

CR 91-128

RECEIVED

STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE,)
TRADE AND CONSUMER PROTECTION)

FEB 13 1992
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Revisor of Statutes
Bureau

I, Nicholas J. Neher, Administrator of the Division of Agricultural Resource Management, Wisconsin Department of Agriculture, Trade and Consumer Protection and custodian of the official records of said Division, do hereby certify that the annexed order, renumbering Ag 30.01(19) to (22) repealing and recreating Ag 30.30, and creating Ag 30.01(19), Ag 30.21, Ag 30.26, Ag 30.30(7) to (12), and Ag 30.31, relating to atrazine management areas and atrazine prohibition areas, were duly approved and adopted by the department on February 13, 1992.

I further certify that this copy has been compared by me with the original on file in the department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Agriculture, Trade and Consumer Protection in the city of Madison, this 13th day of February, 1992.



Nicholas J. Neher

Nicholas J. Neher, Administrator
Agricultural Resource Management

4-1-92

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 the following order to renumber Ag 30.01(19) to (22), to repeal and recreate Ag 30.30, and to create Ag 30.01(19), Ag 30.21, Ag 30.26, Ag 30.30(7) to (12), and Ag 30.31, relating to atrazine management areas and atrazine prohibition areas.

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

Statutory authority: ss. 93.07 (1), 94.69, 160.19 (2), and 160.21 (1), Stats.

Statutes interpreted: ss. 94.69, 160.19 (2) and 160.21 (1), Stats.

Introduction

This rule establishes "atrazine management areas" and "prohibition areas" in which the use of atrazine pesticides is restricted or prohibited.

Current rules, contained in ch. Ag 30, Wis. Adm. Code, restrict the use of atrazine pesticides on a statewide basis in order to protect Wisconsin groundwater. This rule establishes more stringent restrictions or prohibitions in areas where groundwater contamination appears to be more acute.

Currently, ch. Ag 30 establishes one atrazine management area and 6 prohibition areas. The proposed rule establishes 5 additional atrazine management areas and 8 additional prohibition areas.

Atrazine Management Areas

Currently, ch. Ag 30 directs the department to create atrazine management areas whenever it determines that supplementary atrazine use restrictions are needed to prevent or minimize groundwater contamination. Within these areas, the department may impose additional restrictions beyond those which apply on a statewide basis. Ch. Ag 30 currently establishes

one atrazine management area in the lower Wisconsin river valley.

The rule creates 5 atrazine management areas in Columbia, Dane, Green, Lafayette and St. Croix counties. Each area encompasses a cluster of atrazine detections in groundwater which exceed the preventive action limit (PAL) of 0.35 ppb specified in ch. NR 140, Wis. Adm. Code. Each area is defined by naturally occurring geographic boundaries, roads and highways, and is designated by a map which is reproduced in the rule.

Within the 5 atrazine management areas, atrazine applications are limited to 0.75 lbs. per acre per calendar year for coarse soils, and 1.0 lb. per acre per calendar year for medium and fine textured soils. Rescue treatments to sweet corn and seed corn may exceed these local limits, but only if the total annual rate of atrazine use does not exceed current statewide limits.

Atrazine Prohibition Areas

Ch. Ag 30 currently directs the department to prohibit atrazine use on a localized basis, where appropriate under the groundwater law. Atrazine prohibition areas are established where atrazine contamination equals or exceeds the current groundwater enforcement standard of 3.5 ppb under ch. NR 140, Wis. Adm. Code. Currently, 6 prohibition areas are in ch. Ag 30. The current prohibition areas correspond to groundwater recharge zones surrounding contaminated wells. The rule keeps the 6 current prohibition areas intact in the form of 2 "single well" and 1 "multiple well" prohibition areas, and substitutes a map description for the current narrative description of these areas.

The rule establishes 6 prohibition areas at locations where atrazine contamination equals or exceeds the groundwater enforcement standard at a single well site. Each prohibition area includes those quarter-quarter sections of land which lie wholly or in part within a 1-mile radius of the center of the quarter-quarter section that contains the contaminated well. Each of these prohibition areas is described by a map in the rule.

The rule also establishes 2 prohibition areas at locations where atrazine contamination equals or exceeds the groundwater enforcement standard at 2 or more well sites. The boundaries for each "multiple well" prohibition area are defined by naturally occurring geographic boundaries, roads and highways. Each area is described by a map in the rule.

Within every prohibition area, atrazine applications are prohibited. This rule also prohibits atrazine mixing or loading in a prohibition area unless conducted over a spill containment surface which complies with ss. Ag 29.151(2) to (4). This prohibition applies uniformly to all prohibition areas including those currently established.

SECTION 1. Ag 30.01 (19) to (22) are renumbered Ag 30.01 (20) to (23).

SECTION 2. Ag 30.01 (19) is created to read:

(19) "Rescue treatment" means an emergency application of atrazine with crop oil, made after crop emergence to control weeds which are reasonably likely to cause crop yield reduction, either because preplanting, preemergence or planned postemergence application of herbicides failed to control weeds or because weather conditions prevented use of planned mechanical operations for weed control.

SECTION 3. Ag 30.21 is created to read:

Ag 30.21 OTHER ATRAZINE MANAGEMENT AREAS. (1) AREAS DEFINED.

Within each of the following atrazine management areas, atrazine use is subject to the restrictions under sub. (2):

(Drafter's note: Maps will be used to identify atrazine management areas. The map will show sections of highways, roads, rivers and other natural features used as borders for the AMA.

(a) The south central Columbia county atrazine management area is the area designated by the following map:

[Map 1 will be inserted here]

(b) The central Dane county atrazine management area is the area designated by the following map:

[Map 2 will be inserted here]

(c) The northeastern Green county atrazine management area is the area designated by the following map:

[Map 3 will be inserted here]

(d) The central Lafayette county atrazine management area is the area designated by the following map:

[Map 4 will be inserted here]

(e) The central St. Croix county atrazine management area is the area designated by the following map:

[Map 5 will be inserted here]

(2) **MAXIMUM APPLICATION RATES.** Within an atrazine management area under sub. (1), applications of atrazine active ingredient shall not exceed the applicable rates specified under pars. (a) to (d) below.

(a) If at least one-fourth of the surface soil at the application site is a coarse soil, the maximum application rate for that site is 0.75 lbs. per acre per calendar year.

(b) If less than one-fourth of the surface soil at the application site is a coarse soil, the maximum application rate for that site is 1.0 lb. per acre per calendar year.

(c) A rescue treatment to a field of seed corn or sweet corn may exceed the maximum rate specified under par. (a) or (b), provided that total annual atrazine applications at that site do not exceed the maximum statewide rate established under s. Ag 30.10.

(d) If a field is subdivided into smaller application sites for the purpose of applying differing rates of atrazine, the applicator shall comply with the recordkeeping requirements under Ag. 30.10(4).

SECTION 4. Ag 30.26 is created to read:

Ag 30.26 MIXING AND LOADING PROHIBITED. No person may mix or load

any atrazine product in a prohibition area identified under ss. Ag 30.30 or Ag 30.31 unless the mixing and loading is conducted over a spill containment surface which complies with s. Ag 29.151(2) to (4).

SECTION 5. Ag 30.30 is repealed and recreated to read:

Ag 30.30 PROHIBITION AREAS; SINGLE WELLS. No person may apply any atrazine product in any of the following prohibition areas surrounding any of the following well sites at which atrazine concentrations have equalled or exceeded the enforcement standard under s. NR 140.10:

(Drafter's note: Maps will be used to identify prohibition areas. The map will show all quarter-quarter sections which are located, wholly or in part, within a 1-mile radius of the center of the quarter-quarter section in which the contaminated well is located.

(1) (a) Contaminated well site: Columbia county, Township 12N-Range 9E, Section 30, SE quarter-quarter section of SW quarter.

(b) The prohibition area is designated by the following map:
[Map 6 will be inserted here.]

(2) (a) Contaminated well site: Dane county, Township 6N-Range 8E, Section 12, SW quarter-quarter section of NW quarter.

(b) The prohibition area is designated by the following map:

[Map 7 will be inserted here.]

(3) (a) Contaminated well site: Dane county, Township 9N-Range 9E, Section 31, SE quarter-quarter section of NE quarter.

(b) The prohibition area is designated by the following map:

[Map 8 will be inserted here.]

(4) (a) Contaminated well site: Green Lake county, Township 15N-Range 13E, Section 5, NE quarter-quarter section of NW quarter.

(b) The prohibition area is designated by the following map:

[Map 9 will be inserted here.]

(5) (a) Contaminated well site: Green Lake county, Township 16N-Range 12E, Section 32, SW quarter-quarter section of SW quarter.

(b) The prohibition area is designated by the following map:

[Map 10 will be inserted here.]

(6) (a) Contaminated well site: Iowa county, Township 8N-Range 4E, Section 16, SW quarter-quarter section of SE quarter.

(b) The prohibition area is designated by the following map:

[Map 11 will be inserted here. The map shows the quarter-quarter sections included in the current prohibition area. The prohibition area is not changed.]

(7) (a) Contaminated well site: Lafayette county, Township 1N-Range 4E, Section 28, NE quarter-quarter section of NW quarter.

(b) The prohibition area is designated by the following map:

[Map 12 will be inserted here.]

(8) (a) Contaminated well site: Sauk county, Township 8N-Range 4E, Section 1, NE quarter-quarter section of NW quarter.

(b) The prohibition area is designated by the following map:

[Map 13 will be inserted here. The map shows the quarter-quarter sections included in the current prohibition area. The prohibition area is not changed.]

SECTION 6. Ag 30.31 is created to read:

Ag 30.31 PROHIBITION AREAS; MULTIPLE WELLS. No person may apply any atrazine product in any of the following areas, which are the approximate recharge areas for groups of wells in which atrazine has been found at concentrations which equal or exceed the enforcement standard under s. NR 140.10:

(1) NORTHEASTERN COLUMBIA COUNTY; TOWN OF RANDOLPH;

PROHIBITION AREA. The northeastern Columbia county prohibition area, located in the town of Randolph, is designated by the following map:

[Map 14 will be inserted here]

(2) SOUTH-CENTRAL COLUMBIA COUNTY; TOWN OF LOWVILLE;

PROHIBITION AREA. The south-central Columbia county prohibition area, located in the town of Lowville, is designated by the following map:

[Map 15 will be inserted here.]

(3) RICHLAND COUNTY; TOWN OF BUENA VISTA - SAUK COUNTY;
TOWN OF SPRING GREEN; PROHIBITION AREA. The Richland-Sauk prohibition area,
located in the towns of Buena Vista and Spring Green, is designated by the following map:

[Map 16 will be inserted here. The map shows the quarter-quarter sections
included in four current contiguous prohibition areas. The land area
represented by this prohibition area is not changed.]

SECTION 7. EFFECTIVE DATE. The rules contained in this order shall take
effect on the first day of the month following publication in the Wisconsin administrative
register.

Dated this 13th day of February, 1992.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Nicholas J. Neher, Administrator
Agricultural Resource Management
Division

(3) RICHLAND COUNTY; TOWN OF BUENA VISTA - SAUK COUNTY;
TOWN OF SPRING GREEN; PROHIBITION AREA. The Richland-Sauk prohibition area,
located in the towns of Buena Vista and Spring Green, is designated by the following map:

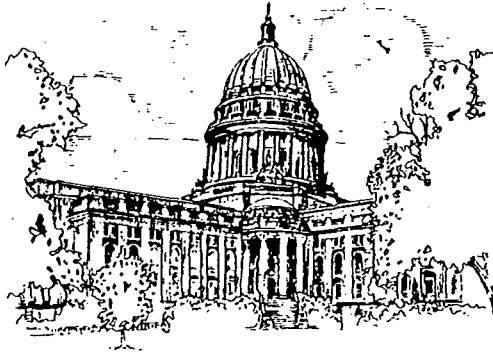
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Dated this 13th day of February, 1992.

STATE OF WISCONSIN
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By Nicholas J. Neher
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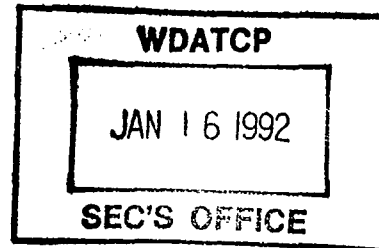


BRIAN BURKE STATE SENATE

Chair, Committee on Urban Affairs, Environmental Resources & Elections

January 16, 1992

Alan Tracy
Secretary
Department of Agricultural,
Trade and Consumer Protection
801 W. Badger Road
Madison, WI 53702



Dear Secretary Tracy:

The Senate Committee on Urban Affairs, Environmental Resources and Elections held a public hearing on January 14, 1992 on Clearinghouse Rule 91-128 which was submitted by the Department of Agriculture, Trade and Consumer Protection. As a result of the testimony presented at that hearing, the committee voted unanimously to recommend that the Department of Agriculture, Trade and Consumer Protection make the following modifications to Clearinghouse Rule 91-128:

That the Department of Agriculture, Trade and Consumer Protection agree to consider modifying under s. 227.19 (4) (b) 2, Stats., Clearinghouse Rule 91-128, as referred to the Committee, by phasing in a prohibition on the use of atrazine in the State of Wisconsin over a 3 year period, commencing in the Spring of 1992.

Please respond by January 29, 1992 and let the Committee know if the Department will modify Clearinghouse Rule 91-128 as recommended by the Committee.

I appreciate your immediate attention to this matter and look forward to the Department's response to this request.

Sincerely,

BRIAN B. BURKE
State Senator

BB/ckm



State of Wisconsin

Department of Agriculture, Trade & Consumer Protection

Alan T. Tracy
Secretary

801 West Badger Road
PO Box 8911
Madison, WI 53708-8911

January 23, 1992

The Honorable State Senator Brian Burke
Room 35 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Burke:

Thank you for your letter informing the Department of Agriculture, Trade and Consumer Protection (DATCP) of the executive action taken by your Senate Committee on Urban Affairs, Environmental Resources and Elections on proposed changes to ch. Ag 30, Wis. Adm. Code, relating to the use of atrazine (Clearinghouse Rule 91-128).

The Department accepts your recommendation that we consider a phased-in prohibition on atrazine use as part of our continuing evaluation of regulatory alternatives. As previously noted, the Department will initiate further rulemaking proceedings related to atrazine by mid-1992. The gradual accumulation of new data, in combination with the expected tightening of the enforcement standard, makes it likely that more prohibition zones will be created in 1993 and subsequent years.

In compliance with ch 160, Stats., Wisconsin's groundwater law, the Department has prohibited atrazine use in areas where groundwater enforcement standards have been exceeded. On a statewide basis, the Department has restricted atrazine use rates to levels which are below labeled application rates set by the U.S. Environmental Protection Agency. Where preventive action limits have been exceeded, the Department has established atrazine management areas covering over 700,000 acres, and has restricted atrazine use to even lower levels (one-half of the statewide rate). Previously, the Department prohibited atrazine use on 1,800 acres, and the current proposed rule would prohibit usage on an additional 24,000 acres. Wisconsin has gone further than any other state in regulating the use of atrazine.

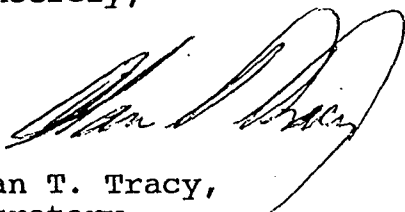
The Department will continue to evaluate new and existing groundwater monitoring data for atrazine and its metabolites. As a result of these findings, the Department will pursue further changes in ch. Ag 30, Wis. Adm. Code, to further restrict or prohibit atrazine usage in Wisconsin. The Department will initiate further rulemaking proceedings no later than mid-1992 for the 1993 planting season.

The Department and Legislative Council staff have already noted that, under s. 160.23(4), Stats., the Department may not ban the use of atrazine unless the agency (1) bases its decision upon reliable test data, (2) determines "to a reasonable certainty, by the greater weight of the credible evidence, that no other remedial action would prevent the violation of the enforcement standard", at the monitoring site, (3) establishes the basis for the boundary and duration of the prohibition, and (4) ensures that any prohibition imposed shall be reasonably related in time and scope to maintaining compliance with the enforcement standard. At this time, the Department does not believe that there are sufficient data to support a statewide ban on the use of atrazine. However, the Department will continue to evaluate new information as it becomes available, and will take whatever regulatory action is appropriate based on the data, including further prohibitions on atrazine use.

In order for these additional atrazine restrictions to take effect by April 1, 1992 for the next planting and growing season, the proposed rule must be submitted to the Revisor of Statutes by February 12 at the latest. To incorporate major changes into the proposed rule, the Department would have to withdraw the current proposed rule, hold additional public hearings, and resubmit a modified rule proposal to the Legislature for standing committee review. This cannot be accomplished in time for the rules to take effect prior to the 1992 planting and growing season.

I enjoyed our recent meeting in your office, and I hope this response and commitment meets with your satisfaction. Please contact me if we can answer any further questions or provide you with additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan T. Tracy", written in a cursive style.

Alan T. Tracy,
Secretary