

Report From Agency

DATCP Docket No. 08-R-08
 Rules Clearinghouse No: 12-003

Final Draft Rule
 August 1, 2012

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

2 The Wisconsin department of agriculture, trade and consumer protection proposes the following
 3 order *to repeal* ATCP 29.11 (2) (c) 3. (note), 29.23, and 29.54 (1) (e) 2.; *to renumber and*
 4 *amend* ATCP 29.56 (2) (a) note; *to amend* 29.01 (43) (note), 29.11 (2) (a) 1., 2., and 3., (b) 1.,
 5 2., and 3., (c) 1., 2., and 3., 29.15 (4) (b), 29.15 (8) (f) and (g), 29.21 (2) (d), 29.22 (intro) and
 6 (4), 29.25 (2) (b) and (c), 29.31 (10) (title), (a), and (b) 1 and 2., 29.31 (11) (a) 2. and (note),
 7 29.33 (3) (d), 29.45 (1) (b) (note), 29.45 (3) (b), 29.48 (3), 29.54 (7) (a) 1. and (note), 29.54 (7)
 8 (e) (note), 29.54 (10), (12) and (13), 29.55 (1) (d) and (2) (a), 29.55 (3) (c), 29.56 (1) (e) 2.,
 9 29.56 (2) (intro.), 29.56 (7) (c) (intro), 29.56 (7) (c) 4. (note), 29.70 (2), 29.71 (2), and 29.72 (4);
 10 *to repeal and recreate* ATCP 29.45 (3) (b) (note), 29.45 (4) (a) and (5), 29.54 (1) (a), and 29.61
 11 (note); and *to create* ATCP 29.01 (8m), (24m), (25m) and (37m), 29.10 (2) (b) 6., 29.22 (intro)
 12 (note), 29.31 (10) (b) 2m., 29.45 (3) (d) and (e), 29.54 (1) (am), (gm), and (km), 29.54 (5) (e), (f)
 13 and (g), 29.55 (3) (a) 8., 29.58, and 29.70 (2) (k) (note); *relating to* pesticide use and control and
 14 affecting small business.

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

The Wisconsin department of agriculture, trade and consumer protection (DATCP) regulates the sale and use of pesticides in this state. This rule modifies current rules related to pesticides. Among other things, this rule:

- Repeals the provision that veterinarians and veterinary technicians who use pesticides for animal treatment be required to obtain individual commercial applicator licenses. This

change will make the current rule consistent with a recent law change that removes the requirement for veterinary clinics to obtain special veterinary clinic pesticide use permits.

- Modifies an existing pesticide applicator certification category to include pesticide applications to natural areas, which is of interest to those committed to rehabilitating or maintaining natural areas and also is an area of business growth for pesticide applicators.
- Allows regulated persons to give certain notices and submit certain permit applications by electronic transmission to customers, if customers choose to receive important pesticide safety information in that way. It also reduces paperwork for some businesses by eliminating duplicative recordkeeping requirements and clarifies that certain paperwork will be submitted to the department primarily by electronic means.
- Updates current rules related to structural pesticide applications, including rules related to perimeter barrier applications and application notices.
- Harmonizes current rules with existing rules related to fertilizer and pesticide bulk storage.
- Updates current rules related to non-agricultural chemigation systems. The rule also provides minimum requirements for the installation and use of urban pesticide misting systems.
- Creates labeling requirements for rodenticide bait stations that are set out by commercial applicators, which often are placed outdoors in areas that are accessible to animals and the public.
- Modernizes the rules related to spill containment and spill containment surfaces. The rule also clarifies that spill containment surface repairs shall be made according to good engineering practices and manufacturer specifications.
- Removes obsolete pesticide license fee provisions to avoid confusion when reading the rule.
- Amends the administrative rule note regarding worker protection provisions by removing the summary of federal requirements, in anticipation of a change to federal worker protection standards.
- Makes a number of other minor drafting changes designed to update, clarify and correct current rules.

Statutory Authority

Statutory Authority: ss. 93.07 (1), 94.69 (1), and 94.705 (2), Stats.

Statutes Interpreted

Statutes Interpreted: ss. 94.645 (2) and (3), 94.67, 94.676, 94.69 (1), 94.703, 94.704, and 94.705, 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 s. 94.705 (2), Stats., DATCP has the authority to adopt standards for the training and certification of private and commercial applicators “at least equal to but not to exceed federal standards adopted under the federal act.”

Related Rules or Statutes

Generally, DATCP has the authority to regulate the manufacture, distribution and sale of pesticides in the state under ss. 94.67 to 94.71, Stats. The department also licenses commercial pesticide application businesses and individual commercial pesticide applicators under ss. 94.703 and 94.704, Stats.

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.

In addition to rules on pesticide use in ch. ATCP 29, DATCP has adopted ch. ATCP 30 to restrict use of some pesticide products in the state of Wisconsin.

DATCP has adopted rules in ch. ATCP 33 to regulate fertilizer and pesticide bulk storage. This rule is being revised to ensure standards for spill containment, including surfaces, pumps, and storage containers, are consistent with the requirements in ch. ATCP 33.

Plain Language Analysis

This rule updates administrative rules relating to pesticide use and control. Some of the key changes include the following:

Veterinary Clinics Applying Pesticides

2009 Wis. Act 139 repealed a statutory provision that required veterinary clinics to have a biennial DATCP permit to use, repackage or prescribe pesticides as part of a veterinary treatment. This rule modifies current rules to reflect that statutory change. This rule also clarifies that veterinarians and certified veterinary technicians are not required to have an individual commercial applicator license in order to use a pesticide as part of a veterinary treatment.

Applying Pesticides to Natural Areas; Applicator Certification

Under current rules, commercial pesticide applicators must be certified for competence in relevant application categories. This rule expands the existing “right-of-way” category to include applications to natural areas. The category is now titled, “right-of-way and natural area pest control.” Applicators applying pesticides to natural areas must have relevant knowledge

related to the restoration and maintenance of natural areas and the treatment of common pests affecting natural areas.

Pesticide Mixing and Loading Sites; Spill Containment

DATCP recently updated its rules in ch. ATCP 33 related to fertilizer and pesticide bulk storage. This rule updates related pesticide rules in ch. ATCP 29 to make them consistent with ch. ATCP 33, including construction and maintenance standards for pesticide mixing and loading sites. The updated standards include standards related to construction materials, sumps, spill containment and cleanup.

Urban Pesticide Misting Systems

Under the existing rule, chemigation systems generally are defined as systems that mix pesticides with irrigation water and apply the pesticide irrigation water mixture to plants. These types of pesticide application systems must meet certain standards and posting requirements. Existing standards and posting requirements apply to chemigation systems, but the current rule exempts devices or systems used only to apply residential lawn and garden pesticides. In the past, chemigation systems were developed primarily for use in agriculture.

New forms of non-agricultural chemigation systems are being installed at residential and commercial sites for the purpose of controlling pests such as mosquitoes. These urban pesticide misting systems are considered to be a type of chemigation but do not use irrigation water and are not used to apply water to lands, crops or plants. These chemigation systems disperse a mixture of pesticides and water into the air in the form of a mist to kill or control pests such as mosquitoes. In this rule, the definition of “non-agricultural chemigation system” is created and includes urban pesticide misting systems. The rule establishes standards and posting requirements specifically for these types of systems.

Perimeter Barrier Applications

This rule creates a definition for “perimeter barrier applications” and establishes that these are pesticide applications made on or within ten feet of a building or structure to discourage pests. The rule also clarifies the notification requirements for these applications.

Worker Protection Provisions

The United States environmental protection agency (EPA) currently is revising its federal regulations concerning its Worker Protection Standard for Agricultural Pesticides. DATCP summarizes the current federal worker protection requirements in a note to s. ATCP 29.61. This rule amends the note by removing the summary of these requirements, in anticipation of the change to the federal standards.

Electronic Notifications

Many of the notification requirements throughout the rule require written notification to

customers. In this proposed rule, DATCP is explicitly permitting the use of electronic notifications if the customer agrees to that method of notification. DATCP is also allowing persons to apply for special pesticide permits via electronic methods in order to decrease the time it takes to submit, review and issue these permits. DATCP is also clarifying the rules related to the landscape registry to allow explicitly for electronic registration and publication.

Rodenticide Bait Stations

Many rodenticide bait stations used by commercial applicators are not labeled or have labeling that becomes unreadable due to being outside and exposed to the elements. The concern is that human or non-target species exposure to unknown products may delay timely medical assistance. This rule establishes labeling requirements for rodenticide bait stations used by commercial pesticide applicators. The rule also establishes that rodenticide bait stations must be labeled on the interior or exterior with the company responsible for maintaining the bait station and the EPA registration number of the pesticide(s) in the bait station. This information must be readily accessible and remain legible while the rodenticide bait station is in service.

Other Changes

The rule makes a number of other minor drafting changes designed to update, clarify and correct current rules, including deleting outdated time frames.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

EPA regulates pesticides at the federal level under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and through the use of pesticide product labels. The EPA has delegated authority to Wisconsin to enforce federal pesticide regulations and to assure proper use and handling of pesticides in this state. Wisconsin's pesticide regulations must be at least as stringent as EPA's regulations. Ch. 94, Stats., and ch. ATCP 29 implement Wisconsin's delegated pesticide authority.

EPA recently established new regulations related to bait stations for 10 rodenticides. The regulations were developed after a review of incidents and accidental deaths related to rodenticide use. The new regulations restrict the sale of some rodenticides to certified applicators, limit the distance from a structure that a rodenticide may be placed, permit only "closed-system" rodenticide bait stations to be sold to non-certified applicators, and phase out the use of certain rodenticides altogether. Wisconsin pesticide applicators must already comply with EPA regulations. In addition to EPA regulations, this proposed rule would require operators to label, on the interior or exterior, the rodenticide bait station with contact and product information in order to assist emergency responders in the case of an accidental ingestion by non-target animals or persons.

EPA currently is revising its federal regulations concerning the Worker Protection Standard (WPS) for Agricultural Pesticides. The proposed new standard is scheduled to be released for public comment in mid-2013. Section ATCP 29.61 adopts the federal WPS by reference and

summarizes the current WPS requirements in a note. This rule amends the note by removing the summary of current WPS requirements, in anticipation of the change in federal standards.

Comparison with Rules in Adjacent States

Surrounding states, including Michigan, Minnesota, Illinois and Iowa also have delegated authority by EPA to enforce federal pesticide regulations. Each state also has state-specific pesticide regulations, similar to Wisconsin's regulations. The state-specific regulations must be at least as stringent as EPA's regulations but may be more or less stringent than Wisconsin's regulations, depending on the topic.

Chemigation

Nearly all states have chemigation laws, including Illinois, Michigan and Minnesota. EPA has minimum standards in place for states that do not have their own regulations, such as Iowa. Minnesota's chemigation regulations are more stringent than Wisconsin's regulations and require applicators obtain a chemigation permit annually before chemigating. This rule updates Wisconsin's chemigation laws to reflect developments in industry practices.

Urban pesticide misting systems are an emerging application method. Surrounding states have existing regulations that govern the use of these systems (including label, drift, and pesticide applicator certification requirements), although they do not apply only to this specific type of application. Wisconsin's proposed requirements to monitor windspeed and prevent time-delayed applications complement label requirements and will help ensure applicators avoid serious pesticide use violations and help protect human and companion animal health.

Natural Area Certification

No surrounding states have a separate certification category for "natural area" applications. Some surrounding states include these applicators in the "turf and landscape" certification category. Surrounding states also include these applicators in the "field and vegetable crop" certification category, when the natural areas are in a grassland-type setting. At the suggestion of Wisconsin's pesticide industry, and due to similarity of types of pests and pesticide application methods, the rule includes natural area applications in the current "right-of-way" category. The expanded certification category in the rule will be called "right-of-way and natural area pest control."

Rodenticide Bait Station Labeling

Many states are considering modifying their rodenticide bait station requirements in response to EPA's new rodenticide regulations. Iowa does not require rodenticide bait station labeling but does require notification to its department of agriculture prior to use of certain hazardous rodenticides (which is more stringent than what this rule proposes). Minnesota, Illinois and Michigan do not require exterior labeling of rodenticide bait stations at this time. Other states, including California, New York and Tennessee, require exterior labeling of rodenticide bait stations. This proposed rule permits either interior or exterior labeling of rodenticide bait stations.

Electronic Information

Surrounding states allow electronic transmittal of information between commercial application businesses and customers, as Wisconsin is proposing.

Summary of Factual Data and Analytical Methodologies

DATCP relied on data and other information obtained from EPA, the ch. ATCP 29 rule revision advisory committee, professional pesticide application business associations, the Wisconsin Pesticide Applicator Training Program, and public hearing testimony to develop this rule.

Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of Economic Impact Analysis

No specific documents were used to determine the effect of this rule on small business or in preparation of the economic impact analysis. The department gathered input from affected parties, including small businesses, during development of this rule. Input was sought from small businesses and other stakeholders during the rulemaking process, including the ch. ATCP 29 rule revision advisory committee meeting and as part of the public hearings.

Effects on Small Business

This rule likely will impact certain pesticide-related businesses, including small businesses. This rule will add minimal, if any, costs to affected pesticide applicators and pesticide application businesses. Moreover, this rule will not have a significant effect on local markets, on the sale or distribution of pesticide products, or on the overall economy of this state. Pesticide application businesses may experience cost savings as a result of clarifying existing regulations, improving regulatory consistency and modifying administrative requirements, including the ability to provide certain notices and submit certain permit applications by electronic means.

Pesticide applicators who choose to obtain a “right-of-way and natural area pest control” certification may experience a minimal additional cost every five years to purchase a new training manual (\$45). This additional cost will only apply to pesticide applicators that seek the natural areas certification and are not already certified in the existing “right-of-way” category. Many commercial application businesses cover the cost of training manuals for their employees. The average cost per year for the manual is \$9. The restoration of natural areas is considered to be a growth area for business and may positively impact pesticide businesses through increased revenue.

While many pesticide application businesses already label their rodenticide bait stations, businesses that are not currently doing so may have some minimal economic costs to comply with the rodenticide bait station labeling requirement. Costs may include purchasing stickers or another bait station labeling system (*e.g.*, conforming “luggage tags”) and personnel time to fill out the label. Pesticide application businesses supported labeling of rodenticide bait stations during public hearings, as long as they have the option of labeling on the inside or the outside, and they will have a number of cost-effective ways to meet this requirement, including the ability to design their own or choose from among a wide-variety of labeling systems.

Businesses should not have any direct costs to comply with the non-agricultural chemigation and urban pesticide misting system requirements. Few, if any, pesticide application businesses in Wisconsin currently are known to be using these application systems. If pesticide application businesses do decide to sell these systems in the future, costs to comply with these regulations could be included in the initial cost of the system.

Because ch. ATCP 33 was revised in 2006, many businesses are already in compliance with the spill containment and sump requirements. Those businesses not required to comply with ch. ATCP 33 may have some minor costs to comply if a spill containment surface fails and a repair would be inadequate. If a new spill containment surface is required, and the facility is not already regulated under ch. ATCP 33, there will be some incremental costs to comply with the proposed requirements, which now prohibit some materials (*e.g.*, asphalt) that were previously allowed. These materials are now prohibited because they have been prone to failure and unable to contain spills. A complete Business Impact Analysis is attached.

DATCP Contact

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

Mr. Michael Murray
Department of Agriculture, Trade and Consumer Protection
Agricultural Resource Management Division
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4551
E-Mail: michael.murray@wisconsin.gov

- 1 **SECTION 1.** ATCP 29.01 (8m) (24m), (25m) and (37m) are created to read:
- 2 ATCP 29.01 (8m) “Bulk pesticide” means liquid pesticide in a container larger than 55
- 3 gallons (208 liters), or dry pesticide in undivided quantities greater than 100 pounds (45
- 4 kilograms).
- 5 (24m) “Natural area” means native, undeveloped or wild land and land that is preserved
- 6 or restored and managed for its natural or native features, including parks, forests, and native
- 7 grassland on public and private land.

1 (25m) "Perimeter barrier application" means a pesticide application that is made on or
2 within 10 feet of a building or structure to prevent or discourage pests from entering that building
3 or structure.

4 (37m) "Rodenticide bait station" means a tamper-resistant package, container or device
5 holding a pesticide used to control rodents.

6 **SECTION 2.** 29.01 (43) (note) is amended to read:

7 **Note:** See additional definitions in s. 94.67, Stats., and ss. ATCP 29.11 (1),
8 29.54 (1), 29.55 (1), 29.56 (1), ~~and 29.60, and 30.01.~~

9
10 **SECTION 3.** ATCP 29.10 (2) (b) 6. is created to read:

11 ATCP 29.10 (2) (b) 6. The repackaging of a bulk pesticide.

12 **SECTION 4.** ATCP 29.11 (2) (a) 1., 2. and 3., (b) 1., 2. and 3., and (c) 1., 2. and 3. are
13 amended to read:

14 ATCP 29.11 (2) (a) 1. If the applicant sold less than \$25,000 of the product during the
15 preceding year for use in this state, \$265, ~~except that the fee is \$215 for each of the license years~~
16 ~~beginning January 1, 1999 and January 1, 2000.~~

17 2. If the applicant sold at least \$25,000 but less than \$75,000 of the product during the
18 preceding year for use in this state, \$750, ~~except that the fee is \$650 for each of the license years~~
19 ~~beginning January 1, 1999 and January 1, 2000.~~

20 3. If the applicant sold at least \$75,000 of the product during the preceding year for use
21 in this state, \$1,500, ~~except that the fee is \$1,200 for each of the license years beginning January~~
22 ~~1, 1999 and January 1, 2000.~~

23 (b) 1. If the applicant sold less than \$25,000 of the product during the preceding year for
24 use in this state, \$315, ~~except that the fee is \$265 for each of the license years beginning January~~
25 ~~1, 1999 and January 1, 2000.~~

1 2. If the applicant sold at least \$25,000 but less than \$75,000 of the product during the
2 preceding year for use in this state, \$860, ~~except that the fee is \$760 for each of the license years~~
3 ~~beginning January 1, 1999 and January 1, 2000.~~

4 3. If the applicant sold at least \$75,000 of the product during the preceding year for use
5 in this state, \$3,060, ~~except that the fee is \$2,760 for each of the license years beginning January~~
6 ~~1, 1999 and January 1, 2000.~~

7 (c) 1. If the applicant sold less than \$25,000 of the product during the preceding year for
8 use in this state, \$320, ~~except that the fee is \$270 for each of the license years beginning January~~
9 ~~1, 1999 and January 1, 2000.~~

10 2. If the applicant sold at least \$25,000 but less than \$75,000 of the product during the
11 preceding year for use in this state, \$890, ~~except that the fee is \$790 for each of the license years~~
12 ~~beginning January 1, 1999 and January 1, 2000.~~

13 3. If the applicant sold at least \$75,000 of the product during the preceding year for use
14 in this state, \$3,060 plus 0.2% of gross revenues from product sales during the preceding year for
15 use in this state, ~~except that for each of the license years beginning January 1, 1999 and January~~
16 ~~1, 2000 the fee is \$2,760 plus 0.2% of gross revenues from product sales made during the~~
17 ~~preceding year for use in this state.~~

18 **SECTION 5.** ATCP 29.11 (2) (c) 3. (note) is repealed.

19 **SECTION 6.** ATCP 29.15 (4) (b) is amended to read:

20 ATCP 29.15 (4) (b) ~~Beginning with the license year that begins on January 1, 2008, an~~
21 An agricultural chemical cleanup surcharge of \$28.

22 **SECTION 7.** ATCP 29.15 (8) (f) and (g) are amended to read:

1 ATCP 29.15 (8) (f) ~~The identity~~ first name, last name and address of the purchaser or
2 intended recipient, ~~including name, address, seller or~~ and the commercial application business
3 license number, restricted use dealer license number, and applicator license and certification
4 number, if any, and applicator certification number if any of the purchaser or intended recipient.

5 (g) ~~The name and address~~ The first name, last name and address of the person to whom
6 the seller delivered custody of the pesticide, if other than the purchaser or intended recipient.

7 **SECTION 8.** ATCP 29.21 (2) (d) is amended to read:

8 ATCP 29.21 (2) (d) ~~The~~ A specific description of the location of the pesticide
9 application site. The description shall contain sufficient information and detail so that the
10 location of the pesticide application site may be readily determined from the description.

11 **SECTION 9.** ATCP 29.22 (intro) and (4) are amended to read:

12 **ATCP 29.22 Commercial application business; information to customers.** Within 30
13 days after making a pesticide application for a customer, either directly or through an employee,
14 a person required to be licensed under s. ATCP 29.20 shall provide that customer with all of the
15 ~~following~~ information in subs. (1) to (9) in writing. The information may be provided to the
16 customer electronically if the customer consents in writing to such notification prior to the
17 application.

18 (4) ~~The~~ A specific description of the location of the pesticide application site. The
19 description shall contain sufficient information and detail so that the location of the pesticide
20 application site may be readily determined from the description.

21 **SECTION 10.** ATCP 29.22 (intro) (note) is created to read:

22 Note: Types of electronic communication include, but are not limited to, email and text.

23 **SECTION 11.** ATCP 29.23 is repealed.

1 **SECTION 12.** ATCP 29.25 (2) (b) and (c) are amended to read:

2 ATCP 29.25 (2) (b) A veterinarian, ~~affiliated with a veterinary clinic, whose operator~~
3 ~~holds a permit under s. ATCP 29.23,~~ who uses or directs the use of a pesticide as part of a
4 veterinary treatment which that veterinarian is licensed to provide in this state.

5 (c) ~~An animal~~ A veterinary technician, ~~affiliated with a veterinary clinic whose operator~~
6 ~~holds a permit under s. ATCP 29.23,~~ who uses a pesticide as part of a veterinary treatment which
7 that technician is certified to provide under ch. 453, Stats.

8 **SECTION 13.** ATCP 29.31 (10) (title) and (a) are amended to read:

9 ATCP 29.31 (10) RIGHT-OF-WAY AND NATURAL AREA PEST CONTROL.

10 (a) *Category description.* This category includes individuals who use or direct the use of
11 pesticides to maintain lands used for electric power lines, pipelines, railways, public roads or
12 similar purposes, or to restore or maintain the ecological integrity of natural areas.

13 **SECTION 14.** ATCP 29.31 (10) (b) 1. and 2. are amended to read:

14 ATCP 29.31 (10) (b) 1. The variety of environments that may be affected by right-of-way
15 and natural area pesticide applications.

16 ATCP 29.31 (10) (b) 2. Recognition of common pests controlled by right-of-way and
17 natural area pesticide applications.

18 **SECTION 15.** ATCP 29.31 (10) (b) 2m. is created to read:

19 ATCP 29.31 (10) (b) 2m. Restoration and maintenance of natural areas.

20 **SECTION 16.** ATCP 29.31 (11) (a) 2. and (note) are amended to read:

21 ATCP 29.31 (11) (a) 2. To control pests in or around food handling establishments,
22 human dwellings, schools, institutions, industrial establishments, warehouses, grain elevators or
23 like facilities. It includes individuals making perimeter barrier ~~treatments, within 10 feet of a~~

1 ~~building or structure, to prevent or discourage pests from entering that building or structure~~
2 applications. It also includes individuals making spot or directed applications to landscapes to
3 control structural, household or nuisance pests such as ants, fleas, wasps, bees and hornets. It
4 does not include individuals making applications under sub. (5) to control pests of turf or
5 ornamentals; nor does it include individuals making applications under sub. (8) to control
6 mosquitoes.

7 **Note:** Landscape applications other than perimeter barrier ~~treatments within~~
8 ~~10 feet of a building,~~ applications must comply with s. ATCP 29.56.

9
10 **SECTION 17.** ATCP 29.33 (3) (d) is amended to read:

11 ATCP 29.33 (3) (d) ~~The~~ A specific description of the location of the pesticide
12 application site. The description shall contain sufficient information and detail so that the
13 location of the pesticide application site may be readily determined.

14 **SECTION 18.** ATCP 29.45 (1) (b) (note) is amended to read:

15 **Note:** See also ~~ss.~~ ch. ATCP 33.

16 **SECTION 19.** ATCP 29.45 (3) (b) is amended to read:

17 ATCP 29.45 (3) (b) It shall be liquid tight and made of ~~asphalt,~~ portland cement concrete
18 or other nonabsorbent materials ~~approved by the department, and.~~ It shall be strong enough to
19 withstand all foreseeable loading conditions, including the filled weight of all vehicles,
20 application equipment or other equipment that may be used or located on it. A tarpaulin may not
21 be used as a spill containment surface for liquid pesticides.

22 **SECTION 20.** ATCP 29.45(3)(b)(note) is repealed and recreated to read:

23
24 **Note:** Spill containment surfaces constructed prior to *[Revisor, please insert rule's*
25 *effective date here]* may be made of asphalt or other materials approved by the
26 department.
27

28 **SECTION 21.** ATCP 29.45 (3) (d) and (e) are created to read:

1 ATCP 29.45 (3) (d) A spill containment surface shall be inspected at least semi-annually
2 and be maintained to ensure compliance with this section. All repairs to a spill containment
3 surface shall be made according to good engineering practices and manufacturer specifications.

4 (e) A spill containment surface shall be removed if it cannot be maintained in
5 compliance with this section for at least 2 years after the date of an initial repair or if corrective
6 action is needed to remove environmental contamination beneath the spill containment surface.

7 **SECTION 22.** ATCP 29.45 (4) (a) and (5) are repealed and recreated to read:

8 ATCP 29.45 (4) SPILL CONTAINMENT SURFACE; LIQUID PESTICIDES. (a) If any liquid pesticide is
9 mixed or loaded over a spill containment surface under sub. (1), the surface shall meet all of the
10 requirements under sub. (3) in addition to all of the following requirements:

11 1. The spill containment surface shall be liquid tight.

12 2. The spill containment surface shall have one or more fully functioning pumps that can
13 be used to remove liquid from the surface of the mixing and loading pad. Each pump shall be
14 plumbed or have a readily available hose connection to a storage container that shall be designed,
15 constructed, inspected and maintained to operate effectively and to prevent discharges under all
16 reasonably foreseeable use conditions. The storage container shall at all times have an unused
17 capacity of at least 200 gallons. The pump shall self-activate or shall be susceptible to
18 immediate activation whenever needed.

19 3. If the spill containment surface drains to a sump area, the sump area shall meet all
20 requirements set forth under sub. (5).

21 4. The spill containment surface shall be protected against precipitation runoff from
22 surrounding surfaces.

1 5. The spill containment surface may not have any precipitation drain through which
2 spilled pesticide could discharge.

3 (5) SUMPAREA. If the spill containment surface drains to a sump area, the sump area
4 shall meet all of the following requirements:

5 (a) The sump area shall be designed, constructed and maintained to contain all liquid that
6 drains to the sump.

7 (b) The sump area shall be liquid-tight.

8 (c) The sump area shall have a pump and storage container as described in s. ATCP
9 29.45 (4) (a) 2.

10 (d) The capacity of a sump installed after *[Revisor, please insert rule's effective date*
11 *here]* shall not be more than 50 gallons.

12 (e) The sump area shall be routinely inspected and maintained in compliance with this
13 section and shall make and keep records of inspection and maintenance for at least 3 years.

14 (f) The sump area shall be repaired, when necessary, to good engineering practices and
15 manufacturer specifications.

16 (g) The sump area shall be removed if it cannot be maintained in compliance with this
17 section, or if corrective action is needed to remove environmental contamination from beneath
18 the sump area. A leaking sump area shall be removed unless the sump is repaired and remains
19 liquid-tight for at least 2 years after the date of repair.

20 **Note:** Construction standards for sumps at fertilizer and pesticide bulk storage
21 facilities are found in s. ATCP 33.38. In addition, The *Wisconsin minimum*
22 *design standards for concrete agrichemical containment (February, 2005)*,
23 written by Professor David W. Kammel, department of biological systems
24 engineering, University of Wisconsin-Extension, is on file with the
25 department and the legislative reference bureau. Copies are available from
26 the department, free of charge, at the following address:
27

1 Department of Agriculture, Trade and
2 Consumer Protection
3 Agricultural Resource Management Division
4 P.O. Box 8911
5 Madison, WI 53708-8911
6 Phone: (608) 224-4500
7 Web: <http://datcp.wi.gov>
8

9 **SECTION 23.** ATCP 29.48 (3) is amended to read:

10 (3) **STORING SPILLED PESTICIDE AND RINSATE.** No spilled pesticides or spilled materials
11 containing pesticides may be stored below ground level. ~~Pesticide spills or rinsate stored in~~
12 ~~containers having a capacity of more than 55 gallons of liquid or 100 pounds of dry material~~
13 ~~shall be stored in compliance with ch. ATCP 33.~~

14 **SECTION 24.** ATCP 29.54 (1) (a) is repealed and recreated to read:

15 (a) “Agricultural chemigation system” means a chemigation system that mixes pesticides
16 with irrigated water and applies the pesticides with the irrigation water in an agricultural setting.

17 **SECTION 25.** ATCP 29.54 (1) (am), (gm) and (km) are created to read:

18 ATCP 29.54 (1) (am) “Automatic low pressure drain valve” means a self-activating
19 device which is designed and constructed to drain the water supply pipeline in a chemigation
20 system if water pressure falls or the water supply pump ceases operation.

21 (gm) “Non-agricultural chemigation system” means a chemigation system that is used to
22 apply pesticides in a non-agricultural setting, including to urban lawns and gardens.

23 (km) “Urban pesticide misting system” means a non-agricultural chemigation system that
24 draws water from any source, mixes the water with a pesticide and applies the mixture outdoors
25 and into the air to kill, repel, or otherwise control pests in an urban setting, including a residential
26 or commercial area.

27 **SECTION 26.** ATCP 29.54 (1) (e) 2. is repealed.

1 **SECTION 27.** ATCP 29.54 (5) (e), (f) and (g) are created to read:

2 ATCP 29.54 (5) (e) No pesticide may be injected into an urban pesticide misting system
3 unless the pesticide is labeled for application by misting.

4 (f) A rain sensor and a wind sensor must be installed on an urban pesticide misting
5 system to prevent drift and control runoff.

6 (g) A legible copy of the label must be securely attached to an urban pesticide misting
7 system's reservoir tank or on the outside of the system timer.

8 **SECTION 28.** ATCP 29.54 (7) (a) 1. and (note) are amended to read:

9 ATCP 29.54 (7) (a) 1. In compliance with ~~ASSE Standards 1013.80~~ s. SPS 382.41.

10 **Note:** ~~ASSE Standard 1013.80, published by the American society of sanitary~~
11 ~~engineers, is on file with the secretary of state, the legislative reference~~
12 ~~bureau and the department. The department can provide a list, by~~
13 ~~manufacturer and model, of reduced pressure principle backflow~~
14 ~~preventers which comply with ASSE Standard 1013.80. The department~~
15 ~~of commerce safety and professional services can provide a list of~~
16 ~~persons qualified to test reduced pressure principle backflow preventers.~~

17
18 **SECTION 29.** ATCP 29.54 (7) (e) (note) is amended to read:

19 **Note:** ~~To obtain a current list of approved check valves, by manufacturer and model,~~
20 ~~contact the department of agriculture, trade and consumer protection, agricultural~~
21 ~~resource management division, at P.O. Box 8911, Madison, WI, 53708-8911. UL~~
22 ~~Standard 312, published by the underwriters' laboratory, is on file with the secretary~~
23 ~~of state, the legislative reference bureau and the department and the legislative~~
24 ~~reference bureau.~~

25
26 **SECTION 30.** ATCP 29.54 (10), (12) and (13) are amended to read:

27 ATCP 29.54 (10) CHECK VALVE; PESTICIDE INJECTION LINE. In every chemigation
28 system, a check valve shall be installed in the pesticide injection line between the pesticide
29 injection unit and the point at which pesticides are injected into the ~~irrigation~~ irrigation water supply. The
30 check valve shall be spring loaded and have a minimum opening or cracking pressure of 10
31 pounds per square inch.

1 (12) WATER PRESSURE FAILURE; AUTOMATIC SHUT-OFF. In every chemigation system, a
2 low pressure switch shall be effectively designed and installed to shut off power to the ~~irrigation~~
3 application system if water pressure decreases to the point that the pesticide application no
4 longer complies with the pesticide label directions.

5 (13) PURGING A CHEMIGATION SYSTEM. After pesticide injection is completed, water
6 shall be pumped through a chemigation system for at least the flush time of the ~~irrigation~~
7 application system.

8 **SECTION 31.** ATCP 29.55 (1) (d) and (2) (a) are amended to read:

9 ATCP 29.55 (1) (d) “Residential application” means the application of a pesticide, other
10 than a germicide, sanitizer or disinfectant, to a residential structure. “Residential application”
11 includes perimeter barrier applications, but does not include an individual’s application of a
12 pesticide to a dwelling unit in which that individual resides, provided that the individual does not
13 apply the pesticide to other dwelling units or common areas in the residential structure, or its
14 perimeter barrier.

15 (2) (a) A written notice offering to provide pre-application information under par. (b).
16 The written notice may be provided electronically to the customer if the customer consents in
17 writing to such notification. The person shall make the offer before making the first residential
18 application for the customer, and shall repeat the offer at least annually if there is a continuing
19 contract for more than one year.

20 **SECTION 32.** ATCP 29.55 (3) (a) 8. is created to read:

21 ATCP 29.55 (3) (a) 8. A specific description of the location of the pesticide application
22 site. The description shall contain sufficient information and detail so that the location of the
23 pesticide application can be readily determined.

1 **SECTION 33.** ATCP 29.55 (3) (c) is amended to read:

2 ATCP 29.55 (3) (c) A person making a residential application to any common area within
3 a residential structure, or making a perimeter barrier application, shall provide the information
4 under par. (a) by posting clearly legible notices in common entryways or other conspicuous
5 locations so that all residents are likely to see the notices.

6 **SECTION 34.** ATCP 29.56 (1) (e) 2. is amended to read:

7 ATCP 29.56 (1) (e) 2. A perimeter barrier ~~treatment~~ application ~~made on or within 10~~
8 ~~feet of a building or structure to prevent or discourage pests from entering that building or~~
9 ~~structure.~~

10 **SECTION 35.** ATCP 29.56 (2) (intro.) is amended to read:

11 ATCP 29.56(2) INFORMATION TO CUSTOMER. A person hired by a customer to make a
12 landscape application shall provide that customer with all of the following in writing, or
13 electronically if the customer consents in writing to electronic notification:

14 **SECTION 36.** ATCP 29.56 (2) (a) (note) is renumbered ATCP 29.56 (2) (intro.)

15 (note) and amended to read:

16 **Note:** *See Appendix A for an example of a written or electronically transmitted*
17 *notice under par. (a). Nothing in this section authorizes a commercial applicator*
18 *to make a landscape application which the customer has not affirmatively*
19 *authorized.*

20
21 **SECTION 37.** ATCP 29.56 (7) (c) (intro) is amended to read:

22 ATCP 29.56 (7) (c) An individual shall register with the department by February 1 of
23 each year to be included in the registry that takes effect on March 15 of that year. An individual
24 shall register on a an electronic or paper form provided by the department. The registration form
25 shall include all of the following information which shall be included in the registry under par.

26 (a):

1 **SECTION 38.** ATCP 29.56 (7) (c) 4. (note) is amended to read:

2
3 **Note:** Individuals may obtain registration forms and submit registrations at the
4 following website address:

5
6 http://datcp.wi.gov/Plants/Pesticides/Landscape_Registry/index.aspx

7
8 Forms may also be obtained by mailing a request to Lawncare Registry
9 Coordinator, DATCP, PO Box 8911, Madison, WI 53708-8911, or by calling
10 (608) 224-4500.

11
12 ~~Department of Agriculture, Trade and Consumer Protection; Division of~~
13 ~~Agricultural Resource Management; Landscape Application Registry; P.O.~~
14 ~~Box 8911; Madison, WI 53708 8911. Individuals may also obtain registration~~
15 ~~forms by calling the department at 608 224 4616. A registration complies with~~
16 ~~the filing deadline under par. (c) if the registration is postmarked, or delivered~~
17 ~~to the department or entered onto the department's website by February 1. The~~
18 ~~department may accept registrations filed after February 1 for inclusion in the~~
19 ~~March 15 registry, but is not required to do so.~~

20
21 **SECTION 39.** ATCP 29.58 is created to read:

22 **ATCP 29.58 Rodenticide bait station.** (1) A person licensed under s. ATCP 29.20 or
23 certified under s. ATCP 29.31(11) who uses a rodenticide bait station shall mark it with the
24 following information:

25 (a) The name of the person responsible for maintaining the rodenticide bait station.

26 (b) The EPA registration number of all the pesticide products that are currently in use
27 within the rodenticide bait station.

28 (2) The information in sub. (1) shall be in English, resistant to deterioration and remain
29 legible throughout the length of time the rodenticide bait station is serviced.

30 **SECTION 40.** ATCP 29.61 (note) is repealed and recreated to read:

31 **Note:** Some federal requirements under 40 CFR 170 are stated in full on the pesticide
32 label, while others are merely referenced. The department will provide a free
33 summary of the federal rules upon request. The entire federal worker protection
34 standards rule can also be accessed at

35
36 www.epa.gov/pesticides/safety/workers/PART170.htm
37

1 40 CFR 170 requires specific pesticide safety practices, including pesticide product
2 application posting, training of equipment operators and pesticide workers and
3 handlers, and use of preventative emergency response measures including sanitation,
4 decontamination and availability of emergency medical treatment. To obtain summary
5 materials, contact the department at: Department of Agriculture, Trade and Consumer
6 Protection; Division of Agricultural Resource Management; Worker Protection
7 Program; P.O. Box 8911, Madison, WI 53708-8911 or call (608) 224-4545.
8

9 **SECTION 41.** ATCP 29.70 (2) is amended to read:

10 ATCP 29.70 (2) PERMIT APPLICATION. An application for an emergency use permit
11 under sub. (1) shall be ~~in writing,~~ submitted by electronic means to the department unless
12 advance approval to submit a paper application is granted by the department. The application and
13 shall include all of the following:

14 **SECTION 42.** ATCP 29.70 (2) (k) (note) is created to read:

15 **Note:** The use of certain pesticides, such as use of atrazine in an atrazine prohibition area,
16 may require a permit under ch. ATCP 30.
17

18 **SECTION 43.** ATCP 29.71 (2) is amended to read:

19 ATCP 29.71 (2) PERMIT APPLICATION. ~~A person seeking~~ An application for an
20 experimental use permit under sub. (1) shall apply in writing be submitted by electronic means to
21 the department unless advance approval to submit a paper application is granted by the
22 department. The application shall include all of the following:

23 **SECTION 44.** ATCP 29.72 (4) is amended to read:

24 ATCP 29.72 (4) APPLYING FOR REGISTRATION. A person licensed under s. ATCP 29.10
25 may apply for a special local needs registration under sub. (1). The application shall be ~~made in~~
26 writing and submitted by electronic means to the department unless advance approval to submit a
27 paper application is granted by the department. The application shall include all of the
28 following:

1 **SECTION 45. EFFECTIVE DATE.** This rule takes effect on the first day of the month
2 following publication in the Wisconsin administrative register, as provided under s. 227.22 (2)
3 (intro.), Stats.

Dated this _____ day of _____, 2012.

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary