

Clearinghouse Rule 04-094

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DATCP Docket No. 03-R-07

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

1 The state of Wisconsin department of agriculture, trade and consumer protection
2 adopts the following order to repeal and recreate the cover page to Appendix A of ch.
3 ATCP 30; to repeal a prohibition map in Appendix A of ch. ATCP 30; and to create a
4 prohibition map in Appendix A of ch. ATCP 30, relating to pesticide product restrictions.

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates pesticide use to prevent groundwater contamination. Current rules restrict the use of atrazine pesticides, and prohibit atrazine use in areas where groundwater contamination has exceeded state enforcement standards established by the Department of Natural Resources (“DNR”).

This rule update expands one current atrazine prohibition area in Adams County, based on new groundwater data showing atrazine contamination in excess of DNR enforcement standards. This rule adds 1,280 acres to the current prohibition area. This rule does not eliminate any prohibition areas.

Statutory Authority

Statutory authority: ss. 93.07(1), 94.69(1), 160.19(2), and 160.21(1), Stats.
Statutes interpreted: ss. 94.69, 160.19, 160.21, 160.23 and 160.25, Stats.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP has authority to adopt pesticide rules under s. 94.69(1), Stats. Under ss. 160.19(2) and 160.21(1), Stats., DATCP must regulate pesticide use, as necessary, to prevent groundwater contamination and restore groundwater quality.

Background

DATCP currently regulates atrazine use to protect Wisconsin groundwater. Atrazine is an agricultural herbicide that has been widely used for many years. Atrazine has been found in groundwater in many areas of the state. Current DATCP rules do all the following:

- *Specify maximum atrazine use rates.* These rates are about half the rates normally allowed under the federal label.
- *Limit the timing of atrazine applications.* Under current rules, atrazine applications are allowed only from April 1 through July 31.
- *Prohibit atrazine use on 1.2 million acres of land.* Current rules prohibit atrazine use in 102 designated areas where contamination has been found at or above groundwater enforcement standards adopted by DNR. Current rules also prohibit atrazine mixing and loading operations that are not conducted over a spill containment surface.

Current rules spell out standards for the creation and repeal of prohibition areas. DATCP updates its atrazine rules each year, based on existing regulatory standards and new groundwater findings. This rule is a routine annual update to DATCP's current atrazine rules.

Rule Content

This rule expands one current prohibition area in Adams County, based on existing regulatory standards and new groundwater findings. This rule adds 1,280 acres to the current prohibition area (this rule contains a map showing the expanded prohibition area). This rule does not repeal any existing prohibition areas.

Environmental Impact

This rule will help to protect and restore groundwater quality in Adams County. The attached Environmental Impact Statement provides background information related to DATCP's overall regulation of atrazine pesticides. This rule is consistent with the state groundwater law, and with the overall protocol for atrazine regulation that has been in effect since 1991.

Fiscal Impact

This rule will require some additional DATCP expenditures for groundwater testing and informational services related to the expanded prohibition area. DATCP expects to absorb these expenditures within the department's current budget. A fiscal estimate is attached.

Business Impact

This rule will affect 2 to 4 farmers located in the expanded atrazine prohibition area created by the rule. However, those farmers have other pesticides available for weed control. This rule will not have a significant economic impact on farmers or other businesses, and is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats.. See small business analysis (“final regulatory flexibility analysis”) and environmental impact statement attached.

Federal Regulations

Pesticides and pesticide labels must be registered with the federal Environmental Protection Agency (“EPA”). Persons may not use pesticides in a manner inconsistent with the federal label.

The current federal label for atrazine suggests that atrazine should not be used on permeable soils with groundwater near the soil surface. Wisconsin has clearer, more definite restrictions on atrazine use, based on actual findings of groundwater contamination in this state.

EPA is proposing federal rules that would require states to create pesticide management plans for pesticides that have the potential to contaminate groundwater. Wisconsin’s current regulatory scheme for atrazine pesticides would likely comply with the proposed federal rules.

Adjacent State Regulations

Wisconsin atrazine regulations are stronger than those in adjacent states:

- **Iowa restricts atrazine application rates to half the federal label rate in 23 counties (7 with county-wide restrictions and 16 with restrictions in some townships).**
- Minnesota has a program of voluntary use limitations when surface water or groundwater contamination exceeds a level of concern. This program suggests pesticide use restrictions or management practices to reduce surface water or groundwater contamination. To date, this program has not been implemented anywhere in Minnesota.
- Illinois and Michigan have no atrazine regulations.

1 **SECTION 1.** Chapter ATCP 30 Appendix A cover page is repealed and recreated
2 in the form attached.

1 **SECTION 2.** Chapter ATCP 30 Appendix A prohibition area map numbered 02-
2 01-01, is repealed.

3 **SECTION 3.** Chapter ATCP 30 Appendix A prohibition area map, numbered
4 05-01-01 is created as attached.

5 **EFFECTIVE DATE.** This rule shall take effect on the first day of the month
6 following publication in the Wisconsin administrative register, as provided in s.
7 227.22(2)(intro.), Stats.

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Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen,
Secretary