

Clearinghouse Rule 11-046

DATCP Docket No. 9-R-13
Rules Clearinghouse No. _____

Proposed Hearing Draft
August 24, 2011

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

1 The state of Wisconsin department of agriculture, trade and consumer protection
2 proposes the following order *to repeal and recreate Appendix A* of ch. ATCP 30, *relating*
3 *to pesticide product restrictions.*

Analysis by the Department of Agriculture,
Trade and Consumer Protection

In order to protect Wisconsin groundwater, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers rules concerning atrazine pesticide application rates. The current rules prohibit atrazine applications in areas where groundwater contamination levels attain or exceed state enforcement standards adopted by the Department of Natural Resources (“DNR”). Based on advancements in computer mapping software introduced since the rule was first promulgated in 1991, this rule updates existing maps in Ch. ATCP 30 Appendix A (“Atrazine Prohibition Areas”).

Statutes Interpreted

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

Statutory Authority

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

Explanation of Statutory Authority

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP has authority to adopt pesticide rules under s. 94.69(1), Stats. Under ss. 160.19(2) and 160.21(1), Stats., DATCP must regulate pesticide use, as necessary, to prevent groundwater contamination and restore groundwater quality.

Related Rules or Statutes

Under the state groundwater law, ch. 160, Stats., DATCP must regulate pesticide use as necessary to prevent groundwater contamination and restore groundwater quality. DATCP has

adopted general rules for its groundwater protection program under ch. ATCP 31, Wis. Adm. Code. DNR has adopted groundwater enforcement standards and preventive action limits for atrazine and its metabolites under ch. NR 140, Wis. Adm. Code.

This rule is consistent with the state groundwater law (ch. 160, Stats.) and DATCP's general groundwater protection rules (ch. ATCP 31, Wis. Adm. Code), and is designed to attain compliance with the groundwater enforcement standards and preventive action specified by DNR rules (ch. NR 140, Wis. Adm. Code).

Background

Atrazine is a widely used agricultural herbicide that has been found in groundwater throughout the state. Current DATCP rules under ch. ATCP 30, Wis. Adm. Code, limit atrazine application rates to half the current federal label rate. The current rules also prohibit the use of atrazine where atrazine contamination of groundwater has attained or exceeded the state groundwater enforcement standard under ch. NR 140, Wis. Adm. Code.

Current rules prohibit atrazine use in approximately 100 designated prohibition areas, including in the lower Wisconsin River Valley and much of Dane and Columbia Counties. Within an Atrazine Prohibition Area, atrazine may not be applied. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface that complies with s. ATCP 29.45, Wis. Adm. Code.

Rule Content

This rule will update existing maps in Ch. ATCP 30, Wis. Adm. Code Appendix A ("Atrazine Prohibition Areas"). These maps show areas where use of atrazine is prohibited because testing of local groundwater for the pesticide atrazine indicates that state standards have been attained or exceeded.

DATCP is *not adding to or changing* any of the current Atrazine Prohibition Areas on any of the maps in Appendix A. Maps presently being used contain surface features that require updating, such as new roadways, modified street names, and other features that are mapped. Moreover, current mapping software allows for reliance of data from numerous sources to provide for improved accuracy in mapping. The maps in this rule have been created within the last year and provide more accurate, up-to-date maps of the same Atrazine Prohibition Areas than are presently in ATCP 30 Appendix A.

Fiscal and Economic Impact

There will be no additional costs or economic impact to any other state agencies, local governments, or the private sector. A complete *Fiscal Estimate and Economic Impact Analysis* is attached.

Business Impact

This rule will have a positive impact on the Wisconsin agricultural community because the rule revises maps that are becoming outdated due to the passage of time. Using updated maps that contain correct street names, new roadways, and other mapped features will reduce confusion for users of atrazine and make it easier to prevent the inadvertent applications of that pesticide where it is prohibited due to its detection in groundwater.

Environmental Impact

This rule will not have any adverse environmental impacts.

Federal Regulations

Under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) and implementing regulations, pesticides and pesticide labels (submitted by pesticide manufacturers) *must be approved and registered* with the Environmental Protection Agency (“EPA”). Pesticide labels are required to provide detailed information stating how to use the pesticide products in a safe and legal manner. Pesticide labels must carry a statement indicating that it is a violation of law to use the product in a manner inconsistent with its labeling. Under FIFRA, states are permitted to have stricter requirements regarding pesticide use than those on the federally approved label.

Atrazine product labels approved by EPA under FIFRA establish an application rate of use (“label rate”) depending on factors such as crop type, timing of crop emergence, and erodibility of soils. Some approved atrazine labels indicate that atrazine has been found in groundwater and advise the user to avoid applying atrazine to sandy and loamy sand soils where groundwater is close to the surface and soils are very permeable. EPA classifies products containing atrazine as “restricted use” pesticides due to ground and surface water concerns.

EPA does not require the establishment of prohibition areas for atrazine in its regulations. Wisconsin establishes and maps prohibition areas based on groundwater data that documents atrazine presence in groundwater above state groundwater enforcement standards.

Surrounding State Regulations

Wisconsin’s maximum atrazine application rates are set by administrative rule at about half the rates normally allowed under the federal label. Neighboring states are not required to map Atrazine Prohibition Areas in its regulations. Neighboring states’ regulations relating to atrazine prohibitions are as follows:

- Iowa restricts atrazine application rates to half the federal label rate in 23 counties (7 with county-wide restrictions and 16 with restrictions in some townships).
- Minnesota has a program of voluntary use limitations when surface water or groundwater contamination exceeds a level of concern. This program suggests pesticide use restrictions or “best management practices” will reduce surface water or groundwater contamination.
- Illinois and Michigan have no atrazine regulations.

DATCP Contact

Questions and comments related to this rule may be directed to:

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DATCP will publish hearing notices, each of which will specify a hearing date, time and place, and a deadline date for submitting hearing comments.

1 **SECTION 1.** Ch. ATCP 30 Appendix A is repealed and recreated in the form
2 attached.

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

Dated this _____ day of _____, 2011.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary