

CR 91-27

Docket No. 2265

STATE OF WISCONSIN)
)
DEPARTMENT OF AGRICULTURE,) ss.
TRADE AND CONSUMER PROTECTION)

RECEIVED

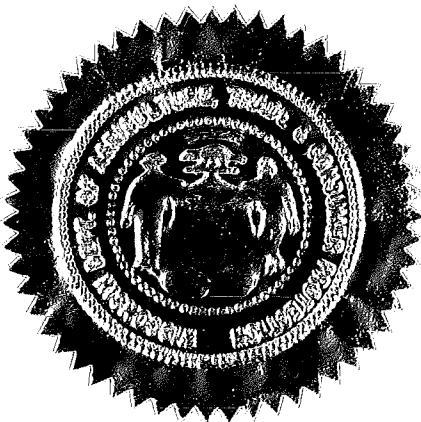
SEP 17 1991
4:10 pm
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Nicholas J. Neher, Administrator, Agricultural Resource Management 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 creating rules relating to the use of metam sodium soil fumigants in Wisconsin, Chapter Ag 29.171, Wis. Adm. Code, were duly approved and adopted by the Department on September 16, 1991.

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 16th day of September, 1991.



Nicholas J. Neher by *[Signature]*

Nicholas J. Neher, Administrator
Agricultural Resource Management Division

11-1-91

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

The Wisconsin department of agriculture, trade and consumer protection adopts this order to amend Ag 29.16(10) and to create Ag 29.01(11m), Ag 29.16(10m) and Ag 29.171, relating to the use of metam sodium soil fumigants and the certification of commercial pesticide applicators engaged in soil fumigation.

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

Statutory authority: ss. 93.07(1), 94.69(9) and (10) and 227.24, Stats.

Statutes interpreted: ss.94.67 through 94.71, Stats.

This rule imposes restrictions on the use of pesticides containing metam sodium, also known as metham sodium. Metam sodium soil fumigants (including Vapam and Busan) have been used with increasing frequency in Wisconsin's potato producing areas. Used in an integrated pest management program, these fumigants provide an effective replacement for the pesticide aldicarb, which has been found in Wisconsin groundwater.

Recent investigations by the department have shown that use of metam sodium fumigants according to label directions can result in off-site movement of evolved gases from sandy soils. In several cases, evolved methyl isothiocyanate (MITC) gas from fumigant applications have resulted in adverse human health effects requiring medical attention and, in one case, hospitalization. This rule restricts the use of metam sodium fumigants in order to prevent such incidents from occurring.

This rule establishes application restrictions and post application inspection requirements for use of pesticides containing metam sodium. Similar requirements were adopted on a temporary basis in 1990 and 1991 by emergency rule. These rules create new certification requirements for individual commercial applicators engaged in soil fumigation. After July 1, 1992, individual commercial applicators engaged in soil fumigation must be certified in the new soil fumigation category. All certified applicators, commercial and private, must keep records of metam sodium applications and file those records with the department.

The rule prohibits surface application of metam sodium unless the soil surface is immediately covered by a tarp or other

impermeable barrier. The rule prohibits application of metam sodium pesticides within 1/4 mile of nursing homes, hospitals, jails, or prisons. The rule also prohibits applications within 1/4 mile of schools that are or will be in session within 48 hours following application.

If metam sodium is applied by chemigation, the applicator must provide 72 hours advance notice of application to all residents within 1/4 mile of the application site, and to the county public health agency. A certified applicator must be at the site during any chemigation application. No chemigation application may be made when local weather forecasts indicate that more than 3/4 of an inch of rainfall may occur in the area of the application within 6 hours following application. The applicator must inspect the application site 6 to 7 hours and 12 to 13 hours after application to determine whether volatilized gases are present. At sites where volatilized gases are found and could result in significant drift, the rule specifies procedures to control further volatilization, and requires notification of potentially affected parties and the department.

RULEMAKING ORDER

SECTION 1. Ag 29.01(11m) is created to read:

Ag 29.01(11m) "Commercial application business" has the meaning given under s. 94.67(5), Stats.

SECTION 2. Ag 29.16(10) (a) is amended to read:

Ag 29.16(10) (a) This category includes individual commercial applicators using or directing the use of pesticides for the control of pests in industrial, institutional, structural, or health related pest control application by means of fumigation, including general, spot, tarpaulin, chamber, vehicle, or in-transit fumigation. This category does not include individual commercial applicators under s. Ag 29.16(10m) who use or direct the use of pesticides as soil fumigants.

SECTION 3. Ag 29.16(10m) is created to read:

Ag 29.16(10m) SOIL FUMIGATION PEST CONTROL. (a) This

category includes individual commercial applicators using or directing the use of pesticides as soil fumigants.

(b) Applicators shall demonstrate practical knowledge and competency in the application of soil fumigants including types of pesticides used as soil fumigants, human safety considerations, pests that can be successfully treated by soil fumigation, and methods of application that minimize exposure of persons and animals to soil fumigants and their byproducts. Applicators shall also demonstrate practical knowledge of safety apparatus, re-entry times, and any other conditions necessary to ensure the safety of persons or property, non-target organisms, and the environment.

SECTION 4. Ag 29.171 is created to read:

Ag 29.171 METAM SODIUM PESTICIDE USE RESTRICTIONS. (1)

DEFINITIONS. In this section:

(a) "Metam sodium" means Sodium N-Methyldithiocarbamate, also referred to as metham sodium.

(b) "Metam sodium pesticide" means any soil fumigant or other pesticide containing metam sodium.

(c) "Public building" has the meaning specified under s.101.01 (2)(g), Stats., but does not include a residential structure.

(d) "Residential structure" means a structure which is used wholly or in part as a human residence, and includes all lawns, grounds, facilities, and furnishings pertaining to that structure. "Residential structure" includes all of the

following:

1. A residential structure occupied on a rental basis.
2. A mobile home and the site on which it is located.
3. A hotel, motel or similar premises occupied on a transient basis.
4. A hospital, nursing home, or similar facility occupied by persons receiving medical care or related services.
5. A prison, jail or other place of detention.

(2) GENERAL RESTRICTIONS. (a) No person may apply a metam sodium pesticide unless one of the following applies:

1. The person is an individual commercial applicator and is certified in each applicable category under s. Ag 29.16.

NOTE: An applicator who applies metam sodium as a soil fumigant for agricultural purposes (e.g., on potato lands), must be certified in field and vegetable crop pest control under s. Ag 29.16(1) and in soil fumigation pest control under s. Ag 29.16(10m).

2. The person is a private applicator and is certified in the fumigation category under s. Ag 29.162 (3).
3. The person applies the metam sodium pesticide solely for household purposes around the person's residence.

(b) No agricultural application of metam sodium pesticide may be made within 1/4 mile of a hospital, nursing home, jail or prison.

(c) No agricultural application of metam sodium pesticide may be made within 1/4 mile of a school that will be in session during the application or within 48 hours after the application is completed.

(d) No agricultural application of a metam sodium pesticide may be made by applying the pesticide to the soil surface, or by applying the pesticide to the soil surface and incorporating by discing or tilling the soil surface, unless the soil is immediately covered by a tarp or other impermeable barrier as described on the pesticide label. This paragraph does not apply to:

1. An application in which the pesticide is injected beneath the soil surface.
2. A chemigation application made in compliance with sub.
- (3).

(e) No agricultural application of metam sodium pesticide may be made by knife rig injection when the soil temperature is greater than 75 degrees Fahrenheit measured at a depth of 5 to 6 inches.

(3) CHEMIGATION. No metam sodium pesticide may be applied by means of chemigation unless the chemigation system complies with s. Ag 29.152. Every chemigation application shall comply with sub. (2) and with all of the following:

(a) The certified applicator, or the commercial application business which is responsible for the application, shall provide 72 hours advance written notice of the application to the county public health agency and to every person or household residing within 1/4 mile of the chemigation application site. If a person or household resides in a residential structure other than a one-family or two-family dwelling, the applicator or commercial

application business complies with this requirement by providing written notice to the manager of the residential structure. The notice shall state all of the following:

1. The location of the application site.
2. The earliest possible date and time when application will begin.
3. The brand name of the metam sodium pesticide that will be applied.
4. That eye irritation is an early symptom of exposure, and that eye irritation may be alleviated by leaving the affected area.
5. That a resident may obtain the pre-application information specified under par. (b) if the resident requests the information at least 24 hours before the application is scheduled to occur.
6. The name, address and telephone number of a person whom residents may contact to obtain further information about the application, including the pre-application information specified under par. (b). The identified person may be the certified applicator who performs the application, or an employe of the commercial application business which is responsible for the application.

(b) If a resident requests pre-application information under par. (a)5, the certified applicator or commercial application business shall provide the following information in writing to the requesting resident before the application is

made:

1. A copy of the label of the metam sodium pesticide to be applied.

2. The toxicology and manifestations of poisoning by metam sodium, and the treatment of metam sodium toxicosis, as described in Recognition and Management of Pesticide Poisonings, United States environmental protection agency, EPA-540/9-88-001, March 1989, fourth edition, or in other materials approved by the department.

NOTE: A copy of the relevant paragraphs of the EPA publication, Recognition and Management of Pesticide Poisonings, or of any other materials approved by the department under par. (b)2, may be obtained upon a request to the Agrichemical Management Bureau, P.O. Box 8911, Madison, Wisconsin 53708-8911.

3. The date on which the pesticide will be applied. The pesticide application date may be provided orally, rather than in writing, if the resident consents to oral notification and if the resident gives that consent when he or she requests pre-application information under par. (a)5.

(c) A certified applicator shall be present at the chemigation site at all times during application.

(d) No metam sodium pesticide may be applied by chemigation if the air temperature at the application site is higher than 80 degrees Fahrenheit.

(e) No metam sodium pesticide may be applied by chemigation if the soil temperature at the application site is greater than 70 degrees Fahrenheit at a depth of 5 to 6 inches.

(f) No metam sodium pesticide may be applied by chemigation if a local weather forecast indicates that more than 3/4 of an inch of rainfall may occur in the area of the application site within 6 hours following application.

(4) APPLICATION PRECAUTIONS. (a) Every field, and every portion of a field where a metam sodium pesticide has been applied shall be inspected by a certified applicator 6 to 7 hours after the application is completed, and again 12 to 13 hours after the application is completed. The certified applicator shall check the treated area and surrounding areas for volatilized gas odors resulting from the application. The certified applicator shall carefully monitor all locations where gases have volatilized, and shall initiate follow-up action as required under this subsection.

(b) If volatilized gases are found at any time during or after application, and if the volatilized gases have moved or could move off the application site in quantities that could result in significant drift under s. Ag 29.15(1)(c), the site shall immediately be irrigated with 1/4" to 1/2" of water if an irrigation system is available at the application site.

(c) The certified applicator shall notify the department whenever significant drift of volatilized gas occurs. If residential structures or public buildings could be exposed to significant drift of volatilized gas, the certified applicator inspecting the site shall immediately notify the division of emergency government that persons may be exposed to drift of the

gas, and shall identify the location of the application site.

NOTE: The telephone number for the division of emergency government is (608) 266-3232. The telephone number for the department is (608) 266-2295.

(5) RECORDKEEPING AND FILING REQUIREMENTS. (a) Every certified applicator who applies a metam sodium pesticide shall make and keep the following records:

1. All of the records required under s. Ag 29.11 (3) for that application.

2. The time of each inspection under sub. (4), the results of each inspection, and any actions taken under sub. (4) as a result of the inspection.

3. If the metam sodium is applied by knife rig injection or chemigation, the soil temperature at the time application begins. The soil temperature shall be measured at a point 5 to 6 inches below the soil surface, as provided under subs. (2)(e) and (3)(e).

(b) If a certified commercial applicator is required to keep records under par. (a) for a metam sodium pesticide application, the applicator shall retain the original records for at least 2 years after the application is made. Copies of records pertaining to each metam sodium application shall also be filed with the department by December 15th of the year in which the application was made.

(c) A commercial application business which performs metam sodium pesticide applications shall, for at least 2 years after each application, retain copies of the records made by its

certified applicators under this subsection. A commercial application business may annually file copies on behalf of its certified applicators under par. (b).

(6) SAFETY EQUIPMENT. Certified applicators inspecting an area treated with metam sodium pesticide shall use proper safety equipment and precautions when visiting the treated area.

SECTION 5. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2), Stats., except that the amendment of Ag 29.16(10)(a) and the creation of Ag 29.16(10m) shall take effect on July 1, 1992.

Signed this 17 day of Sept, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Nicholas J. Neher by W. E. Simmons
Nicholas J. Neher, Administrator
Agricultural Resource Management Division