

## Chapter ATCP 29

### PESTICIDE USE AND CONTROL

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**Note:** Chapter Ag 29 was renumbered ch. ATCP 29 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

**Note:** See chapters NR 80 and 107, Wis. Adm. Code for pesticide rules of the department of natural resources. See also chapters NR 600 to 685, Wis. Adm. Code, pertaining to disposal of hazardous wastes.

**ATCP 29.01 Definitions.** (1) "Accident" means an unexpected or undesirable event caused by the use or presence of a pesticide, adversely affecting persons, property or the environment.

(2) "Agricultural commodity" means any plant or part of a plant, or animal or animal product, produced by a person primarily for sale, consumption, propagation or other use by humans or animals, as defined in s. 94.67 (2), Stats.

(2j) "Agricultural employer" means a person who hires or contracts for the services of agricultural workers, or who operates an agricultural establishment that uses agricultural workers.

(2k) "Agricultural establishment" means any farm, forest, nursery or greenhouse where agricultural plants are produced.

(2m) "Agricultural pesticide" means any pesticide used or labeled for use in the production of agricultural plants at an agricultural establishment.

(2n) "Agricultural plant" means any plant grown or maintained for commercial or research purposes.

(2p) "Agricultural worker" means a person who performs activities related to the production of agricultural plants at an agricultural establishment.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe supplying water to a tank, vat, reservoir, or other pesticide container and the flood level rim of the tank, vat, reservoir or other container.

(4) "Automatic low pressure drain valve" means a self-activating device which is designed and constructed to drain the water supply pipeline in a chemigation system if water pressure falls or the water supply pump ceases operation.

(6) "Calibration of equipment" means the measurement of dispersal or output of application equipment, and the adjustment of such equipment to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

(7) "Catch basin" means all structures or containers used to provide the containment capacity required to contain or hold liquids at a site where pesticides are transferred from one container to another. The term may include spill containment surfaces, sumps and above ground storage containers.

(8) "Certified applicator" means a private applicator or individual commercial applicator who is certified by the department under s. 94.705, Stats., and this chapter.

(9) "Check valve" means a device designed and constructed to close a water supply pipeline, pesticide injection line, or other conduit in a chemigation system and to prevent reverse flow in that line.

(10) "Chemigation" means the process of applying pesticides with irrigation water during irrigation.

(11) "Chemigation system" means a device or system which mixes pesticides with irrigation water drawn from any source, and which applies the pesticides with the irrigation water during irrigation.

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

(12) "Commercial applicator" means a person, whether or not a private applicator with respect to some uses, who uses or directs the use of any pesticide, either directly or through an employe, for any purpose or on any property other than as a private applicator. "Commercial applicator" does not include:

(a) A person who applies a pesticide, other than a restricted-use pesticide, solely for household purposes in and around that person's residence.

(b) A person who contracts with a commercial applicator for hire to apply a pesticide for that person, if the person does not otherwise use or direct the use of a pesticide as a commercial applicator.

(13) "Commercial applicator for hire" means a commercial applicator who uses or directs the use of a pesticide as an independent contractor for hire, either directly or through an employe. "Commercial applicator for hire" does not include a provider of janitorial, cleaning or sanitizing services if the provider of the services uses no pesticides other than sanitizers, disinfectants and germicides.

(14) "Common exposure route" means a likely way by which a pesticide may reach or enter an organism.

(15) "Compatibility" means that property of a pesticide which permits it to be used or combined with another pesticide or chemical without undesirable results being caused by the combination.

(16) "Competent" means qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and associated responsibility.

(16m) "Crop advisor" means any person who assesses pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants.

(17) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(18) "Directs the use" means to select a pesticide for use by another person or to instruct or control the application of a pesti-

cide by another person and to be available if and when needed during that application. "Directs the use" may, but does not necessarily, mean to be physically present at the time and place a pesticide is being applied.

(19) "Display" means the exposure or holding open to public view of pesticides in any sales room or business area from which sales are made and to which the public has access.

(20) "Distributor" means a person engaged in the sale of pesticides for resale and includes a person who sells at both wholesale and retail, as provided in s. 94.67 (11), Stats.

(20m) "Dual notice pesticide" means an agricultural pesticide whose label requires agricultural employers to do both of the following:

- (a) Post application sites with worker protection warning signs.
- (b) Give workers oral notice of applications.

(21) "Environment" includes water, air, land and all plants and persons and other animals living in or on the water, air, or land and the interrelationships which exist among them, as defined in s. 94.67 (12), Stats.

(22) "Federal act" means the federal insecticide, fungicide, and rodenticide act, as amended (7 USC 136 et seq.) and regulations issued under that act.

(23) "Flow interrupter" means a device designed and constructed to stop the flow through a pesticide injection line if a pesticide injection unit ceases operation.

(24) "Flush time" means the time needed under normal operating conditions to completely fill an irrigation system with water so that all outlets are discharging water.

(24m) "Handler" means any person who engages in any of the following activities:

- (a) Mixing, loading, transferring or applying agricultural pesticides.
- (b) Disposing of agricultural pesticides.
- (c) Handling opened containers of agricultural pesticides, other than empty containers that have been triple-rinsed or cleaned according to the pesticide product label.
- (d) Acting as a flagger to mark the pesticide application pathway during an agricultural pesticide application.
- (e) Cleaning, adjusting, handling or repairing those parts of pesticide mixing, loading or application equipment that may contain agricultural pesticide residues.
- (f) Assisting with the application of agricultural pesticides in any manner which could expose that person to pesticides.
- (g) Entering a greenhouse or other enclosed area during or after an agricultural pesticide application, and before the inhalation exposure level specified on the pesticide label and the ventilation criteria specified by 40 CFR 170.110 (c) (3) or the pesticide label have been met, in order to operate ventilation equipment, adjust or remove covers used in fumigation, or monitor air quality.
- (h) Entering an outdoor area treated with a soil fumigant in order to adjust or remove soil coverings such as tarpaulins.
- (i) Performing tasks as a crop advisor at an agricultural pesticide application site during or after a pesticide application, and before any of the following have occurred:
  1. The inhalation exposure level specified on the pesticide label is met.
  2. The ventilation criteria specified by 40 CFR 170.110 (c) (3) or the pesticide label are met.
  3. The restricted entry interval specified on the pesticide label has expired.

(25) "Immediately adjacent land" means, with respect to the advance notification requirement under s. ATCP 29.15 (4) (b), land which is directly contiguous to land on which pesticides may be applied, or which is separated only by a road, railway, or utility

right-of-way, or by a government-owned land corridor or waterway having a width of not more than 66 feet.

(26) "Individual commercial applicator" means a natural person who does any of the following:

(a) Personally uses or directs the use of any pesticide as a commercial applicator for hire, or as an employe of a commercial applicator for hire. This paragraph does not apply to a person performing janitorial, cleaning or sanitizing services if the person uses no pesticides other than sanitizers, disinfectants and germicides.

(b) Personally uses a restricted-use pesticide as a commercial applicator.

(c) Directs the use of a pesticide by a person specified under par. (a) or (b).

(d) Mixes or directs the mixing of a pesticide for the purpose of commercial application.

(e) Loads or directs the loading of a pesticide into application or nurse equipment for the purpose of commercial application.

(27) "Injection unit" means a chemical metering pump or device that withdraws pesticide from a supply tank and injects the pesticide into irrigation water during chemigation.

(28) "Irrigation" means the application of water by any means to land, crops or plants in order to supply the water needs of plants or to promote plant growth.

(29) "New product" means a pesticide product which is not a federally registered product.

(30) "Nonpotable water supply" means a well or other source of water which is not used for human consumption, hygiene or preparation of food products. "Nonpotable water supply" includes surface water.

(31) "Non-target organism" means a plant or animal other than the one against which the pesticide is applied.

(32) "Ornamental" means trees, shrubs, and other plantings grown for their decorative effect in or around homes, buildings, parks, streets, or roadways.

(33) "Person" means an individual, partnership, corporation, association, and any other business association or entity. The term includes counties, municipalities and townships.

(34) "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living persons or other living animals, declared to be a pest under the federal act or this chapter.

(35) "Pesticide" means any substance or mixture of substances labeled or designed or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant, as defined in s. 94.67 (25), Stats. For purposes of use, storage, transportation, disposal and display under this chapter, the term includes pesticide-fertilizer mixtures and seeds, seed pieces and other plant parts intended for planting or propagation which have been treated with a pesticide.

(36) "Pesticide drift" means the drifting or movement of pesticide by air currents or diffusion onto property beyond the boundaries of the target area to be treated with pesticide, other than by pesticide overspray. Absent evidence of pesticide overspray, the application of pesticide beyond the boundaries of the target area shall be considered to be the result of pesticide drift.

(37) "Pesticide mixing and loading site," as used under s. ATCP 29.151, means a site or facility where more than 1,500 pounds of pesticide active ingredients, including pesticide active ingredients, contained in pesticide-fertilizer mixtures or combinations, are transferred from one container to another, repackaged, or mixed in dry or liquid form during any calendar year. If, during any calendar year, more than 1500 lbs. of pesticide active ingredients are mixed or loaded at 2 or more locations which are within 1/2 mile of each other, and which are under common ownership or control, those locations are collectively considered a "pes-

ticide mixing and loading site" under this subsection. Transfer between containers includes transfers to pesticide application equipment and nurse tanks.

**(38)** "Pesticide overspray" means the application of pesticide onto property beyond the boundaries of the target area to be treated, by the failure to control the direct flow or application of pesticide from the application equipment, under surrounding conditions of use and application, so as to confine the pesticide to the target area.

**(39)** "Pesticide product" means a pesticide, all of the containers of which in commerce are labeled with a unique combination of all of the following:

(a) The brand name of the pesticide.

(b) The pesticide registration number assigned to the pesticide under the federal act.

(c) The name of the pesticide labeler.

**(41)** "Pesticide review board" means the board created under s. 15.195 (1), Stats.

**(42)** "Pesticide supply tank" means a container used to hold pesticides for injection into a chemigation system.

**(43)** "Potable water supply" means a well or other source of water which is used for human consumption, hygiene or preparation of food products.

**(44)** "Practical knowledge" means the possession and comprehension of pertinent facts together with the ability to use them in dealing with specific problems and situations.

**(45)** "Private applicator" means a person who uses or directs the use of any pesticide for the purposes of producing any agricultural commodity on property owned or rented by the person or the person's employer, or on property of another person if the pesticide is used without compensation other than the trading of goods or services between producers of agricultural commodities on an exchange basis.

**(46)** "Protective equipment" means clothing or any other materials or devices that shield against unintended exposure to pesticides.

**(47)** "Reduced pressure principle backflow preventer" means a backflow prevention device consisting of 2 independently acting check valves, spring-loaded to a closed position and separated by an intermediate chamber in which there is an automatic relief vented to the atmosphere, spring-loaded to the open position.

**(48)** "Regulated pest" means a specific organism considered under the federal act or rules of the department to be a pest requiring regulatory restrictions, regulations, or control procedures in order to protect the host, or persons or the environment.

**(48m)** "Restricted entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

**(49)** "Restricted-use pesticide" means a pesticide which, with respect to certain or all of its uses, is classified under the federal act or s. ATCP 29.08 (6), as a restricted-use pesticide for use only by certified applicators.

**(50)** "Retail dealer" means a person engaged in the sale of pesticides to consumers at retail.

**(51)** "Similar composition" means composition of a pesticide product which, when compared to a federally registered pesticide product, has the same active ingredients, and the same category of toxicity, as the federally registered product with which it is compared.

**(52)** "Similar use" means use of a pesticide product which, when compared to a federally registered use of a product with similar composition, is substantially the same as the federally registered use, and does not require a change in precautionary labeling under the federal act.

**(53)** "Special local need" means an existing or imminent pest problem within the state which cannot be adequately controlled by the use of any available federally-registered pesticide product.

**(54)** "Storage" means the keeping or holding of pesticides, other than pesticides on display, at any location at which pesticides are held for distribution, sale, use or disposal, and except for storage as used in s. ATCP 29.15 (1), excludes pesticides held on residential property for use in and about the home.

**(55)** "Supplemental registrant" means a person in whose name a pesticide is supplementally registered with the federal environmental protection agency under the federal act.

**(56)** "Target organism" means a plant, animal, or other organism against which a pesticide is applied.

**(57)** "Toxicity" means the property of a pesticide to cause any adverse physiological effects.

**(58)** "Vacuum relief valve" means an atmospheric device designed, constructed and installed to protect against back-siphonage by allowing the entry of air to relieve vacuums in a chemigation system.

**(59)** "Waters of the state" means those portions of Lake Michigan and Lake Superior, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface or ground water, whether public or private, within the state or its jurisdiction.

Note: Additional definitions are found in s. 94.67, Stats.

History: Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. (5) to (12) to be (6) to (13); cr. (5) and am. (6) as renum. Register, April, 1972, No. 196, eff. 5-1-72; am. (13), Register, May, 1973, No. 209, eff. 6-1-73; r. (3) and (5), renum. (4) to be (3) and recr., renum. (6) to (13) to be (4) to (11) and cr. (12) and (13), Register, August, 1975, No. 236, eff. 9-1-75; r. (3) and (4), renum. (1), (2), (5) through (13) and Ag 29.15 (1) (a) through (j), (l) through (t) to be (26), (1), (25), (10), (32), (11), (37), (12), (21) through (23), (2) through (9), (13), (14), (17), (18), (20), (27) through (31) and (40), am. (1) to (3), (5), (6), (10), (11), (13), (20) to (23), (25), (28), (31), (32) and (37), cr. (15), (16), (19), (24), (33) to (36), (38), (39) and (41), Register, March, 1982, No. 315, eff. 4-1-82; r. (33), renum. (1) to (32) and (34) to (41) to be (17), (1), (2), (6), (8), (12), (15), (16), (14), (13), (20), (19), (21), (22), (25), (29), (31) to (36), (38) to (41), (44) to (46), (48), (50) to (58) and (60) and am. (8), (12), (13), (39) and (45), cr. (3) to (5), (7), (9) to (11), (18), (23), (24), (26) to (28), (30), (37), (42), (43), (47), (49) and (59), Register, April, 1990, No. 412, eff. 5-1-90; emerg. cr. (11m), eff. 9-9-91; cr. (11m), Register, October, 1991, No. 430, eff. 11-1-91; r. (49), Register, December, 1992, No. 444, eff. 1-1-93; renum. (50) to (60) to be (49) to (59) under s. 13.93 (2m) (b) 1., Stats., Register, December, 1992, No. 444; r. (5), Register, August, 1994, No. 464, eff. 9-1-94; cr. (2), (2k), (2m), (2n), (2p), (16m), (20m), (24m), and (48m), Register, February, 1996, No. 482, eff. 3-1-96.

**ATCP 29.02 Declaration of pests.** Under authority of s. 94.69 (1), Stats., the following named forms of plant or animal life or viruses are declared to be pests and subject to destruction or control by use of pesticides when present under circumstances where they may be injurious to humans or their property, or to plants, plant products, or animals:

**(1)** Mammals, other than humans, including but not limited to dogs, cats, moles, bats, wild carnivores, and deer.

**(2)** Birds, including but not limited to starlings, house sparrows, crows, pigeons, and redwing blackbirds.

**(3)** Fishes, including but not limited to the jawless fishes such as the sea lamprey, and the bony fishes such as the carp.

**(4)** Amphibians and reptiles, including but not limited to poisonous snakes.

**(5)** Aquatic and terrestrial invertebrates, including but not limited to insects and other arthropods, molluscs and nematodes.

**(6)** Plants, fungi or their parts growing where not wanted.

**(7)** Viruses, bacteria, mycoplasmata and protozoans other than those on or in living humans or other animals.

History: Cr. Register, April, 1972, No. 196, eff. 5-1-72; renum. from Ag 29.13 to be Ag 29.11, Register, August, 1975, No. 236, eff. 9-1-75; renum. from Ag 29.11 and am. (intro.), (5) to (7), Register, March, 1982, No. 315, eff. 4-1-82.

**ATCP 29.03 Prohibited pesticides.** (1) The registration, purchase, sale or use of the following pesticides is prohibited in Wisconsin, except for use under emergency permit as provided in s. ATCP 29.06, use under experimental use permit as provided in s. ATCP 29.07, or in the case of DDT and its isomers and metabo-

lites, emergency or experimental uses authorized by the pesticide review board under s. 134.67, Stats.:

- (a) DDT.
- (b) DDE (TDD).
- (c) Endrin.
- (d) Cadmium.
- (e) Thallium sulfate.
- (f) Aldrin.
- (g) Chlordane.
- (h) Dieldrin.
- (i) Heptachlor.
- (j) 2,4,5-Trichlorophenoxyacetic acid (2,4,5-T).
- (k) 2-(2,4,5-Trichlorophenoxy) propionic acid (silvex).
- (L) Dinoseb.

(2) The prohibitions under sub. (1) do not apply to the purchase, sale or use of pesticides as laboratory standards or educational exhibits, or for laboratory research other than research involving the use of DDT for which a permit is required under s. 134.67, Stats.

**History:** Cr Register, March, 1982, No. 315, eff. 4-1-82; r. and recr. (1) (f), cr. (1) (g) to (l), Register, April, 1990, No. 412, eff. 5-1-90.

#### ATCP 29.04 Pesticides for use by special permit only.

(1) PERMIT REQUIREMENTS. (a) The following pesticides may be used or purchased for use in Wisconsin only under a special permit from the department as provided in this section, except for emergency use under permit as provided in s. ATCP 29.06, or experimental use under permit as provided in s. ATCP 29.07:

1. Sodium fluoroacetate (1080).
2. Strychnine, including products containing strychnine sold or purchased for use as pesticides.
3. Any pesticide used for the control of insects or rodents in public sewers, except when used by a commercial applicator trained or certified in public health pest control under s. ATCP 29.16 (13), and acting in the course of his or her employment.

(b) The permit requirements under par. (a) do not apply to the purchase or use of pesticides as laboratory standards or educational exhibits, or for laboratory research.

(2) APPLICATIONS FOR PERMIT. Applications for special permits under this section shall be submitted to the department in writing, on forms prescribed by the department, except that an oral application may be accepted by the department in an emergency. Emergency oral applications, if accepted by the department, shall be followed by a written application postmarked or hand-delivered to the department within 48 hours after acceptance of the emergency oral application. Applications, including oral applications, shall specify:

- (a) The name and address of the permit applicant, including the name and address of the pesticide applicator if different from the permit applicant.
- (b) The name and formulation of the pesticide for which a permit is requested, and the purposes for which it will be used.
- (c) Where and when the pesticide is to be used and in what quantity.
- (d) Any special controls or precautions that will be exercised in the use of the pesticide.
- (e) Any other information required by the department.

(3) STANDARDS FOR ISSUING PERMITS; GENERAL. Permits may be issued under this section only when, in the judgment of the department, adequate controls can be established to assure that the pesticide will be used with relative safety and without unreasonable hazard to persons, property, wild animals or the environment. As a condition to the issuance of permits, the department may require that the pesticide be used only by or under the direct and immediate supervision of government officials engaged in pest control work, certified applicators, or other qualified personnel.

The department shall grant or deny a permit application within 60 business days after the application is filed with the department, provided that the application is accompanied by all requisite information and documentation.

(4) PERMITS FOR USE OF SODIUM FLUOROACETATE (1080); SPECIAL REQUIREMENTS. (a) Special permits for the use of sodium fluoroacetate (1080) may be granted only for use in the control of rats and mice by certified applicators.

(b) Requests for permits for the use of sodium fluoroacetate (1080) shall, in addition to the information required under sub. (2), include a description of:

1. The nature of the application site and surrounding area;
2. The types of wild animals frequenting the site, if any;
3. The type of bait or the form in which the sodium fluoroacetate (1080) will be used;
4. The method of application; and
5. The method of disposal of carcasses of rats or mice.

(c) The following conditions shall apply to all permits for the use of sodium fluoroacetate (1080) under this section, and to all emergency permits for its use under s. ATCP 29.06:

1. All buildings or portions of buildings in which the pesticide is to be used shall be completely closed and sealed off against access by all non-target animals and persons other than those engaged in the control work. Control work within a building shall be carried on in such a manner as to prevent the contamination of the building or its contents. All remaining and unconsumed pesticide used in the building shall be completely removed from the building before the building is opened for further use.

2. Outdoor applications shall be made using tamper-proof bait boxes designed and secured to prevent a hazard to humans or non-target animals, including birds or fish.

3. Carcasses of rats and mice shall be picked up promptly after being killed by the pesticide, to prevent access to the carcasses by humans or other animals. Carcasses shall be disposed of at a landfill site approved by the department of natural resources.

4. Records of each use of the pesticide shall be maintained for a period of 2 years and be made available to the department upon request, for inspection and copying. Records shall include the date and time of application, and a description of the site at which the pesticide was used, the form in which it was used, the method of application, and the site used for the disposal of carcasses.

(5) PERMITS FOR USE OF STRYCHNINE; SPECIAL REQUIREMENTS.

(a) Special permits for the use of strychnine may be granted only for registered, uses involving applications below ground or to control rats and mice.

(6) PROHIBITIONS. (a) No person may use any pesticide for which a permit is required under this section unless and until a permit has been received in writing from the department, or use the pesticide contrary to the terms and conditions specified in the permit.

(b) No person may openly display sodium fluoroacetate (1080) or strychnine for sale, or sell or offer to sell them to any person who does not have a permit from the department. Persons selling sodium fluoroacetate (1080) or strychnine shall make a record of each sale as required under s. ATCP 29.10 (2) (b), and shall also record the purchaser's permit number under this section. Records shall be kept for a period of 2 years after the date of sale, and shall be made available to the department upon request, for inspection and copying.

(c) No permit holder who purchases sodium fluoroacetate (1080) or strychnine may resell or give the pesticide to any person who does not have a permit.

**History:** Cr Register, March, 1982, No. 315, eff. 4-1-82; am. (3), Register, December, 1985, No. 360, eff. 1-1-86; r. (1) (a) 3., renum. (1) (a) 4. to be 3. and am., r. and recr. (5), am. (6) (b) and (c), Register, April, 1990, No. 412, eff. 5-1-90.

#### ATCP 29.05 Pesticides for limited purposes only. (1)

The following pesticides may be purchased, sold or used in Wis-

consin only for the purposes specified in this section, except for emergency use under permit as provided in s. ATCP 29.06, or experimental use under permit as provided in s. ATCP 29.07:

(a) Benzene hexachloride may be used only to treat trees for the control of pine root collar weevil, pine tip weevil and balsam gall midge, at an application rate not to exceed  $\frac{1}{4}$  pound per acre.

(b) Chromium in any pesticide formulation may be used only in the following forms and for the following purposes:

1. For pressure treatment of lumber for protection against termites and decay producing fungi.

2. In the form of potassium dichromate for the preservation of milk samples for testing. Milk samples treated with potassium dichromate shall not be sold or disposed of for consumption by persons or other animals. No person shall ship or deliver milk sample bottles containing potassium dichromate unless each bottle or the shipping container is labeled with the following:

a. The statement "NOT FOR SALE OR CONSUMPTION—CONTAINS POTASSIUM DICHROMATE;"

b. The signal words "DANGER-POISON;" and

c. A skull and crossbones, or other readily recognizable poison prevention symbol.

**Note:** Milk samples treated with potassium dichromate are classified as hazardous waste under chs. NR 600 to 685, Wis. Adm. Code, and must be disposed of in compliance with that chapter.

(c) Lindane (gamma isomer of benzene hexachloride) may be used only for:

1. The treatment of beef cattle, swine, goats except dairy goats, sheep and pets for mange and lice; treatment of sheep for fleeceworms; and spot treatment of animals, including dairy cattle and goats, for the protection of flesh and flesh wounds against insect infestation.

2. Seed treatment.

3. Treatment of yard and non-commercial garden ornaments.

4. Household uses for which the product is registered.

5. Medicinal use by physicians or persons acting under their direction.

6. The treatment of Christmas trees in tree plantations for the control of pine root collar weevil, pales weevil and pine root tip weevil, and the treatment of white pine and spruce Christmas trees in tree plantations for the control of white pine weevil.

(d) Mercury in any pesticide formulation may be used only in the manufacturing of paints and to control winter turf disease on golf tees and greens.

(e) Daminozide may be used only for treatment of nonfood producing ornamental plants.

(2) The limitations under sub. (1) do not apply to the purchase, sale or use of pesticides as laboratory standards or educational exhibits, or for laboratory research.

**History:** Cr. Register, March, 1982, No. 315, eff. 4-1-82; am. (1) (c), Register, August, 1982, No. 320, eff. 9-1-82; r. (1) (a), (d) and (e), renum. (1) (b), (c), (f) and (g) to be (1) (a) to (d), cr. (1) (c) 6. and (e), Register, April, 1990, No. 412, eff. 5-1-90.

**ATCP 29.06 Emergency use permits. (1) PERMITS; AUTHORIZATION.** (a) Except as provided under par. (b), the department may issue emergency use permits authorizing the purchase, sale, distribution and use of pesticides for purposes not otherwise permitted under ss. 94.67 through 94.71, Stats., or this chapter, when necessary in an emergency situation to control:

1. Epidemic diseases of humans;

2. Plant or animal diseases or pest infestations which threaten substantial destruction of property; or

3. A rabid bat population. Before any pesticide other than naphthalene may be used under department permit to control rabid bats, a permit is also required from the pesticide review board under s. 94.708 (4), Stats.

(b) No permit may be issued under this subsection for any pesticide use unless that use is also authorized under the federal act. Emergency permits for the use of DDT and its isomers and metabolites may not be issued by the department, but may be issued by the pesticide review board under s. 134.67, Stats.

(2) APPLICATIONS FOR PERMIT. Applications for emergency use permits shall be in writing, and include all of the following information:

(a) The name and address of the applicant, including the name and address of the pesticide applicator if different from the applicant.

(b) A detailed description of the nature and scope of the emergency warranting the pesticide use, including information on the pest to be controlled.

(c) A description of the purpose for which the pesticide will be used.

(d) A detailed description of the potential benefits, adverse effects and hazards which may result from the use of the pesticide.

(e) A description and analysis of feasible alternative pesticides and control measures that could be utilized to control the pest.

(f) The composition and formulation of the pesticide.

(g) The source from which the pesticide is to be purchased or shipped.

(h) The amount of pesticide to be used.

(i) The site of the pesticide application.

(j) The method of pesticide application and any special control measures or precautions that will be taken in the use and disposal of the pesticide.

(k) Any additional information required by the department.

(3) STANDARDS FOR ISSUING PERMITS. The department may issue an emergency use permit if it determines all of the following:

(a) That the pest to be controlled has the potential to cause an epidemic disease among humans or substantial destruction to plants or animals, or that a rabid bat population exists as claimed.

(b) The benefits derived from use of the pesticide exceed the potential adverse effects on human health, property or the environment which may result from use of the pesticide.

(c) There are no feasible alternative measures available to effectively control the disease, pest infestation or rabid bat population.

(d) Relevant facts and circumstances demonstrate the need for issuing the permit.

(4) PERMIT CONDITIONS AND CONTROLS. (a) The department may impose conditions or limitations on emergency use permits as necessary to protect persons, property, wild animals or the environment, including conditions and limitations on the duration of the permit, the amount of pesticide to be used, the location and size of the application site where the pesticide may be used, the method of pesticide application, and the disposal of unused pesticides and pesticide containers. The department may require that the pesticide be used only by government officials engaged in pest control work, certified applicators, or other qualified personnel. The department may require that pesticide applications made under this section be done under the direct and immediate supervision of government officials specified by the department in the permit.

(b) The department may summarily suspend or revoke an emergency use permit if it appears that any condition of the permit has been violated, or that continued pesticide use under the permit may result in an unreasonable hazard to persons, property, wild animals or the environment.

(5) ACTION ON PERMIT APPLICATION; TIME LIMIT. The department shall grant or deny an application for an emergency use permit within 20 business days after the application is filed with the department, provided that the application is accompanied by all required information and documentation.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.04 to be Ag 29.05, Register, April, 1972, No. 196, eff. 5-1-72; renum. from Ag

29.05 to be Ag 29.03 and am.; Register, August, 1975, No. 236, eff. 9-1-75; renum. from Ag 29.03 and am., Register, March, 1982, No. 315, eff. 4-1-82; cr. (4), Register, December, 1985, No. 360, eff. 1-1-86; r. and recr. Register, April, 1990, No. 412, eff. 5-1-90.

**ATCP 29.07 Experimental use permits. (1) PERMIT; AUTHORIZATION.** The department may issue experimental use permits authorizing the sale, purchase, shipment and use of pesticides, other than DDT and its isomers and metabolites, for experimental purposes not otherwise permitted under ss. 94.67 through 94.71, Stats., or this chapter. A permit may not be issued under this section for any purpose or use not also authorized or approved under the federal act. Permits may be issued only to:

(a) Persons wishing to accumulate experimental data within the state necessary to register a pesticide or pesticide use under the federal act or s. ATCP 29.08.

(b) Public or private agricultural research agencies or educational institutions performing scientific research in this state not necessarily related to the registration of a pesticide or pesticide use. This paragraph does not authorize the issuance of permits to agencies or institutions engaged primarily in the sale or promotion of pesticides, except for purposes provided in par. (a).

**(2) APPLICATIONS FOR PERMIT.** Applications for experimental use permits shall be submitted to the department in writing, and include:

(a) The names and addresses of:

1. The applicant.
2. Persons who will be shipping pesticide, and the address of the place or places from which the pesticide will be shipped.
3. Persons who will be receiving shipments of the pesticide.
4. Persons who will be applying or supervising the experimental application of the pesticide.
5. Persons on whose property the pesticide will be used experimentally.

(b) A detailed description of the proposed experimental use of the pesticide, including:

1. The purpose of the experimental use.
2. The quantity of pesticide to be used.
3. The target organisms against which the experimental use will be directed.
4. The type of plants, animals or site to be treated.
5. The location, nature and size of the site to be treated, and the nature of the surrounding environment.
6. The dates or time periods on or within which the pesticide is to be used.
7. The methods of pesticide application or use.

(c) The proposed schedule of pesticide shipments, including individual shipment dates and amounts.

(d) A detailed description of the pesticide to be used, including:

1. The chemical composition and type of formulation of the pesticide, giving the chemical name and percentage by weight of each active and inert ingredient.
2. Relevant chemical and physical properties of the pesticide, as required by the department.
3. Methods used to analyze pesticide formulation and to determine the existence of pesticide residues.
4. Available data and information on pesticide toxicity, including oral, dermal and inhalation toxicity, lethal concentrations in the aquatic environment, chronic toxicity hazards, and symptoms of toxicity in persons, plants and animals.
5. Available data and information on the rate of decline of pesticide residues in target and non-target organisms, raw agricultural commodities, food, feed and the environment.
6. Potential hazards to persons using the pesticide, and suggested precautions for use.

(e) A description of precautions to be taken in connection with the experimental use to prevent hazards to persons, property, wild animals and the environment. Where an experimental use may cause pesticide residues to occur in raw agricultural commodities, food or feed, the applicant shall:

1. Submit proof that the proposed experimental use will not result in pesticide residues in excess of tolerances established under the federal act or the federal food, drug and cosmetic act, as amended (21 USC 301 et seq.), or that the pesticide's active and inert ingredients are exempted from the requirement of a residue tolerance in raw agricultural commodities, food and feed; or

2. Certify that any raw agricultural commodities, food or feed derived from the experiment or program will not be sold or disposed of for consumption by persons or animals, other than laboratory or experimental animals.

(f) A copy of any permit issued for the experimental use under the federal act.

(g) Copies of proposed labeling for the experimental use pesticide.

(h) Any additional information required by the department.

**(3) STANDARDS FOR ISSUING PERMITS.** The department may issue permits only for bona fide experimental uses under the supervision of persons qualified by training and experience to engage in pesticide research, when in the department's judgment the proposed experimental use presents no significant hazard to persons, property, wild animals or the environment, and includes adequate controls and safeguards to prevent actual hazards. The department shall grant or deny a permit application within 60 business days after the application is filed with the department, provided that the application is accompanied by all requisite information and documentation.

**(4) PERMIT CONDITIONS AND CONTROLS.** (a) The department may impose conditions or limitations on experimental uses as necessary to protect persons, property, wild animals or the environment, including limits on the amount of pesticide to be used experimentally, the size and location of experimental application sites, the method of pesticide use, and the disposal of unused pesticides and pesticide containers.

(b) Permits shall expire on a date set by the department which shall be the expiration date of the federal experimental use permit for the pesticide. If no federal permit is required, a permit under this section shall expire no more than 2 years from the date of issuance. Permits may be renewed or amended on basis of the standards and criteria applicable to the issuance of original permits. Permits may also be amended to authorize experimental use on property of persons not identified in the original application.

(c) The department may summarily suspend or revoke an experimental use permit if any condition of the permit has been violated, or if continuation of the experimental use may be hazardous to persons, property, wild animals or the environment.

**(5) LABELING.** Pesticides shipped or used under an experimental use permit shall be labeled to include:

(a) The prominent statements, "FOR EXPERIMENTAL USE ONLY" and "NOT FOR RESALE."

(b) The name, brand or trademark of the pesticide.

(c) The name and address of the experimental use permit holder.

(d) The net contents of the pesticide container.

(e) A complete ingredient statement.

(f) Appropriate warning or cautionary statements.

(g) Any appropriate limitations on entry of persons into areas treated with the pesticide.

(h) Directions and conditions for use of the pesticide.

(i) Any other labeling required by the department.

**(6) REPORTS.** The department may require permit holders to file periodic reports with the department concerning the shipment

or use of pesticides under the permit. In the reports, the department may request information on the amounts of pesticide shipped and used; shipment and delivery dates and locations; dates and site locations of pesticide use; experimental findings; disposal of unused pesticide and pesticide containers; disposal of treated agricultural commodities, food or feed; and other information pertaining to the experimental use of pesticides. Permit holders shall immediately report to the department any observed adverse effects of the experimental use on persons, property, wild animals, or the environment.

**(7) EXEMPTIONS.** (a) Except as provided under par. (c), an experimental use permit is not required for the preliminary screening or testing of a pesticide compound or product by a state or federal agency, an accredited college or university, or a pesticide registrant, if the screening or testing is designed solely to determine whether the material has value as a pesticide for specific purposes. This exemption is limited to the following types of preliminary screening or testing:

1. Screening or testing done in a laboratory or greenhouse.
2. Field screening or testing of a compound or product by a principal investigator employed by a testing agency, educational institution or pesticide registrant on a total of not more than 5 acres of land owned or leased by the testing agency, educational institution or pesticide registrant, provided that individual test plots do not exceed  $1/2$  acre in size and are not contiguous.
3. Screening or testing authorized by an experimental use permit issued by the federal environmental protection agency, provided the person issued such permit files with the department a copy of the permit and a list of the locations where the testing is to be conducted prior to commencement of the screening or testing.

(b) No test crops or other products resulting from an exempt screening or testing program may be distributed or used for human or animal consumption, other than for laboratory or experimental animals which are part of the screening or testing program. All products, including crops, resulting from an exempt screening or testing program shall be destroyed in a manner which minimizes exposure to animals and humans of the pesticide compound or product.

(c) The exemption under par. (a) does not apply to any of the following:

1. Release of a microorganism produced or modified by recombinant DNA techniques except for testing authorized by a federal environmental protection agency permit or experiments involving preliminary laboratory or greenhouse screening of the microorganism. A person conducting an experiment under a federal permit shall file a copy of the permit and a list of locations where the testing will occur with the department prior to commencement of the experiment.
2. A pesticide or pesticide use which is prohibited under this chapter.
3. A pesticide or pesticide use for which federal registration has been denied, suspended or canceled.

**History:** Cr Register, March, 1982, No. 315, eff. 4-1-82; am. (3), Register, December, 1985, No. 360, eff. 1-1-86; am. (4) (b), r. and recr. (7), Register, April 1990, No. 412, eff. 5-1-90.

**ATCP 29.08 Registration of pesticides to meet special local needs.** (1) **STANDARDS FOR REGISTRATION.** The department may register pesticide products and uses not registered under the federal act, when necessary to meet a special local need in the state, as provided under s. 94.69 (11), Stats., and the federal act. Registration has the same effect within the state as registration under the federal act, unless disapproved by the environmental protection agency under the federal act. A product or use may be registered only if:

(a) Registration is necessary to meet a special local need within the state, as determined by the department. Situations which the department may consider as not constituting a special local need

may include, but are not limited to, pest problems existing on a nationwide or multi-state regional basis.

(b) The product will be distributed for use only within the state, as evidenced by product labeling under sub. (4), and not for further manufacturing, reformulation or repackaging;

(c) The product or use is covered by necessary residue tolerances, exemptions, or other clearances under the federal act or the federal food, drug and cosmetic act, as amended (21 USC 301 et seq.), if the registration is for use on raw agricultural commodities, food or feed;

(d) The product is shown to be effective for use, and is warranted on the product label to perform as claimed;

(e) Registration of the product or use would, in the judgment of the department, result in no unreasonable adverse effects on persons, property, wild animals or the environment, assuming normal use according to label directions; and

(f) Registration of the product or the proposed use of the product has not been denied, disapproved, canceled or suspended under the federal act. If registration of a product for any use has been denied, disapproved, canceled or suspended under the federal act, no other use of the product may be registered by the department without prior approval by the federal environmental protection agency.

(g) The product conforms to all applicable packaging, coloration and labeling standards and requirements under ss. 94.67 through 94.71, Stats., and the federal act.

(h) The benefits derived from use of the pesticide exceed the potential adverse effects on human health, property, or the environment.

(i) There are no other federally registered pesticides which are available for use to effectively meet the special local need.

(j) Relevant facts and circumstances demonstrate the need to register the product.

**Note:** Under ch. ATCP 3, special local need registrations are subject to the preparation of an environmental assessment.

**(2) REGISTRATION OF NEW PRODUCTS.** (a) The department may register a new product to meet a special local need only if it is formulated from ingredients found in federally registered products and:

1. Is identical in composition to a federally registered product, and differs only in packaging, formulation type, or identity of the manufacturer;

2. Contains the same active and inert ingredients as a federally registered product, except in different percentages; or

3. Contains a new combination of active or active and inert ingredients, all of which are found in federally registered products.

(b) If a new product is formulated from a product for which federal registration has been denied, disapproved, canceled or suspended in part, the department may not register the new product without prior approval by the federal environmental protection agency.

**(3) APPLICATIONS FOR REGISTRATION; FEE.** (a) Applications for registration to meet a special local need shall include:

1. The name and address of the applicant, and the license number of the manufacturer's and labeler's license held by the applicant in this state.

2. A description of the special local need justifying registration.

3. The name of the product for which a registration is being sought and, if the application is for a new product registration, the complete formula of the product.

4. A copy of proposed labeling for the product.

5. Valid scientific evidence demonstrating that the product is effective for the proposed registered uses.

6. Any other information required by the department in order to make a determination on the application.

7. Substantiation from the applicant that use of the product will not result in any unreasonable adverse effects on persons, property, wild animals, or the environment if it is used according to label directions.

8. A description of other methods or available pesticides which may be used to meet the special local need.

9. A description and analysis of the benefits to be derived from use of the product.

10. A description and analysis of the potential adverse effects on human health, property or the environment resulting from use of the product.

11. An analysis demonstrating that the benefits to be derived from use of the product exceed the potential adverse effects.

(b) Applications for registration to meet a special local need shall be accompanied by a nonrefundable fee of \$100. If registration is granted under this section, the applicant shall pay the appropriate fees required under s. 94.68 (3), Stats., prior to any sale or distribution in this state. If a pesticide product is presently registered with the department, a supplementary license fee of \$150 shall be paid before a special local needs registration is issued for any new or additional use of the pesticide product.

(c) The department shall grant or deny an application for registration to meet a special local need within 180 business days after the application is filed with the department, provided that the application is accompanied by all requisite information and documentation.

(4) LABELING. (a) *New products.* New pesticide products registered by the department to meet a special local need shall be labeled in conformity with all applicable labeling standards and requirements for federally registered products, as provided under the federal act and ss. 94.67 through 94.71, Stats., and shall also contain:

1. A statement that the product is registered for distribution and use only in Wisconsin.
2. The special local need number assigned by the department.
3. The expiration date of state registration.
4. Any other labeling required by the department.

(b) *New uses of federally registered products.* Federally registered products which are registered by the department for an additional use to meet a special local need shall be accompanied at time of use by supplemental labeling containing:

1. A statement that the state-registered use is authorized only in Wisconsin.
2. Directions for use to meet the special local need.
3. The trade name of the product.
4. The name and address of the registrant.
5. The EPA (federal environmental protection agency) registration number of the federally registered product.
6. The special local need number assigned by the department.
7. A statement requiring persons using the product to comply with all applicable directions, restrictions and precautions found on the product label, and accompanying supplemental labeling.
8. The expiration date of the state registration.
9. Any other labeling required by the department.

(5) USE RESTRICTIONS; USE BY CERTIFIED APPLICATORS ONLY. The department may, as a condition to registering any pesticide product or use to meet a special local need, classify the product for use only by certified applicators. A product shall be classified for use only by certified applicators if:

(a) It is identical or similar in composition to a federally registered product for which all or similar uses have been restricted to use by certified applicators under the federal act;

(b) It meets the criteria for classification as a restricted-use pesticide under the federal act; or

(c) The department determines that the restricted-use classification is necessary to prevent unreasonable hazards to persons, property, wild animals or the environment.

(6) SUSPENSION OR REVOCATION. The department may summarily suspend or revoke a registration issued under this section if any conditions or requirements under which the product or use was registered is violated, the special local need no longer exists, or continuation of the registration may result in an unreasonable hazard to persons, property, wild animals or the environment. A registration shall be suspended or revoked if at any time it is suspended or disapproved by action of the federal environmental protection agency under the federal act.

**History:** Cr. Register, March, 1982, No. 315, eff. 4-1-82; cr. (3) (c), Register, December, 1985, No. 360, eff. 1-1-86; cr. (1) (h) to (j), (3) (a) 7. to 11., am. (3) (b), Register, April, 1990, No. 412, eff. 5-1-90.

### ATCP 29.09 Licensing of pesticide manufacturers and labelers; filing of reports. (1) LICENSE REQUIREMENT

(a) No person may sell or distribute for sale any pesticide product in this state unless the product label bears the name and address of a licensee under s. 94.68, Stats., who, as the manufacturer, registrant or supplemental registrant of the pesticide product, is responsible for the introduction, sale or distribution of the pesticide product in this state. No license is required of a supplemental registrant if the product label bears the name and address of a licensed manufacturer or registrant, and the name of the supplemental registrant is qualified by appropriate wording such as "Packed for...", "Distributed by...", or "Sold by..." to show that the name of the supplemental registrant is not that of a licensed manufacturer or registrant.

(b) The name and address of the licensee, as it appears on the product label, shall conform to the name and address appearing on the license application. License applications shall include all addresses of licensees which may be used on product labels.

(c) The responsible person under par. (a), or that person's successor in interest, is subject to the license and fee requirements under s. 94.68, Stats., for as long as any pesticide product bearing the responsible person's name and address remains in trade channels in this state. For purposes of this paragraph, some portion of the pesticide products bearing the responsible person's name and address are rebuttably presumed to continue in trade channels for 2 full license years after the pesticide products were last introduced in commerce.

(2) REPORTS BY LICENSEES. As a condition to licensing under s. 94.68, Stats., pesticide manufacturers and labelers shall submit the following information to the department upon request:

(a) Labeling for each pesticide product which the manufacturer or labeler may sell or distribute in this state.

(b) The quantity of each pesticide product sold or distributed by the manufacturer or labeler.

(c) The names and addresses of persons from whom the manufacturer or labeler receives pesticides, or to whom the manufacturer or labeler distributes pesticides.

(d) The identity of pesticide formulation materials and breakdown products for each pesticide product intended for distribution.

(e) Analytical methods which may be used to detect and quantify pesticide formulation materials and breakdown products that may contaminate groundwater.

(f) Information related to toxicology and environmental fate of pesticide formulation materials and breakdown products.

(g) Summaries of all pertinent data, in the possession of the manufacturer or labeler, related to interactive toxicological effects of the pesticide.



(h) Other information which the department may require concerning pesticides sold or distributed by the manufacturer or labeler.

**(3) ACTION ON LICENSE APPLICATION; TIME LIMIT.** The department shall grant or deny a license application by a pesticide manufacturer or labeler within 20 business days after the application is filed with the department, provided that the application is accompanied by all requisite information and documentation.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.06 to be Ag 29.07, Register, April, 1972, No. 196, eff. 5-1-72; renum. from Ag 29.07 to be Ag 29.05, Register, August, 1975, No. 236, eff. 9-1-75; renum. from Ag 29.05 and am., Register, March, 1982, No. 315, eff. 4-1-82; cr. (3), Register, December, 1985, No. 360, eff. 1-1-86; cr. (1) (c), r. and recr. (2), Register, April, 1990, No. 412, eff. 5-1-90.

**ATCP 29.10 Pesticide dealers and distributors; license; recordkeeping. (1) DEALERS AND DISTRIBUTORS OF RESTRICTED-USE PESTICIDES; LICENSE REQUIRED.** No distributor or retail dealer may sell or offer to sell any restricted-use pesticide in this state, whether or not the sale is made wholly or partially in this state, without a license issued by the department under s. 94.685, Stats. The department shall grant or deny a license application within 30 business days after a complete license application is received by the department.

**(2) RECORDKEEPING. (a) General.** Distributors and retail dealers of pesticides, whether or not subject to licensing under s. 94.685, Stats., shall keep records of the amounts and kinds of pesticides sold.

**(b) Restricted-use pesticides.** Distributors and retail dealers of restricted-use pesticides shall maintain a record of each sale or distribution of a restricted-use pesticide. Records shall include all of the following:

1. The date of sale or distribution.
2. The name and address of the purchaser.
3. The purchaser's applicator certification number under s. ATCP 29.159 or 29.162, or the purchaser's license number under sub. (1) if the purchaser is a distributor or retail dealer of restricted-use pesticides, or the purchaser's commercial application business license number under s. 94.703, Stats., if the pesticide is delivered to a commercial application business.
4. The name and address of the person to whom the pesticide was delivered if other than the purchaser.
5. The brand name of the pesticide.
6. The name of the pesticide manufacturer or the federal environmental protection agency registration number of the pesticide.
7. The quantity of the pesticide sold or distributed.

**(c) Records kept for 2 years; inspection and copying.** Records under pars. (a) and (b) shall be kept for 2 years after the date of sale or distribution, and shall be made available to the department for inspection and copying upon request.

**(3) REPORTING.** Not later than October 30 of each year, every distributor and retail dealer of restricted-use pesticides shall report to the department both of the following, on report forms provided by the department:

(a) The name and address of each person from whom the distributor or retail dealer received any pesticide during the preceding 12-month period ending September 30.

(b) The amount of each pesticide which that dealer or distributor distributed to end users for use in Wisconsin during the preceding 12-month period ending September 30.

**Note:** Forms may be obtained from the Department of Agriculture, Trade & Consumer Protection, Agricultural Resource Management Division, P.O. Box 8911, Madison, WI 53708.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.07 to be Ag 29.08, Register, April, 1972, No. 196, eff. 5-1-72; am. (1), Register, May, 1973, No. 209, eff. 6-1-73; renum. from Ag 29.08 to be Ag 29.06, Register, August, 1975, No. 236, eff. 9-1-75; renum. from Ag 29.06 and am., Register, March, 1982, No. 315, eff. 4-1-82; am. (3), Register, December, 1985, No. 360, eff. 1-1-86; r. and recr. Register, April, 1990, No. 412, eff. 5-1-90; cr. (3), Register, August, No. 464, eff. 9-1-94.

**ATCP 29.11 Commercial applicators; license; record-keeping. (1) COMMERCIAL APPLICATION BUSINESS; LICENSE. (a)** No commercial application business may operate in this state without a license issued by the department under s. 94.703, Stats. A commercial application business shall pay a basic annual license fee of \$125. If a commercial application business operates from more than one business location, as defined under par. (b), that commercial application business shall identify each additional business location on its license application and shall pay a supplementary license fee of \$125 for each additional business location, including each new business location added during the license year. The department shall grant or deny a license application within 30 business days after the department receives a complete license application.

(b) A business location under par. (a) includes any of the following sites, regardless of whether the commercial application business owns that site:

1. A site from which a commercial application business operates on a regular basis as a commercial applicator for hire, including any site at which a commercial application business regularly takes orders for pesticide applications. A business location under par. (a) does not include a motorized vehicle from which a commercial application business takes orders by means of a mobile telephone.

2. A site at which a commercial application business mixes or loads at least 1,500 lbs. of pesticide active ingredient during a license year, excluding an active ingredient that is applied at or immediately adjacent to the mixing or loading site. If a commercial application business mixes or loads a combined total of at least 1,500 lbs. of pesticide active ingredient at 2 or more sites that are within 0.5 mile of each other, those sites shall constitute a single business location.

**Note:** See ss. 94.67 (3m) and 94.703, Stats. A natural person who operates a commercial application business as a sole proprietor, and who is also an individual commercial applicator, must be licensed both under this subsection and under sub. (2). If 2 or more commercial application businesses operate from the same business location (e.g., if 2 or more aerial application businesses mix and load pesticides at the same airfield), each of those commercial application businesses must identify and pay a license fee for that business location.

**(2) INDIVIDUAL COMMERCIAL APPLICATOR; LICENSE. (a) Requirement.** Except as provided under par. (b), no person may act as an individual commercial applicator in this state without a license issued by the department under s. 94.704, Stats. A person who mixes or loads pesticides, or who directs the mixing and loading of pesticides, into pesticide application equipment or nurse tanks for application by an individual commercial applicator is considered an individual commercial applicator subject to licensing under this paragraph. The department shall grant or deny a license application within 30 business days after a complete application is received by the department. No license may be issued to a person who is under 16 years of age.

(b) **Exemptions.** No license is required under par. (a) for:

1. A physician licensed to practice in this state who applies a pesticide solely in the course of a medical treatment.

2. A veterinarian who demonstrates evidence of continuing education and competence in the use of pesticides and is applying a pesticide solely in the course of a veterinary treatment.

3. A laboratory researcher who applies a pesticide solely in the laboratory, as part of a bona fide laboratory research project.

4. A person performing janitorial, cleaning or sanitizing services if the person uses no pesticides other than sanitizers, disinfectants and germicides.

5. A private applicator who applies pesticides as a commercial applicator solely on an occasional or incidental basis. This exemption does not apply if the private applicator does any of the following:

a. Applies a restricted-use pesticide without being certified as a private applicator.

b. Applies a pesticide as a commercial applicator for any purpose other than to produce an agricultural commodity.

c. Applies pesticides for other persons as a commercial applicator to more than 500 acres of land during any license year.

d. Applies pesticides for other persons as a commercial applicator on more than 3 separate occasions or applications during any license year.

6. A person who holds a valid temporary commercial applicator trainee registration under s. ATCP 29.161.

**(3) COMMERCIAL APPLICATORS; RECORDKEEPING** (a) *Requirement.* Every commercial applicator, whether or not subject to licensing under sub. (1) or (2), shall keep a record of every pesticide application, except that no record is required for applications of germicides, sanitizers and disinfectants. The record shall be completed on the day of the pesticide application, and shall include all of the following:

1. The name of the individual who applied the pesticide.
2. The name and address of the person for whom the pesticide was applied, if other than the commercial applicator.
3. The location of the site where the pesticide was applied.
4. The pest or pests against which the pesticide was applied.
5. The date and time of application.
6. The brand name of the pesticide applied.
7. The name of the pesticide manufacturer, or the federal environmental protection agency registration number of the pesticide.
8. The rate of application or amount of the pesticide applied, and the total area treated.
9. The specific types of crops, commodities, plants, animals, structures, equipment, materials or sites treated.
10. The location, if other than a licensed business location, at which the pesticide was loaded into the application equipment or nurse tank. This requirement does not apply to applications made with prepackaged retail containers or to applications utilizing application equipment with a total capacity of 5 gallons or less of liquid pesticide or 50 pounds or less of dry pesticide.

(b) *Records kept for 2 years; inspection and copying.* The record of a pesticide application under par. (a) shall be kept for 2 years after the application date, and shall be made available to the department for inspection and copying upon request.

*History:* Renum. from Ag 29.15 (7) and am., Register, March, 1982, No. 315, eff. 4-1-82; am. (1) (intro.), Register, August, 1982, No. 320, eff. 9-1-82; r. and recr. Register, April, 1990, No. 412, eff. 5-1-90; r. and recr. (1), Register, August, 1994, No. 464, eff. 9-1-94.

**ATCP 29.12 Storage of pesticides.** (1) Pesticides shall be stored in accordance with temperature and moisture requirements and other precautionary storage instructions contained on the product label, and in a manner which will assure that original labels on the containers are protected from damage or destruction and kept in readable condition.

(2) Pesticides and their containers while in storage shall be kept in separate rooms or areas, adequately separated from areas used for the storage or display of food, feed, seed, livestock remedies, drugs, plants, and other products or materials so as to prevent possible contamination of those products or materials which could result from volatilization of pesticides, the leakage or breakage of pesticide containers, or other causes.

(3) Indoor rooms or areas used for the storage of pesticides shall be protected and secured in such manner that they are not readily accessible to children or the general public.

(4) Pesticides and pesticide containers stored at outdoor locations, including loading or application sites, shall be kept in a fenced or walled enclosure, secured against entry by children or the general public. Pesticides and pesticide containers shall be covered or otherwise protected and secured to avoid damage to or destruction of product labels, and to prevent hazards to persons, property or wild animals. This subsection does not apply to pesti-

cides or containers temporarily held at loading and application sites in connection with their use, subject to s. ATCP 29.15 (8).

(5) Pesticides removed from original shipping containers prior to storage shall be inspected to assure that caps, lids or other sealing devices on the container are tight or secure, and that the container is sound and unbroken. Defective containers, if not fully repaired, shall be destroyed or disposed of in accordance with label directions or in a landfill site approved by the Wisconsin department of natural resources.

(6) Hypochlorite sanitizers held in storage for sale or distribution shall be stored in such a manner that the oldest stocks will be used to replace stock which has been sold.

(7) Bins or areas used for storage of pesticides shall be maintained in a clean condition and be thoroughly inspected and cleaned prior to use for any other purpose.

*History:* Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from gp 29.08 to be Ag 29.09, Register, April, 1972, No. 196, eff. 5-1-72; renum. from Ag 29.09 to Ag 29.07, Register, August, 1975, No. 236, eff. 9-1-75; renum. from Ag 29.07 and am. (2) to (5), Register, March, 1982, No. 315, eff. 4-1-82.

**ATCP 29.13 Sale and display of pesticides.** (1) No pesticide shall be sold or displayed which is not labeled, or on which the label is illegible in any respect.

(2) Pesticides labeled with the precautionary signal words, "POISON", "DANGER" or "WARNING", and packaged in glass or non-rigid containers, or in containers the caps, lids or dispensing devices of which are not equipped with a protective seal or covering, shall be displayed at a height of not less than 42 inches above the floor or otherwise protected to assure they are out of the reach of children.

(3) Any pesticide before being sold or displayed shall be examined to assure that caps, lids or other sealing devices on the container are tight or secure and that the container is sound and unbroken. Defective containers shall not be placed on display.

(4) Pesticides and their containers, while on display, shall be adequately separated from food, feed, seed, livestock remedies, drugs, plants, or other products or materials displayed or offered for sale, so as to prevent possible contamination of those products or materials which could result from volatilization of pesticides, the leakage or breakage of pesticide containers, or other causes. Under no circumstances shall pesticide containers which have been opened be displayed for sale.

(5) No person may sell a pesticide for uses other than those specifically set forth on the original product label, or supplemental labeling supplied by the manufacturer or registrant for new registered uses and furnished to the purchaser at the time of sale.

(6) No person may sell or distribute any poison or chemical at retail with instructions for its use in the formulation of a pesticide unless it is registered as a pesticide.

(7) No pesticide dealer, distributor or commercial applicator for hire may make any false or misleading verbal or written claim of safety for a pesticide.

*History:* Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.09 to be Ag 29.10, Register, April, 1972, No. 196, eff. 5-1-72; cr. (6) Register, May, 1973, No. 209, eff. 6-1-73; renum. from Ag 29.10 to be Ag 29.08, Register, August, 1975, No. 236, eff. 9-1-75; renum. from Ag 29.08 and am. (2), (4), to (6), Register, March, 1982, No. 315, eff. 4-1-82; cr. (7), Register, April, 1990, No. 412, eff. 5-1-90.

**ATCP 29.14 Removal of pesticides from sale.** (1) The department may by summary order direct the removal from sale of pesticides which are adulterated or misbranded, or held or offered for sale in violation of these rules. Notice of any removal order shall be given to the manufacturer, distributor or registrant whenever recall of the pesticide or other corrective action is appropriate, unless the removal order was served directly on them. The notice shall include the reasons for the order and such instructions as may be necessary to accomplish the recall or removal of such products from sale.

(2) A pesticide, the labeling of which was acceptable at the time of registration but which at a later date is determined to be

defective or deficient because of changes in approved uses, directions for use, warning or precautionary statements or for any other reason, may be ordered removed from sale by the department. The product may be released from the removal order if relabeled to correct existing deficiencies.

(3) Pesticides not registered with the department or for which registration has expired, been discontinued or canceled shall be removed from sale or display by retail dealers and distributors. Such pesticides, including pesticides ordered removed from sale by the department for any reason, shall not be sold or displayed until registered or brought into compliance with the law.

**History:** Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. from Ag 29.10 to be Ag 29.11, Register, April, 1972, No. 196, eff. 5-1-72; renum. from Ag 29.11 to be Ag 29.09, Register, August, 1975, No. 236, eff. 9-1-75; renum. from ATCP 29.09, Register, March, 1982, No. 315, eff. 4-1-82.

**ATCP 29.15 Application, use and disposal of pesticides.** (1) **IMPROPER USE; GENERAL.** No person may mix, handle, store, transport, display, or use a pesticide in a negligent manner or in a manner:

- (a) That is inconsistent with its labeling;
- (b) That results in pesticide overspray; or
- (c) That results in significant pesticide drift.

**Note:** Significant pesticide drift, as used in sub. (1) means pesticide drift which based on credible evidence has moved to areas outside of the target area in amounts which either:

- (a) Cause actual harm to persons, property or the environment; or
- (b) Could conceivably harm persons, property or the environment, under any foreseeable combination of circumstances. This does not require a finding that actual exposure did occur; or
- (c) Are readily visible.

(2) **CONTAMINATION OF THE WATERS OF THE STATE.** (a) No person may apply a pesticide to or cause a pesticide to enter waters of the state directly or through sewer systems. This does not apply to:

1. Fish management, mosquito abatement, or other treatment of waters under the supervision or rules of the department of natural resources;
2. The use of pesticides under s. ATCP 29.04, to treat sewers for insect or rodent control; or
3. The use of pesticides registered and not otherwise prohibited for use in root control in sewage lines or in cleaning, sanitizing, algaciding, slimiciding, or disinfecting 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.

(b) No pesticide application equipment, mix tank or nurse tank may be filled from any waters of the state. This paragraph does not prohibit any person from:

1. Filling pesticide application equipment, mix tanks or nurse tanks from a well or discharge outlet which is fully protected against backflow and backsiphonage under s. ILHR 82.41. The minimum distance for any air gap used under this subsection shall be at least twice the effective opening of the supply outlet but not less than one inch.
2. Applying a pesticide by means of chemigation if the chemigation complies with s. ATCP 29.152.
3. Filling a water tank from surface waters if the water tank is used only to carry water. If any pesticide container is carried on the same vehicle carrying the water tank, the pesticide container must remain at least 8 feet from the surface water while the water tank is being filled.
4. Filling a water tank from surface waters for an aquatic application which complies with ch. NR 107.

(c) Pesticide spray equipment, including mix or nurse tanks other than nurse tanks used exclusively for water supply purposes, shall not be cleaned in any surface waters of the state. Pesticide spray equipment shall also not be filled or cleaned adjacent to surface waters or wells where, because of the slope or other condition

of the ground or bank, pesticides or materials contaminated with pesticides could enter or contaminate the surface waters or well as a result of overflow, leakage 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 causes.

(d) The department may, by rule or special order, take such action as may be necessary to prevent the contamination of groundwaters resulting from the seepage or leaching of pesticides through the soil. Rules or orders may restrict or regulate the storage, use or disposal of pesticides in those areas under the department's jurisdiction where, under surrounding environmental conditions or conditions of use and application of pesticides, contamination may occur. Rules or orders may be issued on an emergency or summary order basis where necessary to prevent an imminent hazard to human health or groundwater quality, subject to a right of hearing before the department.

(3) **APPLICATION EQUIPMENT.** No person may use, furnish, lease or sell pesticide application equipment which is clogged, unclean, leaking or in disrepair, or which cannot be properly calibrated to apply pesticides at the approved label rate of application. This does not prohibit the sale of pesticide application equipment which is clogged, unclean, leaking or in disrepair, or which cannot be properly calibrated, if the seller discloses those defective conditions to the buyer in writing prior to sale.

(4) **AERIAL APPLICATIONS.** (a) *Aircraft requirements and operations.* No person may apply a pesticide by aircraft unless the aircraft meets the requirements of and is operated according to the regulations of the federal aviation administration and the Wisconsin department of transportation.

(b) *Notice of applications.* 1. Residents on land immediately adjacent to land on which pesticides are to be applied by aircraft shall be given advance notice of the aerial application if, at any time within the calendar year, they have made a written request for advance notification to the landowner or person controlling the use of the adjacent land on which pesticides may be applied. Written requests for advance notification shall include the name, mailing address, property location, and telephone number if any, of the person making the request. Responsibility for giving notice shall be with the landowner or person controlling the use of the land on which aerial application of pesticide is to be made, whichever party received the request for notification. Notice from either responsible party shall constitute notice from both. Notice of an aerial application is not required under this paragraph if the target site of the application is at no point closer than  $\frac{1}{4}$  mile to the adjacent land on which the party requesting notice resides.

2. Advance notice of application may be written or oral, and shall include the intended date and time of application, the trade or common name of the pesticide to be applied, and the location of the land on which the application is to be made. Notice shall be given at least 24 hours in advance of application. If the application date is changed, so that the application will occur before or after the intended date specified in the original notice of application, a new notice shall be given as soon as reasonably possible prior to the application. Advance notice need not be given in emergencies where an immediate aerial application is required to control a sudden pest infestation and time does not reasonably allow the giving of an advance 24 hour notice. Notice of emergency applications shall be given as soon as reasonably possible before or after the application, and include a brief explanation of the circumstances constituting the emergency.

3. If a migrant labor camp, as defined in s. 103.90 (5), Stats., is located on land immediately adjacent to land on which pesticides may be applied by aircraft, the operator of the camp shall make annual written request for advance notification under this paragraph.

(5) **DISPOSAL OF PESTICIDES AND CONTAINERS.** (a) No person may dispose of or hold for disposal, any pesticide or pesticide con-

tainer, including any empty pesticide container, in a manner which:

1. Is inconsistent with label directions;
2. May contaminate the waters of the state; or
3. Creates a hazard to persons, property, or the environment.

(b) No pesticide container may be re-used for any purpose. This paragraph does not prohibit any person from:

1. Recycling a container for scrap in compliance with applicable law.
2. Re-using a pesticide storage container which is designed for that purpose, in compliance with label directions.
3. Returning a pesticide container to a pesticide manufacturer, distributor or retail dealer who has agreed to receive the pesticide container.

**(6) TREATED GRAIN AND SEED; HANDLING AND STORAGE.** (a) Seeds treated with pesticides and intended for planting and propagation shall be incorporated into the soil during planting and shall not be used for or mixed with any food, feed, or oil, or be exposed in such a manner that birds or other animals have access to them.

(b) Bins or storage areas used for the bulk storage of grain or seed treated with pesticide shall be prominently posted with a placard at least 11 inches square bearing the following statement, or words or symbols having the same meaning and effect, in conspicuous lettering: "DANGER. THE GRAIN OR SEED IN THIS STORAGE AREA HAS BEEN TREATED WITH THE PESTICIDE (name of pesticide) ON (date)." The placard shall be posted immediately upon treatment or placement of the treated grain or seed in the storage area, and shall be kept posted until the treated grain or seed has been removed from storage, or the storage area can be entered safely. If grain or seed is treated with pesticide while in storage, the pesticide applicator shall be responsible for posting the required placard. This paragraph does not apply to treated grain or seed stored on the property of the producer and not intended for sale.

**(7) POSTING TREATED AREAS.** (a) *Posting required.* Except as provided under par. (i) or the pesticide label, warning signs shall be posted at a pesticide application site whenever any of the following applies:

1. An agricultural employer is required to post the application site under a federal worker protection standard contained in 40 CFR 170. The agricultural employer who operates the site to which the pesticide is applied is responsible for posting that application site under this subdivision.

2. The pesticide is a dual notice pesticide, and the application site is located within 100 feet of a public road or within 300 feet of a residence, migrant labor camp, school, day care facility, health care facility, commercial or industrial facility, public recreation area or other nonagricultural area where persons are likely to be present during the restricted entry interval specified on the pesticide label. The posting requirement under this subdivision applies to any person who applies or orders the application of a dual notice pesticide at a site described under this subdivision, regardless of whether that person is an agricultural employer.

**Note:** Subdivision 2. applies to all persons applying "dual notice" agricultural pesticides — not just agricultural employers. Posting under subd. 2. is designed to protect the general public as well as agricultural workers.

3. The application site is treated with a pesticide, other than an agricultural pesticide, whose label prescribes a time interval for safe re-entry following that non-agricultural application.

4. The pesticide label requires that the treated area be posted.

**Note:** See also the specialized posting requirements under s. ATCP 29.152 (14) related to chemigation applications, s. ATCP 29.153 related to residential structures and s. ATCP 29.154 related to landscape applications.

(b) *Federal worker protection warning signs.* 1. Federal worker protection warning signs required under par. (a) 1. shall comply with this paragraph. Federal worker protection warning signs complying with this paragraph may also be used to satisfy any of the posting requirements under par. (a) 2. to 4.

2. Except as provided under par. (h), or as permitted in this state by the federal environmental protection agency, a federal worker protection warning sign shall have dimensions of at least 14 inches by 16 inches.

3. Except as permitted in this state by the federal environmental protection agency, a federal worker protection warning sign shall portray the information shown in Appendix E in the same format shown in Appendix E, and shall contain no supplementary information beyond that shown in Appendix E.

4. A federal worker protection warning sign shall be constructed to resist deterioration and remain legible throughout the required posting period.

(c) *Other warning signs.* Every warning sign under par. (a), other than a federal worker protection warning sign or a warning sign used to post a landscape application under s. ATCP 29.154, shall comply with all of the following requirements:

1. Except as provided under par. (h), it shall have dimensions of at least 8 1/2 inches by 11 inches.

2. It shall portray the information in Appendix F in the manner shown in Appendix F. The sign may contain supplementary information, beyond that shown in Appendix F, if the information is consistent with and does not detract from that shown in Appendix F.

3. It shall be constructed to resist deterioration and remain legible throughout the required posting period.

(d) *Warning signs; when posted.* Warning signs required under par. (a) may be posted at any time before the pesticide application is made, except that federal worker protection warning signs shall be posted not more than 24 hours before the pesticide application is scheduled to be made.

(e) *Warning signs; when removed.* Warning signs required under par. (a) shall remain posted for the duration of any restricted entry interval specified on the pesticide label. Warning signs may remain posted indefinitely, except that federal worker protection warning signs shall be removed or covered not more than 3 days after the restricted entry interval expires unless they are required for another pesticide application.

(f) *Warning signs; where posted.* Warning signs required under par. (a) shall be posted at the following locations:

1. At normal points of access to the treated area.

2. At 1/4 mile intervals along those borders of the treated area that lie within 100 feet of a public road or within 300 feet of a residence, migrant labor camp, school, day care facility, health care facility, commercial or industrial facility, public recreation area or other area where persons are likely to be present during the restricted entry interval. Treated areas bordering a public road or other area identified under this subdivision for less than 1/2 mile shall be posted with at least one sign.

(g) *Persons responsible for posting.* Except as provided under par. (a) 1., the following persons are individually and jointly responsible for posting a pesticide application under par. (a):

1. The person who operates the premises at which the pesticide is applied.

2. The pesticide applicator.

3. The pesticide applicator's employer, if any.

**Note:** The persons identified under par. (g) may contract between themselves to post an application site, but any or all of them may be held liable if an application site is not properly posted under par. (a) 2. to 4.

(h) *Posting small treated areas.* If a small treated area, such as a potted plant or greenhouse bench top, is not large enough to accommodate warning signs under par. (b) or (c), the treated area may be posted with smaller warning signs whose dimensions are not less than 4 inches by 5 inches. Small treated areas shall be clearly posted on each side at intervals no greater than 25 feet. An individual treated plant may be posted with a single sign. The content and format of the smaller signs shall correspond to the content and format of the standard signs under par. (b) or (c).

(i) *Exemptions.* Paragraph (a) does not apply to pesticide applications made to waters of the state for the management or control of aquatic plants or organisms if the applications comply with ch. NR 107.

(8) **PESTICIDES TEMPORARILY HELD AT LOADING AND APPLICATION SITES.** Pesticides and their containers temporarily held at loading and application sites in connection with their use shall be kept covered, or otherwise secured or guarded so as to prevent access by children, the general public or wild animals, or the contamination of the waters of the state.

(9) **USE OF PESTICIDES HIGHLY TOXIC TO BEES; NOTICE TO BEEKEEPERS.** (a) Persons owning honeybee colonies located within a 1 1/2 mile radius of land on which pesticides are to be applied shall be notified prior to the application of any pesticide labeled as being "Highly Toxic to Bees" or containing the active ingredient methomyl if, at any time within the calendar year, they have made a written request for advance notification to the landowner or person controlling the use of the land on which the pesticides may be applied. Written requests for advance notification shall include the specific location of each bee yard, and the name, address, and telephone number if any, of the honeybee colony owner making the request. Responsibility for giving advance notice shall be with the landowner or person controlling the use of the land on which the pesticide is to be applied, whichever party has received the request for notification. Notice from either responsible party shall constitute notice from both.

(b) Advance notice of application may be written or oral, and shall include the intended date and time of application, the trade or common name of the pesticide to be applied, and the location of the land on which the application is to be made. Notice shall be given at least 24 hours in advance of application. If the application date is changed, so that the application will occur before or after the intended date specified in the original notice of application, a new notice shall be given as soon as reasonably possible prior to the application. Advance notice need not be given in emergencies where an immediate application is required to control a sudden pest infestation, and time does not reasonably allow the giving of an advance 24 hour notice. Notice of emergency applications shall be given as soon as reasonably possible before or after the application and include a brief explanation of the circumstances constituting the emergency.

(10) **COMMERCIAL APPLICATORS FOR HIRE; APPLICATION INFORMATION** (a) *Applicator to provide information.* A commercial applicator for hire who performs a pesticide application for any person, other than a residential or landscape application under s. ATCP 29.153 or 29.154, shall provide that person with a written statement containing the information prescribed under par. (b). Except as provided under par. (c), the statement shall be provided to the contracting person before or immediately after the application is made.

(b) *Information required.* The statement under par. (a) shall include all of the following information:

1. The name, license number and certification number of the applicator.
2. The telephone number of the applicator or the commercial application business.
3. The common chemical name, the brand name, and the EPA registration number of the pesticide applied.
4. The concentration and total quantity of the pesticide applied, or the amount of pesticide active ingredient applied per unit area and the total area treated.
5. Any post-application precautions stated on the pesticide label, including any prescribed time intervals for re-entry, grazing, harvest or swimming.
6. The date and approximate time of application. If the pesticide label specifies a restricted entry interval, the applicator shall

correctly notify the contracting person of the scheduled application date and time before making the application.

7. The location and a description of the area treated.

(c) *Time for providing information; exemption.* The statement required under par. (a) may be provided up to 30 days after the pesticide application if the commercial applicator for hire does both of the following before the application is made:

1. Notifies the contracting person of pertinent post-application precautions specified on the pesticide label.
2. Notifies the contracting person of the date or dates on which the pesticide may be applied.

(11) **VIOLATIONS BY EMPLOYER OR CONTRACTOR.** No person who employs a pesticide applicator, or who contracts with a pesticide applicator to use a pesticide on that person's behalf, may direct, compel or coerce the pesticide applicator in any manner to use a pesticide in violation of ss. 94.67 to 94.71, Stats., or this chapter knowing that there is a reasonable likelihood that the use would be in violation of the law.

*Note:* Nothing in this chapter limits the civil or criminal liability of an employer or contractor for the acts or omissions of a pesticide applicator if the employer or contractor may be held jointly liable with the applicator under this chapter or other applicable law.

(12) **VIOLATION OF PREHARVEST INTERVAL.** No person may harvest an agricultural commodity from a pesticide application site during the preharvest interval specified for that commodity on the pesticide label. The landowner or person controlling the use of the pesticide application site is responsible for any violation of this paragraph. If a commercial applicator for hire makes the pesticide application, the commercial applicator for hire is also responsible for any violation of this paragraph unless the applicator clearly informs the contracting party of the preharvest interval and the requirements of this paragraph prior to making the application.

(13) **PESTICIDE SPILLS.** Pesticide spills shall be immediately contained and recovered in a manner which prevents contamination of the waters of the state, and prevents hazards to persons, property, fish and other animals. Surfaces upon which pesticides have been spilled shall be promptly cleaned to assure the maximum recovery of the material spilled.

*Note:* The department of natural resources administers rules which require reporting of spills. Reporting requirements are based upon the quantity of pesticide spilled.

*History:* Cr. Register, October, 1970, No. 178, eff. 11-1-70; renum. Ag 29.11 to be Ag 29.12; (2) as renum. is am., Register, April, 1972, No. 196, eff. 5-1-72; am. (1), (2), (3), (5) and (6) and cr. (8), Register, May, 1973, No. 209, eff. 6-1-73; renum. from Ag 29.12 to Ag 29.10, am. (1), Register, August, 1975, No. 236, eff. 9-1-75; renum. from Ag 29.10 and am., Register, March, 1982, No. 315, eff. 4-1-82; r. and recr. (1), (2) (b), (5) and (7) (a), (b) and (d), am. (2) (a) 2. and (3), cr. (7) (e) and (10) to (14), Register, April, 1990, No. 412, eff. 5-1-90; am. (10) (a), r. (11), Register, December, 1992, No. 444, eff. 1-1-93; renum. (12) to (14) to be (11) to (13) under s. 13.93 (2m) (b) 1., Stats., Register, December, 1992, No. 444; r. and recr. (7), am. (10) (b) 3. and 6., cr. (10) (b) 7., Register, February, 1996, No. 482, eff. 3-1-96.

**ATCP 29.151 Pesticide mixing and loading.** (1) **GENERAL.** Except as provided under sub. (6), pesticide mixing and loading operations shall comply with applicable requirements under subs. (2) to (5) if the mixing or loading operations are conducted:

(a) Within 100 feet of any well or surface water; or

(b) At a pesticide mixing and loading site as defined under s. ATCP 29.01 (37).

(2) **SPILL CONTAINMENT SURFACE.** (a) *General.* Pesticide mixing and loading operations under sub. (1), including operations to impregnate fertilizers with pesticides, shall be conducted over a surface which is designed to catch and contain pesticide spills. Except as provided under par. (c), the surface shall be paved or lined with asphalt, concrete or other materials approved in writing by the department.

*Note:* The department will maintain a list of approved paving and lining materials for various pesticide compounds, and will provide the current list to interested persons upon request. Additional materials may be approved and added to this list if the person requesting approval provides the department with information demonstrating the adequacy of the materials under intended conditions of use. Information shall

include relevant information related to chemical compatibility, permeability, and physical characteristics and durability.

(b) *Liquid pesticides; spill containment surface.* If any liquid pesticide, including any pesticide mixed with a liquid carrier, is mixed or loaded over a spill containment surface under par. (a), the spill containment surface shall:

1. Be curbed or sloped to contain spillage and prevent liquids from adjacent surfaces from flowing onto the spill containment surface; and

2. Form or drain into a liquid-tight catch basin which meets the capacity requirements under sub. (3).

(c) *Nonliquid pesticides; spill containment surface.* 1. If no liquid pesticides are mixed or loaded over a spill containment surface, the spill containment surface need not comply with the curbing and catch basin requirements under par. (b). Impregnation of a nonliquid fertilizer with a liquid pesticide constitutes the mixing or loading of a nonliquid pesticide under this paragraph.

2. If nonliquid pesticides are mixed or loaded over a spill containment surface under par. (a), the spill containment surface shall be of adequate size to contain reasonably foreseeable spills or overflow from the largest vehicle to which those pesticides are transferred at that location. The spill containment surface shall extend beneath the pesticide load-out conveyor, if any, unless the load-out conveyor is fully enclosed within a housing which is adequate to contain any spillage from the conveyor. The spill containment surface shall be constructed to prevent water or other liquids from flowing onto the surface. The spill containment surface for mixing and loading of nonliquid pesticides may consist of a tarpaulin made of nonabsorbent materials which is of adequate thickness and construction to withstand all foreseeable loading conditions.

(3) **CATCH BASIN.** (a) *Minimum capacity; general.* Except as provided under par. (b), the catch basin under sub. (2) (b) 2. shall have an available capacity of at least 1,500 gallons. To attain the required capacity, the catch basin may include a sump from which liquids are automatically pumped to an above-ground container.

(b) *Pesticide containers smaller than 1,000 gallons.* If no pesticide is transferred from or into a container larger than 1,000 gallons, including containers on application equipment, the available capacity of the catch basin under sub. (2) (b) 2. shall be at least 125% of the capacity of the largest container loaded or unloaded at the site.

(4) **RECOVERY OF DISCHARGES.** Pesticides spilled or intentionally released onto a spill containment surface under sub. (2) shall be promptly recovered from the spill containment surface or catch basin.

(5) **STORAGE OF SPILLS AND RINSATE.** Spilled pesticides and spilled materials containing pesticides may not be stored below ground level. Above ground containers used to hold pesticide spills or rinsate shall be located within secondary containment which complies with s. ATCP 33.04.

(6) **EXEMPTIONS.** Subsections (2) and (3) do not apply to any of the operations identified under pars. (a) to (e). If nonexempt operations are conducted at the same location as exempt operations, the location is not exempt.

(a) Pesticide applications to waters of the state for the management or control of aquatic plants or organisms, provided that the application complies with ch. NR 107.

(b) Mixing or loading pesticides into application equipment having a total capacity of 5 gallons or less of liquid pesticide, or 50 pounds or less of nonliquid pesticide.

(c) Pesticide mixing or loading operations conducted before January 1, 1993 at a site owned or controlled by the same person for whom the pesticide is being applied, provided that the mixing or loading is conducted at least 100 feet away from any well or surface water.

(d) Pesticide mixing or loading operations conducted at or immediately adjacent to the pesticide application site, provided

that the mixing or loading operation is conducted at least 100 feet away from any well or surface water.

(e) Pesticide mixing and loading operations, including the transfer of pesticides into mixing equipment, conducted before January 1, 1993 at a site where fixed or rotary-wing aircraft are loaded if the aircraft is loaded over a permanent or portable spill containment system that meets all of the following requirements;

1. The spill containment system will contain any leak or spill that may occur from any portion of the aircraft's pesticide application system excluding the spray boom.

2. The capacity of the spill containment system is at least 125% the maximum volume of the aircraft's pesticide application system.

3. The spill containment system is constructed of steel or synthetic materials that are resistant to corrosion, puncture or cracking and that are chemically compatible with the products to be loaded. A written confirmation of compatibility shall be kept at the site of the facility or at the nearest local office of the person responsible for operation of the aircraft.

4. The spill containment system is designed and constructed to withstand all foreseeable loading conditions including a full hydrostatic head of any discharged liquid.

5. All equipment for mixing and loading pesticide including the aircraft are located at least 100 feet away from any well or surface water.

**History:** Cr. Register, April, 1990, No. 412, eff. 5-1-90, except (1) (b) eff. 1-1-91; printed to correct error in (2), Register, October, 1991, No. 430.

**ATCP 29.152 Chemigation.** (1) **GENERAL.** No person may apply a pesticide by means of chemigation unless the chemigation system complies with this section. Before initial operation of a chemigation system, the operator shall provide written notice to the department under sub. (15). Chemigation systems shall be designed, constructed, maintained and operated in compliance with this section. The requirements of this section do not apply to residential lawn and garden pesticide applications, direct injection of pesticides into plants or direct application of pesticide to roots of ornamental trees and shrubs.

**Note:** For additional requirements related to chemigation systems, see ss. NR 812.15 (8) and ILHR 82.41.

(2) **WATER SUPPLY FOR CHEMIGATION.** (a) *General.* No person may cause a pesticide to enter the waters of the state directly or through a chemigation system, except as provided under s. ATCP 29.15 (2).

(b) *Potable water supply.* No chemigation system may draw water directly from a potable water supply. A chemigation system may draw water from a pond or reservoir to which water has been pumped from a potable water supply, provided that there is an unobstructed vertical air gap between the potable water supply outlet and the flood level of the pond or reservoir. The minimum air gap shall be at least 2 feet, or at least twice the diameter of the effective opening of the water supply outlet, whichever is greater.

(c) *Nonpotable water supply.* No chemigation system may draw from a nonpotable water supply, unless the system is constructed and operated in compliance with this section. If a chemigation system draws water from a privately owned watertight container or impoundment which is protected by an air gap under par. (b), the chemigation system need not comply with sub. (6).

(3) **CHEMIGATION SYSTEM; GENERAL REQUIREMENTS.** (a) *Design, construction, operation and maintenance.* Every chemigation system shall be designed, constructed, operated and maintained to prevent pesticide contamination of the waters of the state, and to prevent unreasonable hazards to persons, property and the environment. A chemigation system, and every component of the system, shall be installed, operated and maintained in compliance with this section and the manufacturer's specifications to ensure proper operation.

(b) *Construction materials.* Every component of a chemigation system shall be resistant to corrosion, puncture or cracking.

Every component of a chemigation system which may come into contact with pesticides, or with water containing pesticides, shall be chemically compatible with every pesticide used in the system. A written confirmation of chemical compatibility shall be obtained from the manufacturer of the system or component, or from the pesticide manufacturer. The written confirmation shall be kept on file by the operator of the chemigation system, and shall be made available for inspection and copying by the department upon request.

**(4) PESTICIDES INJECTED INTO CHEMIGATION SYSTEMS.** No pesticide may be injected into a chemigation system unless the pesticide is suited for application by chemigation. No pesticide may be injected into a chemigation system contrary to or inconsistent with label directions. Every chemigation system shall be properly calibrated to apply the pesticide at the application rate specified on the pesticide label. The point at which pesticides are injected into a chemigation system shall be located downstream from all devices required under subs. (6) through (9).

**(5) PESTICIDE SUPPLY TANK LOCATION; PESTICIDE CONTAINMENT.** No pesticide container used to hold pesticides for injection into a chemigation system may be located less than 8 feet horizontally from any water supply, including any well head or surface water source. The pesticide container, pesticide injection unit and all connections between the pesticide container and injection unit shall be located within secondary containment which complies with s. ATCP 33.04.

**(6) BACKFLOW PREVENTION; WATER SUPPLY LINE.** (a) *Reduced pressure principle backflow preventer.* Except as provided under par. (b), (c) or (d), a reduced pressure principle backflow preventer shall be installed in every chemigation system. The reduced pressure principle backflow preventer shall comply with ASSE Standard 1013-80, and shall be installed according to the manufacturer's specifications in the water supply pipeline between the supply pump discharge and the point at which pesticides are injected. The reduced pressure principle backflow shall be maintained in fully operational condition. Reduced pressure principle backflow preventers shall be tested at annual intervals for as long as the backflow preventer remains in service by a tester currently listed with the department of industry, labor and human relations as a backflow tester. The operator of the chemigation system shall protect the backflow preventer from freezing.

**Note:** ASSE Standard 1013-80, published by the American Society of Sanitary Engineers, is on file with the secretary of state, the revisor of statutes and the department. A list, by manufacturer and model, of reduced pressure principle backflow preventers which comply with ASSE Standard 1013-80 is available from the department upon request. A list of persons qualified to test reduced pressure principle backflow preventers is available from the department and the department of industry, labor and human relations.

(b) *Barometric loop.* If a chemigation system is not subject to back pressure, a barometric loop may be installed in the chemigation system in place of a reduced pressure principle backflow preventer. The barometric loop shall extend to an elevation of 35 feet above the highest outlet in the chemigation system. The loop shall be installed in the water supply pipeline between the supply pump discharge and the point at which pesticides are injected.

(c) *Check valves.* 1. If a chemigation system draws from surface waters, 2 check valves connected in series, each preceded by a vacuum relief valve and an automatic low pressure drain valve, may be installed in the chemigation system in place of a reduced pressure principle backflow preventer. The check valves shall be quick-closing by spring action. The check valves shall be of a type which have been tested in accordance with the procedures established in underwriters' laboratory (UL) standard 312 and certified as being in compliance with all the standards and requirements contained in underwriters' laboratory (UL) standard 312. Check valves shall be installed in the water supply pipeline between the supply pump discharge and the point at which pesticides are injected.

**Note:** A current list of approved check valves, by manufacturer and model, is available from the department. UL Standard 312, published by underwriters' laboratory, is on file with the secretary of state, the revisor of statutes and the department.

2. Each vacuum relief valve required under this paragraph shall be installed on top of the horizontal water supply pipeline on the supply side of the check valve. The vacuum relief valve shall have a minimum orifice diameter of 3/4 inch if the water supply pipe has a nominal inside diameter of 4 inches or less; a minimum orifice diameter of 1 inch if the pipe diameter is 5 to 8 inches; and a minimum orifice diameter of 2 inches if the pipe diameter is 10 to 12 inches.

3. Each automatic low pressure drain valve required under this paragraph shall be installed on the bottom of the horizontal water supply pipeline on the supply side of the check valve. The automatic low pressure drain valve shall have a minimum orifice diameter of 3/4 inch. The valve shall not extend upward beyond the inside surface of the bottom of the water supply pipeline. The drain outlet shall be located above grade at a distance of at least 2 inches or a distance equal to twice the diameter of the drain outlet, whichever is greater. The drain outlet shall be installed and located so that, when draining occurs, the drained liquid will flow away from any nearby wellhead or surface water.

(d) *Gooseneck loop and check valve.* If a chemigation system draws water from surface waters, which are higher in elevation than the surface being chemigated, a check valve complying with par. (c) 1., followed by a gooseneck loop, may be installed in the chemigation system in place of a reduced pressure principle backflow preventer. The gooseneck loop shall be constructed and installed so that the irrigation pump is located at a higher elevation than the water source, the bottom of the pipe at the apex of the loop is at least 24 inches higher in elevation than the highest outlet in the chemigation system, and the pesticide injection port is located downstream from the gooseneck loop at a point which is at least 6 inches lower in elevation than the bottom of the pipe at the apex of the loop. A vacuum relief valve complying with par. (c) 2. shall be installed in the top of the pipe at the apex of the loop. The check valve shall be preceded by a low pressure drain complying with par. (c) 3.

**(7) FLOW INTERRUPTER; PESTICIDE SUPPLY LINE.** In every chemigation system, a flow interrupter shall be installed in the pesticide supply line between the pesticide injection unit and the pesticide supply tank. A flow interrupter may consist of a normally closed, solenoid-operated valve or similar device which forms part of the interlock system under sub. (10).

**(8) FLOW SENSOR; INJECTION LINE.** A flow sensor or pressure switch shall be installed at or near the outlet of the injection pump on the injection line. The flow sensor or pressure switch shall be installed in such a manner that, if the injection line fails for any reason, the flow sensor or pressure switch shall shut off the injection pump.

**(9) CHECK VALVE; PESTICIDE INJECTION LINE.** In every chemigation system, a check valve shall be installed in the pesticide injection line between the pesticide injection unit and the point at which pesticides are injected into the irrigation water. The check valve shall be spring loaded and have a minimum opening or cracking pressure of 10 pounds per square inch.

**(10) INTERLOCK BETWEEN WATER PUMP AND PESTICIDE INJECTION UNIT.** In every chemigation system, there shall be a mechanical or electrical interlock between the water supply pump and the pesticide injection unit. If the flow of water is interrupted, the interlock shall immediately shut off the pesticide injection unit.

**(11) WATER PRESSURE FAILURE; AUTOMATIC SHUT-OFF.** In every chemigation system, a low pressure switch shall be installed in the water supply pipeline. The switch shall be effectively designed and installed to shut off the irrigation system's power supply if water pressure decreases to the point where pesticide application is no longer in compliance with the pesticide's label directions.

**(12) PURGING A CHEMIGATION SYSTEM.** After pesticide injection is completed, water shall be pumped through a chemigation system for at least the flush time of the irrigation system.

**(13) OPERATING A CHEMIGATION SYSTEM.** (a) *Operation and observation plan.* The owner or operator of a chemigation system shall, prior to operating a chemigation system, have prepared a written operation and observation plan for the chemigation system. The plan shall be followed by the owner or operator. The plan shall contain the following information:

1. A listing and identification of sensitive areas which may be subject to drift or overspray by the chemigation system. Sensitive areas are nontarget areas and include surface water, wetlands, public roads within 100 feet of the site to be treated and residential areas, labor camps, day care centers, hospitals, medical clinics, nursing homes, school yards, playgrounds, parks and other similar public areas or facilities within 300 feet of the site to be treated.
2. A description of the methods and procedures to be utilized to prevent drift and overspray.
3. A description of the backflow prevention system and other methods utilized by the chemigation system to prevent backflow.
4. A description of the procedures to be followed and methods to be used to accurately and effectively monitor wind speed and direction for prevention of drift and overspray.
5. A description of the system utilized and methods and procedures followed to disable any sprinkler heads or end guns for the purpose of preventing drift or overspray.
6. A description of the methods and procedures to be followed to assure the chemigation system is properly calibrated and remains properly calibrated.
7. A description of the methods and procedures to be followed to monitor the chemigation system and assure the chemigation system is functioning properly.
8. A statement indicating the flush time for the chemigation system.
9. A description of the manner and method by which proper and effective observations will be made of the chemigation system to assure that it is functioning according to the plan and the law.
10. A description of the safety procedures to be observed and safety equipment to be worn by persons observing the chemigation system's operation or entering treated areas for the purpose of performing repairs.

(b) *Plan location and availability.* The operation and observation plan under par. (a) shall be kept at the chemigation site or in the possession of the person operating the chemigation system while the chemigation system is functioning. A copy of the plan shall also be kept at the business office or residence of the owner or operator. When requested by the department, plans shall be provided to department personnel for inspection and copying.

(c) *Observation of chemigation systems.* If sensitive areas identified under par. (a) 1. are subject to potential drift or overspray from a chemigation system, the person operating the chemigation system shall be present at the chemigation site at all times while the system is operating. In other cases, no more than one hour may pass between times when the person operating the system is present at the chemigation site as part of the operation and observation plan. A person is present at the chemigation site if the person is in a position from which the person can effectively observe, monitor and determine that the chemigation system is properly functioning, properly calibrated, not causing pesticide overspray or drift, and not creating an unreasonable hazard to persons, property or the environment. Operators of chemigation systems shall comply with observation requirements specified on the pesticide label if those requirements are more extensive than the requirements under this paragraph.

**(14) POSTING OF CHEMIGATED AREAS.** (a) *General posting requirement.* Sites treated with a pesticide by means of chemiga-

tion shall be posted with warning signs. Each warning sign shall portray the information in Appendix G in the manner shown in Appendix G. A warning sign may contain supplementary information, beyond that shown in Appendix G, if the information is consistent with and does not detract from that shown in Appendix G. Warning signs shall be posted in compliance with par. (b) before chemigation begins. Warning signs shall not be removed until chemigation is completed and treated surfaces have dried. A chemigation application shall also be posted in compliance with applicable requirements under s. ATCP 29.15(7). Warning signs under this paragraph may remain posted indefinitely as long as they are composed of materials that are not subject to deterioration and remain legible for the duration of the posting interval.

(b) *Posting locations; exception.* The posting requirement under par. (a) applies to sites treated with pesticides by means of chemigation only to the extent that the target area to be treated with the pesticide borders within 100 feet of a public road or within 300 feet of a residence, migrant labor camp, school, day care facility, health care facility, commercial or industrial facility, public recreation area or other area where persons are likely to be present during the operation of the chemigation system. Placards [warning signs] shall be posted at regular intervals along the border between the treated area and the public road or other sensitive area, and at normal points of access, with at least one placard [warning sign] being posted for each 1/4 mile of border. Treated areas bordering a public road or other sensitive area for less than 1/4 mile shall be posted with at least one placard [warning sign].

(c) *Responsibility for compliance.* The person responsible for operation of the chemigation system shall be responsible for compliance with this subsection.

**(15) ADVANCE NOTICE TO OPERATE CHEMIGATION SYSTEM.** (a) *Initial notice.* Before operating a chemigation system for the first time after January 1, 1990 at any location, the operator shall give a written notice to the department. Notice shall state the following information for each location at which the chemigation system is operated:

1. The name and address of the person who operates and is responsible for the chemigation system.
2. The specific location of the chemigation system.
3. The type of water supply from which the chemigation system will draw.
4. The type of backflow protection to be used in the system, pursuant to sub. (6). If a backflow prevention device, other than a reduced pressure principle backflow preventer, is used in the chemigation system, notice shall specify the type, manufacturer, model, serial number and installed location of the device.

(b) *Notice of changes.* The operator of a chemigation system shall promptly notify the appropriate department of any changes in the information provided under par. (a).

**Note:** Information provided under this subsection will be shared between the department, the department of industry, labor, and human relations, and the department of natural resources.

**(16) MODIFICATION CHEMIGATION SYSTEM; DEPARTMENT AUTHORIZATION.** The department may, for good cause shown, permit an alternative chemigation system design which does not comply with the standards under this section, provided that the alternative design complies with other applicable state and federal law and affords equal or greater protection to the waters of the state. No person may operate an alternative chemigation system which is not in compliance with this section unless the alternative chemigation system has been approved in writing by the department. Applications for department approval shall be submitted to the department in writing. Applications shall be accompanied by all information and design specifications which may be required by the department. The department shall grant or deny an application within 45 days after a complete application is received by the department.

**History:** Cr Register, April, 1990, No. 412, eff. 5-1-90; am. (14) (a) and (b), Register, February, 1996, No. 482, eff. 3-1-96.



**ATCP 29.153 Commercial applications to residential structures. (1) DEFINITIONS.** As used in this section:

(a) "Common area" means an area in a residential structure that is accessible to residents but is not part of any individual dwelling unit.

(b) "Dwelling unit" means that portion of a residential structure which is used, or designed for use, as a residence by a household.

(c) "Resident" means any person residing in a residential structure.

(d) "Residential application" means the application of a pesticide, other than a germicide, sanitizer or disinfectant, to a residential structure.

(e) "Residential structure" means a structure that is used wholly or in part as a human residence, and includes all facilities and furnishings pertaining to that structure. "Residential structure" includes a residential structure occupied on a rental basis, and also includes a mobile home. "Residential structure" does not include any of the following:

1. A hotel, motel or similar premises occupied on a transient basis.
2. A hospital, nursing home or similar facility occupied by persons receiving medical care or related services.
3. A prison, jail or other place of detention.

**(2) INFORMATION TO PERSONS REQUESTING RESIDENTIAL APPLICATIONS.** (a) *Offer to provide pre-application information.* If a commercial applicator contracts with any person to make a residential application, the commercial applicator shall offer to provide that person, upon request, with all of the pre-application information under par. (b). The commercial applicator shall renew the offer whenever an existing contract for residential applications is extended or altered.

**Note:** See Appendix A for an example of a pre-application information notice.

(b) *Pre-application information; provided upon request.* If a person contracting for a residential application requests any of the following information from the commercial applicator hired to make the application, the commercial applicator shall provide the information to the requester, in writing, before making the application:

1. The common chemical or brand name of each pesticide that may be applied.
2. A copy of the pesticide label of each pesticide that may be applied.
3. The date on which the pesticide application will be made. The commercial applicator may communicate the application date orally, rather than in writing, if the requester agrees to oral notification.
4. The name, business address and telephone number of a person who can provide further information about the pesticide application.

(c) *Post-application information.* Upon completing a residential application for any person, a commercial applicator shall provide that person with all of the following information in writing:

1. The name and business address of the individual applicator who made or supervised the application, and the applicator's license number if any.
2. The common chemical or brand name of each pesticide actually applied.
3. The concentration and total quantity of each pesticide actually applied, or the amount of pesticide active ingredient applied per unit area and the total area treated.
4. Any pertinent post-application precautions stated on the pesticide label, including precautions related to re-entry or use of treated areas.
5. The date and approximate time of application.

6. Notice that a copy of the pesticide label is available upon request for each pesticide actually applied. If the person contracting for the residential application requests a copy of the pesticide label, the commercial applicator shall provide that copy free of charge.

**(3) NOTICE TO RESIDENTS.** (a) *Notice required.* If a commercial applicator makes a residential application, whether or not the application is a contract application, the commercial applicator shall provide the following information to affected residents at the time of application, in the manner provided under pars. (b) and (c):

1. The name and business address of the individual applicator who made or supervised the application, and the applicator's license number if any.
2. The telephone number of a person who can provide further information about the application.
3. The common chemical or brand name of the pesticide applied.
4. The concentration and total quantity of the pesticide applied, or the amount of pesticide active ingredient applied per unit area and the total area treated.
5. Any pertinent post-application precautions stated on the pesticide label, including precautions related to re-entry into or use of treated areas. If the pesticide label prescribes a time interval for safe re-entry following application, each treated area shall be prominently posted with one or more warning placards [warning signs] under s. ATCP 29.15 (7).
6. The date and approximate time of application.

(b) *Application to dwelling unit; method of giving notice.* If a commercial applicator makes a residential application in any dwelling unit, the commercial applicator shall leave the information under par. (a) with an adult resident of that dwelling unit, or shall prominently post the information at the entrance to that dwelling unit.

(c) *Application to common area; method of giving notice.* If a commercial applicator makes a residential application to any common area within a residential structure, the commercial applicator shall provide the information under par. (a) by posting clearly legible notices in common entryways or other conspicuous locations so that all residents are likely to see the notices.

**History:** Cr. Register, December, 1992, No. 444, eff. 1-1-93.

**ATCP 29.154 Landscape applications; notice and information. (1) DEFINITIONS.** As used in this section:

(a) "Block" means an area, bounded by 4 streets or some other physical feature, which is the smallest geographic area used by the U.S. bureau of the census for data collection and tabulation.

(b) "Division" means the agricultural resource management division of the department.

(c) "Dwelling unit" means that portion of a residential structure that is used, or designed for use, as a residence by a household.

(d) "Golf course superintendent" means the person responsible for on-site management of a golf course.

(e) "Landscape" means turf areas, including turf areas in and around residential premises, public or commercial facilities, parks, workplaces, care facilities, recreational areas and public lands. "Landscape" includes trees, shrubs and other vegetation growing within turf areas. "Landscape" does not include utility or transportation right-of-way areas, flower or vegetable gardens, greenhouses, nurseries, or areas used for agricultural production, forest production or commercial turf production.

(f) "Landscape application" means the application of a pesticide to a landscape. "Landscape application" does not include any of the following pesticide applications:

1. To trees by means of injection.
2. By sub-soil injection.
3. For forest pest control as described under s. ATCP 29.16 (4) (a).

4. For public health pest control as described under s. ATCP 29.16 (13) (a).

5. For regulatory pest control as described under s. ATCP 29.16 (14) (a).

6. For abatement of pests as described under s. 94.02, Stats.

(g) "Landscape pesticide" means a pesticide that is labeled for use on landscape.

(h) "Treated landscape" means that portion of a landscape to which a pesticide is applied.

(2) **INFORMATION TO PERSONS REQUESTING LANDSCAPE APPLICATIONS.** (a) *Offer to provide pre-application information.* If a commercial applicator contracts with any person to make a landscape application, the commercial applicator shall offer to provide that person, upon request, with all of the pre-application information under par. (b). The commercial applicator shall renew the offer whenever an existing contract for residential applications is extended or altered.

(b) *Pre-application information; provided upon request.* If a person contracting for a landscape application requests any of the following information from the commercial applicator hired to make the application, the commercial applicator shall provide the information to the requester, in writing, before making the application:

1. The common chemical or brand name of each pesticide that may be applied.

2. A copy of the pesticide label for each pesticide that may be applied.

3. The date on which the pesticide application will be made. The commercial applicator may communicate the application date orally, rather than in writing, if the requester agrees to oral notification.

4. The name, business address and telephone number of a person who can provide further information about the pesticide application.

*Note:* See Appendix A for an example of a pre-application information notice.

(c) *Post-application information.* Upon completing a landscape application for any person, a commercial applicator shall provide that person with all of the following information in writing:

1. The name and business address of the individual applicator who made or supervised the application, and the applicator's license number if any.

2. The common chemical or brand name of each pesticide actually applied.

3. The concentration and total quantity of each pesticide actually applied, or the amount of pesticide active ingredient applied per unit area and the total area treated.

4. Any pertinent post-application precautions stated on the pesticide label, including precautions related to re-entry or use of treated areas.

5. The date and approximate time of application.

6. Notice that a copy of the pesticide label is available upon request for each pesticide actually applied. If the person contracting for the landscape application requests a copy of the pesticide label, the commercial applicator shall provide that copy free of charge.

(3) **POSTING WARNING SIGNS.** (a) *Requirement.* Whenever a commercial applicator makes a landscape application, other than a landscape application to a golf course under sub. (7), the commercial applicator shall post warning signs in compliance with this subsection.

(b) *When posted.* The commercial applicator shall post warning signs before the pesticide application begins. No person may remove a warning sign until sunset of the day following the application, or until sunset of the day the safe re-entry interval on

the pesticide label has expired, whichever is later. The commercial applicator is not required to remove the warning signs.

(c) *Size of warning signs.* The dimensions of each warning sign shall be at least 4 inches by 5 inches.

(d) *Warning sign construction.* Each warning sign shall be attached to a stable supporting device. Warning signs shall be made of rigid material. The material shall be durable enough so that a warning sign can be easily read for at least 72 hours after posting, notwithstanding reasonably foreseeable adverse weather conditions.

(e) *Warning sign contents; general.* Warning signs shall be professionally printed with red lettering on a white background, according to the format shown in Appendix B. Each warning sign shall contain the universal symbol depicting an adult, child and pet in a circle, with a diagonal line across the circle. Each warning sign shall bear the statements "PESTICIDE APPLICATION" and "PLEASE KEEP OFF" in not less than 36-point type. Each warning sign shall also bear all of the following statements in not less than 9-point type:

1. The statement "DO NOT REMOVE UNTIL SUNSET THE DAY FOLLOWING APPLICATION", except that if the pesticide label specifies a restricted entry interval, the warning sign shall bear the alternative statement "DO NOT REMOVE UNTIL SUNSET ON [specify date that the restricted entry interval expires]."

2. The statement "FOR ADDITIONAL INFORMATION ON THIS APPLICATION OR ANY FUTURE APPLICATIONS CALL [name and telephone number of the commercial applicator's business] OR THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION AT 608-224-LAWN".

(f) *Warning sign locations.* 1. Warning signs shall be posted at regular intervals along the boundaries of the treated landscape. If the boundaries of the treated landscape do not correspond to readily identifiable physical or property boundaries, warning signs shall be posted so that the warning signs define the boundaries of the treated landscape.

2. Warning signs shall be posted so that they are clearly visible from the boundaries of the treated landscape. If a driveway, sidewalk or other established vehicle or pedestrian thoroughfare intersects the boundary of the treated landscape, a warning sign shall be posted so that it is clearly visible from that point of intersection.

3. Except as provided under subd. 4. or 5., at least one warning sign shall be posted for every 300 feet of treated landscape boundary.

4. If the area of the treated landscape exceeds 2,000 sq. ft., but the perimeter of the treated landscape is less than 1,200 feet, at least 4 warning signs shall be posted at regular intervals along the boundary of the treated landscape.

5. If the area of the treated landscape is less than 2,000 sq. ft., only one warning sign is required for that treated landscape. The warning sign shall be posted so that it is clearly visible from the most likely point of entry to the treated landscape.

(4) **INFORMATION PROVIDED UPON REQUEST.** (a) If any person asks a commercial applicator or commercial application business for information about a landscape application made by that applicator or business, the applicator or business shall indicate the following information is available, and the business shall provide the information orally or in writing upon request:

1. The name and business address of the commercial application business.

2. The common chemical or brand name of each pesticide applied, and the EPA registration number of that pesticide.

3. The concentration and total quantity of each pesticide applied, or the amount of pesticide active ingredient applied per unit area and the total area treated.

4. The date and approximate time of application.

5. Any post-application precautions stated on the pesticide label, including precautions related to re-entry into or use of treated areas.

6. A copy of the pesticide label for each pesticide applied. The commercial application business may require the requester to pay reasonable copying and postage costs before providing a copy of a pesticide label.

(b) The department may request information from commercial application businesses employing individual commercial applicators certified in the category of ornamental and turf pest control under s. ATCP 29.16 (4) regarding the number and nature of requests received under par. (a). A commercial application business may notify the department if the commercial application business receives what it considers to be excessive or harassing requests for information under par. (a). The department may investigate allegations of excessive or harassing requests under par. (a) in order to determine whether this subsection should be amended or repealed.

(c) Within 2 years after the effective date of this subsection, the department shall report to the board of agriculture, trade and consumer protection on the effectiveness and workability of this subsection. The department may recommend that this subsection be amended or repealed if the department finds that this subsection is not effective or workable.

(5) **REGISTRY OF PERSONS REQUESTING ADVANCE NOTICE OF LANDSCAPE APPLICATIONS.** (a) *General.* If a person files a complete registration request with the department under par. (b) on or before March 1 of any year, the department shall include that person in the annual registry prepared and distributed to commercial application businesses under par. (c).

(b) *Registration request.* A registration request shall be postmarked or delivered to the department on or before March 1. The registration request shall include all of the following:

1. The requester's name, address and telephone number.
2. The address of those properties, on the requester's block or immediately adjoining blocks, for which the requester is seeking advance notice of landscape applications under par. (e).

*Note:* A registration request may be submitted to the DATCP Landscape Application Registry, Agricultural Resource Management Division, P.O. Box 8911, Madison, Wisconsin 53708-8911.

(c) *Annual registry of persons entitled to notice.* Based on complete registration requests postmarked or received by the department on or before March 1 of each year, the division shall compile and distribute an annual registry of persons entitled to advance notice of landscape applications. The annual registry takes effect on April 1 and remains in effect until April 1 of the following year. The annual registry shall include the name and address of each requester, and the address of those properties specified by the requester under par. (b) 2.

(d) *Annual registry distributed to commercial application businesses.* Prior to April 1 of each year, the division shall distribute a free copy of the annual registry under par. (c) to every licensed commercial application business that employs individual commercial applicators certified in the category of ornamental and turf pest control under s. ATCP 29.16 (5). The division shall also provide a free copy of the annual registry to any other commercial applicator who requests a copy.

(e) *Advance notice of landscape applications.* No commercial application business may make a landscape application to any property unless the commercial application business has given 12 hours advance notice to every person on the current registry under par. (c) who has requested advance notice of landscape applications to that property, provided that the property is located on the block where the requester resides, or on an immediately adjacent block.

(f) *Form of notice.* A commercial application business may give notice under par. (e) by telephone, or may mail or deliver

notice to the requester's address listed in the registry under par. (c). Notice mailed to the requester's address must be postmarked no less than two business days prior to a landscape application. The notice shall state the name, business address, and telephone number of the commercial application business, the address of the landscape to be treated, and the possible pesticides to be applied.

(g) *Rescheduled applications.* If a commercial application business gives advance notice of a landscape application under par. (f), and if that landscape application is subsequently rescheduled to a different date, the commercial application business shall give advance notice of the rescheduled application. Notice of the rescheduled application shall comply with par. (f), and shall be given to each person who received notice of the originally scheduled application.

(6) **LANDSCAPE APPLICATIONS TO GOLF COURSES.** No person may make a landscape application to a golf course unless all of the following conditions are met:

(a) *Signs posted.* All-weather signs, complying with par. (b), shall be permanently and conspicuously posted at all of the following locations:

1. At or near the place where golfers register to play the course.

2. At or near the first tee of every 9 holes.

3. If the non-golfing public is allowed access to the golf course by means of any road, driveway, sidewalk, path or other established thoroughfare, at every point where that thoroughfare intersects the boundary of the golf course.

(b) *Sign size and contents.* The dimensions of each sign under par. (a) shall be at least 12 inches by 12 inches. In red lettering of not less than 1/2 inch height on a white background, the sign shall state that **"PESTICIDES ARE PERIODICALLY APPLIED TO THIS GOLF COURSE. YOU MAY CONTACT THE GOLF COURSE SUPERINTENDENT FOR FURTHER INFORMATION."**

(c) *Information provided upon request.* If any person asks the golf course superintendent for information about pesticide applications to the golf course, the superintendent or the superintendent's designee shall indicate that the following information is available, and shall provide the information in writing upon request:

1. A general description of the types and amounts of pesticides commonly applied to the golf course.

2. An identification of pesticide applications made to the golf course within the last week prior to the request, including the common chemical or trade names of the pesticides applied and the areas to which those pesticides were applied.

3. A copy of the pesticide label related to any pesticide application under subd. 2. The superintendent may require the requester to pay reasonable copying and postage costs before providing the label.

(d) *Additional posting for pesticide with restricted entry interval.* If the pesticide label prescribes a restricted entry interval, the treated area shall be posted with warning signs according to sub. (3).

(7) **RETAIL DEALERS SELLING LANDSCAPE PESTICIDES.** No retail dealer may sell a landscape pesticide to any person, other than a certified commercial applicator, unless the retail dealer displays both of the following at the point of sale, and offers them to buyers at no additional charge at the time of sale:

(a) *Warning signs.* Warning signs shall be professionally printed on a minimum of 70 weight paper or other rigid material durable enough so that a warning sign can be easily read for at least 72 hours after posting, notwithstanding reasonably foreseeable adverse weather conditions. The dimensions of each warning sign shall be at least 4 inches by 5 inches. Warning signs shall be printed with red lettering on a white background, with the contents show in Appendix C. Each warning sign shall contain the univer-

sal symbol depicting an adult, child and pet in a circle, with a diagonal line across the circle. Each warning sign shall bear the words, in not less than 20-point type, "PESTICIDE APPLICATION," and "PLEASE KEEP OFF."

**Note:** See Appendix C for an example of a warning sign.

(b) *Notice to customers.* Written notice which is identical to the notice contained in Appendix D.

**(8) COUNTY AND MUNICIPAL REGULATION PREEMPTED.** This section and the law under which it is promulgated are of statewide concern, and uniformly affect every county and municipality. No county or municipality may enact a law or ordinance related to landscape applications by commercial applicators which conflicts with or frustrates the uniform application of any provision of this section.

**Note:** The intent of this section is to establish uniform statewide standards for landscape applications by commercial applicators, including uniform standards related to public notice and posting requirements so that applicators are not subject to differing or conflicting requirements between municipalities.

This section neither prohibits nor authorizes the enactment of county or municipal laws or ordinances governing landscape applications by homeowners.

**History:** Cr Register, December, 1992, No. 444, eff. 1-1-93; am. (3) (a) to (d), (f), (7) (a), r. and recr. (3) (c), cr. (6) (d), Register, February, 1996, No. 482, eff. 3-1-96.

**ATCP 29.155 Worker protection; agricultural pesticides.** (1) **GENERAL.** Agricultural employers, persons who employ handlers, and commercial applicators for hire shall comply with applicable worker protection standards under 40 CFR 170.

**Note:** See also s. ATCP 29.15(7) related to posting treated areas.

**(2) AGRICULTURAL EMERGENCIES; EARLY ENTRY BY WORKERS.**

(a) In this subsection:

1. "Agricultural emergency" means a sudden onset of conditions, such as flood, fire, frost, hail, high winds or loss of power, which will result in a substantial economic loss that can only be prevented or mitigated by the early entry of agricultural workers into an area treated with an agricultural pesticide. "Agricultural emergency" does not include conditions which an agricultural employer could have anticipated and controlled, or which are precipitated by an agricultural employer's mismanagement or negligence.

2. "Early entry" means the entry of agricultural workers into an area treated with an agricultural pesticide before the restricted entry interval has expired, for the purpose of performing hand labor.

3. "Hand labor" means any agricultural activity, performed by hand or with hand tools, that causes a worker to have substantial contact with surfaces such as plants, plant parts, or soil that may contain pesticide residues. "Hand labor" includes activities such as: harvesting, detasseling, thinning, weeding, topping, planting, removing suckers, pruning, debudding, roguing, and packing produce into containers in the field. "Hand labor" does not include operating, moving or repairing irrigation, watering or frost protection equipment, acting as a crop advisor, or performing similar activities which do not entail substantial contact with surfaces that may contain pesticide residues.

4. "Substantial economic loss" means a loss in profitability which is greater than that which could occur as a result of normal annual fluctuations in crop yield or quality.

(b) An agricultural employer may have agricultural workers enter an area treated with an agricultural pesticide before the restricted entry interval has expired if all of the following apply:

1. The early entry is necessary to prevent or mitigate the effects of an agricultural emergency.

2. The early entry complies with applicable worker protection standards under 40 CFR 170.112.

3. The agricultural workers entering the treated area have been trained in compliance with 40 CFR 170.130.

4. The agricultural employer reports the early entry to the department within 72 hours after the early entry occurs.

(c) A report under par. (b)4 shall be made in writing and shall include all of the following:

1. The name, mailing address and telephone number of the agricultural employer.

2. The date and location of the early entry.

3. A description of the agricultural emergency which necessitated the early entry.

4. The brand name, EPA registration number and restricted entry interval for each pesticide applied to the treated area.

5. The number of agricultural workers involved in the early entry.

(d) The department may require an agricultural employer to file additional information with the department related to an early entry.

**Note:** Subsection (2) is intended to serve as a "declaration of emergency" for purposes of 40 CFR 170.112 (d) (2) (i). If all of the conditions under sub. (2) are met, no further "declaration" by the department is needed in order to permit the early entry of agricultural workers into a treated area.

**(3) TRAINING HANDLERS.** (a) An employer of a handler shall ensure that the handler is trained as required by 40 CFR 170.230 before the handler engages in any handler activity.

(b) A person who trains handlers under par. (a) shall be at least one of the following:

1. Currently certified as a pesticide applicator by the department.

2. Currently certified as a pesticide applicator in another state, pursuant to an applicator certification program approved by the federal environmental protection agency.

3. Employed by the university of Wisconsin—extension to train pesticide applicators.

4. A graduate of a worker protection train—the—handler program approved by the department or the federal environmental protection agency.

**(4) TRAINING AGRICULTURAL WORKERS.** (a) An agricultural employer may not require or permit any agricultural worker to enter any area that has been subject to a restricted entry interval during the previous 30 days, unless that agricultural worker has been trained as required by 40 CFR 170.130.

(b) A person who trains agricultural workers under par. (a) shall be at least one of the following:

1. Currently certified as a pesticide applicator by the department.

2. Currently certified as a pesticide applicator in another state, pursuant to an applicator certification program approved by the federal environmental protection agency.

3. Employed by the university of Wisconsin—extension to train pesticide applicators.

4. A graduate of a worker protection train—the—handler or train—the—worker program approved by the department or the federal environmental protection agency.

5. Currently trained as a pesticide handler under 40 CFR 170.230.

**(5) TRAINING RECORDS.** (a) Agricultural employers and persons who employ handlers shall keep current pesticide training records for each agricultural worker or handler whom they currently employ. These records shall be retained for at least one year after employment is terminated and shall include all of the following:

1. The name and permanent home address of the agricultural worker or handler.

2. The date or dates on which the agricultural worker or handler received training required under sub. (3)(a) or (4)(a).

3. A signed statement by the agricultural worker or handler confirming that the worker or handler received the training required under sub. (3)(a) or (4)(a) on the dates indicated.

(b) Persons training agricultural workers or handlers under sub. (3) (a) or (4) (a) shall keep training records for all of the agricultural workers or handlers whom they train. Records shall include all of the information required under par. (a). Trainers shall keep the records for at least 5 years following the date on which they give the training.

*History:* Cr. Register, February, 1996, No. 482, eff. 3-1-96.

**ATCP 29.159 Certification of individual commercial applicators.** (1) **CERTIFICATION REQUIRED.** No individual commercial applicator licensed under s. ATCP 29.11 (2) may engage

in any activity for which that license is required unless the individual commercial applicator is also certified by the department in the applicable pesticide use category under s. ATCP 29.16. If a license holder is certified under s. ATCP 29.16 (1), (2), (4), (5) or (8), that license holder may mix or load pesticides for application in all of those categories, but may apply pesticides only in the category or categories for which the license holder is specifically certified. Persons exempt from licensing under s. ATCP 29.11 (2) (b) are also exempt from certification under this section.

(2) **QUALIFYING FOR CERTIFICATION.** To be certified in any pesticide use category, an individual commercial applicator shall demonstrate through examination under sub. (4) practical knowledge of the nature and proper use of pesticides; practical knowledge of the principles and practices of pest control; and competency in the proper use and handling of pesticides. Practical knowledge and competency shall be demonstrated in the general areas identified under sub. (5), and in the pesticide use category under s. ATCP 29.16 for which the applicator seeks certification. An aerial applicator in any pesticide use category shall also demonstrate practical knowledge and competency under sub. (6).

(3) **LENGTH OF CERTIFICATION; RENEWAL.** Except as provided under s. 94.705 (4) (c), Stats., certification is valid for a period of 5 years, unless suspended or revoked by the department. During the 5-year period, the certification may be amended to include additional pesticide use categories under s. ATCP 29.16, but all amendments expire concurrently at the end of the 5-year period. An individual commercial applicator may be re-certified in any pesticide use category for an additional 5-year period if the applicator demonstrates continuing practical knowledge and competency as required by sub. (2). Continuing practical knowledge and competency shall be demonstrated by a written examination under sub. (4).

(4) **TESTING FOR CERTIFICATION.** (a) *Written examination required.* Except as provided under s. 94.705 (4), Stats., no person may be certified or recertified as an individual commercial applicator in any pesticide use category unless that person passes a written examination administered by the department. The examination shall test the applicator's practical knowledge and competency in each area required under sub. (2). If necessary, the department may require an applicator to undergo a performance test in addition to a written examination. An examination shall be given within 10 business days after the applicator pays the required fee under par. (b), or at a later date if requested by the applicator. Certification shall be issued by the department to applicants within 20 business days after successfully passing the required examination.

(b) *Examination fees; reexamination.* An individual commercial applicator applying for certification or recertification shall pay an examination fee of \$10 for each pesticide use category in which the applicator applies to be certified or recertified, unless the applicator is exempt from fees under s. 94.705 (1) (d), Stats. If an applicator fails to pass an examination in any pesticide use category, the applicator may retake the examination after the 24-hour waiting period. If an applicator fails to pass a reexamination, the applicator may again retake the examination after a 30 day waiting period. Applicators shall pay a fee of \$5 for each reex-

amination. No examination may be administered until the required fee is paid.

(5) **CERTIFICATION STANDARDS; GENERAL.** In order to be certified in any pesticide use category under s. ATCP 29.16, an individual commercial applicator shall demonstrate practical knowledge and competency in that pesticide use category, and in each of the following general areas:

(a) *Label and labeling comprehension.* Knowledge related to the general format and terminology of pesticide labels and labeling; ability to understand instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels; knowledge of pesticide use classifications; and knowledge that pesticide use inconsistent with labeling is prohibited.

(b) *Risks and safety measures.* Knowledge of risk factors and safety measures including pesticide toxicity; hazards to persons; common exposure routes; common types and causes of pesticide accidents; precautions necessary to guard against injury to applicators and other persons; the need for and use of protective equipment; symptoms of pesticide poisoning; first aid and other procedures to be followed in case of a pesticide accident; the proper identification, storage, transportation, handling, mixing and loading of pesticides; and the disposal of pesticides and their containers according to label directions and department rules.

(c) *Environment.* Knowledge of potential environmental consequences resulting from the use or misuse of pesticides. This includes the effect of climatic conditions; terrain; drainage patterns; soil types; hydrogeologic conditions; and the presence of fish, wildlife and other nontarget organisms including endangered species. Knowledge of potential hazards associated with indoor applications of pesticides including direct exposure to humans or pets and contamination of food and surfaces coming in contact with food.

(d) *Pests.* Knowledge of pests including the identification of relevant pests, the common features of pest organisms, characteristic damage caused by pest organisms, and pest development and biology as it may be relevant to problem identification and control.

(e) *Pesticides.* Knowledge of pesticide types and formulations; the compatibility, synergism, persistence, and animal and plant toxicity of different formulations; the hazards and residues associated with the use of different pesticides; factors influencing pesticide effectiveness or pest resistance to pesticides; and the mixing and dilution of pesticides.

(f) *Equipment.* Knowledge of the types of equipment used in the application of pesticides, including the advantages and limitations of each type of equipment, the use and maintenance of equipment, and the calibration of equipment.

(g) *Application techniques.* Knowledge of the methods or procedures used to apply different pesticides and pesticide formulations; factors affecting the choice of application method or application rate; the relationship of pesticide discharge and placement to proper use; unnecessary use and misuse of pesticides; and prevention of overspray and drift.

(h) *Laws and regulations.* Knowledge of state and federal laws and regulations applicable to pesticides and their use, including the federal act; ss. 94.67 to 94.71, Stats.; and chs. ATCP 29 and NR 80.

(6) **CERTIFICATION STANDARDS; AERIAL APPLICATORS.** No individual commercial applicator may apply pesticides by fixed or rotary-wing aircraft unless that applicator is certified as an aerial applicator in the applicable pesticide use category under s. ATCP 29.16. To be certified as an aerial applicator in any pesticide use category, the applicator shall comply with all applicable certification requirements under this section. In addition, the applicator shall demonstrate practical knowledge and competency in the application of pesticides by aircraft, including principles and

practices of aerial pest control, effects of aerial pest control on the environment, and prevention of pesticide drift and overspray. No person may aerially apply pesticides unless that person is fully trained and licensed to operate the type of aircraft to be used in pesticide applications.

(7) **CERTIFICATION STANDARDS; PESTICIDE MIXER-LOADERS.** (a) Except as provided under par. (b), no person may mix or load pesticides for application or direct the mixing or loading of pesticides into application equipment or nurse vehicles unless certified as a mixer-loader. To be certified in this category, the mixer-loader shall, by examination, demonstrate practical knowledge and competency in the mixing and loading of pesticides, including determination of mixing rates and procedures, use of protective safety equipment, proper spill response procedures, and proper disposal practices.

(b) Persons may mix or load pesticides for application in any category for which the person is specifically certified. In addition, persons certified under s. ATCP 29.16 (1), (2), (4), (5) or (8) may mix or load pesticides for application in all of those categories, but may apply pesticides only in the category or categories for which the person is specifically certified.

History: Cr. Register, April, 1990, No. 412, eff. 5-1-90

**ATCP 29.16 Individual commercial applicators; certification categories.** In order to be certified under s. ATCP 29.159 in any of the pesticide use categories under subs. (1) to (15), an individual commercial applicator shall meet the certification requirements provided for that pesticide use category under this section.

(1) **FIELD AND VEGETABLE CROP PEST CONTROL.** (a) This category includes individual commercial applicators using or directing the use of pesticides to control pests in the production of agricultural field and vegetable crops, and on grasslands and noncrop agricultural lands.

(b) Applicators shall demonstrate practical knowledge of crops grown, specific pests affecting those crops, types of pesticides which may be used to control such pests, and the effects of such pesticides on the ultimate use of the crop for food or feed purposes. Practical knowledge shall also be demonstrated concerning soil and water problems; human safety considerations; pre-harvest intervals; re-entry intervals; phytotoxicity; and the potential for environmental contamination, non-target injury, and community problems associated with the use of pesticides on agricultural field and vegetable crops, grasslands and noncrop agricultural lands.

(2) **FRUIT CROP PEST CONTROL.** (a) This category includes individual commercial applicators using or directing the use of pesticides to control pests affecting the production of agricultural fruit crops, including small fruits, tree fruits and nuts.

(b) Applicators shall demonstrate practical knowledge of crops grown; specific pests affecting small fruits, tree fruits and nuts, and the types of pesticides which may be used to control such pests; soil and water problems; human safety considerations; pre-harvest and re-entry intervals; phytotoxicity; and the potential for environmental contamination, non-target injury and community problems resulting from the use of pesticides in agricultural fruit crop areas and on small fruits, tree fruits and nuts.

(3) **ANIMAL PEST CONTROL.** (a) This category includes individual commercial applicators using or directing the use of pesticides to control pests on animals, including livestock, poultry and pets, or to control pests in places, other than homes or residences, where animals are confined. (b) Applicators applying pesticides to animals shall demonstrate practical knowledge of such animals and pests which may affect them, the types of pesticides and pesticide formulations which may be used to control such pests, and specific pesticide toxicity and residue potential associated with the use of such pesticides. Practical knowledge shall also be demonstrated concerning relative hazards associated with the use of such pesticides, taking into consideration application techniques,

extent of treatment, age of the animal treated, and the effect the use of such pesticides may have on animals and their products.

(4) **FOREST PEST CONTROL.** (a) This category includes individual commercial applicators using or directing the use of pesticides to control pests in forests, forest nurseries, Christmas tree plantations and tree seed producing areas.

(b) Applicators shall demonstrate practical knowledge of forests, forest nurseries, tree seeds, and tree seed production in this state, and pests which may affect forests, forest nurseries, tree seeds, and tree seed production; the types of pesticides which may be used to control such pests; the effects of pesticides on tree or forest products; and the provisions of s. 26.30, Stats., and ch. NR 35, as they relate to forest pest control. Practical knowledge shall also be demonstrated of the cyclic occurrence and specific population dynamics of certain pests as a basis for the programming of pesticide applications; relative biotic agents and their vulnerability to pesticides; and pest control methods which will minimize secondary problems associated with the use of pesticides, such as unintended effects on natural aquatic habitats and wildlife. Proper use of specialized equipment shall be demonstrated as it may relate to meteorological factors and adjacent land use.

(5) **ORNAMENTAL AND TURF PEST CONTROL.** (a) This category includes individual commercial applicators using or directing the use of pesticides to control pests in the maintenance and production of ornamentals and turf.

(b) Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamentals and turf; pests which may affect them; the types of pesticides which may be used to control such pests; and the effects, including phytotoxicity, of pest control on ornamentals and turf. Applicators shall also demonstrate practical knowledge of drift, persistence of the pesticide beyond the intended period of pest control, and application methods which will minimize or prevent hazards to persons and the environment.

(6) **SEED TREATMENT PEST CONTROL.** (a) This category includes individual commercial applicators using or directing the use of pesticides to control pests on seeds.

(b) Applicators shall demonstrate practical knowledge of seeds, the types of seeds that require chemical protection against pests, pests which may affect them, and the types of pesticides which may be used to control such pests. Practical knowledge shall also be demonstrated concerning seed coloration carriers, and surface active agents which influence pesticide binding and may affect germination. Applicators shall also demonstrate practical knowledge of hazards associated with the handling, sorting, mixing, use and disposal of treated seed.

(7) **AQUATIC PEST CONTROL.** (a) This category includes individual commercial applicators using or directing the use of any pesticide in standing or running surface water to control pests, excluding applicators engaged in public health related activities under sub. (13).

(b) Applicators shall demonstrate practical knowledge of various water use situations, including the types of pests to be controlled, and pesticides which may be used to control them. They shall also demonstrate practical knowledge of the potential of downstream effects, secondary effects which may be caused by improper applications, and principles of limited area application. They shall demonstrate practical knowledge of potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments; and the provisions of ss. 29.62 and 144.025, Stats., and chs. NR 20 and 107, as they relate to the control of aquatic nuisances, protection of water resources, and control of detrimental fish.

(8) **RIGHT-OF-WAY PEST CONTROL.** (a) This category includes individual commercial applicators using or directing the use of pesticides to control pests in the maintenance of public roads, electric powerlines, pipelines, railway right-of-ways or other similar areas.

(b) Applicators shall demonstrate practical knowledge of the wide variety of environments involved in this category, the types of pests to be controlled, and the types of pesticides which may be used to control them. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of such pesticides within right-of-way areas; the impact right-of-way pesticide applications may have on adjacent areas and communities; and runoff, drift, and excess foliage destruction problems as well as recognition of target organisms.

**(9) INDUSTRIAL, INSTITUTIONAL, STRUCTURAL, AND HEALTH-RELATED PEST CONTROL; GENERAL.** (a) This category includes individual commercial applicators using or directing the use of pesticides to protect stored, processed, or manufactured products; or to control pests in, or around food handling establishments, human dwellings, schools, institutions, industrial establishments, warehouses, grain elevators, and any other public or private structures and adjacent areas. It does not include individual commercial applicators under subs. (10) to (14).

(b) Applicators shall demonstrate practical knowledge of a wide variety of pests and their life cycles; types of pesticides and pesticide formulations which may be used for their control; methods of application that avoid the contamination of food, the damage and contamination of habitat, and the exposure of people and pets to pesticides; and specific factors which may lead to a hazardous condition including continuous exposure of humans to pesticides. Applicators shall also demonstrate a practical knowledge of environmental conditions affecting the outdoor application of pesticides for health related pest control.

**(10) FUMIGATION PEST CONTROL.** (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. ATCP 29.16 (10m) who use or direct the use of pesticides as soil fumigants.

(b) Applicators shall demonstrate a practical knowledge of a wide variety of pests and their life cycles; types of pesticides which may be used for their control; methods of fumigation application that avoid the contamination of food or other products or commodities, the damage and contamination of habitat, and the exposure of people and pets to fumigants. 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.

**(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.

**(11) WOOD DESTROYING PEST CONTROL.** (a) This category includes individual commercial applicators using or directing the use of pesticides for the prevention or control of termites.

(b) Applicators shall demonstrate practical knowledge of the life cycle of termites; the types of pesticides and pesticide formulations which may be used to control termites; and methods of application that avoid damage and contamination of habitat and the exposure of people and pets to pesticides. Applicators shall also demonstrate practical knowledge of specific factors which may lead to hazardous conditions, including continuous exposure

of humans to pesticides, and environmental factors related to the control of termites.

**(12) WOOD PRESERVATION.** (a) This category includes individual commercial applicators using or directing the use of pesticides to preserve and protect wood or wood based materials against damage from insects, fungi, surface molds and mildew, marine crustaceans, shipworms and other pests.

(b) Applicators shall demonstrate practical knowledge of wood species and wood structure, wood destroying pests and their biology, types and uses of wood preservatives and methods of application. Applicators shall also demonstrate knowledge of safe handling and disposal practices, and hazards to humans and the environment associated with use of wood preservatives.

**(13) PUBLIC HEALTH PEST CONTROL.** (a) This category includes individual commercial applicators using or directing the use of pesticides to control pests in public health programs for the management and control of pests having medical and public health importance.

(b) Applicators shall demonstrate practical knowledge of vector disease transmission as it relates to and influences application programs, the recognition of pests involved and their life cycles and habitats, and the types of pesticides which may be used for their control. Applicators shall also demonstrate practical knowledge of a great variety of environments covered by this category ranging from streams to conditions found in buildings and such non-chemical control methods as sanitation, waste disposal, and drainage.

**(14) REGULATORY PEST CONTROL.** (a) This category includes individual commercial applicators who use or direct the use of pesticides in the control of regulated pests.

2. Applicators shall demonstrate practical knowledge of regulated pests, the pesticides which may be used for their control, and laws relating to the quarantine and regulation of pests. They shall also demonstrate practical knowledge of factors influencing the introduction, spread and population dynamics of regulated pests; the potential impact on the environment of restricted-use pesticide used in suppression or eradication programs; and the provisions of ss. 26.30, 29.62, 144.025, Stats., and chs. NR 20, 35 and 107, as they relate to the control of regulated pests. The applicator's knowledge shall extend beyond that required by their immediate duties and includes practical knowledge of regulated pests and emergency control measures invoked to control such pests in other areas of the United States.

**(15) DEMONSTRATION AND RESEARCH PEST CONTROL.** (a) This category includes individual commercial applicators who demonstrate the use and application of pesticides, or who direct such demonstrations. This category includes extension specialists and county agents, commercial representatives demonstrating pesticide products, and other individual commercial applicators who demonstrate the use and application of pesticides. This category also includes individual commercial applicators who use pesticides pursuant to any field research project.

(b) Applicators in this category who demonstrate the use and application of pesticides shall demonstrate practical knowledge and competency in a broad spectrum of pesticide uses. They shall demonstrate practical knowledge of pests, pesticides which may be used for the control of pests, population levels occurring in each demonstration situation, and potential problems which may be associated with pest control demonstrations. They shall also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. Applicators engaged in pesticide demonstrations or field research shall demonstrate practical knowledge and competency in all pest control categories under this section which are relevant to that demonstration or research.

**(16) CERTIFICATION CARDS.** (a) A certification card shall be issued by the department to a private or commercial applicator when the applicator has satisfied all the conditions required for

certification. Persons claiming to have satisfied the applicable certification requirements may submit a request for certification to the department. The department shall grant or deny a request for certification within 20 business days after the request is made, provided that the request is accompanied by all requisite information and documentation.

(b) Duplicates of the certification card may be issued by the department to the certified applicator if the applicator's card is lost, stolen, mutilated or destroyed upon payment of costs for duplicating the card.

**History:** Cr. Register, August, 1978, No. 272, eff. 9-1-78; renum. from Ag 29.15 (2) to (6), (8) and (9), cr. (6), Register, March, 1982, No. 315, eff. 4-1-82; am. (7) (a), Register, December, 1985, No. 360, eff. 1-1-86; r. (1), (2) (intro.), (3) to (6) and (8), renum. (2) (a) 1. to 3., (b) to (f), (g) 1. to 3., (h) to (j) and (7) to be (1) to (11) and (13) to (16) and am. (1) to (3) (a), (4) (a), (5) (a), (6) (a), (7) (a), (8) (a), (9) (a), (10) (a), (11), (13) (a), (14) (a) and (15), cr. (intro.) and (12), Register, April, 1990, No. 412, eff. 5-1-90; am. (10) (a), cr. (10m), Register, October, 1991, No. 430, eff. 7-1-92.

**ATCP 29.161 Commercial applicator trainee registration. (1) REGISTRATION; AUTHORIZATION.** (a) A competent person, not certified as a commercial applicator under s. 94.705, Stats., and not licensed under s. 94.704, Stats., may commercially use pesticides for not more than 30 days as a registered trainee under this section, subject to the conditions specified under sub. (3). Registration under this section allows a registered trainee to apply pesticides only as part of a bona fide training program conducted by the trainee's employer in preparation for the trainee becoming certified and licensed as an individual commercial applicator.

(b) To be registered as a commercial applicator trainee under this section, a person shall:

1. Have the ability to understand and follow oral instructions and read and comprehend written instructions including pesticide labels and labeling information;
2. Be at least 16 years of age;
3. Be capable of performing functions associated with the proper use and application of pesticides on the basis of prior training and experience, to the satisfaction of the employer and the certified applicator under whose supervision the trainee will be acting; and
4. Be capable of carrying out assignments and instructions in a responsible manner.

**(2) REGISTRATION PROCEDURE.** To register as a commercial applicator trainee under this section, a trainee shall file with the department a completed registration form prescribed by the department. The completed registration form shall include the following information:

- (a) The name and address of the applicant and the commercial application business employing the applicant.
- (b) The name, certification number, pesticide use categories for which the certification is valid, and expiration date of certification, for each commercial applicator responsible for supervising the trainee under sub. (3) (c).
- (c) The pesticide use category or categories under which the trainee will be using pesticides during the training period.
- (d) The trade name and either the manufacturer's name or the EPA (federal environmental protection agency) registration number of each pesticide which may be applied by the trainee during the training period.
- (e) The date on which the registration form is signed, and the signatures of the trainee and each of the certified and licensed applicators identified under sub. (2) (b).
- (f) Other information required by the department.

**(3) CONDITIONS AND CONTROLS.** A registered trainee shall comply with all of the following conditions:

(a) A registered trainee may only use pesticides for a 30-day period beginning on the date that a complete registration form is filed with the department.

(b) A registered trainee may not use any pesticide classified as restricted-use unless authorized in writing by the department.

(c) A registered trainee may only use pesticides under the direct, on-site supervision of a certified, licensed applicator identified under sub. (2) (b), in pesticide use categories for which the supervisor is certified as a commercial applicator.

(d) A person may register as a trainee no more than once annually, except that a person may register twice within a year if the person is employed by a different commercial application business at the time of the second registration.

(e) A registered trainee may only commercially use pesticides if they have a dated copy of their registration form in their immediate possession.

**(4) SUSPENSION OR REVOCATION.** The department may summarily suspend or revoke a registration under this section if any condition or requirement under which a person was registered is violated.

**History:** Cr. Register, April, 1990, No. 412, eff. 5-1-90.

**ATCP 29.162 Certification of private applicators. (1) RESTRICTED-USE PESTICIDES; CERTIFICATION REQUIRED.** No person may use or direct the use of a restricted-use pesticide as a private applicator unless that person is certified as a private applicator under this section. A person who mixes or loads a restricted-use pesticide, or who directs the mixing or loading of a restricted-use pesticide into pesticide application equipment or nurse tanks for application by a private applicator shall be certified as a private applicator under this section, or as an individual commercial applicator in a relevant pesticide use category under ss. ATCP 29.159 and 29.16. No person under 16 years of age may be certified as a private applicator.

**(2) STANDARDS FOR CERTIFICATION.** To be certified under this section, a private applicator shall demonstrate practical knowledge and competency in the proper use and application of restricted-use pesticides. An applicant for certification shall demonstrate practical knowledge and competency in each of the following areas:

(a) Pest control problems and practices associated with the production of agricultural commodities, including recognition of common pests and the damage caused by those pests.

(b) Reading and understanding pesticide labels and labeling information, including the common or generic names of pesticides; the types of pests that they are intended to control; pesticide use classifications and directions for use; pesticide application methods and timing of pesticide applications; appropriate safety measures and precautions; pre-harvest and re-entry restrictions; and pesticide disposal instructions and procedures.

(c) Applying pesticides according to label directions.

(d) Preparing correct pesticide concentrations under various circumstances, taking into account relevant factors such as the area to be covered, the speed of the application equipment, the rate of application, and the quantity dispersed during a given period of operation.

(e) Proper handling, storage and disposal of pesticides and their containers.

(f) Recognizing potential human health hazards, including hazards to farm workers, and taking appropriate precautions.

(g) Recognizing potential environmental hazards, including hazards to groundwater and endangered species, and taking appropriate precautions.

(h) Recognizing poisoning symptoms, antidotes, and procedures to follow in case of a pesticide accident.

(i) Recognizing the legal liabilities and responsibilities of a private applicator, including those provided under the federal act, ss. 94.67 to 94.71, Stats., and chs. ATCP 29 and NR 80.

**(3) SUPPLEMENTARY STANDARDS FOR CERTIFICATION; PRIVATE APPLICATORS APPLYING FUMIGANTS.** In addition to meeting the requirements under sub. (2), a private applicator who wishes to



use or direct the use of a restricted-use fumigant pesticide shall demonstrate a practical knowledge of the pests against which the fumigants may be used, the life cycles of those pests, the types of fumigants that are available for use, methods of fumigation, and potential hazards to persons and the environment from the use of fumigants. The applicant shall also demonstrate practical knowledge and competency related to the use of fumigation equipment including safety procedures; monitoring devices; re-entry intervals and posting requirements; and other measures needed to ensure the safety of persons, property and the environment. Practical knowledge and competency under this subsection shall be demonstrated by means of a written examination under sub. (5).

(4) **CERTIFICATION BY TRAINING.** Pursuant to s. 94.705 (5) (a), Stats., an applicant for private applicator certification may attend a training session approved by the department. The training shall cover the areas of practical knowledge and competency required for certification. A private applicator shall be certified within 10 business days after the applicator successfully completes the training session. Certification is good for 5 years, unless suspended or revoked for cause.

(5) **CERTIFICATION BY EXAMINATION.** Pursuant to s. 94.705 (5) (b), Stats., an applicant for private applicator certification may take a written examination approved by the department. The examination shall cover the areas of practical knowledge and competency required for certification. A private applicator shall be certified within 10 business days after the applicator successfully completes the examination. Certification is good for 5 years unless suspended or revoked for cause.

(6) **EMERGENCY USE CERTIFICATION.** The department may issue an emergency use certification for a specific one-time use of a restricted-use pesticide, pursuant to s. 94.705 (5) (c), Stats.

(7) **CERTIFICATION FOR PERSONS OF LIMITED ENGLISH LANGUAGE ABILITY.** The department may certify persons of limited English language ability pursuant to s. 94.705 (5) (d), Stats.

(8) **NON-RESIDENT CERTIFICATION.** The department may certify a non-resident private applicator pursuant to s. 94.705 (4), Stats.

(9) **RENEWAL OF CERTIFICATION.** A person certified under sub. (4) or (5) may renew the certification for an additional 5 year period by either of the certification methods prescribed under sub. (4) or (5).

**History:** Cr. Register, April, 1990, No. 412, eff. 5-1-90, except (3) (b), eff. 1-1-91.

**ATCP 29.17 Aldicarb use restrictions; reporting requirements. (1) DEFINITIONS.** As used in this section:

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

(b) "Point of standards application" means a point of standards application as defined in s. ATCP 31.01 (13).

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

(d) "Reliable groundwater test result" means an official groundwater test result as defined in s. ATCP 31.01 (8), or a groundwater test result which the department determines to be reliable under s. ATCP 31.02 (2). It includes every groundwater test result which was used as a basis for prohibiting aldicarb use under the provisions of s. ATCP 29.17 or 29.171, which became effective on or after April 1, 1983.

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

(b) *Use by certified applicators only.* Pesticides containing the active ingredient aldicarb are classified as restricted-use pesticides. As restricted-use pesticides, they may only be applied by the following persons:

1. An individual commercial applicator certified in the pest control category pertaining to the type of application being made.

2. A certified private applicator.

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

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

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

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

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

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

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

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

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

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

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

(4) **DEPARTMENT REVIEW OF PROPOSED APPLICATIONS; EVALUATION OF APPLICATION SITES.** Whenever the department receives a report of intended application under sub. (3), the department shall evaluate the proposed application site for susceptibility to groundwater contamination by aldicarb residues. The evaluation shall be based on the relevant environmental characteristics of the proposed application site, including depth to groundwater and soil texture. Site characteristics used in the evaluation shall be determined on the basis of data published by the Wisconsin geological and natural history survey, the U.S. department of agriculture soil conservation service, or other reliable sources.

(5) **ALDICARB APPLICATIONS TO CERTAIN SITES PROHIBITED.** (a) The department shall, by summary special order, prohibit a proposed aldicarb application if either of the following applies:

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

2. In the judgment of the department based on a site evaluation under sub. (4), 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.

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

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

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

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

2. The owner of the proposed application site, and every other person filing a report of intended application for the site, agrees that future applications to the site may be prohibited based on groundwater test results obtained from a representative application site chosen by the department, if the groundwater test results at the representative application site show aldicarb residues in concentrations of 10 ppb or more. A representative application site is a site which, in the department's judgment, is similar in its relevant environmental characteristics to the proposed application site described in the report of intended application. Relevant environmental characteristics include the characteristics listed under sub. (4). In determining whether one application site may be considered representative of another, the department shall compare any prior existing concentrations of aldicarb residues which are known to be present in groundwater at the 2 sites.

(b) A summary special order under par. (a) 1. shall include all of the following conditions:

1. One or more monitoring wells shall be installed at the proposed application site according to a written plan which is approved in writing by the department prior to the aldicarb application. The plan shall specify:

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

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

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

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

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

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

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

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

c. The laboratory at which the groundwater samples are to be tested for aldicarb residues. Groundwater samples shall be promptly tested for aldicarb residues after the samples are collected. Test methods shall be approved by the department and have a limit of detection at or below one part per billion. Groundwater test results shall be promptly forwarded to the department.

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

a. Groundwater test results obtained from the monitoring well may be used to prohibit future aldicarb applications to the application site, as appropriate pursuant to ch. 160, Stats., and department rules, if the groundwater test results indicate that aldi-

carb residues are present in groundwater at a concentration of 10 parts per billion or more.

b. The department may at reasonable times, and upon prior notice to the owner of the monitoring well site, inspect the monitoring well and collect groundwater samples from the monitoring well.

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

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

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

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

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

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

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

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

(b) *Creation and scope of prohibition areas.* 1. A prohibition area is created to include every township quarter-quarter section lying wholly or in part within one mile of a point of standards application at which aldicarb residues have been detected in groundwater at a concentration of 10 ppb or more, based on a reliable groundwater test result received by the division at any time before or after April 1, 1988. If the reliable groundwater test result was received by the division before April 1, 1988, the prohibition area is created on April 1, 1988. If the reliable groundwater test result is received by the division after April 1, 1988, the prohibition area is created on the date when the groundwater test result is received by the division. The one mile radius from the point of standards application shall be calculated from the center point of the township quarter-quarter section in which the actual point of standards application is located.

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

**(9) DISTRIBUTORS AND RETAIL DEALERS OF ALDICARB; RECORD-KEEPING AND REPORTING REQUIREMENTS.** Distributors and retail dealers shall keep records of aldicarb distributions and sales, specifying the amount of aldicarb product included in each sale or dis-

tribution, and the name and address of the purchaser or recipient. During each week in which aldicarb sales or distributions are made by a distributor or dealer, the distributor or dealer shall file a written report with the department, specifying the amount of aldicarb product sold or distributed during that week to each purchaser or recipient, and the name and address of each purchaser or recipient. Reports may be in the form of actual invoice copies or written sales or distribution summaries.

**(10) NOTICE OF CONTAMINATION FINDINGS** (a) Whenever the department receives a reliable groundwater test result which indicates that aldicarb residues are present in groundwater at a concentration of one part per billion or more, the department shall give written notice of the groundwater test result to:

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

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

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

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

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

**(12) COMPLIANCE WITH PREVENTIVE ACTION LIMIT NOT NECESSARILY MAINTAINED; REQUIRED DISCLOSURE BY DEPARTMENT.** Based on information available to the department, it appears that aldicarb applications to susceptible application sites will result in groundwater contamination exceeding the preventive action limit for aldicarb at points of standards application downgradient from the application sites. Aldicarb applications to many of these sites will be subject to prohibition under sub. (5). In addition, sub. (2) continues current management practice requirements, and sub. (6) creates groundwater monitoring requirements. These combined requirements are designed to limit aldicarb contamination and detect any contamination which may occur. However, these requirements may not be adequate to assure compliance with the preventive action limit for aldicarb in all cases. If the enforcement standard for aldicarb is unexpectedly exceeded at an individual site, future applications at that site will be subject to prohibition under ch. 160, Stats., ch. ATCP 161, and other applicable rules of the department.

**Note:** This notice is given pursuant to the requirements of s. 160.19 (2) (b), Stats. It is intended solely as a disclosure statement, and does not affect or alter any other provision of this section.

**History:** Emerg. cr. eff. 3-15-82; cr. Register, March, 1983, No. 327, eff. 4-1-83; emerg. r. eff. 3-3-86; r. and recr. Register, March, 1988, No. 387, eff. 4-1-88; am. (2) (b) 1. and 2. and (11), r. (3) (b), Register, April, 1990, No. 412, eff. 5-1-90.

**ATCP 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. ATCP 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. ATCP 29.16 (1) and in soil fumigation pest control under s. ATCP 29.16 (10m).

2. The person is a private applicator and is certified in the fumigation category under s. ATCP 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  $\frac{1}{4}$  mile of a hospital, nursing home, jail or prison.

(c) No agricultural application of metam sodium pesticide may be made within  $\frac{1}{4}$  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. ATCP 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  $\frac{1}{4}$  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 employee 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° Fahrenheit.

(e) No metam sodium pesticide may be applied by chemigation if the soil temperature at the application site is greater than 70° 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. ATCP 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) 224-4500.

**(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. ATCP 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) 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.

**History:** Emerg. cr. eff. 9-4-90; emerg. cr. eff. 9-9-91; cr. Register, October, 1991, No. 430, eff. 11-1-91.

**ATCP 29.18 Authority.** This chapter is adopted under authority of ss. 93.07 (1), 94.69 and 94.705 (2), Stats., and enforced under s. 94.71, Stats.

**History:** Cr. Register, March, 1982, No. 315, eff. 4-1-82; renum. from Ag 29.17, Register, March, 1983, No. 327, eff. 4-1-83.

## Appendix A

**Note:** The following is an example of pre-notification that complies with ss. ATCP 29.153 (2) and ATCP 29.154 (2):

**Note:** Before any pesticides may be applied to your property, Wisconsin's pesticide rules require that you be notified that you are entitled to receive pre-application information. If you request pre-application information you will be provided with the following information:

- The common chemical or brand name of each pesticide that may be applied.
- A copy of the pesticide label for each pesticide that may be applied.
- The date on which the pesticide application will be made (this can be given verbally if you give approval).
- A contact name, address and telephone number where you can obtain further information about the pesticide application.
- This information will be useful if you are concerned about pesticides that may be applied to your lawn. The common chemical or brand name of each pesticide can be used to obtain additional information on the product's chemical properties.
- The pesticide label provides information on the pesticide(s) active ingredient(s), directions for use and environmental and worker protection requirements. The label also contains information on precautions you will need to follow after the application is made including when you may use the treated area.
- Regardless of whether you request information prior to any pesticide application, you must receive information about what pesticides were applied following the application. If pesticides are applied to your lawn, a notification sign will be placed in your lawn at the time of application to notify persons that a pesticide application has been made. These signs must remain in place until sunset of the day after the application.
- You may obtain general information regarding pesticide product or pesticide rules by contacting the Wisconsin Department

of Agriculture, Trade and Consumer Protection at (608) 224-LAWN.

### Appendix B

Note: The following is an example of placard contents that comply with s. ATCP 29.154 (3) (e):



### Appendix C

Note: The following is an example of placard contents that comply with s. ATCP 29.154 (7) (a):



### Appendix D

Note: See s. ATCP 29.154 (7) (b).

### Pesticide Application Information Sheet

Pesticides are any compound used to control a pest. Pests include many insects, fungus, weeds, rodents and plant diseases. Types of pesticides include insecticides, fungicides, herbicides and rodenticides. All pesticides have labels that give the user information on how to use the product and what you can expect the pesticide to control. **It is important that you read and follow all label directions.** This information sheet gives

you information on proper practices for the handling, use, storage and disposal of pesticides. **Before You Use A Pesticide**

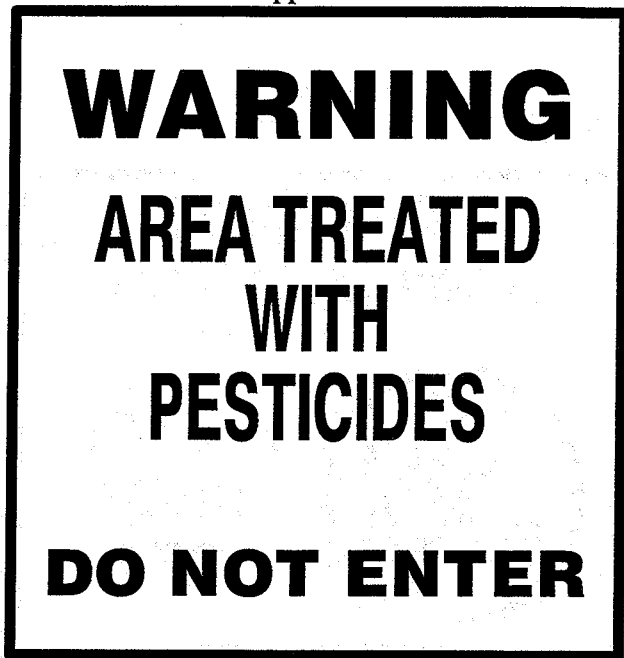
- Read The Label
- Does the pesticide control the pest problem?
- Is the site or plant you intend to treat listed on the pesticide label?
- What type of protective clothing or equipment is required?
- What type of application equipment is needed?
- Are there weather conditions when application should not be made?
- Buy only the amount of pesticide that you will need. Pesticides stored for long periods of time may degrade or become less effective.
- Do not mix up more of the dilute solution than is needed. It is better to under-estimate the amount you need and make up additional solution as needed than to have to dispose of unneeded spray solution. **During Application**
- Always wear the protective equipment required by the label. At a minimum, wear a long sleeve shirt, long pants, socks and shoes when applying pesticides.
- Do not wear cotton or leather shoes, boots, hats or gloves when handling pesticides. Leather absorbs pesticides and it may be difficult to rid the leather of pesticide residues.
- Avoid spraying on days when pesticides may drift from the application site. Stand up wind when mixing and applying pesticides. Keep children and pets out of the area being treated until the time period specified on the pesticide label.
- Do not apply pesticides at a rate higher than allowed on the product label.
- If you are applying pesticides to a food crop, check the label to see how many days you must wait before harvesting the crop. **After Using a Pesticide**
- Wash your hands with soap and water immediately after applying a pesticide. Shower as soon as possible.
- Wash all clothing worn during the application after each use. Wash these clothes separately from household laundry. Use a heavy duty detergent and hot water.
- Keep pesticide measuring tools separate from household and kitchen measuring tools.
- Store pesticides in their original containers. Do not store dilute pesticide solutions in unmarked containers. Keep pesticides away from food, feed, seed and fertilizer and out of the reach of children and pets.
- Dispose of empty pesticide containers in accordance with the label directions. **Posting**
- Wisconsin's pesticide regulations require commercial pesticide applicators to place signs in landscape areas that have been treated with pesticides. Posting is used to notify persons that a pesticide application has been made. Additional information regarding the application may be obtained by contacting the pesticide application firm.
- Posting of landscape pesticide applications made by do-it-yourself applicators is encouraged. Signs may be obtained from retail landscape pesticide dealers in Wisconsin. It is recommended that you post one sign per boundary to your property and at the points of entry (i.e. near sidewalks, driveways, etc.) You can get additional information regarding pesticide use from your local county extension agent. If you have questions regarding pesticide regulations contact the Wisconsin Department of Agriculture, Trade and Consumer Protection at (608) 224-LAWN.

Appendix E



- All letters shall have a minimum height of 1 inch.
- Red circle placed near center of sign containing; upraised hand on left / stern face on right, length of hand, twice the size of smallest letter, length of face, slightly smaller than hand.
- Background color shall contrast with red.
- Letter printing shall contrast with the background color.
- Printing within the circle shall contrast with red.

Appendix F



- All letters shall have a minimum height of 1 inch.
- Letter printing shall contrast with the background color.
- The words "DO NOT ENTER" may be replaced with "NO TRESPASSING" or "KEEP OUT".
- Additional words may be added to the sign as long as they do not detract from or contradict with the required words.

Appendix G



- All letters shall have a minimum height of 2 1/2 inches.
- Letter printing shall contrast with the background color.
- The octagonal stop sign symbol shall be at least 8 inches in diameter.
- Additional words may be added to the sign as long as they do not detract from or contradict with the required words.