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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Kenneth P. Robert, Administrator of the Agricultural Resource Management Division of the 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 Chapter Ag 29, Wis. Adm. Code, relating to use restrictions on the pesticide aldicarb was duly approved and adopted by the Department on February 9, 1988.

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 9th day of February, 1988.

K. P. Robert

Kenneth P. Robert
Administrator
Agricultural Resource
Management Division

4-1-88

ORDER
OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING, OR REPEALING RULES

1 To repeal and recreate Ag 29.17, related to use restrictions on
2 the pesticide aldicarb.

Analysis by the Department of Agriculture,
Trade and Consumer Protection

This rule repeals and recreates previous rules restricting the use of the pesticide aldicarb in order to prevent or limit groundwater contamination. The revised rule is essentially identical to emergency rules previously adopted for the 1987 planting and growing season. The rule establishes aldicarb use prohibitions in the areas where aldicarb has been detected in groundwater at a level of 10 ppb or more. It also prohibits aldicarb use on highly susceptible application sites, and requires groundwater monitoring at certain other sites as a condition to aldicarb use. Groundwater monitoring agreements will continue in effect for the period of time specified in the agreement.

Ag 29.17 previously imposed certain statewide restrictions on the use of aldicarb, including limitations on the amount and frequency of use, and the timing of application during the growing season. These restrictions are continued under the revised rule. Previous rules also required prospective aldicarb users to file a report of intended application with DATCP at least 30 days prior to the application. This reporting requirement continues under the revised rule, except that the report must be filed at least 45 days prior to application.

Pursuant to ch. 160, Stats., the Department of Natural Resources (DNR) has established a groundwater enforcement standard for aldicarb of 10 parts per billion (10 ppb). Under previous rules, if aldicarb was detected in groundwater at a level above 10 ppb at a point of standards application, the use of aldicarb was prohibited for a period of one year on every quarter-quarter section of land lying wholly or in part within one mile of the point of standards application. The revised rule continues this prohibition scheme, with certain modifications. Under the revised rule, all expired prohibition areas created under the previous rules will be immediately reinstated. New and reinstated prohibition areas include every quarter-quarter section of land lying wholly or in part within one mile of each point of standards application at which aldicarb residues are detected at 10ppb or more. Pursuant to 1985 Wisconsin Act 206, if any prohibition area is contiguous with or overlaps 2 or more other prohibition areas, there is created a new prohibition area having a 2-mile radius. A prohibition area remains in effect until conditions specified in 1985 Wisconsin Act 206 are met.

Under the revised rule, if a proposed application site is not subject to prohibition based on actual findings of aldicarb contamination, the site will nevertheless be evaluated by DATCP for susceptibility to groundwater contamination by aldicarb. The evaluation will be based on environmental factors including depth to groundwater and soil texture. Based on this evaluation, if DATCP determines that the proposed application is likely to cause aldicarb residues to be present in groundwater at a concentration of 10 ppb or more at any point of standards application, DATCP will prohibit the proposed application. If the proposed application is not subject to prohibition, but DATCP determines that there is a potential for aldicarb residues to leach to groundwater at a concentration of 2 ppb or more, DATCP will issue a special order requiring the prospective aldicarb user to establish a groundwater monitoring program at the application site as a condition to the proposed application. Under the monitoring program, at least one monitoring well must be installed for each quarter section of land, according to DATCP approved specifications. Groundwater samples from the monitoring wells must be tested at a certified laboratory and submitted to DATCP according to an approved plan. As a condition to the application of aldicarb under a monitoring program, the landowner must agree that groundwater test results obtained from monitoring wells may be used to prohibit future aldicarb applications to the application site if aldicarb residues are found at a concentration of 10 parts per billion or more. DATCP must also be given reasonable access to monitoring wells for purposes of DATCP's own inspection and sampling. As an alternative to individual site monitoring, the aldicarb user may agree to be bound, for regulatory purposes, by groundwater test results obtained from another similar site chosen by the department.

As under the previous rule, distributors and retail dealers of aldicarb are required to keep records of aldicarb sales, and file periodic reports with DATCP. As under the previous rule, whenever DATCP receives a reliable groundwater test result showing that aldicarb residues are present in groundwater at one part per billion or more, DATCP must give notice to DNR, the department of health and social services, the county health department or county nurse, the county extension agent, and all persons who have filed reports of intended application to sites located within 1 mile of the sample point.

Like the previous rule, the revised rule does not apply to greenhouse applications of aldicarb, or to research applications made pursuant to written authorization from DATCP.

1 Pursuant to authority vested in the State of Wisconsin depart-
2 ment of agriculture, trade and consumer protection by s. 94.69 and

1 ch. 160, Stats., the department repeals and recreates rules inter-
2 preting ss. 94.67 through 94.71, Stats., and ch. 160, Stats., as
3 follows:

4 SECTION 1. Ag 29.17 is repealed and recreated to read:

5 Ag 29.17 ALDICARB USE RESTRICTIONS; REPORTING REQUIREMENTS.

6 (1) DEFINITIONS. As used in this section:

7 (a) "Division" means the agricultural resource management
8 division of the department.

9 (b) "Point of standards application" means a point of
10 standards application as defined in s. Ag 161.01(13).

11 (c) "Prohibition area" means an area in which aldicarb use is
12 prohibited under sub. (8).

13 (d) "Reliable groundwater test result" means an official
14 groundwater test result as defined in s. Ag 161.01(8), or a ground-
15 water test result which the department determines to be reliable
16 under s. Ag 161.02(2). It includes every groundwater test result
17 which was used as a basis for prohibiting aldicarb use under The
18 provisions of s. Ag 29.17 or s. Ag 29.171, which became effective on
19 or after April 1, 1983.

20 (2) GENERAL RESTRICTIONS ON ALDICARB USE. (a) Amount and
21 frequency of use. No pesticide containing the active ingredient
22 aldicarb may be applied at a rate exceeding 2 lbs. of aldicarb
23 active ingredient per acre, or to the same application site more
24 than once in any 2 successive years. Sites treated with aldicarb
25 in 1987 may not be treated with aldicarb in 1988.

26 (b) Use by certified applicators only. Pesticides containing
27 the active ingredient aldicarb are classified as restricted-use

1 pesticides. As restricted-use pesticides, they may
2 only be applied by the following persons:

3 1. A commercial applicator certified in the pest control cate-
4 gory pertaining to the type of application being made.

5 2. A certified private applicator, or a person acting under
6 the direct supervision of a certified private applicator, if the
7 application is not a commercial application.

8 (c) Timing of application. No pesticide containing the
9 active ingredient aldicarb may be applied on potatoes sooner than
10 28 days after the date of planting or later than 42 days after the
11 date of planting. Potatoes from fields treated with aldicarb may
12 not be harvested sooner than 50 days after the date of treatment.

13 (3) REPORT OF INTENDED APPLICATION. (a) No person may
14 apply a pesticide containing the active ingredient aldicarb unless
15 a report of intended application has been filed with the depart-
16 ment at least 45 days before the pesticide is applied. Reports of
17 intended application shall be made on forms provided by the
18 department, and shall specify:

19 1. The name, address, and applicator certification number of
20 the person making the application.

21 2. The name and address of the person contracting for the
22 application, if any.

23 3. The crop on which the pesticide is to be applied, and the
24 pests intended to be controlled by the application.

25 4. The specific location at which the pesticide is to be
26 applied, including town, range, section and quarter-quarter
27 section.

1 5. The approximate date on which the pesticide is to be
2 applied.

3 6. The size of the area to be treated, and the amount of
4 pesticide to be applied.

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

8 (b) No person, other than a person identified on the report of
9 intended application, may perform or supervise the application of a
10 pesticide containing the active ingredient aldicarb. This does not
11 apply to persons working under the direct supervision of a certified
12 private applicator who is identified in the report of intended
13 application.

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

17 (d) No person may falsify information submitted under this
18 subsection.

19 (4) DEPARTMENT REVIEW OF PROPOSED APPLICATIONS; EVALUATION OF
20 APPLICATION SITES. Whenever the department receives a report of
21 intended application under sub. (3), the department shall evaluate
22 the proposed application site for susceptibility to groundwater con-
23 tamination by aldicarb residues. The evaluation shall be based on
24 the relevant environmental characteristics of the proposed appli-
25 cation site, including depth to groundwater and soil texture. Site
26 characteristics used in the evaluation shall be determined on the
27 basis of data published by the Wisconsin Geological and Natural

1 History Survey, the U.S. Department of Agriculture Soil Conservation
2 Service, or other reliable sources.

3 (5) ALDICARB APPLICATIONS TO CERTAIN SITES PROHIBITED.

4 (a) The department shall, by summary special order, prohibit a
5 proposed aldicarb application if either of the following applies:

6 1. The proposed application site is within a prohibition area
7 created under sub. (8).

8 2. In the judgment of the department based on a site evalua-
9 tion under sub. (4), the proposed application is likely to cause
10 aldicarb residues to be present in groundwater at a concentration of
11 10 ppb or more at any point of standards application.

12 (b) A person prohibited from using aldicarb under par. (a)1
13 may request an exemption from the prohibition. Except as provided
14 in par. (c), the department may not grant an exemption unless the
15 department makes all of the determinations required under s.
16 94.709(3)(a) and (b), Stats. The department may require the
17 requester to submit proof that the exemption requirements are met.
18 Exemptions, if any, shall be issued in writing and be signed by the
19 division administrator or the administrator's designee. Every
20 exemption shall contain a specific statement of facts and con-
21 clusions which form the basis for the exemption. An exemption under
22 this subsection does not constitute an exemption from any other
23 provision of this section.

24 (c) Notwithstanding par. (a), the department may authorize the
25 controlled application of aldicarb for research purposes, pursuant
26 to s. 94.709(4), Stats., as created by 1985 Wisconsin Act 206.
27 Authorizations, if any, shall be issued in writing, and shall

1 describe the scope and basis of the authorization.

2 (6) ALDICARB APPLICATIONS PROHIBITED AT CERTAIN SITES EXCEPT
3 IN CONJUNCTION WITH GROUNDWATER MONITORING. (a) If a proposed ald-
4 icarb application is not subject to prohibition under sub. (5), but
5 the department determines under sub. (4) that the proposed appli-
6 cation may cause aldicarb residues to be present in groundwater at a
7 concentration of 2 ppb or more at any point of standards applica-
8 tion, the department shall issue a summary special order prohibiting
9 the proposed aldicarb application unless:

10 1. All of the conditions under par. (b) are met as required in
11 the order; or

12 2. The owner of the proposed application site, and every other
13 person filing a report of intended application for the site, agrees
14 that future applications to the site may be prohibited based on
15 groundwater test results obtained from a representative application
16 site chosen by the department, if the groundwater test results at
17 the representative application site show aldicarb residues in con-
18 centrations of 10 ppb or more. A representative application site is
19 a site which, in the department's judgment, is similar in its rele-
20 vant environmental characteristics to the proposed application site
21 described in the report of intended application. Relevant environ-
22 mental characteristics include the characteristics listed under sub.
23 (4). In determining whether one application site may be considered
24 representative of another, the department shall compare any prior
25 existing concentrations of aldicarb residues which are known to be
26 present in groundwater at the 2 sites.

27 (b) A summary special order under par. (a)1 shall include all

1 of the following conditions:

2 1. One or more monitoring wells shall be installed at the pro-
3 posed application site according to a written plan which is approved
4 in writing by the department prior to the aldicarb application. The
5 plan shall specify:

6 a. The number and location of the monitoring wells. At least
7 one monitoring well shall be installed for each quarter section of
8 land on which aldicarb is to be applied.

9 b. The materials from which the monitoring wells will be
10 constructed.

11 c. The depth of each monitoring well, and the type, length and
12 diameter of the sample screen on each well.

13 d. The date by which each monitoring well is to be installed.

14 e. Whether or not each monitoring well will be considered a
15 point of standards application.

16 2. Groundwater samples shall be collected from each monitoring
17 well under par. (a) and tested for aldicarb residues according to a
18 plan which is approved by the department prior to the aldicarb
19 application. The plan shall specify:

20 a. The number of groundwater samples to be collected from each
21 monitoring well, and the intended dates of collection.

22 b. The persons or agencies who will collect the groundwater
23 samples.

24 c. The laboratory at which the groundwater samples are to be
25 tested for aldicarb residues. Groundwater samples shall be promptly
26 tested for aldicarb residues after the samples are collected. Test
27 methods shall be approved by the department and have a limit of

1 detection at or below one part per billion. Groundwater test
2 results shall be promptly forwarded to the department.

3 3. The owner of each monitoring well site under par. (a)
4 shall agree in writing, prior to the aldicarb application, that:

5 a. Groundwater test results obtained from the monitoring well
6 may be used to prohibit future aldicarb applications to the applica-
7 tion site, as appropriate pursuant to ch. 160, Stats., and depart-
8 ment rules, if the groundwater test results indicate that aldicarb
9 residues are present in groundwater at a concentration of 10 parts
10 per billion or more.

11 b. The department may at reasonable times, and upon prior
12 notice to the owner of the monitoring well site, inspect the moni-
13 toring well and collect groundwater samples from the monitoring
14 well.

15 (c) This subsection does not apply to controlled applications
16 of aldicarb for research purposes, if authorized by the department
17 under sub. (5)(c).

18 (7) SUMMARY SPECIAL ORDERS; GENERAL. (a) How and to whom
19 issued. A summary special order under sub. (5) or (6) shall be
20 issued to each person identified in the corresponding report of
21 intended application. A summary special order shall be signed by
22 the division administrator or the administrator's designee, and be
23 served in person or by certified mail, return receipt requested.

24 (b) Coverage; effective date and duration. A summary special
25 order under sub. (5) or (6) shall prohibit all proposed applications
26 of aldicarb to the site or sites described in the order, except as
27 specifically provided under sub. (6). A summary special order under

1 sub. (5) or (6) becomes effective on the date of service.

2 NOTE: A "proposed application" means an application described
3 in a report of intended application under sub. (3).

4 (c) Timely response to notice of intended application. A sum-
5 mary special order, if issued under sub. (5) or (6), shall be issued
6 within 30 days after a report of intended application is filed with
7 the department. This subsection does not prohibit the department
8 from issuing a summary special order under sub. (5) at a later date,
9 based on new information received more than 30 days after the date
10 on which the report of intended application was received by the
11 department.

12 (d) Right of hearing. Summary special orders are subject to a
13 subsequent right of hearing before the department upon request, as
14 provided in s. 94.71(3)(c), Stats. Hearings shall be limited to the
15 issue of whether the department has correctly interpreted and
16 applied this section.

17 (e) Violations prohibited. No person may apply aldicarb in
18 violation of a special order issued by the department under this
19 section. No person may violate the terms and conditions of a
20 monitoring agreement under sub. (6).

21 (8) PROHIBITION AREAS. (a) General. A proposed application
22 site is subject to prohibition, for purposes of sub. (5), if the
23 proposed application site is located wholly or in part within a
24 prohibition area under this subsection.

25 (b) Creation and scope of prohibition areas. 1. A prohibition
26 area is created to include every township quarter-quarter section
27 lying wholly or in part within one mile of a point of standards

1 application at which aldicarb residues have been detected in ground-
2 water at a concentration of 10 ppb or more, based on a reliable
3 groundwater test result received by the division at any time before
4 or after the effective date of this section. If the reliable
5 groundwater test result was received by the division before the
6 effective date of this section, the prohibition area is created on
7 the effective date of this section. If the reliable groundwater
8 test result is received by the division after the effective date of
9 this section, the prohibition area is created on the date when the
10 groundwater test result is received by the division. The one mile
11 radius from the point of standards application shall be calculated
12 from the center point of the township quarter-quarter section in
13 which the actual point of standards application is located.

14 2. If any prohibition area is contiguous with or overlaps 2 or
15 more other prohibition areas, there is created a new prohibition
16 area which includes each quarter quarter section any part of which
17 lies within a 2-mile radius of each point of standards application
18 used in determining the need for the contiguous or overlapping
19 prohibition areas.

20 (9) DISTRIBUTORS AND RETAIL DEALERS OF ALDICARB; RECORDKEEPING
21 AND REPORTING REQUIREMENTS. Distributors and retail dealers shall
22 keep records of aldicarb distributions and sales, specifying the
23 amount of aldicarb product included in each sale or distribution,
24 and the name and address of the purchaser or recipient. During each
25 week in which aldicarb sales or distributions are made by a distrib-
26 utor or dealer, the distributor or dealer shall file a written
27 report with the department, specifying the amount of aldicarb pro-

1 duct sold or distributed during that week to each purchaser or
2 recipient, and the name and address of each purchaser or recipient.
3 Reports may be in the form of actual invoice copies or written sales
4 or distribution summaries.

5 (10) NOTICE OF CONTAMINATION FINDINGS. (a) Whenever the
6 department receives a reliable groundwater test result which indi-
7 cates that aldicarb residues are present in groundwater at a con-
8 centration of one part per billion or more, the department shall
9 give written notice of the groundwater test result to:

10 1. The Wisconsin department of natural resources and the
11 Wisconsin department of health and social services.

12 2. The county health department or county nurse, and the
13 county extension agent for the county in which the groundwater
14 sample was drawn.

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

19 (b) Notice under par. (a) shall specify the township and
20 quarter-quarter section in which the groundwater sample was taken,
21 if known, and the concentration of aldicarb residues found in the
22 sample. Notice shall include such explanations and precautionary
23 statements as may be considered appropriate by the department.

24 (11) GREENHOUSE APPLICATIONS; EXEMPTION. This section does
25 not apply to greenhouse applications of aldicarb.

26 (12) COMPLIANCE WITH PREVENTIVE ACTION LIMIT NOT NECESSARILY
27 MAINTAINED; REQUIRED DISCLOSURE BY DEPARTMENT. Based on information

1 available to the department, it appears that aldicarb applications
2 to susceptible application sites will result in groundwater contam-
3 ination exceeding the preventive action limit for aldicarb at points
4 of standards application downgradient from the application sites.
5 Aldicarb applications to many of these sites will be subject to pro-
6 hibition under sub. (5). In addition, subsection (2) continues cur-
7 rent management practice requirements, and sub. (6) creates ground-
8 water monitoring requirements. These combined requirements are
9 designed to limit aldicarb contamination and detect any
10 contamination which may occur. However, these requirements may not
11 be adequate to assure compliance with the preventive action limit
12 for aldicarb in all cases. If the enforcement standard for aldicarb
13 is unexpectedly exceeded at an individual site, future applications
14 at that site will be subject to prohibition under ch. 160, Stats.,
15 ch. Ag 161, Wis. Adm. Code, and other applicable rules of the
16 department.

17 NOTE: This notice is given pursuant to the requirements of
18 s. 160.19(2)(b), Stats. It is intended solely as a dis-
19 closure statement, and does not affect or alter any other
20 provision of this section.

21 SECTION 2. The rules contained in this order shall take effect
22 on the first day of the month following publication in the Wisconsin
23 administrative register, as provided in s. 227.22(2)(intro.),
24 Stats.
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1 Dated this 9th day of February, 1988.

2 STATE OF WISCONSIN
3 DEPARTMENT OF AGRICULTURE,
4 TRADE AND CONSUMER PROTECTION

5 BY K. P. Robert
6 K. P. Robert, Administrator
Agricultural Resource Management Division

7 JKM/T5/1/D13-SP3
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