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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Agriculture...

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

Assembly

Record of Committee Proceedings

Committee on Agriculture

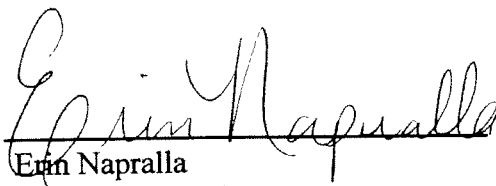
Clearinghouse Rule 03-076

Relating to pesticide product restrictions.

Department of Agriculture, Trade and Consumer Protection

January 21, 2004 Referred to Committee on Agriculture.

February 20, 2004 No action taken.


Erin Napralla
Committee Clerk

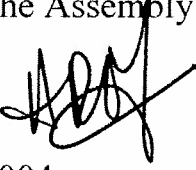




Al Ott

State Representative • 3rd Assembly District

MEMORANDUM

To: Members of the Assembly Committee on Agriculture
From: Al Ott, Chair 
Date: January 21, 2004
Re: Clearinghouse Rule 03-076

The following Clearinghouse Rule was referred to the Assembly Committee on Agriculture:

Clearinghouse Rule 03-076: Relating to Atrazine Use Restrictions.

A copy of the rule and referral memo is attached for your review. An additional 25 pages of supporting documentation is also available. Please contact my office if you would like a copy of this information.

The deadline for committee action on this rule is **Friday, February 20, 2004**. If you have any questions or are interested in requesting a hearing, please contact Erin Napralla in my office at 266-5831 prior to that date.






State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: January 8, 2004

TO: The Honorable Alan J. Lasee
President, Wisconsin State Senate
Room 219 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable John Gard
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison 53708-8952

FROM:  Rod Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Atrazine Use Restrictions; Final Draft Rule (*Clearinghouse Rule #03-076*)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) is transmitting this rule for legislative committee review, as provided in ss. 227.19(2) and (3), Stats. DATCP will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Background

Current DATCP rules under ch. ATCP 31, Wis. Adm. Code, establish "generic" standards for regulating pesticides in groundwater. DATCP adopts separate "substance-specific" rules for individual pesticides such as atrazine subject to these "generic" standards. This rule amends DATCP's current "substance-specific" rule related to atrazine use restrictions under ch. ATCP 30, Wis. Adm. Code.

Groundwater Law

Under ch. 160, Stats. (Wisconsin's "Groundwater Law"), the Department of Natural Resources (DNR) adopts numerical standards for contaminants in groundwater. DNR adopts an enforcement standard and a lower preventive action limit for each contaminant substance. Chapter NR 140, Wis. Adm. Code, contains current groundwater standards.

DATCP is required to take regulatory action to limit pesticide contamination of groundwater. If pesticide contamination exceeds the enforcement standard at any location, DATCP must ordinarily prohibit applications of that pesticide at that location. If contamination does not exceed the enforcement standard, DATCP may not ordinarily prohibit pesticide applications unless DATCP finds that lesser actions will not effectively control groundwater contamination. However, DATCP must take other regulatory steps which are designed, to the extent technically and economically feasible, to minimize pesticide contamination of groundwater and maintain compliance with the preventive action limit.

Atrazine Rules

Atrazine is the most widely used agricultural herbicide in Wisconsin. It has been found in more than 7,500 wells throughout the state, with over 430 wells having levels above the enforcement standard. Chapter ATCP 30, Wis. Adm. Code, is designed to carry out DATCP's obligations under the Groundwater Law. Current rules restrict the use of atrazine herbicides statewide to protect Wisconsin groundwater. Current rules prohibit atrazine use on over one million acres of land, and set maximum statewide use rates at about half the rates allowed under the federal label.

Under current rules, DATCP must normally prohibit atrazine use in a local area if atrazine is found in groundwater at or above the state enforcement standard of 3.0 parts per billion that DNR has established for atrazine. The use prohibition remains in effect until the conditions specified under s. ATCP 30.375, Wis. Adm. Code, for the repeal of a prohibition area are met.

Rule Contents

Current rules prohibit atrazine use on 1.2 million acres of land, and establish maximum statewide use rates, which are about half the rates allowed under the federal label. This rule enlarges one existing prohibition area by 3,200 acres, based on new groundwater test data. This rule also extends, by 2 weeks, the annual time period within which persons may apply atrazine. Under this rule, atrazine may be applied between April 1 and July 31. This change will give growers more flexibility in applying atrazine. The change is not expected to have a significant adverse effect on the environment.

Hearings

In 2003, DATCP held 3 public hearings on this rule. The department held the hearings in Wautoma on September 16, Janesville on September 17 and Madison on September 18. A total of 6 people attended the hearings. Four attendees registered in support of the extended application window and 2 attended for informational purposes only. No written testimony was submitted. A summary of the hearings is attached.

Changes from Hearing Draft

DATCP did not change the rule draft following public hearings, except that DATCP made minor editorial changes in response to comments from the Legislative Council Rules Clearinghouse (See below).

Response to Rules Clearinghouse Comments

DATCP modified the summary analysis that accompanies the rule, based on comments from the Legislative Council Rules Clearinghouse.

Small Business Analysis

This rule will affect some small businesses. This rule will prohibit a number of small businesses (farms) from using atrazine in the expanded atrazine prohibition area. On the other hand, this rule will give small businesses (farms, farm chemical dealers and pesticide applicators) across the state more flexibility to apply atrazine earlier in the year. A small business analysis (final regulatory flexibility analysis) is attached.

Fiscal Estimate

The proposed changes will require some additional department expenditures for groundwater testing and informational services related to the expanded prohibition area and extended application window. DATCP expects to absorb these expenditures within the department's current budget. A fiscal analysis is attached.

Environmental Impact Statement

In accordance with s. 1.11, Stats. and ch. ATCP 3, Wis. Adm. Code, DATCP prepared an environmental impact statement (EIS) on the proposed atrazine rule (copy attached). This rule will have a mixed environmental impact. The expanded prohibition area will have a positive environmental impact in the prohibition area. The extended application period may have a slight negative impact, but the effect is not expected to be significant. A final environmental impact statement is attached.

**PROPOSED ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING, AND REPEALING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection
2 proposes the following order to amend ATCP 30.31(2); to repeal and recreate the cover
3 page to ch. ATCP 30 Appendix A; to repeal a prohibition map in ch. ATCP 30
4 Appendix A; and to create a prohibition map in ch. ATCP 30 Appendix A; relating to
5 pesticide product restrictions.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory authority: ss. 93.07(1), 94.69(1), 160.19(2), and 160.21(1), Stats.
Statutes interpreted: ss. 94.69, 160.19(2), and 160.21(1), Stats.

This rule modifies current rules related to the use of atrazine, an agricultural herbicide that has been widely used for many years. Atrazine has been found in groundwater in many areas of the state.

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently regulates atrazine use to protect Wisconsin groundwater. Current DATCP rules do all the following:

- *Specify maximum atrazine use rates.* These rates are about half the rates normally allowed under the federal label.
- *Limit the timing of atrazine applications.* Under current rules, atrazine applications are allowed only between April 15 and July 31.
- *Prohibit atrazine use on 1.2 million acres of land.* Current rules prohibit atrazine use in 102 designated areas where contamination has been found at or above groundwater enforcement standards adopted by the Department of Natural Resources. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface.

This rule makes the following changes to current rules:

- It expands one current prohibition area by 3,200 acres, based on new groundwater test data.
- It extends, by 2 weeks, the annual time period within which persons may apply atrazine. Under this rule, atrazine may be applied between April 1 and July 31. This change will give farmers more flexibility to apply atrazine earlier in the year. The change is not expected to have a significant adverse effect on the environment.

1 **SECTION 1.** ATCP 30.31(2) is amended to read:

2 ATCP 30.31(2) **TIMING OF APPLICATION.** No atrazine product may be applied to
3 any site before April ~~15~~1 or after July 31 in any year.

4 **SECTION 2.** Chapter ATCP 30 Appendix A cover page is repealed and recreated
5 in the form attached.

6 **SECTION 3.** Chapter ATCP 30 Appendix A prohibition area map numbered 93-
7 70-03, is repealed.

8 **SECTION 4.** Chapter ATCP 30 Appendix A prohibition area map, numbered
9 04-70-01 is created as attached.

10 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first
11 day of the month following publication in the Wisconsin administrative register, as
12 provided under s. 227.22(2)(intro.), Stats.

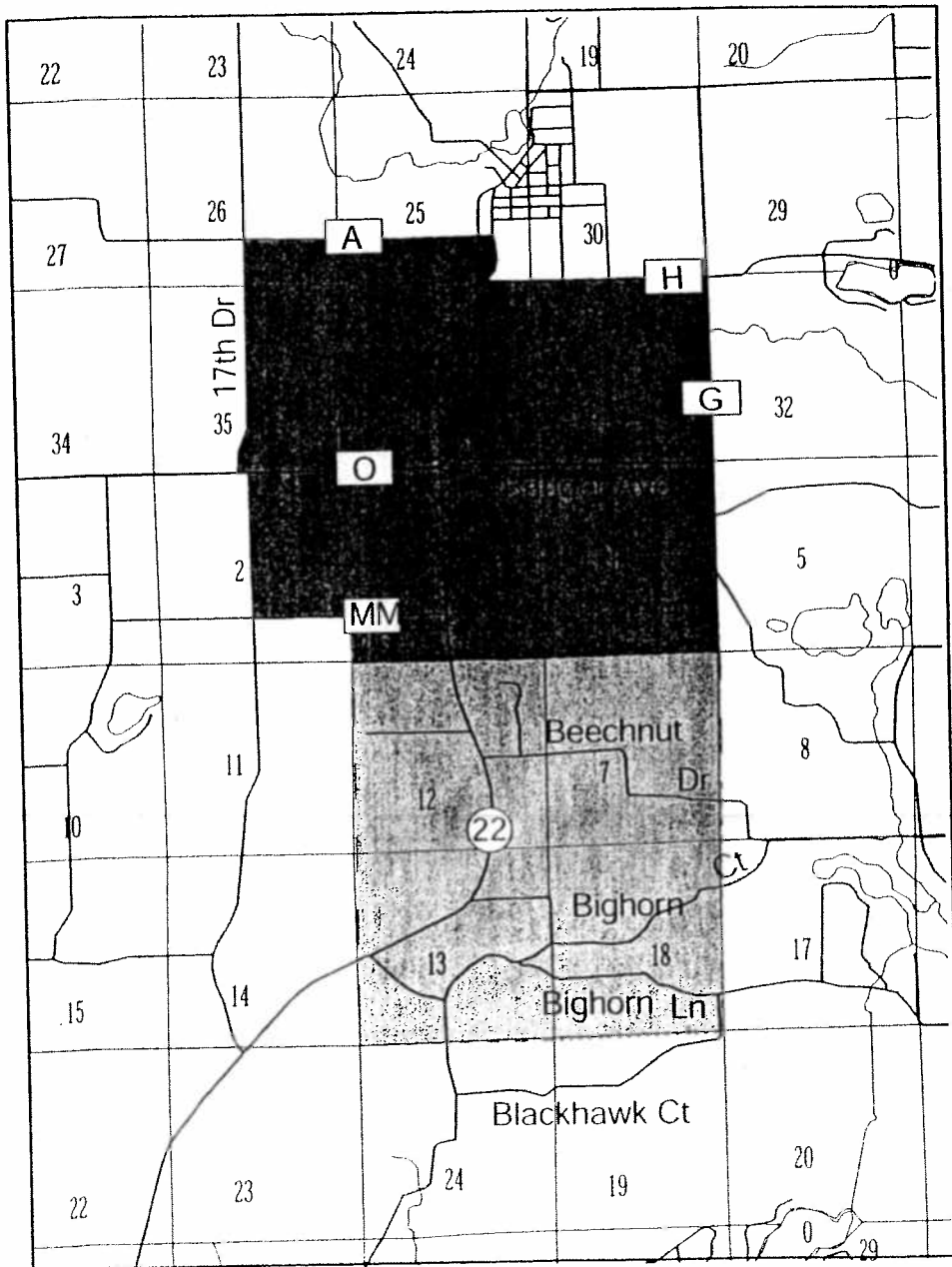
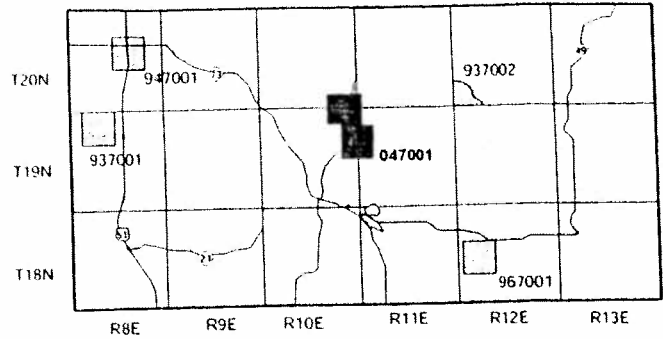
Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary

Waushara County
Towns of Rose, Spring Water
Mount Morris & Wautoma
T19-20N R10-11E PA 04-70-01

All uses of atrazine are prohibited on lands within the shaded regions. There are five prohibition areas in Waushara County. Refer to each map for specific locations.





DATE: January 21, 2004

TO: Erin Napralla

Committee on Agriculture

FROM: Patrick E. Fuller, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 03-076

AN ORDER to amend ATCP 30.31 (2); to repeal and recreate the cover page to Appendix A ch. ATCP 30; to repeal a prohibition map in Appendix A ch. ATCP 30; and to create a prohibition map in Appendix A ch. ATCP 30, Wis. Adm. Code, relating to pesticide product restrictions.

Submitted by **Department of Agriculture, Trade and Consumer Protection.**

Report received from Agency on **January 12, 2004.**

To committee on **Agriculture.**

Referred on **Wednesday, January 21, 2004.**

Last day for action - **Friday, February 20, 2004.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs choose to do so, you are not required by law or rule to send a copy of the text of the rule to each member at this time. Instead, your notice could state that members should contact you if they wish to receive a hard copy of the rule. Another option would be to email the rule to members. **(Please note that the text of Rules beginning with the prefix "01" is available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.