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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, William E. Simmons, Assistant 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 restrictions on the use of pesticides containing aldicarb, section Ag 29.17, Wis. Adm. Code, was duly approved and adopted by the Department on February 17, 1983.

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 17th day of February, 1983.


William E. Simmons
Assistant Administrator
Plant Industry Division

4-1-83

ORDER OF THE STATE OF WISCONSIN

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

ADOPTING AND AMENDING RULES

1 To renumber Ag 29.17, and create Ag 29.17 relating to
2 restrictions on the use of pesticides containing aldicarb.

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

The department's proposed rule would establish certain restrictions on the use of pesticides containing the active ingredient aldicarb. Aldicarb residues have been discovered in groundwater supplies in certain areas of the state, and have apparently leached into the groundwater as a result of normal agricultural applications of the pesticide to potatoes and other crops.

The proposed rule would establish certain general restrictions on the use of aldicarb throughout the state, corresponding to label restrictions voluntarily adopted by the product manufacturer. These include a mandatory reduction in application rate, a required one month postponement in the seasonal time of application (from time of planting, as formerly, to time of emergence), a prohibition against repeated use on the same field for 2 successive years, and a designation of the product as a restricted-use pesticide which can be applied only by certified applicators.

The rule would require prospective aldicarb users to file a report of intended application with the department at least 30 days prior to the date of aldicarb use. Among other things, reports of intended application must identify the persons who intend to apply aldicarb, the site of the proposed application, the intended date of application, the size of the area to be treated, and the amount of aldicarb to be applied. Upon receipt of a report of intended application, the department must review the report to determine whether the intended application is subject to prohibition by summary special order, based on rule criteria.

Under the proposed rule, the department will issue summary special orders prohibiting aldicarb applications if the intended application site is located within a quarter-quarter section of land lying wholly or in part within one mile of a sample point at which aldicarb residues have been detected in groundwater at a level exceeding 10 parts per billion (the current drinking water guideline established by the federal EPA), based on a completed groundwater sample analysis received by the plant industry division of the department no earlier than March 1 of the year immediately preceding the year of intended application. Aldicarb applications may be exempted from prohibition if the department determines that the intended application site is not in the same groundwater recharge zone as the sample point at which aldicarb residues have been detected in excess of 10 parts per billion. If a field covers at least 160 acres, or is covered by a center-

pivot irrigation system having a radius of at least 1/4 mile, the field may also qualify for exemption if no more than one quarter-quarter section of land within the field is subject to an aldicarb use prohibition. Persons requesting an exemption must submit proof that the exemption prerequisites are met. Exemptions must be issued in writing, and must state the specific facts and conclusions which form the basis for the exemption.

Summary special orders, when issued, will be directed to individual prospective users, and will prohibit all aldicarb applications to the intended application site during the year of intended application. Orders are subject to a subsequent right of hearing before the department. A summary order, if issued, must be issued within 14 days after a report of intended application is received from a prospective user. However, if a report of intended application is received on or before February 15, a summary special order may be issued at any time on or before March 1, based on new groundwater sample analyses received by the department more than 14 days after the report of intended application. No summary special order will be issued after March 1 of any year, except where the report of intended application is received after February 15. Orders will expire on March 1 of the year following the year of intended application.

Groundwater samples used as a basis for prohibiting aldicarb applications must be drawn by or under the supervision of the department of natural resources, the department of health and social services, or the department. Samples must be drawn from: 1) a potable water supply well, or or 2) any other well, including a test well, provided that the well construction and method of sampling are adequate to insure that soil or water located in the unsaturated zone of the soil profile are excluded from the well, and from the groundwater sample. Samples shall not be drawn from a high capacity irrigation well, or any well located within 300 feet of a high capacity irrigation well.

The department will, at least annually, publish maps or other documents tentatively describing areas where aldicarb applications may be subject to prohibition by special order, based on the rule criteria and the latest available groundwater sample data. Such documents are for tentative informational purposes only, and are not enforceable against a prospective user, apart from an individual special order directed to the prospective user.

Whenever a groundwater sample is found to contain aldicarb residues, the department will give written notice of the sample findings to: 1) the Wisconsin department of health and social services; 2) the county health department or county nurse, and the county extension agent in the county where the sample was drawn; and 3) all persons who have filed a report of intended application for an aldicarb application to be made within 1 mile of the sample point.

Under the proposed rule, pesticide distributors and retail dealers are required to keep records of aldicarb sales, and file weekly sales reports with the department.

The proposed rule does not apply to greenhouse applications of aldicarb, or to experimental applications under department permit.

The rule contains a statement of purpose which provides for possible future amendments in the event that the rule provisions are not adequate to achieve the stated purpose.

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

7 SECTION 1. Ag 29.17 is renumbered Ag 29.18.

8 SECTION 2. Ag 29.17 is created to read:

9 Ag 29.17 ALDICARB USE RESTRICTIONS; REPORTING REQUIREMENTS.

10 (1) PURPOSE. The purpose of this section is to minimize the
11 quantity of aldicarb and its degradation products in groundwater,
12 in order to prevent aldicarb residues in groundwater from reaching
13 a level exceeding 10 ppb. The general restrictions in this section
14 are based on the judgment that label restrictions implemented in
15 1982 on timing, amount and frequency of aldicarb use are adequate
16 measures to prevent further deterioration of groundwater quality.
17 Prohibitions, therefore, are intended to afford an opportunity for
18 groundwater quality recovery by assuring that additional aldicarb
19 applications be suspended according to these rules in the most
20 critically affected areas. Should substantial evidence become
21 available, through research or field monitoring, that, as a result
22 of applications made since 1982, the label restrictions enumerated
23 in this rule or label changes made subsequent to 1982 do not

1 adequately minimize the quantity of aldicarb and its degradation
2 products in groundwater in order to meet the purpose of this sec-
3 tion, the rule will be amended. The department shall evaluate the
4 need for further actions, including but not limited to monitoring,
5 research, label restrictions, use restrictions and moratoria, when
6 groundwater samples are found to contain aldicarb residues at a
7 level from 2 to 10 parts per billion. Based upon that evaluation,
8 prior to each growing season, the department shall implement those
9 actions within its authority, necessary to meet the purpose of this
10 rule. In the event the department concludes that further moratoria
11 are required, such moratoria shall be implemented by amending the
12 rule.

13 (2) GENERAL RESTRICTIONS.

14 (a) Amount and frequency of use. Pesticides containing the
15 active ingredient aldicarb shall not be applied at a rate exceeding
16 2 lbs. of aldicarb active ingredient per acre, or to the same
17 application site more than once in any 2 successive years. Sites
18 treated with aldicarb in 1982 may not be treated with aldicarb in
19 1983.

20 (b) Use by certified applicators only. Pesticides containing
21 the active ingredient aldicarb are classified as restricted-use
22 pesticides, to be applied only by commercial applicators certified
23 in the pest control category pertaining to the type of application
24 being made, certified private applicators, or persons acting under
25 the direct supervision of the certified applicator.

26 (c) Timing of application. Pesticides containing the active
27 ingredient aldicarb shall not be applied on potatoes sooner than 28

1 days after the date of planting or later than 42 days after the
2 date of planting. Potatoes from fields treated with aldicarb shall
3 not be harvested sooner than 50 days after the date of treatment.

4 (3) REPORT OF INTENDED APPLICATION. (a) No person may
5 apply a pesticide containing the active ingredient aldicarb unless
6 a report of intended application has been filed with the department
7 at least 30 days before the pesticide is applied. Reports of
8 intended application shall be made on forms provided by the depart-
9 ment, and shall specify:

10 1. The name, address, and applicator certification number of
11 the person making the application.

12 2. The name and address of the person contracting for the
13 application, if any.

14 3. The type of crop on which the pesticide is to be applied,
15 and the pests intended to be controlled by the application.

16 4. The specific location at which the pesticide is to be
17 applied, including town, range, section and quarter-quarter
18 section.

19 5. The approximate date on which the pesticide is to be
20 applied.

21 6. The size of the area to be treated, and the amount of
22 pesticide to be applied.

23 7. The history of aldicarb applications, if any, to the
24 intended application site for the previous 3 years, specifying the
25 year of each prior application.

26 (b) No person, other than a person identified on the report
27 of intended application, may perform or supervise the application

1 of a pesticide containing the active ingredient aldicarb. This
2 does not apply to persons working under the direct supervision of
3 the certified applicator.

4 (c) No person may apply a pesticide containing the active
5 ingredient aldicarb except at the location identified in the
6 report of intended application.

7 (d) No person may falsify information submitted under this
8 subsection.

9 (4) SUMMARY SPECIAL ORDERS PROHIBITING ALDICARB USE IN
10 CERTAIN AREAS.

11 (a) Whenever the department receives a report of intended
12 application under sub. (3), the department shall review the report
13 to determine whether the intended application is subject to pro-
14 hibition by summary special order, based on the prohibition cri-
15 teria set forth under sub. (5). If the department finds that
16 aldicarb applications to all, or a portion of the intended appli-
17 cation site are subject to prohibition, it shall issue a summary
18 special order under s. 94.71(3)(c), Stats. and s. Ag 29.15(2)(d),
19 prohibiting aldicarb applications to the affected portions of the
20 intended application site. Summary special orders shall expire on
21 March 1 of the year following the year of intended application.
22 Summary special orders shall prohibit all applications of aldicarb
23 to the site for the duration of the order period. No person shall
24 apply a pesticide containing the active ingredient aldicarb in
25 violation of a summary special order issued under this subsection.

26 (b) A summary special order, if issued, shall be issued
27 within 14 days after the date on which the report of intended

1 application is received by the department. If a report of intended
2 application is received on or before February 15 of the year of
3 intended application, a summary special order may be issued at any
4 time on or before March 1, based on new groundwater sample analyses
5 received by the department more than 14 days after the receipt of
6 the report of intended application. No summary special order shall
7 be issued after March 1 of the year of intended application, except
8 where the report of intended application is received after
9 February 15 of that year.

10 (c) Summary special orders shall be issued to each person
11 identified in the report of intended application. Orders shall be
12 signed by the plant industry division administrator or designee, and
13 be served in person or by certified mail, return receipt requested.
14 Summary special orders are subject to a subsequent right of hearing
15 before the department upon request, as provided in s. 94.71(3)(c),
16 Stats. Hearings shall be held within 14 days of the date on which
17 the request for hearing is received by the department, unless the
18 requesting person and the department agree to a later hearing date.
19 Hearings shall be limited to the issue of whether the department has
20 correctly interpreted and applied this subsection and sub. (5).

21 (5) APPLICATIONS SUBJECT TO PROHIBITION BY SPECIAL ORDER;
22 CRITERIA.

23 (a) General criteria. Aldicarb applications are subject to
24 prohibition by summary special order under sub. (4) if the intended
25 application site is located within a township quarter-quarter sec-
26 tion lying wholly or in part within one mile of a sample point at
27 which aldicarb residues have been detected in groundwater at a level

1 exceeding 10 parts per billion. Groundwater sample analyses used as
2 a basis for a summary special order shall be received by the plant
3 industry division of the department, in completed form, on or before
4 the date of the summary special order, but no earlier than March 1
5 of the year immediately preceding the year of intended application.
6 For purposes of this section, the groundwater sample point shall be
7 taken as the center point of the township quarter-quarter section in
8 which the actual sample point is located. Survey boundaries are
9 those established by the United States public lands surveys.

10 (b) Individual exemptions. 1. An aldicarb application which
11 is subject to prohibition by summary special order may be exempted
12 by the department, upon request, if:

13 a. The application site is separated by a groundwater recharge
14 divide or discharge boundary from the sample point at which aldicarb
15 residues have been detected in groundwater at a level exceeding 10
16 parts per billion; or

17 b. The application site is a single continuous field covering
18 at least 160 acres, or covered by a center-pivot irrigation system
19 having a radius of at least 1/4 mile, if no more than one quarter-
20 quarter section of land within the field is subject to the aldicarb
21 use prohibition.

22 2. Persons requesting an exemption under this paragraph shall
23 submit proof that the exemption prerequisites are met. Exemptions
24 shall be issued in writing, signed by the plant industry division
25 administrator or designee. Exemptions shall include a specific
26 statement of the facts and conclusions which form the basis for the
27 exemption.

1 (c) Sample requirements. Groundwater samples under
2 par. (a) shall be properly drawn, by or under the supervision of the
3 Wisconsin department of natural resources, the Wisconsin department
4 of health and social services, or the department. Samples may be
5 drawn from:

6 1. A potable water supply well; or

7 2. Any other well, including a test well, provided that the
8 well construction and method of sampling are adequate to insure that
9 soil and water located in the unsaturated zone of the soil profile
10 are excluded from the well, and from the groundwater sample.

11 Samples shall not be drawn from a high capacity irrigation well, or
12 any well located within 300 feet of a high capacity irrigation well.
13 For samples other than those drawn from a potable water supply well,
14 the sample collection record shall include the date of well con-
15 struction, the depth of the water intake screen, the depth of the
16 well casing, and the method and date of sampling. The department
17 shall exclude all samples, other than samples drawn from potable
18 water supply wells, for which this information is not available.

19 (d) Publication of map descriptions. The department shall, at
20 least annually, publish maps or other documents describing land
21 areas where aldicarb applications may be subject to prohibition by
22 summary special order, based on the criteria set forth in par. (a)
23 and groundwater sample analyses received by the department as of the
24 map publication date. Maps or descriptions published under this
25 paragraph are for tentative informational purposes only, and do not
26 have the force and effect of law, apart from a special order under
27 sub. (4). A disclosure to this effect shall be included on all maps

1 and descriptions published under this paragraph. Maps and descrip-
2 tions shall clearly indicate the date of their publication.

3 (6) DISTRIBUTORS AND RETAIL DEALERS OF ALDICARB; RECORDKEEPING
4 AND REPORTING REQUIREMENTS. Distributors and retail dealers shall
5 keep records of aldicarb distributions and sales, specifying the
6 amount of aldicarb product included in each sale or distribution,
7 and the name and address of the purchaser or recipient. During each
8 week in which aldicarb sales or distributions are made by a dis-
9 tributor or dealer, the distributor or dealer shall file a written
10 report with the department, specifying the amount of aldicarb
11 product sold or distributed during that week to each purchaser or
12 recipient, and the name and address of each purchaser or recipient.
13 Reports may be in the form of actual invoice copies or written sales
14 or distribution summaries.

15 (7) NOTICE OF CONTAMINATION FINDINGS.

16 (a) Whenever a groundwater sample taken in accordance with
17 sub. (5)(c) is found to contain aldicarb residues at a level of one
18 part per billion or more, the department shall give written notice
19 of the sample findings to:

20 1. The Wisconsin department of health and social services.

21 2. The county health department or county nurse, and the
22 county extension agent for the county in which the groundwater
23 sample was drawn.

24 3. All persons who have filed reports of intended application
25 for aldicarb applications to be made in township quarter-quarter
26 sections located wholly or in part within one mile of the sample
27 point.

1 (b) Notice under par. (a) shall specify the township and
 2 quarter-quarter section in which the groundwater sample was taken,
 3 and the level of aldicarb residues found in the sample. Notice
 4 shall include such explanations and precautionary statements as may
 5 be considered appropriate by the department.

6 (8) GREENHOUSE AND RESEARCH APPLICATIONS; EXEMPTION. This
 7 section does not apply to greenhouse applications of aldicarb, or to
 8 research applications made pursuant to an experimental use permit
 9 issued by the department.

10 SECTION 3. The rules and amendments contained in this order
 11 shall take effect on the first day of the month following publica-
 12 tion in the Wisconsin Administrative Register, as provided in
 13 s. 227.026(1), Stats.

14
 15 Dated: Feb. 17, 1983.

17 STATE OF WISCONSIN
 18 DEPARTMENT OF AGRICULTURE,
 19 TRADE AND CONSUMER PROTECTION

20 By

W E Simmons

21 William E. Simmons
 22 Assistant Administrator
 23 Plant Industry Division

24 JM/T2/1/ADMIN2
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