

Chapter NR 80

USE OF PESTICIDES ON LAND AND WATER AREAS OF THE STATE OF WISCONSIN

NR 80.01 Definitions
NR 80.02 Requirements

NR 80.03 Exemptions

Note: Chapter NR 80 as it existed on June 30, 1976, was repealed and a new chapter NR 80 was created effective July 1, 1976.

Note: See ch. ATCP 29 for additional rules on the use of pesticides.

NR 80.01 Definitions. As used in these rules, the following terms mean:

(1) "Pesticide review board" means the board created by s. 15.195, Stats.

(2) "Pesticide" has the meaning designated in s. 94.67, Stats.

(3) "Department" means the department of natural resources.

(4) "Limited use pesticide" means a pesticide which under certain conditions or usages constitutes a serious hazard to wild animals other than those it is intended to control. The following is a list of such pesticides:

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| (a) Aldrin | (f) DDD (TDE) | (k) Lindane |
| (b) Alkyl mercury compounds | (g) DDT | (l) Solium fluoroacetate |
| (c) BHC | (h) Dieldrin | (m) Strychnine |
| (d) Cadmium | (i) Endrin | (n) Thallium sulfate |
| (e) Chromium | (j) Heptachlor | (o) Tributyltin compounds/organotin derivatives |

(5) "Registration" means compliance with the provisions of s. 94.68, Stats.

(6) "Applications" means the use of a pesticide in any manner whatsoever but excluding pesticide manufacturing or formulating processes.

(7) "Rate of application" means the total amount of actual toxicant (not formulation) applied per unit area and ordinarily expressed in pounds per acre or in reference to shade trees or other trees treated individually in weight of actual toxicant per tree.

(8) "Description of area to be treated" means the description for rural area by township, range, section and forty; for urban area, by the legal description.

(9) "Use" means the application of a pesticide outdoors in such manner that it will be introduced into and become part of the natural environment. Use of the material within buildings or for termite control in the vicinity of buildings is excluded from the meaning of this term.

(10) "Waters of the state" includes those portions of Lake Michigan and Lake Superior, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other

surface or ground water, natural or artificial, public or private, within the state or its jurisdiction.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; cr. (4) (o), Register, April, 1988, No. 388, eff. 10-1-88.

NR 80.02 Requirements. (1) Except as noted in s. NR 80.03 (exemptions) any person desiring to use a limited use pesticide in the state shall obtain a permit from the secretary of the department or the secretary's designated agent who will act after recommendation of the pesticide review board. The information furnished in an application for a permit shall include the description of the area to be treated, interval or calendar period when such treatment shall be made, number of applications, purpose of treatment, pesticide to be used, method of application and rate of application. Upon receipt of a completed application, the department shall approve or deny the request within 15 business days. Denials shall be in writing stating reasons for the denial. In emergencies, department action shall be expedited and applications may be submitted by telegraph, telephone or special delivery mail. Permit application forms may be obtained from the department.

(2) Except as otherwise provided in this chapter no person shall cause the death or destruction of any wild animal as defined in s. 29.01 (1), Stats., other than those to be controlled, through negligent use or illegal use of any pesticide (as defined in s. NR 80.01 (9)).

(3) Except as noted in s. NR 80.03 (exemptions), it is unlawful for any person to destroy or control game or fish of any variety classified as such by s. 29.01, Stats., or amphibians or reptiles, by use of a pesticide, poison or toxic substance unless a permit for that purpose has been obtained from the department.

(4) Pesticides, seeds, seed pieces or other plant parts treated with a pesticide stored or held at outdoor locations, including loading or application sites, shall be covered or otherwise protected or secured to prevent serious injury to wild animals other than those it is intended to control.

(5) Pesticides, seeds, seed pieces or other plant parts treated with a pesticide and their containers temporarily held at loading and spraying sites in connection with their use shall be secured in such a manner as to reasonably prevent serious hazard to wild animals or the contamination of waters of the state.

(6) No person shall use, store, transport or display pesticides, seeds, seed pieces or other plant parts treated with a pesticide contrary to label instructions or in a negligent manner so as to be a serious hazard to wild animals. Any use, storage, transport or display of pesticides, seeds, seed pieces or other plant parts treated with a pesticide in

violation of these rules, or any use of a pesticide, seeds, seed pieces or other plant parts treated with a pesticide which a person knows or ought to know creates a high degree of risk and probability of serious injury to wild animals other than those it is intended to control is negligent use.

(7) No person shall apply to or cause a pesticide, seeds, seed pieces or other plant parts treated with a pesticide to enter waters of the state directly or through sewage systems. This does not apply to persons engaged in fish management or the treatment of waters under the supervision or rules of the department of natural resources, the use of limited use pesticides for the treatment of sewers for insect or rodent control by or under the supervision of qualified government officials or pest control operators, or under department of agriculture permit, or to chemicals accepted and registered for use in root control in sewage lines or in the cleaning, sanitizing, algaciding, slimiciding, or disinfection of toilets, urinals, sewers, sinks, swimming pools, food processing equipment, dishes, utensils, hospital equipment, walls, floors, or other surfaces or materials in any building or area where such uses are necessary for the protection of persons, animals or property.

(8) No person shall fill pesticide spray equipment, including mix or nurse tanks which contain pesticide or carry pesticides on the tank vehicle from waters of the state. This does not prohibit the filling of tanks used for water supply only from waters of the state, provided no pesticides or empty pesticide containers are carried on the tank vehicle. Pesticide spray equipment shall not be filled or cleaned adjacent to waters of the state including wells where, because of the slope or other condition of the bank, spray materials could readily enter the water in case of overflow, leaks or other causes, or rising waters could reach the filling or cleaning area and become contaminated as a result of prior surface contamination or other reasons. When it is necessary to use a potable water source or other private wells for filling or cleaning spray tanks and equipment, the supply shall be protected from backsiphonage by an air break or other equivalent protection as specified in s. ILHR 82.14, Wis. Adm. Code.

(9) No person shall dispose of or hold pesticides or their containers for disposal contrary to directions on the label or in a manner which may contaminate waters of the state or create a serious hazard to wild animals other than those it is intended to control.

(10) Treated seeds shall be incorporated into the soil during planting and shall not be used or be exposed in such a manner that they present a serious hazard to wild animals other than those it is intended to control.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; am: (1), Register, March, 1985, No. 351, eff. 4-1-85; correction in (8) made under s. 13.93 (2m) (b) 7, Stats., Register, March, 1985, No. 351.

NR 80.03 Exemptions. The following exemptions shall apply only if adequate safety precautions for the protection of wild animals are followed in each case.

(1) Pesticide usage which does not involve use as defined in s. NR 80.01 (12) is exempt from the provisions of this chapter.

(2) The control of rats, mice and bats with pesticides including limited use pesticides, in and around human

habitations, farm buildings, warehouses, storage facilities, including open storage areas, shipping facilities, solid waste disposal sites, sewers, orchards and other areas where rats, mice and bats constitute a sanitation, agricultural or public health nuisance are exempt from the provisions of this chapter providing that:

(a) The pesticides employed are registered by the department of agriculture under s. 94.68, Stats., and are used strictly according to label directions and in accordance with ch. ATCP 29.

(b) The carcasses of animals destroyed under this section shall, whenever possible, be disposed of in such a manner that wildlife and domestic animals will not have access to such carcasses.

(3) Persons employed by the state of Wisconsin department of natural resources, department of agriculture and the department of health and social services in performance of their duties are exempt from the permit requirement of this chapter.

(4) Seed treatments using the limited use pesticides heptachlor, aldrin, dieldrin and lindane are exempt from the provisions of this chapter.

(5) Lindane (gamma isomer of benzene hexachloride) is exempt from the provisions of this chapter when used according to the following registered uses:

(a) Mange and lice treatment of beef, swine, goats (except dairy goats), sheep and pets according to registered use pattern dosage, and precautionary measures.

(b) Yard and noncommercial garden ornamentals.

(6) Treatments made with lindane or BHC at a rate not to exceed $\frac{1}{4}$ pound per acre for the control of white pine weevil (tip weevil), pine root collar, weevil or balsam gall midge are exempt from the provisions of this chapter except such treatments may not be made in the immediate vicinity of waters of the state where the material might be introduced into the water.

(7) Pesticides used by the department of health and social services or official public health agencies acting under their direction for the prevention and control of disease or by physicians in the treatment of patients are exempt from this chapter.

(8) Dipping of tree roots in pesticide preliminary to tree planting or the application of pesticides at or below the surface of the ground as trees are planted by a tree planting machine or in planting ornamentals are exempt from the provisions of this chapter.

(9) The pressure treatment of lumber and wood products with chromium for protection against termites and decay producing fungi is exempt from the provisions of this chapter.

(10) Treatments made for aquatic nuisance control in waters of the state pursuant to s. 144.025 (2) (i), Stats., that are for the control of weeds, algae or swimmers' itch done under the direct supervision of the department or by permit issued by them are exempt from the provisions of this chapter.

(11) Pesticides used under the direct supervision of the department in fish management work pursuant to provi-

sions of ss. 29.62 and 29.623, Stats., in waters of the state are exempt from the provisions of this chapter.

(12) Limited use pesticides used by or under the supervision of a higher education institution for research purposes outdoors is exempt except as provided in ch. NR 107 (permit for use of pesticides in water) and s. 134.67, Stats., (prohibits use of DDT) from the provisions of this chapter provided that the area of each treatment does not exceed $\frac{1}{4}$ acre (including all replicates).

(13) Usage of tributyltin compounds/organotin derivatives that strictly adheres to label directions is exempt from the provisions of this chapter if:

(a) Usage does not involve addition to waters of the state or to structures in contact with waters of the state, or

(b) Usage in an antifoulant paint will result in a short term cumulative release of no more than 168 micrograms organotin per square centimeter for the first 14 days or an average daily release rate of no more than 4 micrograms organotin per square centimeter per day; and the antifoulant paint is used on a boat at least 65 feet in length or on a boat, boat part, or boat accessory made of aluminum.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; cr. (13), Register, April, 1988, No. 388, eff. 10-1-88; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.