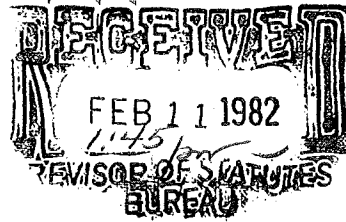


Ag 29

STATE OF WISCONSIN)
DEPARTMENT OF AGRICULTURE,) SS.
TRADE & CONSUMER PROTECTION)



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

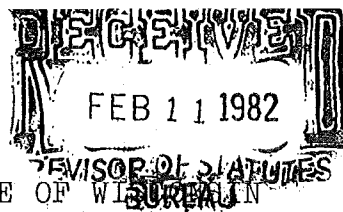
I, Kenneth P. Robert, Administrator, Plant Industry Division, State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order amending rules relating to pesticide use and control, Chapter Ag 29, Wis. Adm. Code, was duly approved and adopted by the Department on February 11, 1982.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 11th day of February, 1982.

Kenneth P. Robert
Kenneth P. Robert
Administrator
Plant Industry Division

4-1-82



FINAL
DRAFT
8/17/81

FEB 11 1982

ORDER OF THE STATE OF WISCONSIN

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

ADOPTING, AMENDING AND REPEALING RULES

Relating to pesticide use and control.

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

The department's amendments to existing rules on pesticide use and control include certain substantive changes, as well as non-substantive drafting and organizational changes intended to simplify and clarify existing rule provisions.

Existing definitions contained in 2 different sections of the rules are consolidated. Several definitions are repealed or added, and others are amended. "Commercial applicators" are defined to include counties, municipalities and townships engaged in pest control work.

Existing rules prohibiting or limiting the use of certain pesticides are re-drafted to clarify their original content. (These state limitations supplement federal law, under which pesticides are registered for specific purposes, and in some cases restricted to use by certified applicators.) The pesticide chlor-dane is added to the existing category of pesticides which may be used only under department permit, except that existing stocks in the hands of users may be used for registered purposes without a permit for 2 years. The pesticides aldrin and dieldrin may no longer be used for seed treatment purposes.

Existing rules on emergency use permits and experimental use permits, by which the department may authorize uses of pesticides not otherwise permitted, are clarified and amended. Among other things, the amendments set forth, in greater detail, the information needed to accompany permit applications.

New rules are created to govern state registration of pesticide products and uses which are not federally-registered, where state registration is necessary to meet a special local need within the state. The rules, which are based on proposed federal rules, establish basic procedures and standards to be used by the department in considering registrations for special local needs, as authorized by state and federal law.

Under amended rules, pesticide manufacturers and labelers are no longer required to file annual reports on pesticide sales with the department, but are required to furnish the information upon request. Retail dealers and distributors are required to keep sales records for 2 years (rather than 1 year as formerly) to conform with requirements already applicable to manufacturers and certified applicators. Existing license requirements for manufacturers and labelers are clarified.

Existing registration requirements applicable to commercial applicators for hire are extended to include all commercial applicators engaged in forest, regulatory, public health or right-of-way pest control, and registrations may be suspended or revoked for rule violations. Current record-keeping requirements for commercial applications of restricted-use pesticides are extended to include all commercial pesticide applications, other than applications of germicides, sanitizers and disinfectants.

Existing rules on the display and storage of pesticides are clarified and strengthened. A secured storage enclosure is required for outdoor storage (other than temporary holding of pesticides at loading and application sites in connection with their use), and warning placards are required on commercial premises in bins or storage areas used for the storage of pesticide-treated seed and grain. Re-use of pesticide containers for any other purpose is prohibited.

The amendments ease the existing burden of proof in state actions alleging negligent use of pesticides by eliminating the need to prove "knowledge" on the part of the applicator. Direct pesticide overspray is considered negligent per se, and is prohibited, regardless of whether it creates a significant risk of damage or injury in any individual instance.

Pesticide drift is considered negligent if it creates a significant risk of damage or injury. In any judicial or administrative enforcement action or proceeding brought by the department, proof of pesticide drift is prima facie evidence of a resulting significant risk, subject to rebuttal by the applicator. The department will seek equivalent enforcement sanctions for pesticide overspray and drift violations in cases involving human exposure.

The rule amendments re-affirm the department's existing statutory authority to restrict or regulate pesticide uses which result in groundwater contamination.

Persons contracting for aerial applications are required to give 24 hours advance notice of the application to persons residing on immediately adjacent land, if such notice has been requested in writing at any time within a year prior to the application. Exception is made for emergency applications, in which case notice (including the name of the pesticide applied) is required as soon as possible before or after the application.

With respect to applications of more highly toxic pesticides whose labels prescribe time intervals for safe re-entry, the amended rules require that treated areas be placarded to warn the public against the potential entry hazard. For outdoor applications, placarding is required only if the treated area borders within 100 feet of a public right-of-way, and only along the border with the right-of-way. The rules also require that effective notice and warning be given to workers employed in or around the treated area.

Persons contracting for the application of pesticides labeled highly toxic to bees are required to give 24 hours advance notice of such applications to beekeepers owning hives within 1 1/2 miles of the application site, if such notice has been requested by the beekeeper in writing at any time within a year prior to the application. Exception is made for emergency applications, in which case notice (including the name of the pesticide applied) is required as soon as possible before or after the application.

Finally, the rule amendments establish specific standards for the recertification of applicators of restricted-use pesticides, including recertification training requirements and approval of training courses.

1 Pursuant to authority vested in the State of Wisconsin Department
2 of Agriculture, Trade and Consumer Protection by sections 93.07(1),
3 94.69 and 94.705(2), Stats., the State of Wisconsin Department of
4 Agriculture, Trade and Consumer Protection repeals, amends and adopts
5 rules interpreting ss. 94.67 through 94.71, Stats., as follows:

6 Note: See Wis. Adm. Code chapters NR80 and NR107 for
7 pesticide rules of the department of natural resources.
8 See also chapter NR 181, Wis. Adm. Code, pertaining to
9 disposal of hazardous wastes.

10 1. Sections Ag 29.01(3) and (4), Ag 29.02, Ag 29.04, Ag 29.09(3),
11 Ag 29.15(1) (title and intro.) and (k), Wis. Adm. Code, are
12 repealed.

13 2. Sections Ag 29.01(1), (2) and (5) through (13), and
14 Ag 29.15(1)(a) through (j) and (l) through (t), Wis. Adm. Code, are
15 renumbered Ag 29.01(26), (1), (25), (10), (32), (11), (37), (12),
16 (21) through (23), (2) through (9), (13), (14), (17), (18), (20),
17 (27) through (31), and (40), respectively.

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1 3. Sections Ag 29.01(1) through (3), (5), (6), (10), (11),
2 (13), (20) through (23), (25), (28), (31), (32), and (37), Wis. Adm.
3 Code, as renumbered, are amended to read:

4 (1) "Department" means the state of Wisconsin department of
5 agriculture, trade and consumer protection.

6 (2) "Accident" means an unexpected or undesirable event caused
7 by the use or presence of a pesticide, adversely affecting persons,
8 property or the environment.

9 (3) "Agricultural commodity" means any plant or part of a
10 plant, or animal or animal product, produced by a person primarily
11 for sale, consumption, propagation or other use by humans or ani-
12 mals, as defined in s. 94.67(2), Stats.

13 (5) "Certified applicator" means a person certified by the
14 department to use or supervise the use of restricted-use pesti-
15 cides as a private or commercial applicator, as defined in
16 s. 94.67(4), Stats.

17 (6) "Commercial applicator" means a person, whether or not a
18 private applicator with respect to some uses, who uses or super-
19 vises the use of ~~restricted-use~~ pesticides for any purpose on any
20 property other than as a private applicator. The term does not
21 apply to persons applying pesticides other than restricted-use
22 pesticides for household purposes in and around their own homes.

23 (10) "Commercial applicator for hire" ~~is~~ means a ~~person~~
24 commercial applicator using or applying pesticides in the perfor-
25 mance of pest control work as an independent contractor for hire.
26
27

1 (11) "Distributor" ~~is~~ means a person engaged in the sale of
2 pesticides for resale and includes a person who sells at both
3 wholesale ~~or~~ and retail, as provided in s. 94.67(11), Stats.

4 (13) "Environment" includes water, air, land and all plants
5 and persons and other animals living in or on the water, air, or
6 land and the interrelationships which exist among them, as defined
7 in s. 94.67(12), Stats.

8 (20) "Pest" means any insect, rodent, nematode, fungus,
9 weed, or any other form of terrestrial or aquatic plant or animal
10 life or virus, bacteria or other microorganism, except viruses,
11 bacteria or other microorganisms on or in living persons or other
12 living animals, declared to be a pest under the federal act or
13 ~~rules-of-the-department~~ this chapter.

14 (21) "Pesticide" ~~is-as-defined-in-section-94.67,-Wis.~~
15 ~~Stats.,-and~~ means any substance or mixture of substances labeled
16 or designed or intended for use in preventing, destroying, repell-
17 ing or mitigating any pest, or as a plant regulator, defoliant or
18 desiccant, as defined in s. 94.67(25), Stats. For purposes of
19 use, storage, transportation, disposal and display under ~~these~~
20 ~~rules~~ this chapter, the term includes pesticide-fertilizer mix-
21 tures and seeds, seed pieces and other plant parts intended for
22 planting or propagation which have been treated with a pesticide.

23 (22) "Pesticide drift" means the drifting or movement of
24 pesticide ~~partieles-by-wind-or~~ by air currents or diffusion onto
25 property beyond the boundaries of the ~~immediate~~ target area to be
26 treated with pesticides, other than by pesticide overspray. Absent
27 evidence of pesticide overspray, the application of pesticide beyond

1 the boundaries of the target area shall be considered to be the
2 result of pesticide drift.

3 (23) "Pesticide overspray" means the ~~direct~~ application of
4 ~~pesticides-in-any-form-or-in-any-manner~~ onto property beyond the
5 boundaries of the target area to be treated with pesticides, by the
6 failure to control the direct flow or application of pesticides from
7 the application equipment, under surrounding conditions of use and
8 application, and so as to confine them the pesticide to the imme-
9 diate target area to-be-treated.

10 (25) "Pesticide registration" means the registration of
11 ~~pesticides with-the-department-under-section-94.68,-Wis.-State,-,~~
12 and pesticide uses with the federal environmental protection
13 agency under the federal act, or with the department to meet a
14 special local need as provided under s. Ag 29.08, Wis. Adm. Code.

15 (28) "Private applicator" means a person who uses or super-
16 vises the use of ~~restricted-use~~ pesticides for purposes of produc-
17 ing any agricultural commodity on property owned or rented by ~~such~~
18 the person or such the person's employer, or on property of
19 another person if used without compensation other than the trading
20 of goods or services between producers of agricultural commodities
21 on an exchange basis.

22 (31) "Restricted-use pesticide" means a pesticide ~~for which,~~
23 with respect to certain or all of its uses, are is classified as
24 being-for-restricted-use under the federal act or s. Ag 29.08(6),
25 Wis. Adm. Code, as a restricted-use pesticide for use only by cer-
26 tified applicators.

1 (32) "Retail dealer" ~~is~~ means a person engaged in the sale
2 of pesticides to consumers at retail.

3 (37) "Storage" means the keeping or holding of pesticides,
4 other than pesticides on display, at any location at which pesti-
5 cides are held for distribution, sale, use or disposal, and except
6 for storage as used in ~~section-Ag-29.44(4)~~ s. Ag 29.15(1), Wis.
7 Adm. Code, excludes pesticides held on residential property for
8 use in and about the home.

9 4. Sections Ag 29.01(15), (16), (19), (24), (33) through
10 (36), (38), (39) and (41), Wis. Adm. Code, are created to read:

11 (15) "Immediately adjacent land" means, with respect to the
12 advance notification requirement under s. Ag. 29.15(4)(b), land
13 which is directly contiguous to land on which pesticides may be
14 applied, or which is separated only by a road, railway, or utility
15 right-of-way, or by a government-owned land corridor or waterway
16 having a width of not more than 66 feet.

17 (16) "New product" means a pesticide product which is not a
18 federally registered product.

19 (19) "Person" means an individual, partnership, corporation,
20 association, and any other business association or entity. The
21 term includes counties, municipalities and townships.

22 (24) "Pesticide product" means a pesticide which, with its
23 container and labeling, including any supplemental labeling, is
24 offered for distribution and use.

25 (33) "Significant risk of injury or damage" means, with
26 respect to pesticide drift, a potential for injury or damage which
27 is not purely remote or highly speculative, but capable of being

1 perceived or recognized based on the location, type and amount of
2 pesticide involved, and available scientific information about the
3 pesticide and its effects on persons, property and the environment.

4 (34) "Similar composition" means composition of a pesticide
5 product which, when compared to a federally registered pesticide
6 product, has the same active ingredients, and the same category of
7 toxicity, as the federally registered product with which it is
8 compared.

9 (35) "Similar use" means use of a pesticide product which,
10 when compared to a federally registered use of a product with sim-
11 ilar composition, is substantially the same as the federally reg-
12 istered use, and does not require a change in precautionary label-
13 ing under the federal act.

14 (36) "Special local need" means an existing or imminent
15 pest problem within the state which cannot be adequately con-
16 trolled by the use of any available federally-registered pesticide
17 product.

18 (38) "Supplemental registrant" means a person in whose name
19 a pesticide is supplementally registered with the federal environ-
20 mental protection agency under the federal act.

21 (39) "Target organism" means a plant, animal, or other
22 organism against which a pesticide is applied.

23 (41) "Waters of the state" means those portions of Lake
24 Michigan and Lake Superior, and all lakes, bays, rivers, streams,
25 springs, ponds, wells, impounding reservoirs, marshes, water-
26 courses, drainage systems and other surface or ground water,
27 whether public or private, within the state or its jurisdiction.

1 Note: Additional definitions are found in s. 94.67,
2 Stats.

3 5. Sections Ag 29.05, Ag 29.07 through Ag 29.09, and
4 Ag 29.11, Wis. Adm. Code, are renumbered Ag 29.09, Ag 29.12
5 through Ag 29.14, and Ag 29.02, Wis. Adm. Code, respectively.

6 6. Sections Ag 29.15(title) and (2) through (9), Wis. Adm.
7 Code, are renumbered Ag 29.16(title) and (1) through (5),
8 Ag 29.11, and Ag 29.16(7) and (8), respectively.

9 7. Sections Ag 29.03, Ag 29.06 and Ag 29.10, Wis. Adm. Code,
10 are renumbered Ag 29.06, Ag 29.10 and Ag 29.15, respectively.

11 8. Sections Ag 29.02(intro.) and (5) through (7), Wis. Adm.
12 Code, as renumbered, are amended to read:

13 Ag 29.02 DECLARATION OF PESTS. Under authority of sections
14 ~~94.67(1)(a) and s. 94.69(1), Wis. Stats., each of the following~~
15 named forms of plant or animal life or viruses are declared to be
16 a pests and subject to destruction or control by use of pesticides
17 when present under circumstances where they may be injurious to
18 humans or their property, or to plants, man, domestic animals,
19 ~~other useful vertebrates or invertebrates, or other property;~~ plant
20 products, or animals:

21 (5) Aquatic and terrestrial invertebrates, including but not
22 limited to ~~slugs, snails and crayfish~~ insects and other arthropods,
23 molluscs and nematodes.

24 (6) ~~Roots and other plant~~ Plants, fungi or their parts
25 growing where not wanted.

26 (7) Viruses, bacteria, mycoplasmata and protozoans other
27 than those on or in living ~~man~~ humans or other animals.

1 9. Sections Ag 29.03 through Ag 29.05, Wis. Adm. Code, are
2 created to read:

3 Ag 29.03 PROHIBITED PESTICIDES. (1) The registration, pur-
4 chase, sale or use of the following pesticides is prohibited in
5 Wisconsin, except for use under emergency permit as provided in
6 s. Ag 29.06, Wis. Adm. Code, use under experimental use permit as
7 provided in s. Ag 29.07, Wis. Adm. Code, or in the case of DDT and
8 its isomers and metabolites, emergency or experimental uses autho-
9 rized by the pesticide review board under section 134.67, Stats.:

10 (a) DDT.

11 (b) DDE (TDD).

12 (c) Endrin.

13 (d) Cadmium.

14 (e) Thallium sulfate.

15 (f) Any pesticide whose registration has been suspended or
16 cancelled, or whose use has been prohibited under the federal act
17 or by order of the department, to the extent that the sale,
18 distribution or use is covered by the suspension, cancellation or
19 order.

20 (2) The prohibitions under sub. (1) do not apply to the pur-
21 chase, sale or use of pesticides as laboratory standards or educa-
22 tional exhibits, or for laboratory research other than research
23 involving the use of DDT for which a permit is required under
24 s. 134.67, Stats.

25 Ag 29.04 PESTICIDES FOR USE BY SPECIAL PERMIT ONLY.

26 (1) PERMIT REQUIREMENTS. (a) The following pesticides may
27 be used or purchased for use in Wisconsin only under a special

1 permit from the department as provided in this section, except for
2 emergency use under permit as provided in s. Ag 29.06, Wis. Adm.
3 Code, or experimental use under permit as provided in s. Ag 29.07,
4 Wis. Adm. Code:

5 1. Sodium Fluoroacetate (1080).

6 2. Strychnine, including products containing strychnine
7 sold or purchased for use as pesticides.

8 3. Chlordane, except that chlordane in the possession of
9 users as of the effective date of this subsection may be used for
10 registered purposes without a department permit for a period of 2
11 years after the effective date of this subsection. No permit
12 shall be required for the purchase or use of chlordane by certi-
13 fied applicators certified in the category of wood destroying pest
14 control as that category is defined in s. Ag 29.16(2)(g)3, Wis.
15 Adm. Code.

16 4. Any pesticide used for the control of insects or rodents
17 in public sewers, except when used by or under supervision of cer-
18 tified pest control applicators or government officials trained in
19 public health pest control as defined in s. 29.16(2)(h), Wis. Adm.
20 Code, and acting in the course of their employment.

21 (b) The permit requirements under par. (a) do not apply to
22 the purchase or use of pesticides as laboratory standards or
23 educational exhibits, or for laboratory research.

24 (2) APPLICATIONS FOR PERMIT. Applications for special per-
25 mits under this section shall be submitted to the department in
26 writing, on forms prescribed by the department, except that an
27 oral application may be accepted by the department in an emer-

1 agency. Emergency oral applications, if accepted by the depart-
2 ment, shall be followed by a written application postmarked or
3 hand-delivered to the department within 48 hours after acceptance
4 of the emergency oral application. Applications, including oral
5 applications, shall specify:

6 (a) The name and address of the permit applicant, including
7 the name and address of the pesticide applicator if different from
8 the permit applicant.

9 (b) The name and formulation of the pesticide for which a
10 permit is requested, and the purposes for which it will be used.

11 (c) Where and when the pesticide is to be used, and in what
12 quantity.

13 (d) Any special controls or precautions that will be exer-
14 cised in the use of the pesticide.

15 (e) Any other information required by the department.

16 (3) STANDARDS FOR ISSUING PERMITS; GENERAL. Permits may be
17 issued under this section only when, in the judgment of the
18 department, adequate controls can be established to assure that
19 the pesticide will be used with relative safety and without unrea-
20 sonable hazard to persons, property, wild animals or the environ-
21 ment. As a condition to the issuance of permits the department
22 may require that the pesticide be used only by or under the direct
23 and immediate supervision of government officials engaged in pest
24 control work, certified applicators, or other qualified
25 personnel.

26 (4) PERMITS FOR USE OF SODIUM FLUOROACETATE (1080); SPECIAL
27 REQUIREMENTS.

1 (a) Special permits for the use of sodium fluoroacetate
2 (1080) may be granted only for use in the control of rats and mice
3 by certified applicators.

4 (b) Requests for permits for the use of sodium fluoroacetate
5 (1080) shall, in addition to the information required under sub.
6 (2), include a description of:

7 1. The nature of the application site and surrounding
8 area;

9 2. The types of wild animals frequenting the site, if any;

10 3. The type of bait or the form in which the sodium fluoro-
11 acetate (1080) will be used;

12 4. The method of application; and

13 5. The method of disposal of carcasses of rats or mice.

14 (c) The following conditions shall apply to all permits for
15 the use of sodium fluoroacetate (1080) under this section, and to
16 all emergency permits for its use under s. Ag 29.06, Wis. Adm.
17 Code:

18 1. All buildings or portions of buildings in which the pes-
19 ticide is to be used shall be completely closed and sealed off
20 against access by all non-target animals and persons other than
21 those engaged in the control work. Control work within a building
22 shall be carried on in such a manner as to prevent the contamina-
23 tion of the building or its contents. All remaining and uncon-
24 sumed pesticide used in the building shall be completely removed
25 from the building before the building is opened for further use.

26

27

1 2. Outdoor applications shall be made using tamper-proof
2 bait boxes designed and secured to prevent a hazard to humans or
3 non-target animals, including birds or fish.

4 3. Carcasses of rats and mice shall be picked up promptly
5 after being killed by the pesticide, to prevent access to the car-
6 casses by humans or other animals. Carcasses shall be disposed of
7 at a landfill site approved by the department of natural
8 resources.

9 4. Records of each use of the pesticide shall be maintained
10 for a period of 2 years and be made available to the department
11 upon request, for inspection and copying. Records shall include
12 the date and time of application, and a description of the site at
13 which the pesticide was used, the form in which it was used, the
14 method of application, and the site used for the disposal of
15 carcasses.

16 (5) PERMITS FOR USE OF STRYCHNINE AND CHLORDANE; SPECIAL
17 REQUIREMENTS. (a) Special permits for the use of strychnine may
18 be granted only for uses for which the product is registered, and
19 only for applications below ground or for use in the control of
20 rats and mice.

21 (b) Special permits for the use of chlordane may be granted
22 only for uses for which the product is registered, and only for use
23 by certified applicators. Permits shall not authorize the sale or
24 purchase of chlordane in container quantities of less than one
25 gallon.

26 (6) PROHIBITIONS. (a) No person may use any pesticide for
27 which a permit is required under this section unless and until

1 a permit has been received in writing from the department, or use
2 the pesticide contrary to the terms and conditions specified in
3 the permit.

4 (b) No person may openly display sodium fluoroacetate
5 (1080), strychnine or chlordane for sale, or sell or offer to sell
6 them to any person who does not have a permit from the department.
7 Persons selling sodium fluoroacetate (1080), strychnine or chlor-
8 dane shall make a record of each sale, to include the date of
9 sale, the name and address of the purchaser, the purchaser's per-
10 mit number, and the quantity of the pesticide sold. Records shall
11 be kept for a period of 2 years and be made available to the
12 department upon request, for inspection and copying.

13 (c) No permit holder purchasing any sodium fluoroacetate
14 (1080), strychnine or chlordane may resell or give the pesticide
15 to persons who do not have a permit.

16 Ag 29.05 PESTICIDES FOR LIMITED PURPOSES ONLY. (1) The
17 following pesticides may be purchased, sold or used in Wisconsin
18 only for the purposes specified in this section, except for emer-
19 gency use under permit as provided in s. Ag 29.06, Wis. Adm. Code,
20 or experimental use under permit as provided in s. Ag 29.07, Wis.
21 Adm. Code:

22 (a) Aldrin may be used only for foundation treatment below
23 ground to control termites and for root treatment of nonfood
24 trees at planting.

25 (b) Benzene hexachloride may be used only to treat trees for
26 the control of pine root collar weevil, pine tip weevil and balsam
27

1 gall midge, at an application rate not to exceed 1/4 pound per
2 acre.

3 (c) Chromium in any pesticide formulation may be used only
4 for pressure treatment of lumber for protection against termites
5 and decay producing fungi.

6 (d) Dieldrin may be used only for foundation treatment below
7 ground to control termites.

8 (e) Heptachlor may be used only for foundation treatment
9 below ground to control termites, and for registered uses in the
10 treatment of seeds.

11 (f) Lindane (gamma isomer of benzene hexachloride) may be
12 used only for:

13 1. The treatment of beef cattle, swine, goats except dairy
14 goats, sheep and pets for mange and lice; treatment of sheep for
15 fleeceworms; and spot treatment of animals, including dairy cattle
16 and goats, for the protection of flesh and flesh wounds against
17 insect infestation.

18 2. Seed treatment.

19 3. Treatment of yard and non-commercial garden
20 ornamentals.

21 4. Household uses for which the product is registered.

22 5. Medicinal use by physicians or persons acting under
23 their direction.

24 (g) Mercury in any pesticide formulation may be used only in
25 the manufacturing of paints and to control winter turf disease on
26 golf tees and greens.

27

1 (2) The limitations under sub. (1) do not apply to the
 2 purchase, sale or use of pesticides as laboratory standards or
 3 educational exhibits, or for laboratory research.

4 10. Section Ag 29.06, Wis. Adm. Code, as renumbered, is
 5 amended to read:

6 Ag 29.06 EMERGENCY USE PERMITS.

7 (1) PERMITS; AUTHORIZATION. The department may authorize
 8 issue emergency use permits authorizing the registration, pur-
 9 chase, sale, distribution and use of limited-use pesticides, other
 10 than DDT and its isomers and metabolites, under-emergency-permit
 11 for purposes not otherwise permitted under these rules ss. 94.67
 12 through 94.71, Stats., or this chapter, when necessary in an emer-
 13 gency situation to control the outbreak or spread of epidemic dis-
 14 eases of humans, or plant or animal diseases or pest infestations
 15 which threaten substantial destruction of property, or to control
 16 epidemic-diseases-of-humans-which where the disease or infestation
 17 can only be controlled by the use of limited-use-pesticides a pes-
 18 ticide which would not be authorized for use except by emergency
 19 permit. An emergency permit may not be issued under this section
 20 for any purpose or use which is not also authorized or approved
 21 under the federal act. Emergency permits for the use of DDT and
 22 its isomers and metabolites may be issued only by the pesticide
 23 review board under s. 134.67, Stats.

24 (2) APPLICATIONS FOR PERMIT. Applications for emergency use
 25 permits shall be in writing, and include the following
 26 information:

27

1 (a) The name and address of the applicant, including the
2 name and address of the pesticide applicator if different from
3 the applicant;

4 (b) The nature and scope of the emergency warranting the
5 pesticide use, and the purpose for which the pesticide will be
6 used.

7 (c) The composition and formulation of the pesticide;

8 (d) The source from which the pesticide is to be pur-
9 chased or shipped;

10 (e) The amount of pesticide to be applied;

11 (f) The site of the pesticide application;

12 (g) The method of pesticide application, and any special
13 controls or precautions that will be exercised in the use and dis-
14 posal of the pesticide; and

15 (h) Any additional information required by the department.

16 (3) PERMIT CONDITIONS AND CONTROLS. (a) The department may
17 impose conditions or limitations on emergency use permits as nec-
18 essary to protect persons, property, wild animals or the environ-
19 ment, including conditions and limitations on the duration of the
20 permit, the amount of pesticide to be used, the location and size
21 of the application site where the pesticide may be used, the
22 method of pesticide application, and the disposal of unused pesti-
23 cides and pesticide containers. The department may require that
24 the pesticide be used only by or under the direct and immediate
25 supervision of government officials engaged in pest control work,
26 certified applicators, or other qualified personnel.

1 (b) The department may summarily suspend or revoke an emer-
2 gency use permit if it appears that any condition of the permit
3 has been violated, or that continued pesticide use under the per-
4 mit may result in an unreasonable hazard to persons, property,
5 wild animals or the environment.

6 11. Section Ag 29.07, Wis. Adm. Code, is created to read:

7 Ag 29.07 EXPERIMENTAL USE PERMITS.

8 (1) PERMITS; AUTHORIZATION. The department may issue exper-
9 imental use permits authorizing the sale, purchase, shipment and
10 use of pesticides, other than DDT and its isomers and metabolites,
11 for experimental purposes not otherwise permitted under ss. 94.67
12 through 94.71, Stats., or this chapter. A permit may not be issued
13 under this section for any purpose or use not also authorized or
14 approved under the federal act. Permits may be issued only to:

15 (a) Persons wishing to accumulate experimental data within
16 the state necessary to register a pesticide or pesticide use under
17 the federal act or s. Ag 29.08, Wis. Adm. Code.

18 (b) Public or private agricultural research agencies or
19 educational institutions performing scientific research in this
20 state not necessarily related to the registration of a pesticide or
21 pesticide use. This paragraph does not authorize the issuance of
22 permits to agencies or institutions engaged primarily in the sale
23 or promotion of pesticides, except for purposes provided in
24 paragraph (a).

25 (2) APPLICATIONS FOR PERMIT. Applications for experimental
26 use permits shall be submitted to the department in writing, and
27 include:

1 (a) The names and addresses of:

2 1. The applicant.

3 2. Persons who will be shipping pesticide, and the address
4 of the place or places from which the pesticide will be shipped.

5 3. Persons who will be receiving shipments of the pesticide.

6 4. Persons who will be applying or supervising the experi-
7 mental application of the pesticide.

8 5. Persons on whose property the pesticide will be used
9 experimentally.

10 (b) A detailed description of the proposed experimental use
11 of the pesticide, including:

12 1. The purpose of the experimental use.

13 2. The quantity of pesticide to be used.

14 3. The target organisms against which the experimental use
15 will be directed.

16 4. The type of plants, animals or site to be treated.

17 5. The location, nature and size of the site to be treated,
18 and the nature of the surrounding environment.

19 6. The dates or time periods on or within which the pesti-
20 cide is to be used.

21 7. The methods of pesticide application or use.

22 (c) The proposed schedule of pesticide shipments,
23 including individual shipment dates and amounts.

24 (d) A detailed description of the pesticide to be used,
25 including:

26

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1 1. The chemical composition and type of formulation of the
2 pesticide, giving the chemical name and percentage by weight of
3 each active and inert ingredient.

4 2. Relevant chemical and physical properties of the pesti-
5 cide, as required by the department.

6 3. Methods used to analyze pesticide formulation and to
7 determine the existence of pesticide residues.

8 4. Available data and information on pesticide toxicity,
9 including oral, dermal and inhalation toxicity, lethal concentra-
10 tions in the aquatic environment, chronic toxicity hazards, and
11 symptoms of toxicity in persons, plants and animals.

12 5. Available data and information on the rate of decline of
13 pesticide residues in target and non-target organisms, raw agri-
14 cultural commodities, food, feed and the environment.

15 6. Potential hazards to persons using the pesticide, and
16 suggested precautions for use.

17 (e) A description of precautions to be taken in connection
18 with the experimental use to prevent hazards to persons, property,
19 wild animals and the environment. Where an experimental use may
20 cause pesticide residues to occur in raw agricultural commodities,
21 food or feed, the applicant shall:

22 1. Submit proof that the proposed experimental use will not
23 result in pesticide residues in excess of tolerances established under
24 the federal act or the federal food, drug and cosmetic act, as amended
25 (21 USC 301 et seq.), or that the pesticide's active and inert
26 ingredients are exempted from the requirement of a residue tolerance
27 in raw agricultural commodities, food and feed; or

1 2. Certify that any raw agricultural commodities, food or
2 feed derived from the experiment or program will not be sold or
3 disposed of for consumption by persons or animals, other than lab-
4 oratory or experimental animals.

5 (f) A copy of any permit issued for the experimental use
6 under the federal act.

7 (g) Copies of proposed labeling for the experimental use
8 pesticide.

9 (h) Any additional information required by the department.

10 (3) STANDARDS FOR ISSUING PERMITS. The department may issue
11 permits only for bona fide experimental uses under the supervision
12 of persons qualified by training and experience to engage in pes-
13 ticide research, when in the department's judgment the proposed
14 experimental use presents no significant hazard to persons, prop-
15 erty, wild animals or the environment, and includes adequate con-
16 trols and safeguards to prevent actual hazards.

17 (4) PERMIT CONDITIONS AND CONTROLS. (a) The department may
18 impose conditions or limitations on experimental uses as necessary
19 to protect persons, property, wild animals or the environment,
20 including limits on the amount of pesticide to be used experimen-
21 tally, the size and location of experimental application sites,
22 the method of pesticide use, and the disposal of unused pesticides
23 and pesticide containers.

24 (b) Permits shall expire on a date set by the department,
25 but shall in no case be effective for more than one year. Permits
26 may be renewed or amended on basis of the standards and criteria
27 applicable to the issuance of original permits. Permits may also

1 be amended to authorize experimental use on property of persons
2 not identified in the original application.

3 (c) The department may summarily suspend or revoke an exper-
4 imental use permit if any condition of the permit has been vio-
5 lated, or if continuation of the experimental use may be hazardous
6 to persons, property, wild animals or the environment.

7 (5) LABELING. Pesticides shipped or used under an experi-
8 mental use permit shall be labeled to include:

9 (a) The prominent statements, "FOR EXPERIMENTAL USE ONLY"
10 and "NOT FOR RESALE."

11 (b) The name, brand or trademark of the pesticide.

12 (c) The name and address of the experimental use permit
13 holder.

14 (d) The net contents of the pesticide container.

15 (e) A complete ingredient statement.

16 (f) Appropriate warning or cautionary statements.

17 (g) Any appropriate limitations on entry of persons into
18 areas treated with the pesticide.

19 (h) Directions and conditions for use of the pesticide.

20 (i) Any other labeling required by the department.

21 (6) REPORTS. The department may require permit holders to
22 file periodic reports with the department concerning the shipment
23 or use of pesticides under the permit. In the reports, the
24 department may request information on the amounts of pesticide
25 shipped and used; shipment and delivery dates and locations; dates
26 and site locations of pesticide use; experimental findings; dis-
27 posal of unused pesticide and pesticide containers; disposal of

1 treated agricultural commodities, food or feed; and other informa-
2 tion pertaining to the experimental use of pesticides. Permit
3 holders shall immediately report to the department any observed
4 adverse effects of the experimental use on persons, property,
5 wild animals, or the environment.

6 (7) EXEMPTIONS. An experimental use permit is not required
7 for the preliminary screening or testing of a material by a state
8 or federal agency, an accredited college or university, or a pes-
9 ticide manufacturer or developer, if the screening or testing is
10 designed solely to determine whether the material has value as a
11 pesticide for specific purposes. This exemption is limited to lab-
12 oratory tests or field tests on a total of not more than 1/4 acre
13 of land owned or leased by the testing agency, educational insti-
14 tution or pesticide developer. The exemption does not apply to
15 pesticides or pesticide uses prohibited or limited under
16 ss. Ag 29.03 through Ag 29.05, Wis. Adm. Code. Test crops or other
17 products of the preliminary screening or testing shall not be sold
18 or disposed of for consumption by persons or animals, other than
19 laboratory or experimental animals.

20 12. Section Ag 29.08, Wis. Adm. Code, is created to read:

21 Ag 29.08 REGISTRATION OF PESTICIDES TO MEET SPECIAL LOCAL
22 NEEDS.

23 (1) REGISTRATION; GENERAL REQUIREMENTS. The department may
24 register pesticide products and uses not registered under the fed-
25 eral act, when necessary to meet a special local need in the
26 state, as provided under s. 94.69(11), Stats., and the federal
27 act. Registration has the same effect within the state as regis-

1 tration under the federal act, unless disapproved by the
2 environmental protection agency under the federal act. A product
3 or use may be registered only if:

4 (a) Registration is necessary to meet a special local need
5 within the state, as determined by the department. Situations
6 which the department may consider as not constituting a special
7 local need may include, but are not limited to, pest problems
8 existing on a nationwide or multi-state regional basis.

9 (b) The product will be distributed for use only within the
10 state, as evidenced by product labeling under sub. (4), and not
11 for further manufacturing, reformulation or repackaging;

12 (c) The product or use is covered by necessary residue tol-
13 erances, exemptions, or other clearances under the federal act or
14 the federal food, drug and cosmetic act, as amended (21 U.S.C. 301
15 et seq.), if the registration is for use on raw agricultural
16 commodities, food or feed;

17 (d) The product is shown to be effective for use, and is
18 warranted on the product label to perform as claimed;

19 (e) Registration of the product or use would, in the judg-
20 ment of the department, result in no unreasonable adverse effects
21 on persons, property, wild animals or the environment, assuming
22 normal use according to label directions; and

23 (f) Registration of the product or the proposed use of the
24 product has not been denied, disapproved, cancelled or suspended
25 under the federal act. If registration of a product for any use
26 has been denied, disapproved, cancelled or suspended under the
27 federal act, no other use of the product may be registered by the

1 department without prior approval by the federal environmental
2 protection agency.

3 (g) The product conforms to all applicable packaging, color-
4 ation and labeling standards and requirements under ss. 94.67
5 through 94.71, Stats., and the federal act.

6 (2) REGISTRATION OF NEW PRODUCTS. (a) The department may
7 register a new product to meet a special local need only if it is
8 formulated from ingredients found in federally registered products
9 and:

10 1. Is identical in composition to a federally registered
11 product, and differs only in packaging, formulation type, or iden-
12 tity of the manufacturer;

13 2. Contains the same active and inert ingredients as a fed-
14 erally registered product, except in different percentages; or

15 3. Contains a new combination of active or active and inert
16 ingredients, all of which are found in federally registered
17 products.

18 (b) If a new product is formulated from a product for which
19 federal registration has been denied, disapproved, cancelled or
20 suspended in part, the department may not register the new product
21 without prior approval by the federal environmental protection
22 agency.

23 (3) APPLICATIONS FOR REGISTRATION; FEE.

24 (a) Applications for registration to meet a special local
25 need shall include:
26
27

1 1. The name and address of the applicant, and the license
2 number of the manufacturer's and labeler's license held by the
3 applicant in this state.

4 2. A description of the special local need justifying
5 registration.

6 3. The name of the product for which a registration is
7 being sought and, if the application is for a new product regis-
8 tration, the complete formula of the product.

9 4. A copy of proposed labeling for the product.

10 5. Valid scientific evidence demonstrating that the product
11 is effective for the proposed registered uses.

12 6. Any other information required by the department in
13 order to make a determination on the application.

14 (b) Applications for registration to meet a special local
15 need shall be accompanied by a fee of \$100.

16 (4) LABELING.

17 (a) New products. New pesticide products registered by the
18 department to meet a special local need shall be labeled in con-
19 formity with all applicable labeling standards and requirements for
20 federally registered products, as provided under the federal act
21 and ss. 94.67 through 94.71, Stats., and shall also contain:

22 1. A statement that the product is registered for distribu-
23 tion and use only in Wisconsin.

24 2. The special local need number assigned by the
25 department.

26 3. The expiration date of state registration.

27 4. Any other labeling required by the department.

1 (b) New uses of federally registered products. Federally
2 registered products which are registered by the department for an
3 additional use to meet a special local need shall be accompanied
4 at time of use by supplemental labeling containing:

5 1. A statement that the state-registered use is authorized
6 only in Wisconsin.

7 2. Directions for use to meet the special local need.

8 3. The trade name of the product.

9 4. The name and address of the registrant.

10 5. The EPA (federal environmental protection agency) regis-
11 tration number of the federally registered product.

12 6. The special local need number assigned by the department.

13 7. A statement requiring persons using the product to comply
14 with all applicable directions, restrictions and precautions found
15 on the product label, and accompanying supplemental labeling.

16 8. The expiration date of the state registration.

17 9. Any other labeling required by the department.

18 (6) USE RESTRICTIONS; USE BY CERTIFIED APPLICATORS ONLY.

19 The department may, as a condition to registering any pesticide
20 product or use to meet a special local need, classify the product
21 for use only by certified applicators. A product shall be classi-
22 fied for use only by certified applicators if:

23 (a) It is identical or similar in composition to a federally
24 registered product for which all or similar uses have been
25 restricted to use by certified applicators under the federal act;

26 (b) It meets the criteria for classification as a restricted
27 use pesticide under the federal act; or

1 (c) The department determines that the restricted use
2 classification is necessary to prevent unreasonable hazards to
3 persons, property, wild animals or the environment.

4 (7) SUSPENSION OR REVOCATION. The department may summarily
5 suspend or revoke a registration issued under this section if any
6 conditions or requirements under which the product or use was reg-
7 istered is violated, the special local need no longer exists, or
8 continuation of the registration may result in an unreasonable
9 hazard to persons, property, wild animals or the environment. A
10 registration shall be suspended or revoked if at any time it is
11 suspended or disapproved by action of the federal environmental
12 protection agency under the federal act.

13 13. Section Ag 29.09, Wis. Adm. Code, as renumbered, is
14 amended to read:

15 Ag 29.09 PESTICIDE-REGISTRATION LICENSING OF PESTICIDE MANU-
16 FACTURERS AND LABELERS; FILING OF REPORTS. (1) LICENSE REQUIRE-
17 MENT. (a) No person may sell or distribute for sale any
18 pesticide product in this state unless the product label bears the
19 name and address of a licensee under s. 94.68, Stats., who, as the
20 manufacturer, registrant or supplemental registrant of the pesti-
21 cide product, is responsible for the introduction, sale or dis-
22 tribution of the pesticide product in this state. No license is
23 required of a supplemental registrant if the product label bears
24 the name and address of a licensed manufacturer or registrant, and
25 the name of the supplemental registrant is qualified by appropriate
26 wording such as "Packed for...," "Distributed by...," or "Sold
27

1 by..." to show that the name of the supplemental registrant is not
 2 that of a licensed manufacturer or registrant.

3 (b) The name and address of the licensee, as it appears on
 4 the product label, shall conform to the name and address appearing
 5 on the license application. License applications shall include
 6 all addresses of licensees which may be used on product labels.

7 (2) FILING OF REPORTS BY LICENSEES. As a condition to the
 8 licensing of pesticide registration manufacturers and labelers
 9 under section s. 94.68, Wis. Stats., each-registrant persons
 10 holding or applying for licenses shall annually submit to the
 11 department upon request copies of pesticide labeling for each pes-
 12 ticide which may be sold or distributed by them in this state, a
 13 record of the quantities of each pesticide registered-by-him-which
 14 he-has sold or distributed within-the-state, the names and
 15 addresses of persons from or to whom pesticides are received or
 16 distributed for further manufacturing, packaging, or labeling, and
 17 such other data information as the department may request concern-
 18 ing pesticides uses sold or distributed by them in this state.
 19 Such-records-shall-be-submitted-by-July-1-of-each-year-for-the
 20 preceding-calendar-year.

21 14. Section Ag 29.10, Wis. Adm. Code, as renumbered, is
 22 amended to read:

23 Ag 29.10 REGISTRATION OF COMMERCIAL APPLICATORS AND SELLERS.

24 (1)--Retail-dealers-of-restricted-use-and-use-by-permit-only
 25 pesticides-in-Wisconsin-shall-register-with-the-department-and-upon
 26 request-submit-to-the-department-records-of-the-amounts-and-kinds
 27 of-such-pesticides-sold-during-the-preceding-calendar-year.--Other

1 ~~retail-dealers-of-pesticides-shall-upon-request-submit-to-the~~
2 ~~department-records-of-the-amounts-and-kinds-of-pesticides-sold~~
3 ~~during-the-preceding-calendar-year.~~

4 ~~(2)--Distributors-of-pesticides-in-Wisconsin-shall-register~~
5 ~~with-the-department-and-upon-request-submit-to-the-department-rec-~~
6 ~~ords-of-the-amounts-and-kinds-of-pesticides-sold-during-the-pre-~~
7 ~~ceding-calendar-year.~~

8 ~~(3)~~ (1) COMMERCIAL APPLICATORS. (a) Commercial applicators of
9 pesticides-in-Wisconsin-shall-annually-register-with-the-depart-
10 ment-on-or-before-April-15-of-each-year-and-submit-information-of
11 the-amounts-and-kinds-of-pesticides-used-or-sold-as-required-by-the
12 department, including but not limited to those licensed to use and
13 apply restricted-use pesticides under ss. 94.705(1)(d) and (4)(c),
14 Stats., shall register annually with the department if engaged in:

15 1. Forest, regulatory, public health or right-of-way pest
16 control, as those categories are defined in s. Ag 29.16, Wis. Adm.
17 Code, whether or not the applications involve the use of
18 restricted-use pesticides.

19 2. The use or application of pesticides as a commercial
20 applicator for hire.

21 (b) Commercial applicators required to register under this
22 subsection may not use or apply pesticides without a valid certificate
23 of registration issued by the department. Certificates shall expire
24 on December 31 of each year, and may be suspended or revoked for
25 violations of any provisions of ss. 94.67 through 94.71, Stats., or
26 this chapter. Certificate authorization may be partially suspended
27 or revoked with respect to the use or application of pesticides by

1 individual employes of a commercial applicator registered under this
 2 subsection.

3 (2) DISTRIBUTORS AND RETAIL DEALERS. Distributors and retail
 4 dealers of restricted-use pesticides and pesticides for which a use
 5 permit is required under s. Ag 29.04, Wis. Adm. Code, shall
 6 register annually with the department. Registrations shall expire on
 7 December 31 of each year.

8 (3) REGISTRATION PROCEDURES. Persons required to register
 9 under this section shall register on forms furnished by the
 10 department, to include the name and address of the applicator or
 11 seller and business locations from which sales are made or from
 12 which business operations are conducted. Changes in business
 13 names or locations shall be reported to the department within 30
 14 days after date of change.

15 15. Section Ag 29.11, Wis. Adm. Code, as renumbered, is
 16 amended to read:

17 Ag 29.11 RECORD-KEEPING-FOR COMMERCIAL APPLICATORS AND
 18 SELLERS; RECORD KEEPING REQUIREMENTS. (1) COMMERCIAL APPLICATORS.
 19 All commercial applicators of restricted-use pesticides, whether or
 20 not subject to licensing under ss. 94.705(1)(d) and 4(c), Stats.,
 21 or registration under s. Ag 29.10(2), Wis. Adm. Code, shall keep a
 22 record for a period of 2 years of all pesticide applications of
 23 restricted-use pesticides, other than applications of germicides,
 24 sanitizers and disinfectants. Records of pesticide applications
 25 shall be completed on the day pesticides are applied, and be made
 26 available to the department for inspection and copying upon
 27 request. Such Records shall include:

1 (a) The name of the individual using or applying the pesti-
 2 cide and the name and address of the person for whom the pesticide
 3 was applied.

4 (b) The location of the site where the pesticide was applied.

5 (c) The pest or pests against which the pesticide was applied.

6 (d) ~~The time-the-pesticide-was-applied-(month,-day,-year,-~~
 7 ~~hour-of-the-day)~~ date and time of application.

8 (e) The trade ~~or-common~~ name of the pesticide applied, and
 9 either the manufacturer's name,-and or the E.P.A. (federal envi-
 10 ronmental protection agency) registration number of the pesticide.

11 (f) The amount of pesticide used and the total area treated.

12 (g) Specific types of crops, agricultural commodities, plants,
 13 animals, structures, equipment, materials or sites treated.

14 (2) DISTRIBUTORS AND RETAIL DEALERS. Distributors and retail
 15 dealers of pesticides, whether or not subject to registration under
 16 s. Ag 29.10(2), Wis. Adm. Code, shall keep records of the amounts
 17 and kinds of pesticides sold. Records shall be kept for a period
 18 of 2 years, and be made available to the department for inspection
 19 and copying upon request.

20 16. Sections Ag 29.12(2) through (5), Wis. Adm. Code, as
 21 renumbered, are amended to read:

22 Ag 29.12 STORAGE OF PESTICIDES.

23 (2) Pesticides and their containers while in storage shall
 24 be kept-reasonably kept in separate rooms or areas, adequately
 25 separated from areas used for the storage or display of food,
 26 feed, seed, livestock remedies, drugs, plants, or-any and other
 27 products or materials including-ether-pesticides,-which-could

1 ~~become-contaminated-by-leakage,-breakage-or-volatilization~~ so as
2 to prevent possible contamination of those products or materials
3 which could result from volatilization of pesticides, the leakage
4 or breakage of pesticide containers, or other causes.

5 (3) Storage Indoor rooms or areas ~~in-buildings~~ used for the
6 storage of pesticides shall be protected and secured in such manner
7 that they are not readily accessible to children or the general
8 public.

9 (4) Pesticides and pesticide containers stored ~~or-held~~ at
10 outdoor locations, including loading or application sites, shall
11 be kept in a fenced or walled enclosure, secured against entry by
12 children or the general public. Pesticides and pesticide con-
13 tainers shall be covered or otherwise protected and secured to
14 avoid damage to or destruction of product labels on-the-container
15 and-to-prevent-public-access-or-injury-to-persons-or-property,
16 including-fish-and-wildlife, and to prevent hazards to persons,
17 property or wild animals. This subsection does not apply to pes-
18 ticides or containers temporarily held at loading and application
19 sites in connection with their use, subject to s. Ag 29.15(8).

20 (5) Pesticides removed from original shipping containers
21 prior to storage shall be inspected to assure that caps, lids or
22 other sealing devices on the container are tight or secure, and
23 that the container is sound and unbroken. Defective containers
24 shall-be-repaired-if-possible, if not fully repaired, shall
25 or be destroyed or disposed of in-a-safe-manner in accordance with
26 label directions or in a landfill site approved by the Wisconsin
27 department of natural resources.

1 17. Sections Ag 29.13(2) and (4) through (6), Wis. Adm. Code,
2 as renumbered, are amended to read:

3 (2) Pesticides labeled with the precautionary signal words
4 "POISON," "DANGER" or "WARNING," and pesticides packaged in glass
5 or nonrigid containers, or in containers the caps, lids or
6 dispensing devices of which are not equipped with a protective seal
7 or covering, shall be displayed at a height of not less than 42
8 inches above the floor or otherwise protected to assure they are
9 out of the reach of children.

10 ~~(4) No pesticide shall be displayed in such proximity to~~
11 ~~feed, feed, seed, plants or other products displayed or offered~~
12 ~~for sale that contamination will result from volatilization, or~~
13 ~~leakage or breakage of the pesticide container.~~ Pesticides and
14 their containers, while on display, shall be adequately separated
15 from food, feed, seed, livestock remedies, drugs, plants, or other
16 products or materials displayed or offered for sale, so as to pre-
17 vent possible contamination of those products or materials which
18 could result from volatilization of pesticides, the leakage or
19 breakage of pesticide containers, or other causes. Under no cir-
20 cumstances shall pesticide containers which have been opened be
21 displayed for sale.

22 (5) No person ~~shall~~ may sell a pesticide for uses other than
23 those specifically set forth on the original product label, or
24 supplemental labeling supplied by the manufacturer or registrant for
25 new and ~~approved~~ registered uses ~~registered with the department~~ and
26 furnished to the purchaser at the time of sale.

1 (6) No person shall may sell or distribute ~~any pesticide which~~
 2 ~~is not registered with the department, or sell or distribute~~ any
 3 poison or chemical at retail with instructions for its use in the
 4 formulation of a pesticide unless ~~the poison~~ it is registered with the
 5 department as a pesticide.

6 18. Section Ag 29.15, Wis. Adm. Code, as renumbered, is
 7 amended to read:

8 Ag 29.15 APPLICATION, USE AND DISPOSAL OF PESTICIDES.

9 (1) USE CONTRARY TO LABELING; NEGLIGENT USE.

10 (a) No person shall ~~use~~ may mix, handle, store, transport, or
 11 display or use a pesticides contrary to in a manner inconsistent
 12 with label directions its labeling or in a ~~careless or reckless~~
 13 negligent manner.

14 (b) ~~Any use, storage, transportation, or display including~~ Any
 15 use resulting in a pesticide overspray or drift is careless or
 16 reckless is negligent, and prohibited under par. (a), if the person
 17 knows or ought to know it causes injury or damage, or creates a
 18 significant risk, hazard or probability of injury or damage to other
 19 persons or their property, or wild animals other than those declared
 20 pests under section s. Ag 29.1402 and Wis. Adm. Code chapter
 21 NR-80, Wis. Adm. Code. In any judicial or administrative enforcement
 22 action or proceeding brought by or on behalf of the department for
 23 violation of this subsection, proof of pesticide drift shall be prima
 24 facie evidence of a significant risk of injury or damage to other
 25 persons, their property and wild animals.

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1 (c) Any use resulting in pesticide overspray is negligent, and
 2 prohibited under par. (a), regardless of whether it causes injury or
 3 damage, or creates a significant risk of injury or damage to other
 4 persons, their property, or wild animals.

5 (d) The department shall seek equivalent enforcement sanctions
 6 for pesticide overspray and drift violations in cases involving human
 7 exposure.

8 (2) CONTAMINATION OF THE WATERS OF THE STATE. (a) No per-
 9 son ~~shall~~ may apply ~~to~~ a pesticide to or cause a pesticide to
 10 enter waters of the state directly or through sewer systems. This
 11 does not apply to:

12 1. ~~persons-engaged-in~~ Fish management, mosquito abatement, or
 13 ~~the~~ other treatment of waters under the supervision or rules of the
 14 department of natural resources;

15 2. The use of ~~use-by-permit-only~~ pesticides under special
 16 department permit, as provided in s. Ag 29.04, Wis. Adm. Code, for
 17 the treatment of sewers for insect or rodent control by or under
 18 the supervision of qualified government officials or certified
 19 ~~pest-control-operators~~ commercial applicators or government officials
 20 trained in public health pest control ~~or under department permit, or~~
 21 ~~to~~ or

22 3. The use of pesticides ~~chemicals-accepted-and~~ registered
 23 and not otherwise prohibited for use in root control in sewage
 24 lines or in cleaning, sanitizing, algaeciding, slimiciding, or
 25 ~~disinfection-of~~ disinfecting toilets, urinals, sewers, sinks,
 26 swimming pools, food processing equipment, dishes, utensils, hos-
 27 pital equipment, walls, floors, or other surfaces or materials in
 28 any building or area where such uses are necessary for the protec-

1 tion of persons, animals or property.

2 ~~(3)~~(b) ~~No person shall fill~~ Pesticide spray equipment,
3 including mix or nurse tanks, shall not be filled from any waters
4 of the state, ~~except public water supplies, farm ponds and wells,~~
5 ~~or clean any pesticide spray equipment in such waters~~ other than
6 from public water supplies and private wells fully protected
7 against backflow or back-siphonage as provided under chapter H62,
8 Wis. Adm. Code. This does not prohibit the filling of tanks used
9 exclusively for water supply ~~only~~ purposes from surface waters of
10 ~~the state,~~ provided that no pesticides or pesticide containers are
11 carried on the tank vehicle.

12 (c) Pesticide spray equipment, including mix or nurse tanks
13 other than nurse tanks used exclusively for water supply purposes,
14 shall not be cleaned in any surface waters of the state. Pesti-
15 cide spray equipment shall also not be filled or cleaned adjacent
16 to surface waters or wells where, because of the slope or other
17 condition of the ground or bank, ~~spray materials~~ pesticides or
18 materials contaminated with pesticides could ~~readily~~ enter or con-
19 taminate the surface waters or well ~~in case~~ as a result of over-
20 flow, leakage or other causes, or rising waters could reach the
21 filling or cleaning area and become contaminated as a result of
22 prior surface contamination or other ~~reasons~~ causes.

23 (d) The department may, by rule or special order, take such
24 action as may be necessary to prevent the contamination of
25 groundwaters resulting from the seepage or leaching of pesticides
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1 through the soil. Rules or orders may restrict or regulate the
2 storage, use or disposal of pesticides in those areas under the
3 department's jurisdiction where, under surrounding environmental
4 conditions or conditions of use and application of pesticides,
5 contamination may occur. Rules or orders may be issued on an
6 emergency or summary order basis where necessary to prevent an
7 imminent hazard to human health or groundwater quality, subject to
8 a right of hearing before the department.

9 ~~(4)~~(3) APPLICATION EQUIPMENT. No commercial applicator or
10 person engaged in the rental, sale or furnishing of pesticide
11 application equipment ~~shall~~ may use, furnish, rent or sell pesti-
12 cide application equipment which is clogged, unclean or in dis-
13 repair, or which cannot be properly calibrated.

14 ~~(5)~~(4) AERIAL APPLICATIONS.

15 (a) Aircraft requirements and operations. No person ~~shall~~
16 may apply a pesticide by aircraft unless the aircraft meets the
17 requirements of and is operated according to the regulations of
18 the federal aviation administration and the Wisconsin department
19 of transportation.

20 (b) Notice of applications. 1. Residents on land immedi-
21 ately adjacent to land on which pesticides are to be applied by
22 aircraft shall be given advance notice of the aerial application
23 if, at any time within the calendar year, they have made a written
24 request for advance notification to the landowner or person
25 controlling the use of the adjacent land on which pesticides may be
26 applied. Written requests for advance notification shall include
27 the name, mailing address, property location, and telephone number

1 if any, of the person making the request. Responsibility for giving
2 notice shall be with the landowner or person controlling the use of
3 the land on which aerial application of pesticide is to be made,
4 whichever party received the request for notification. Notice from
5 either responsible party shall constitute notice from both. Notice
6 of an aerial application is not required under this paragraph if the
7 target site of the application is at no point closer than 1/4 mile
8 to the adjacent land on which the party requesting notice resides.

9 2. Advance notice of application may be written or oral, and
10 shall include the intended date and time of application, the
11 trade or common name of the pesticide to be applied, and the loca-
12 tion of the land on which the application is to be made. Notice
13 shall be given at least 24 hours in advance of application. If the
14 application date is changed, so that the application will occur
15 before or after the intended date specified in the original notice
16 of application, a new notice shall be given as soon as reasonably
17 possible prior to the application. Advance notice need not be
18 given in emergencies where an immediate aerial application is
19 required to control a sudden pest infestation and time does not
20 reasonably allow the giving of an advance 24 hour notice. Notice of
21 emergency applications shall be given as soon as reasonably possible
22 before or after the application, and include a brief explanation of
23 the circumstances constituting the emergency.

24 3. If a migrant labor camp, as defined in s. 103.90(5), Stats.,
25 is located on land immediately adjacent to land on which pesticides
26 may be applied by aircraft, the operator of the camp shall make annual
27 written request for advance notification under this paragraph.

1 (6)(5) DISPOSAL OF PESTICIDES AND CONTAINERS. No person
 2 shall ~~may~~ dispose of or hold pesticides or their containers, includ-
 3 ing empty containers, for disposal eentrary-te in a manner which
 4 is inconsistent with label directions en-their-label-or-in-a-manner
 5 or which may contaminate the waters of the state or create a haz-
 6 ard to persons, or property, including fish or wildlife. Pesticide
 7 containers, other than containers recycled for scrap or returned to
 8 the pesticide manufacturer for re-use, shall not be re-used for any
 9 purpose.

10 (7)(6) TREATED GRAIN AND SEED; HANDLING AND STORAGE.

11 (a) ~~Treated~~ Seeds treated with pesticides and intended for
 12 planting and propagation shall be incorporated into the soil during
 13 planting and shall not be used for or mixed with any food, or feed
 14 or oil, or be exposed in such a manner that birds or other wildlife
 15 animals have access to them.

16 (b) Bins or storage areas used for the bulk storage of grain
 17 or seed treated with pesticide shall be prominently posted with a
 18 placard at least 11 inches square bearing the following statement,
 19 or words or symbols having the same meaning and effect, in conspicu-
 20 ous lettering: "DANGER. THE GRAIN OR SEED IN THIS STORAGE AREA
 21 HAS BEEN TREATED WITH THE PESTICIDE (name of pesticide) ON (date)."
 22 The placard shall be posted immediately upon treatment or placement
 23 of the treated grain or seed in the storage area, and shall be kept
 24 posted until the treated grain or seed has been removed from
 25 storage, or the storage area can be entered safely. If grain or
 26 seed is treated with pesticide while in storage, the pesticide
 27 applicator shall be responsible for posting the required placard.

1 This paragraph does not apply to treated grain or seed stored on
2 the property of the producer and not intended for sale.

3 (7) POSTING OF TREATED AREAS; RE-ENTRY INTERVAL; NOTICE TO
4 WORKERS.

5 (a) General posting requirement. Fields, buildings or areas
6 treated with pesticides whose labels prescribe time intervals for
7 safe re-entry following application shall be posted with placards
8 at least 11 inches square bearing, in conspicuous lettering, the
9 words "WARNING -- AREA TREATED WITH PESTICIDE -- DO NOT ENTER," or
10 words or symbols having the same meaning and effect. Placards
11 shall be posted before or immediately after treatment, and shall
12 not be removed until the re-entry interval prescribed on the pesti-
13 cide label has expired.

14 (b) Posting locations; exceptions. The posting requirement
15 under par. (a) applies to fields or other outdoor areas only to the
16 extent that the target area to be treated with pesticide borders
17 within 100 feet of a road or other public right-of-way. Placards
18 shall be posted at approximately regular intervals along the border
19 between the treated area and the public right-of-way, and at normal
20 points of access, with at least one placard being posted for each
21 1/4 mile of border. Treated areas bordering within 100 feet of the
22 public right-of-way for less than 1/4 mile shall be posted with at
23 least one placard. Treated buildings or indoor enclosures shall be
24 posted at each entrance, unless the building or enclosure is otherwise
25 adequately secured against entry.

26 (c) Notice to workers. Persons employed in or around areas
27 treated with pesticides whose labels prescribe time intervals

1 for safe re-entry following application shall be given clear notice
2 and warning of each application, including a description of the
3 treated area and the time interval required for safe re-entry into
4 the area. Notice shall be given in such a manner as to be received
5 and readily understood by all employes who may have access to the
6 treated area, including persons of limited English language ability.
7 Compliance with the posting requirement under par. (a) does not
8 relieve any person of the duty to comply with this paragraph.

9 (d) Responsibility for compliance. Responsibility for com-
10 pliance with this subsection shall be with the landowner or other
11 person controlling the use of the property on which the pesticide
12 is applied. If a contract application is made under this subsection
13 by a commercial applicator for hire, responsibility for compliance
14 shall also be with the applicator, unless the applicator clearly
15 informs the contracting party of the re-entry interval and the
16 requirements of this subsection prior to application.

17 (8) PESTICIDES TEMPORARILY HELD AT LOADING AND APPLICATION
18 SITES. Pesticides and their containers temporarily held at loading
19 and application sites in connection with their use shall be kept
20 covered, or otherwise secured or guarded in such a manner as to
21 reasonably so as to prevent access thereto by children, the general
22 public or wildlife animals, or the contamination of the waters of
23 the state.

24 (9) USE OF PESTICIDES HIGHLY TOXIC TO BEES; NOTICE TO
25 BEEKEEPERS.

26 (a) Persons owning honeybee colonies located within a 1 1/2
27 mile radius of land on which pesticides are to be applied shall be
28 notified prior to the application of any pesticide labeled as

1 being "Highly Toxic to Bees" or containing the active ingredient
2 methomyl if, at any time within the calendar year, they have made
3 a written request for advance notification to the landowner or
4 person controlling the use of the land on which the pesticides may
5 be applied. Written requests for advance notification shall
6 include the specific location of each bee yard, and the name,
7 address, and telephone number if any, of the honeybee colony owner
8 making the request. Responsibility for giving advance notice
9 shall be with the landowner or person controlling the use of the
10 land on which the pesticide is to be applied, whichever party has
11 received the request for notification. Notice from either
12 responsible party shall constitute notice from both.

13 (b) Advance notice of application may be written or oral, and
14 shall include the intended date and time of application, the
15 trade or common name of the pesticide to be applied, and the loca-
16 tion of the land on which the application is to be made. Notice
17 shall be given at least 24 hours in advance of application. If the
18 application date is changed, so that the application will occur
19 before or after the intended date specified in the original notice
20 of application, a new notice shall be given as soon as reasonably
21 possible prior to the application. Advance notice need not be
22 given in emergencies where an immediate application is required to
23 control a sudden pest infestation, and time does not reasonably allow
24 the giving of an advance 24 hour notice. Notice of emergency
25 applications shall be given as soon as reasonably possible before or
26 after the application and include a brief explanation of the
27 circumstances constituting the emergency.

1 19. Section Ag 29.16(6), Wis. Adm. Code, is created to read:

2 (6) RECERTIFICATION OF COMMERCIAL APPLICATORS OF RESTRICTED-
3 USE PESTICIDES.

4 (a) General Standards. Commercial applicators of restricted
5 use pesticides shall, as a condition to recertification, demon-
6 strate continuing practical knowledge of the nature and safe use
7 of pesticides and the principles and practices of pest control,
8 and continuing competency in the safe use, handling and applica-
9 tion of pesticides, in accordance with the standards for certifi-
10 cation provided in subs. (1) and (2). Continuing practical know-
11 ledge and competency shall be determined by written examination as
12 provided in s. 94.705(1)(c), Stats., or by training as provided in
13 this subsection.

14 (b) Recertification by Training. 1. A certified commercial
15 applicator may, by training, be recertified in any category or sub-
16 category of pesticide application in which the applicator was
17 originally certified by written examination. In order to be re-
18 certified by training, applicators shall attend a minimum number of
19 hours in approved courses relating to the category or subcate-
20 gory of pesticide application for which recertification is
21 desired, as follows:

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1	<u>Category</u>	<u>Hours of Training Required for Recertification</u>
3	Agricultural Pest Control Field and Vegetable Crops	30
4	Fruit Crops	30
	Livestock	12
5	Forest Pest Control	24
	Ornamental and Turf Pest Control	30
6	Seed Treatment Pest Control	12
	Aquatic Pest Control	18
7	Right-of-Way Pest Control	18
	Industrial, Institutional and Health-Related Pest Control	
8	General	30
9	Fumigation	30
	Wood Destroying	18
10	Public Health Pest Control	30
11	Regulatory Pest Control	18

12 2. No more than 1/3 of the total hours of training required
13 for certification in each category or subcategory may be accumu-
14 lated in any single year, with years being calculated from the
15 date of prior certification. To obtain credit for attendance at
16 approved training courses, persons shall submit proof of atten-
17 dance to the department. No person shall claim credit for any
18 portion of an approved training course which was not actually
19 given or attended.

20 (c) Approved Training Courses. A course may be counted
21 toward the recertification training requirement in any category or
22 subcategory of pesticide application only if it has been approved
23 in advance by the department. No course may be advertised or rep-
24 resented as being approved for recertification training credit
25 until and unless it has been approved in writing by the depart-
26 ment. To qualify for approval a course must:

27 1. Be directly relevant to the category or subcategory of

1 pesticide application for which training credit is to be given;

2 2. Cover at least 3 of the general areas of knowledge and
3 competency provided in sub. (1), or be otherwise approved for
4 content by the department;

5 3. Be taught by an instructor certified in the category or
6 subcategory of pesticide application for which training credit is
7 to be given, or who has recognized expertise in the subject area;
8 and

9 4. Be at least 1-1/2 hours in length.

10 (d) Training courses; manner of obtaining approval. In
11 order to obtain approval of a course for recertification training
12 credit, the course sponsor must submit a course description to the
13 department at least 30 days before the scheduled date on which the
14 course is to be given. The description shall include:

15 1. The topics to be covered in the course, and the nature
16 of course contents pertaining to each topic;

17 2. The time allotted to each topic;

18 3. The name, address, title and professional qualifications
19 of each instructor;

20 4. The number of credit hours proposed for the course, in
21 each category or subcategory of pesticide application; and

22 5. The name, address and telephone number of the person
23 responsible for coordinating the course.

24 20. Section Ag 29.16(8), Wis. Adm. Code, as renumbered,
25 is amended to read:

26 (8) ~~STATUTORY-AUTHORITY~~; SCOPE AND APPLICATION.

27 (a) This section is ~~adopted under authority of s. 94.705(2)~~,

1 Stats., and is applicable to all commercial and private applica-
 2 tors of restricted-use pesticides. It does not apply to persons
 3 conducting laboratory type research involving restricted-use pes-
 4 ticides, or physicians or veterinarians using or applying
 5 restricted-use pesticides as drugs or medications in the treatment
 6 of persons or animals in the course of their normal practice.

7 (b) This section does not exempt persons certified to use or
 8 supervise the use of restricted-use pesticides from other provisions
 9 of this chapter or ~~Wis. Adm. Code~~ chapter NR 80, Wis. Adm. Code, or
 10 other laws or regulations applicable to the use and application of
 11 pesticides.

12 21. Section Ag 29.17, Wis. Adm. Code, is created to read:

13 Ag 29.17 AUTHORITY. This chapter is adopted under authority of
 14 ss. 93.07(1), 94.69 and 94.705(2), Stats., and enforced under
 15 s. 94.71, Stats.

16 The rules, amendments and repeals contained in this order
 17 shall take effect on the first day of the month following publica-
 18 tion in the Wisconsin Administrative Register, as provided in
 19 s. 227.026(1), Stats.

20 Dated: Sep. 11th , 19 82.

21
 22 STATE OF WISCONSIN
 23 DEPARTMENT OF AGRICULTURE,
 24 TRADE AND CONSUMER PROTECTION

25 By K. P. Robert
 26 K. P. Robert, Administrator
 Plant Industry Division

27 JKM/T1/1AG 29
 8/14/81-24