

Wisconsin Department of Agriculture, Trade and Consumer Protection

Environmental Assessment

Rule Subject: Pesticide Use and Control
Administrative Code Reference: ATCP 29
Rules Clearinghouse #: 12-003
DATCP Docket #: 08-R-08

This environmental assessment is prepared as required by s. ATCP 3.02 (2), Wis. Adm. Code.

Nature and Purpose of Proposed Rule

This proposed rule modifies Chapter ATCP 29, Wisconsin's pesticide use and control rule. This rule is designed to clarify and modernize existing rules, increase administrative efficiencies for businesses and the department, and ensure regulatory consistency between this rule and ch. ATCP 33. 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.

Foreseeable Environmental Effects

The majority of these rule changes are administrative in nature and are not expected to affect the environment. Administrative changes include the removal of the administrative rule licensing requirements for veterinarians and veterinary technicians due to a recent law change, clarifying an administrative rule note describing the worker protection standard (which is set by federal regulations), harmonizing this rule with ch. ATCP 33 (Bulk Storage of Pesticides and Fertilizers), enabling more efficient communication between pesticide application businesses and customers and a more efficient permit application process, removing duplicative recordkeeping requirements, and removing obsolete rule provisions, including references to past fee holidays and veterinary clinic permits (already deleted in statute). The substance of these rule changes will not directly affect the natural environment but may reduce duplicative recordkeeping and unnecessary paperwork by pesticide businesses and the department.

The expansion of the “right-of-way” pesticide applicator certification category to include natural areas may have a positive environmental impact because it facilitates the rehabilitation or preservation of natural areas. The category will be titled “right-of-way and natural area pest control.” Expertise by pesticide applicators could lead to a reduction in the harm to native plants during the removal of (non-native) invasive plants, which ensures that the adverse effects to these natural areas are minimized.

This rule updates the regulations on chemigation to include non-agricultural chemigation systems and urban pesticide misting systems (which are a type of non-agricultural chemigation system). While these systems are not widely used in Wisconsin at this time, underground irrigation systems and urban pesticide misting systems are being installed more frequently in residential settings in many states (often to control mosquitoes). Chapter ATCP 29 already includes regulations on agricultural chemigation systems, such as backflow prevention devices to prevent contamination of groundwater by pesticides. This proposed rule will extend those environmental protections to non-agricultural chemigation systems that may use underground irrigation systems. Reasonable regulations on these systems are needed to prevent harm to humans, non-target wildlife species, and groundwater (drinking water) contamination.

The proposed rule also will require labeling of rodenticide bait stations. Rodenticide bait stations often contain highly toxic pesticides, which can be deadly to children, pets, and non-target wildlife if accidentally ingested. Labeling of rodenticide bait stations will maintain a safer environment by ensuring veterinarians, homeowners, and others will have the information they need to respond rapidly and appropriately if non-target animals or individuals accidentally ingest rodenticides from bait stations.

This proposed rule updates the current rules related to spill containment and the repair of spill containment surfaces. This rule is expected to protect the public, soil and groundwater from pesticide contamination.

Persons or Groups That May Be Affected by the Rule

This rule applies to all certified pesticide applicators, pesticide application businesses, and pesticide manufacturers, distributors, and wholesalers who must comply with rule standards. The majority of rule changes are administrative and are expected to have no discernible impact on person or groups, except that there may be a reduction in paperwork. For example, veterinary clinics and personnel do not have to file paperwork for licensing and permits, and the department no longer has to file and maintain those records. The rule changes that have some potential environmental impact include those relating to natural area pesticide applicator certification, spill containment, labeling of rodenticide bait stations and non-agricultural chemigation systems and urban pesticide misting systems. The department does not anticipate any irretrievable commitments of natural or human resources under this rule.

Pesticide Applicators and Pesticide Application Businesses

Natural Areas Pesticide Applicator Certification. One growing area of interest is the ability to rehabilitate or preserve natural areas, which includes removing invasive species and restoring or maintaining an area's natural wildlife and plants. Currently, pesticide applicators wishing to treat natural areas are unclear about the category in which they should seek certification. This rule clarifies the category appropriate for pesticide applicators making treatments to natural areas by expanding the existing "right-of-way" category to become a new "right-of-way and natural area pest control" category. This certification will require the pesticide applicator to show competence related to weeds and pests found in natural areas, posting requirements, equipment, and pesticide safety. This rule is expected to provide additional business opportunities and benefit those individuals or groups who wish to rehabilitate or maintain natural areas.

Rodenticide Bait Station Labeling. This rule will require structural pest control application businesses to label rodenticide bait stations with certain information, including the active ingredient or common trade name and EPA registration number of the product used in the bait station. This labeling requirement will ensure veterinarians, medical personnel, and agencies have timely access to information related to the pesticide product used in the rodenticide bait stations to enable prompt and appropriate response to any reports of accidental ingestion of the pesticide products by children, pets or non-target wildlife.

Non-agricultural chemigation systems and urban pesticide misting systems. Non-agricultural chemigation systems and urban pesticide misting systems are not used, or not widely used, in Wisconsin at this time. However, these systems are being installed more frequently in residential settings across the United States. These regulations will have to be implemented by applicable licensees.

Spill Containment. This rule updates certain provisions to ensure regulatory consistency between this rule and ch. ATCP 33, Pesticide and Fertilizer Bulk Storage, which was completely re-written in 2006. The modifications include changes to pesticide mixing and loading spill containment design and sumps. These changes were initially included in ch. ATCP 33, and are now included here, in order to prevent groundwater from being contaminated by pesticides. These changes are expected to be followed by licensed industry and to a large degree are already being followed due to the 2006 changes.

General Public

The general public will benefit from this rule as a result of the consumer, human health and environmental protections offered through proper use and containment of pesticide products. The public may benefit by having pesticide applicators certified to make pesticide applications to natural areas. The public may also benefit from having electronic options to receive pesticide safety information, which may improve access to that information.

Significant Economic, Social or Cultural Effects

Economic Effects

This rule will have minimal, if any, compliance costs for 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 choosing to obtain certification in the newly titled “right-of-way and natural area pest control” category may experience minimal additional costs every five years to purchase a new training manual (\$45). This additional cost will only apply to pesticide applicators who 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 the training manual 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.

Businesses that are not currently labeling their rodenticide bait stations may have some minimal economic costs to comply with the rodenticide bait station labeling requirement. Costs may include purchasing stickers or other bait station labeling system (e.g., conforming “luggage tags”) and personnel time to fill out the label. Businesses 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.

Social and Cultural Effects

This rule is not expected to have any significant social or cultural effects.

Controversial Public Issues

DATCP does not anticipate major public controversy related to this rule. The rule revisions were endorsed by an advisory committee, which included representatives of the pesticide industry.

In particular, the department sought specific input from the pesticide application industry on two issues: certification of pesticide applicators treating natural areas and exterior labeling of bait stations. During the hearing and comments process, the department received feedback on these topics and revised the draft rule accordingly.

Alternatives to this Rule

This rule is designed to clarify and modernize existing rules, increase administrative efficiencies for businesses and the department, and ensure regulatory consistency between this rule and ch. ATCP 33. If DATCP does not adopt this rule, there will continue to be inconsistencies between this rule and other DATCP regulations. In addition, changes being proposed to clarify existing regulations and provide options for administrative efficiencies for businesses will not be enacted and outdated rule language will remain. Finally, provisions updating the rule to protect human health and the environment, such as the extension of regulations to nonagricultural chemigation systems, urban pesticide misting systems and rodenticide bait stations, will not be enacted. These regulations are being proposed proactively to prevent harm to the environment and humans.

Additional Measures to Mitigate Adverse Environmental Effects

The department does not anticipate adverse environmental effects as a result of this rule. Therefore, no additional measures will be needed to mitigate any adverse environmental effects.

Conclusion

This rule will have a positive effect on the environment by expanding an existing pesticide applicator certification category to include natural areas, updating rules on spill containment, requiring labeling of rodenticide bait stations, and establishing modest requirements for urban pesticide misting systems. There are no preferable alternatives to this rule. This rule is not a “major action significantly affecting the quality of the environment,” for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats. or ch. ATCP 3, Wis. Adm. Code.

Signed this _____ day of _____, 2012.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
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Division of Agricultural Resource Management