule will result in wasteful use of taxpayer dollars and poses the potential for damaging the health of Wisconsin's citizens and the environment. We ask the Senate Committee on Agriculture and Natural Resources to refer the proposed Rule back to the DATCP with instructions to establish a standard consistent with the requirements of the FQPA; to withhold any further action on proposed ATCP 30 regarding Atrazine until ATCP 31 has been redrafted and approved; and. to admonish the DATCP from expending any funds to conduct on-farm research relating to groundwater impacts of renewed Atrazine use in current prohibition areas until both ACTP 30 and 31 have been approved.

Thank you for your consideration.

TESTIMONY OF
SENATOR KEVIN SHIBILSKI
IN FAVOR OF SB 275

I have sponsored this legislation because of the need to make several revisions in the Wisconsin grain security law. The Wisconsin grain security law was created in large part to protect farmers against the potential loss in selling their grain at harvest time. I believe that the amendments that have been included in this legislation continue to provide farmers with excellent protection while at the same time creating some new opportunities for farmers and resolving some problems that have appeared in the existing grain security law.

The bill should be helpful to farmers in at least one respect. Farmers are currently allowed to sell grain only to large (Class A) grain dealers. Small grain dealers, known as Class B or Class B-2 grain dealers, are generally prohibited from purchasing grain directly from farmers (when processing the grain for annual feed). Last year, when we had a very large grain crop (as we expect to have this year) some farmers found that Class A grain dealers (to whom they normally sell most of their grain) were filled to capacity and unable to purchase or store their grain for them. This bill attempts to solve that problem by creating a small but significant storage and sale opportunity for farmers to Class B and B-2 grain dealers provided that the purchases of grain by these dealers directly from farmers does not exceed 20% of the total grain purchases made by those dealers.

The bill also makes minor changes in various other elements of the grain security law such as: providing written contracts to farmers when grain is purchased; filing monthly warehouse reports; and, adjustment in the definition of a grain dealer. Please leave questions about those parts of the bill to the DATCP grain security act expert, John Norton, who will be testifying today.

This legislation has been designed in close cooperation with the Wisconsin Department of Agriculture, which oversees the Grain Security Act. This legislation has also been reviewed by all other agricultural organizations known to have an interest in it.

Wisconsin Groundwater Advocacy

Citizens for Sustainable Groundwater Resources
3977 Mizia Rd.
Amherst Junction, WI 54407
715-824-3260

POSITION STATEMENT ON PROPOSED REVISIONS TO ATCP 31

SYNOPSIS: We oppose the proposed rule revision because it is inadequately protective of groundwater, does not meet the intent of Wisconsin's groundwater law, and was developed with a slant toward industry. We ask the Committee on Agriculture and Environmental Resources to direct DATCP to revise the proposal to make it more consistent with the intent of the groundwater law, and conduct process in a way that balances competing interests.

Comment on rule making process

There was a glaring potential conflict of interest in the development of this proposed rule revision. The only body that has needed to approve this proposal to this point is the agriculture board, a group dominated by industry representatives. (We make no claims that board members are not trying to be fair. However, each of us brings our personal history and viewpoints to whatever endeavors we encounter. One board member at the public hearings on this proposal was arguing with citizens and denigrating the views they had presented. This does not encourage confidence that process is balanced.) The rule development process involved no consensus building involving various interests. Previously, the public intervenor's office assured some balance between the industry dominated ag board and environmental interests. The loss of the Intervenor means that the balance is tilted toward industry, unless special pains are taken to conduct process involving all interested parties. We feel that the voices of Wisconsin environmental and non-industry interests were not heard in the development of the current proposal.

General issues

1. We must work to reduce groundwater pollution from agriculture. Agriculture is the major source of groundwater pollution in Wisconsin. Ninety percent of nitrate, which exceeds standards in 10% of Wisconsin wells, and virtually all of pesticides, present in about 14% of Wisconsin wells, originates from agriculture.

2. Groundwater pollution represents a taking of public and private property rights, and this taking costs Wisconsin citizens tremendous sums of money. For instance, the Village of Plover spent $3 million on construction of a nitrate removal facility, and spends additional thousands per year in operation and maintenance costs.

3. DATCP does not begin to take meaningful action to reduce pollution levels in groundwater until the Enforcement Standard is exceeded in domestic water supply wells. By contrast, other state agencies require clean-ups that will eventually cleanse groundwater below the ES or PAL at the property boundary where the pollution originates. The net effect is that DATCP is using the Enforcement Standard as a Degradation Standard, something that specifically was not the intent the groundwater law. DATCP, it seems, has lost sight that they are supposed to protect the groundwater resource, not just drinking water wells.

4. DATCP's policy using the ES as a "DS" (degradation standard) has some oddly wild consequences. It allows every well in Wisconsin to be polluted up to 99.9% of Enforcement Standards with any number of pesticides. The policy also allows all groundwater in Wisconsin except that used in wells, to be polluted beyond Enforcement Standards, making no allowances for future generations, or the need for clean water by fish and other aquatic life when groundwater discharges to lakes and streams.

Specific issues with proposed revisions

1. Proposed ATCP 31.08 (4) (a) 1. Language here requires that tests on at least 3 consecutive groundwater samples drawn from points of standards application have dropped below some level to be determined later. We believe that the code should specifically require the use of the Preventive Action Limit as the trigger level. The Department has not provided a reasonable rationale consistent with groundwater law for any other number.

2. Proposed ATCP 31.08 (4) (a) 3. The proposal requires that the department determine renewed use is not likely to cause a renewed violation of the enforcement standard, but it does not say where! Especially since this code deals with

agrichemicals that have already been groundwater pollutants, we cannot abide with the current DATCP policy that enforcement standards are only enforced at water supply wells (the use of the ES as the Degradation Standard). This code revision needs specific language requiring that " . . . renewed use is not likely to cause a renewed violation of the enforcement standard at the water table."

3. Proposed ATCP 31.08. (4) (b). The proposed language states that the department "may" require monitoring at points of standards application, and impose use modifications. This must be changed to "shall," otherwise we fear the department "won't."

4. Proposed ATCP 31.08. (4) (b)1. The proposed language only requires monitoring in the second and fifth years after repealing prohibitions. This is clearly inadequate, especially in light that the monitoring will usually be of drinking water wells. Wisconsin requires other potential pollution sources (such as engineered landfills) to perform quarterly monitoring to reflect travel times to wells, seasonal fluctuations, changes, and changes in management practices. If the goal is to protect the resource and human health, monitoring has to be much more frequent than that proposed.

5. Proposed ATCP 31.08. (4) (b)2. Proposed language states that the department may require pesticide use modifications to achieve and maintain compliance with the PAL at points of standards application and points downgradient. We suggest that the following language be substituted:

> "(the department shall:) 2. Impose pesticide use modifications that are reasonably designed to achieve and maintain concentrations of pesticides below the preventive action limit at the property boundary of lands to which applications are made. The department shall continue to prohibit pesticide use in portions of the original prohibition area where, because of conditions unique to those smaller areas, a prohibition is justified under sub (2)."

There are two reasons for the substitution. First, it is unclear what the department means by compliance with the PAL. The department in the past seems to have interpreted "compliance with the PAL" as taking more samples or studying the problem rather than taking action to reduce pollution concentrations in groundwater. The clarification is needed to ensure 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, the change to require concentrations to meet standards at property boundaries is essential.

Recommendations

1. Send this proposal back to DATCP with instructions that they develop a proposal using a balanced process, representing both environmental and industry interests, for writing a new administrative code.

2. Send a message to DATCP that their policies violate the intent of Wisconsin's groundwater legislation are inexcusable and need to be rethought.

3. Implement the specific suggested changes to the proposal.

4. Ask DATCP to develop a long-term vision for agriculture to make agriculture both more economically and environmentally viable. Somehow, we need to do a better job keeping livestock out of streams, protecting ground and surface waters, and reducing the erosion that affects us all.

70,000 ppb

When this level of atrazine was fed for a lifetime to a strain of tumor-prone rats, the females developed tumors at an earlier age.

No other species of rat or mouse, nor any other test animal had a similar response!

10,000 ppb

When this level of atrazine was fed for a lifetime, there were no health effects on any species of test animal including the tumor-prone rat!

An average person would need to consume over **21,000** gallons of water daily at 3 ppb to reach this **no effect level!**

▪ 1/16" = 1 ppb

▌ = WI E.S. 3 ppb

Why does this follow the groundwater law? (DATCP)
They don't match up.
Rule doesn't track dictate of statute
Basis of statute is to use health-based standards as criteria (gets us to enforcement standard)
PAL - Fraction of enforcement standard (Yellow Light)
Below PAL - you're OK
Above PAL, but not above enforcement standard - Agency response
Can even prevent atrazine
Enforcement standard Agency must regulate its use.
Must restrict chemical use
ss. 160.25(4) If compliance is achieved.
ss. 160.23(4) Imposing prohibition if you're above PAL but below enforcement
Does rule conform with statutes?
Vague - not a lot of words in statutes.
Doesn't dictate how to do it. That's why we need rule.

What if Ag doesn't have explanation of why they are doing what they are doing?
Rule is more restrictive than it ought to be if DATCP

(1) If it complies with statutes, & within confines of the statute

(2) If it doesn't comply with statutes, we should send it back

When has compliance ~~with~~ with enforcement standard been achieved?

Correspondence Memorandum

To: Pam Porter - Director
Wisconsin's Environmental Decade

From: Tom Dawson - Director
Wisconsin Strategic Pesticide Information Project

Subject: ATCP 31 Generic standards for repealing prohibition areas

There are at least two major problems with the DATCP's generic rule for lifting prohibition areas.

The first is that proposed ATCP 31.08(4)(a)3 should be amended as follows in order to be in compliance with sec. 160.25(1)(a):

> 3. The department determines, to a reasonable certainty, by the greater weight of the ~~based on~~ credible evidence, that renewed use of the pesticide in that prohibition area ~~is not likely to~~ will not cause renewed violation of the enforcement standard at the point of standards application.

Sec. 160.25(1), Stats., expressly requires this burden to be met in order for an alternative to a prohibition to be entertained. The existing burden of proof in the rule is not sufficiently heavy for lifting a prohibition under the groundwater law. Under the rule version, a prohibition could be lifted based on any credible evidence that renewed use will not cause a violation, even

where greater evidence shows there would be a violation. This is in direct violation of the clear and express language in the groundwater statute.

The second major problem with the rule is that it appears to be in violation of sec. 160.25(4), Stats., which provides:

> (4) If compliance with the enforcement standard is achieved at the point of standards application, s. 160.23 applies.

Sec. 160.23(1), Stats., provides that even where there is compliance with the enforcement standard, where the preventive action limit has been exceeded, the department must assess the reason for it, minimize the contamination and regain compliance with the preventive action limit to the extent technically and economically feasible, and ensure the enforcement standard will not be exceeded at the point of standards application.

The rule contemplates that a "trigger" for considering the lifting of a prohibition area will be below the enforcement standard but may be above the preventive action limit. The proposed rule merely assumes that compliance with a percentage of the enforcement standard is a sufficient precondition for lifting a prohibition. It is not. Even if the department is able to make the finding required by sec. 160.25(1)(a) for lifting a prohibition area, before it does so it must go through the analysis required in sec. 160.23(1) to maintain compliance with the preventive action limit and minimize contamination to

the extent technically and economically feasible. Sec. 160.23(1)(c), Stats., expressly sets the PAL as the threshold at which the DATCP must "(e)nsure that the enforcement standard is not attained or exceeded at the point of standards application." The rule replaces the function of the PAL threshold for ensuring compliance with the enforcement standard with a different "trigger" above the PAL. The rule appears to allow the lifting of the prohibition without going through the express requirements in sec. 160.23, Stats.

In the case of atrazine in particular, there are many chemical and non-chemical alternatives for controlling weeds in corn. Farmers are using those alternatives today in atrazine prohibition areas, empirically proving that it is technically and economically feasible to minimize atrazine contamination of groundwater. For the reasons stated above, proposed ch. ATCP 30 for the lifting of atrazine prohibition areas, consistent with proposed generic ch. ATCP 31, suffers from the same deficiencies discussed above.

As a practical matter also, it only makes sense to establish the PAL as the "trigger" for considering the lifting of a prohibition. First, as a practical and scientific matter there is no proof that the triggers being contemplated between the ESs and the PALs should be the basis for a presumption, even in conjunction with other requirements, that a past pesticide practice that has

rendered groundwater unfit to drink can be safely used again. DATCP's assumption, that once atrazine levels have dropped to 50% of the ES in a prohibition area it is not likely to exceed the ES again, merely states the obvious. There is no rational relationship between the 50% trigger and the real issue at hand -- whether continued use under new conditions will cause exceedence of either the PAL or the ES. DATCP has the obligation to meet both standards, albeit under different criteria -- not just the ES.

Second, the legislature established only two statutory thresholds for agency action on groundwater contamination. DATCP's rule unilaterally establishes a third threshold not contemplated in the law, and which works to the potential advantage of pesticide users rather than to the benefit of the public's groundwater the legislature set out to protect. Moreover, the DATCP trigger appears to be based more on arbitrary guesswork than on a "greater weight of the credible evidence" for its establishment.

Third, the legislature clearly set the goal for the agency to minimize groundwater contamination and to achieve the PAL (well below the ES), not merely to maintain groundwater contamination 50% below the levels the water would be unfit to drink.[1] The law does not provide for lifting bans

[1] Enforcement standards are based, for the most part, on federal drinking water standards. Therefore, exceedence of an enforcement standard is exceedence of a drinking water standard.

when the contamination drops somewhere below the enforcement standard. The presumption in the law is that the ban must stay in place. A heavy burden is imposed for lifting the ban. Moreover, because the new trigger still violates the PAL, the agency is required to go through the analysis in sec. 160.23, Stats., which the new rule trigger appears to ignore.

Fourth, just from a common sense standpoint, the PAL was established as the "yellow light" at which action should be taken to ensure the ES would not be exceeded (sec. 160.23(1)(c), Stats). DATCP's rule ignores the yellow light, and establishes an intermediary orange light to perform the same function.