

Chairman:
Agriculture Committee



Member:
Environment & Utilities
Government Operations
Natural Resources
Rural Affairs

Al Ott

State Representative • 3rd Assembly District

Assembly Agriculture Committee

MEMO

To: Members of the Assembly Agriculture Committee

From: Representative Al Ott, Chair

Date: December 23, 1997

The following clearinghouse rule has been referred to the Assembly Agriculture Committee:

**Clearinghouse Rule 97-113
Relating to atrazine use restrictions.**

The deadline for action on this rule is 1-22-98. If you would like a copy of the rule, please contact my office at 266-5831.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF SUBMISSION OF PROPOSED RULES TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 97-113 to the presiding officer of each house of the legislature for standing committee review. The proposed rule amends Chapter ATCP 30, relating to atrazine use restrictions.

Dated this 9 day of December, 1997.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

2811 Agriculture Drive
Madison, Wisconsin 53718-6777

PO Box 8911
Madison, WI 53708-8911

DATE: December 9, 1997

TO: The Honorable Fred A. Risser
President, Wisconsin State Senate
Rm. 206S, State Capitol
Madison, WI 53702

The Honorable Scott R. Jensen
Speaker, Wisconsin State Assembly
Rm. 211W, State Capitol
Madison, WI 53702

FROM: Ben Brancel, Secretary *Ben Brancel*
Department of Agriculture, Trade and Consumer Protection

RE: **Atrazine Rule Amendments (Clearinghouse Rule No. 97-113)**

The Department of Agriculture, Trade and Consumer Protection ("DATCP") hereby transmits the above rule for legislative committee review, pursuant to ss. 227.19(2) and (3), Stats. We are enclosing three copies of the final draft rule, together with the following report. We will publish a notice of this referral in the Wisconsin Administrative Register, as required under s. 227.19(2) Stats.

Overview

Atrazine is the most widely used agricultural herbicide in Wisconsin. Atrazine has been found in 5,642 drinking water wells throughout the state. In 383 of these wells, atrazine contamination has attained or exceeded the state groundwater enforcement standard established by the Department of Natural Resources ("DNR").

Current DATCP rules under ch. ATCP 30, Wis. Adm. Code, restrict the use of atrazine herbicides to protect Wisconsin groundwater. The current rules:

- Prohibit atrazine use on over one million acres of land.
- Limit atrazine use rates on a statewide basis. Current maximum use rates are about half the rates allowed under the federal atrazine label.

Honorable Fred Risser
Honorable Scott Jensen
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This rule makes the following changes to the current rules:

- It creates 2 new prohibition areas and enlarges 5 existing prohibition areas where atrazine contamination of groundwater has exceeded the state enforcement standard. Atrazine use will be prohibited on an additional 13,000 acres.
- It establishes conditions which must be met before the department may repeal or reduce the size of any atrazine prohibition area. These conditions are consistent with the Wisconsin groundwater law. They are also consistent with the department's "generic" groundwater rules under ch. ATCP 31, Wis. Adm. Code.

Groundwater Law

Under Wisconsin's groundwater law (ch. 160, Stats.), the Department of Natural Resources (DNR) adopts numerical standards for contaminants in groundwater. DNR adopts an enforcement standard ("red light") and a lower preventive action limit ("yellow light") for each contaminant substance. Chapter NR 140, Wis. Adm. Code, contains current groundwater standards. The current enforcement standard ("red light") for atrazine and its metabolites is 3.0 parts per billion. The current preventive action limit ("yellow light") is 0.5 ppb.

Under the groundwater law, DATCP must take regulatory action to limit pesticide contamination of groundwater. If pesticide contamination exceeds the enforcement standard ("red light") at any location, DATCP must ordinarily prohibit applications of that pesticide at that location.

If contamination does not exceed the enforcement standard, DATCP may not ordinarily prohibit pesticide applications unless DATCP finds that lesser actions will be ineffective in controlling groundwater contamination. However, DATCP must take other measures (e.g., requiring lower pesticide use rates) which are designed, to the extent technically and economically feasible, to minimize pesticide contamination of groundwater and maintain compliance with the preventive action limit ("yellow light").

"Generic" Groundwater Rules

Current DATCP rules under ch. ATCP 31, Wis. Adm. Code, establish "generic" standards for regulating pesticides in groundwater. Subject to these "generic" standards, DATCP adopts separate "substance-specific" rules for individual pesticides such as atrazine.

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The department recently amended its "generic" groundwater rules. The amendments, which take effect on February 1, 1998, spell out standards for the repeal of pesticide use prohibitions. The department may not repeal a pesticide use prohibition (e.g., for atrazine) unless these conditions are met. This atrazine rule is consistent with the department's "generic" groundwater rules.

New Atrazine Prohibition Areas

Current DATCP rules prohibit the use of atrazine in areas where groundwater contamination resulting from atrazine use has exceeded the state enforcement standard. Current rules prohibit atrazine use on over one million acres of land. Current rules do not spell out the conditions which must be met before DATCP may repeal a local prohibition area.

The department updates its atrazine rules each year, based on new groundwater findings. Based on groundwater test results obtained since the last annual update, this rule creates 2 new prohibition areas and enlarges 5 existing prohibition areas. This rule prohibits atrazine use on an additional 13,000 acres. This rule does not repeal any prohibition areas.

Repealing Atrazine Prohibition Areas

This rule spells out conditions which must be met before the department may repeal an atrazine prohibition area. In future annual updates to the atrazine rule, DATCP may repeal prohibition areas in which these conditions are met.

Before the department may repeal or reduce the size of an atrazine prohibition area, the department must find that all of the following conditions are met:

- In wells that previously exceeded the enforcement standard, atrazine concentrations have fallen to not more than 50% of the enforcement standard (1.5 parts per billion) on at least 3 consecutive tests conducted at intervals of at least 6 months. The first of the 3 consecutive tests must be conducted at least 6 months after the effective date of the prohibition area.
- Tests (if any) conducted at other well sites in the prohibition area during the same retesting period reveal no other concentrations of atrazine that exceed 50% of the enforcement standard.

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- Credible scientific data show that renewed use of atrazine is not likely to cause a renewed violation of the enforcement standard. (The department is currently participating in a research study which should generate credible scientific evidence related to this issue.)

Rule Modifications After Public Hearing

Based on hearing comments from the Department of Natural Resources and others, the department added a note to the final draft rule. The note explains that the department may reinstate a repealed prohibition area if testing shows an increasing trend of atrazine contamination suggesting that contamination will again attain or exceed the enforcement standard. The department also made minor, non-substantive editorial changes to the hearing draft.

Hearing Testimony

DATCP held 5 hearings in September 1997, in Eau Claire, Stevens Point, Appleton, Richland Center and Madison. APPENDIX A contains a summary of hearing testimony and a list of persons who attended, testified or submitted written comments for the hearing record.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made no comments on the hearing draft rule.

Fiscal Estimate

A fiscal estimate on the proposed rule is attached as APPENDIX B.

Small Business Analysis

A small business analysis ("final regulatory flexibility analysis") is attached as APPENDIX C. There were no public comments on the draft analysis.

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Environmental Impact Statement

A final environmental impact statement is attached as APPENDIX D. The department prepared this environmental impact statement according to s. 1.11, Stats. and ch. ATCP 3, Wis. Adm. Code. The environmental impact statement finds that this rule will have a positive impact on the environment.

Alternative herbicides are generally less likely than atrazine to contaminate groundwater. This rule is expected to reduce atrazine contamination of groundwater. This rule does not mandate the repeal of any atrazine prohibition areas, but does establish minimum criteria which must be met before an atrazine prohibition area may be repealed.

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This rule spells out conditions which must be met before the department may repeal an atrazine prohibition area. In future annual updates to the atrazine rule, DATCP may repeal prohibition areas in which these conditions are met.

Before the department may repeal or reduce the size of an atrazine prohibition area, the department must find that all of the following conditions are met:

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Alternative herbicides are generally less likely than atrazine to contaminate groundwater. This rule is expected to reduce atrazine contamination of groundwater. This rule does not mandate the repeal of any atrazine prohibition areas, but does establish minimum criteria which must be met before an atrazine prohibition area may be repealed.

APPENDIX A

SUMMARY OF TESTIMONY PROPOSED AMENDMENTS TO ATCP 30 FOR 1998

INTRODUCTION

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) held public hearings in Eau Claire, Stevens Point, Appleton, Richland Center and Madison to record oral testimony on proposed 1998 changes to Chapter ATCP 30, Wis. Adm. Code. (Wisconsin's "Atrazine Rule"). DATCP also accepted written testimony until October 8, 1997. DATCP is proposing revisions to two major components of ATCP 30: (1) new/expanded atrazine prohibition areas and (2) new language describing the process for repealing atrazine prohibition areas. The proposed repeal language sets specific conditions and requirements that a prohibition area must meet to be considered eligible for repeal.

Each hearing session started with a ½ hour presentation at which DATCP staff explained the proposed changes and answered questions. Other informational materials available at each hearing included: state and county maps showing all of the data that DATCP has of atrazine concentrations in private water supply wells, maps of each proposed atrazine prohibition area, and a description of the three steps required to repeal an atrazine prohibition area. A number of DATCP groundwater reports, general reference materials, and other information were also available.

A total of 55 people attended the public hearings, of which 28 provided oral testimony and filled out an appearance/opinion card. The other 27 attendees completed cards to register their opinion of the proposed changes to ATCP 30 but did not provide oral testimony. Thirteen people submitted written testimony as part of the hearing process.

A summary of testimony participation is shown in Table 1. A summary of the primary concerns about the proposed pesticide prohibition area repeal process and the specific eligibility requirements are presented in Table 2. A list of the suggested modifications to the proposed ATCP 30 is also attached, followed by a summary of each participant's oral or written testimony.

TESTIMONY SUMMARY

The majority of participants who provided testimony were opposed to some portion of the proposed changes to ATCP 30. Most objected to the idea of repealing atrazine prohibition areas at all, while others had specific concerns about the conditions that a prohibition area must meet to be considered eligible for repeal. No one opposed any specific new or expanded atrazine prohibition areas. The participants who supported the proposed changes to ATCP 30 generally felt that the rule was fair and would adequately protect groundwater from atrazine

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contamination. Most people who registered "neither" opposition to nor support for the proposal, or registered as "other", attended the public hearings for informational purposes or worked for the media.

TABLE 1. TESTIMONY SUMMARY

POSITION	PUBLIC HEARINGS (# participants)	WRITTEN TESTIMONY (# participants)	ALL TESTIMONY (# participants)
Support	6	3	9
Oppose	42	5	47
Neither/Other	7	5	12
Totals	55	13	68

PRIMARY CONCERNS ABOUT PROPOSED CHANGES TO ATCP 30

Table 2 summarizes the primary concerns of those presenting oral or written testimony regarding the proposed changes to ATCP 30. In addition to specific comments about the proposed rule, many attendees expressed general concerns about other issues related to pesticide regulation and/or groundwater contamination. These included atrazine groundwater standards, general health effects and costs of pesticides and nitrates in groundwater, and DATCP's need to promote practices that reduce or eliminate pesticide use and prevent groundwater contamination.

**SUMMARY OF TESTIMONY
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TABLE 2. PRIMARY CONCERNS ABOUT CHANGES TO ATCP 30

POSITION	CONCERNS (from most common to least common -- by position)
<p>OPPOSE CHANGES TO ATCP 30</p>	<ul style="list-style-type: none"> • DATCP should <u>never</u> repeal an atrazine prohibition area once the groundwater enforcement standard (ES) has been exceeded. • DATCP should use the preventive action limit (PAL), instead of 50% of the enforcement standard (ES), as the repeal level. 50% of the ES level is <u>not adequate</u> to protect the environment and human health and does not meet the legal requirements of the Groundwater Law (Chapter 160, Wis. Stats.).
<p>SUPPORT CHANGES TO ATCP 30</p>	<ul style="list-style-type: none"> • The proposed ATCP 30 changes represent a fair approach to groundwater protection and pesticide regulation/agricultural development. • 50% of the enforcement standard (ES) is <u>adequate</u> to protect the environment and human health, and to prevent a "yo-yo" effect of prohibition areas coming in and out of existence.

SUGGESTED MODIFICATIONS TO PROPOSED ATCP 30

Several attendees made specific suggestions about how proposed ATCP 30 language should be modified. These suggested modifications are listed below.

Changes to ATCP 30 Rule Language:

- ATCP 30 should explain the process that DATCP will use to re-impose an atrazine prohibition area if atrazine levels in groundwater rise above 50% of enforcement standard.
- ATCP 30 should explain how "credible scientific evidence" from the monitoring project will actually be used in the repeal of atrazine prohibition areas.
- The word "shall" should replace "may" in most instances in which specific eligibility requirements and DATCP actions are described.

SUMMARY OF TESTIMONY PROPOSED AMENDMENTS TO ATCP 30 FOR 1998

- DATCP should consider changing language in 30.31(1) so that the first of three consecutive samples taken at an "exceedance" well is collected 6 months after the last sample date, rather than 6 months after the effective date of the prohibition area.
- DATCP should consider changing language in 30.31(3) so that it does not sound as though "credible scientific evidence" on the effects of renewing atrazine use in prohibition areas already exists.
- DATCP should consider changing language in 30.31(3) to say that renewed atrazine won't cause an exceedance of the enforcement standard at the water table.

PUBLIC HEARING TESTIMONY

Table 3 shows public hearing attendance and indicates the positions taken by hearing participants regarding the proposed ATCP 30 revisions. A summary of each speaker's testimony, by hearing location, follows.

**SUMMARY OF ORAL TESTIMONY
PROPOSED AMENDMENTS TO ATCP 30**

TABLE 3. PUBLIC HEARING ATTENDANCE

POSITION	EAU CLAIRE 9/23/97		STEVENS POINT 9/24/97		APPLETON 9/25/97		RICHLAND CENTER 9/29/97		MADISON 9/30/97		ALL HEARINGS 1997	
	SPOKE	CARD ONLY	SPOKE	CARD ONLY	SPOKE	CARD ONLY	SPOKE	CARD ONLY	SPOKE	CARD ONLY	SPOKE	CARD ONLY
Support	0	0	1	0	0	0	2	1	2	0	5	1
Oppose	0	1	20	18	0	0	0	0	3	0	23	19
Neither/Other	0	3	0	3	0	0	0	0	0	1	0	7
Subtotal	0	4	21	21	0	0	2	1	5	1	28	27
	0 Support 1 Oppose ^a 3 Neither/Other 4 Total Attendees		1 Support 38 Oppose 3 Neither/Other 42 Total Attendees		0 Support 0 Oppose 0 Neither/Other 0 Total Attendees		3 Support 0 Oppose 0 Neither/Other 3 Total Attendees		2 Support 3 Oppose 1 Neither/Other 6 Total Attendees		6 Support 42 Oppose 7 Neither/Other 55 Total Attendees	

SUMMARY OF ORAL TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

Eau Claire - September 23, 1997

Four people attended the public hearing in Eau Claire on proposed changes to ATCP 30. None of the attendees presented oral testimony, but all filled out appearance cards.

- 1 person registered in opposition to the proposal
- 1 person registered neither for nor against the proposal
- 2 people registered other

Stevens Point - September 24, 1997

A total of 42 people attended the public hearing in Stevens Point on proposed changes to ATCP 30. Of these 42 people:

- 1 spoke in support of the proposal
- 20 spoke in opposition to the proposal
- 18 registered in opposition to the proposal
- 1 registered as neither for nor against the proposal
- 2 registered as "other"

The following is a summary of oral testimony provided at the hearing:

1. Richard Filtz: Mr. Filtz is a long time land-owner in the Town of Stockton. He has had atrazine in his well. He tries not to drink the water, but it is hard to afford an alternative source of water.
2. Beth Jansen: Ms. Jansen is a resident of the Town of New Hope with atrazine in her well. Atrazine has greatly affected her family. She supports the use of the preventive action limit (PAL) for regulatory purposes. She also supports field edge groundwater monitoring for atrazine paid for by agricultural interests.
3. Edward Seefelt: Mr. Seefelt testified for himself and his wife Mary Seefelt who could not attend the hearing. He is opposed to the proposed change to ATCP 30 that would allow prohibition areas (PAs) to be repealed. He feels that atrazine problems are related to soil type and that atrazine should be permanently banned on sandy soil areas. He feels that the 50% trigger level is a political decision that he calls the political action limit. Mr. Seefelt presented information on the relation between atrazine detects and cancer occurrences in the Town of New Hope.

SUMMARY OF ORAL TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

4. Mary Seefelt: Mrs. Seefelt says via written comments read by Mr. Edward Seefelt that she has had various levels of atrazine in her well and has been using bottled water for four years. She cites a correlation between atrazine and cancer.
5. Jim Stoltenberg: Mr. Stoltenberg is opposed to the rule change that would allow repeal of atrazine prohibition areas. He cites wells in the Town of New Hope with atrazine levels going up and down. He cites nine new cases of cancer in New Hope.
6. Russ Weisensel: Mr. Weisensel is concerned that the atrazine prohibition area near his farm in Dane County will never be lifted because the rule is too strict. He used to use atrazine and never had a detect in his well. He feels there are economic benefits to using atrazine. He presented a list of all the atrazine pre-packaged products to stress an important use of atrazine. He cites the Minnesota groundwater standard of 20 ppb for atrazine. He would prefer three tests below the trigger level plus a declining trend prior to reuse of atrazine.
7. Gordon Cunningham: Mr. Cunningham feels that the proposal to repeal prohibition areas reflects the arrogance of DATCP. He thinks the public hearings are a farce. He opposes the reintroduction of atrazine, especially in Portage County.
8. Bernice Strauch: Ms. Strauch feels that a statewide ban would save money for well owners and avoid testing costs and health problems. She doesn't want any atrazine in her water and feels this is her right.
9. George Kraft: Mr. Kraft feels that DATCP's policy is misguided because it theoretically allows wells to contain an infinite number of chemicals up to 99% of the enforcement standard. He feels we should use the preventive action limit as the trigger level in the rule proposal. He feels that the rule should say that renewed atrazine won't cause an exceedence of the enforcement standard at the water table. He feels the DATCP board is biased toward agricultural interests, and that industry should pay for field-edge monitoring at fields of renewed atrazine use.
10. Beth Akemann: Ms. Akemann has had to haul water because of atrazine contamination. She is concerned that we will find out in the future that atrazine is worse than we thought.
11. Jim Butler: Mr. Butler is concerned about the reuse of atrazine and wonders whether we really know much about pesticide toxicology. He supports the research we will do as part of the rule proposal.
12. Bob Lord: Mr. Lord is a resident of the Town of New Hope. He feels our approach is too reactive in that we only do something after the contamination has occurred. He feels we need

SUMMARY OF ORAL TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

a vision of prevention and education to protect our groundwater. He thinks we should use the preventive action limit (PAL) for the trigger level. He says that groundwater contamination is a "taking" issue.

13. Jonathan Doppsmith: Mr. Doppsmith feels we should pay (or cost share) people to not use atrazine.
14. Eric Anderson: Mr. Anderson feels there are alternatives to the use of atrazine. He wants us to err on the side of safety and clean groundwater in our approach.
15. Juanita Keller: Ms. Keller feels it is a crime to allow chemicals back into our water supply. She doesn't want the people in the 21 sites where the research will take place to be guinea pigs.
16. Vic Akemann: Mr. Akemann says that since we know there is a problem with atrazine, we should not allow its reuse. He thinks we should look for safe alternatives. He also wants us to reenter his statement from the ATCP 31 hearing in April of 1997 into this record.

Summary of Mr. Akemann's oral testimony presented in April 1997 for ATCP 31: Mr. Akemann lives in Portage County and is a teacher involved in studying the Little Plover River. He is worried that contaminated groundwater is discharging into surface water and negatively affecting macroinvertebrates. He feels that if a pesticide is a known problem and has already had an impact on groundwater, it is a bad idea to allow its reuse. He feels we should look for friendlier products. He is totally against the proposal.
17. Tom O'Day: Mr. O'Day is opposed to the proposal to repeal prohibition areas (PAs). He doesn't think one person's use of atrazine should be allowed to contaminate someone else's well. He is also worried about the composition of the DATCP's board.
18. A. J. Torzewski: Mr. Torzewski doesn't think we should accept money from industry to conduct the research on the reintroduction of atrazine in prohibition areas (PAs). If we can't find other sources of money, we should stop the process.
19. Joe Passineau: Mr. Passineau supports the use of the preventive action limit (PAL) as the trigger level. He feels that we have turned our groundwater into a pea-soup of chemicals. He notes that groundwater is a common resource for all citizens. He supports sustainable agriculture. Joe wants us to also enter into this record the testimony that he presented for ATCP 31 in April 1997.

SUMMARY OF ORAL TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

Summary of Mr. Passineau's oral testimony presented in April 1997 for ATCP 31:
Mr. Passineau lives in New Hope and is Director of the Central Wisconsin Environmental Learning Center which has atrazine in its well. He is opposed to the proposal and feels we should be promoting sustainable agriculture. He feels that people have a right to clean water.

20. George Krubsack: Mr. Krubsack thinks there is plenty of opportunity for a more responsible agriculture.
21. Bob Wiza: Mr. Wiza says that contaminating groundwater is a choice and that we should move ahead and choose not to contaminate groundwater.

Appleton - September 25, 1997

No one attended the public hearing in Appleton on proposed changes to ATCP 30.

Richland Center - September 29, 1997

A total of 3 people attended the public hearing in Richland Center on proposed changes to ATCP 30. Of these 3 people:

- 2 spoke in support of the proposal
- 1 registered in support of the proposal

The following is a summary of the oral testimony provided at the Richland Center hearing:

1. Elizabeth Cronin: Ms. Cronin and her husband are not farmers, but they live in a rural area near Sparta. She generally supports the proposed changes to ATCP 30. She stated that the approach DATCP is taking appears "reasonable" and contains safeguards against loosening standards. She said that she will watching how DATCP implements the rule to catch any "back-sliding" of standards.
2. David Flakne (Novartis Crop Protection): Mr. Flakne supports the proposed changes to ATCP 30. He believes the proposed repeal process addresses grower concerns and will provide relief to growers while ensuring environmental protection. He also supports using 50% of the enforcement standard (ES), rather than the preventive action limit (PAL), as the trigger level for prohibition area repeal. He also wants DATCP's board to recognize that the timing of these hearings was not good for grower participation because they are in

SUMMARY OF ORAL TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

the field this time of the year. However, the fact that growers have already begun volunteering to participate in the monitoring project is a sign that they are interested in atrazine issues.

Madison - September 30, 1997

A total of 6 people attended the public hearing in Madison on proposed changes to ATCP 30. Of these 6 people:

- 2 spoke in support of the proposal
- 3 spoke in opposition to the proposal
- 1 registered as neither for nor against the proposal

The following is a summary of the oral testimony provided at the Madison hearing:

1. Edward Seefelt: Mr. Seefelt presented additional points to expand upon the oral testimony he gave in Stevens Point on 9/24/97. He is generally opposed to the proposed changes in ATCP 30 that relate to repeal of prohibition areas. He believes that preventive action limit (PAL) should be the repeal trigger level instead of 50% of the enforcement standard (ES). However, if a level other than the preventive action limit (PAL) is used, it should be based on scientific data, rather than chosen "arbitrarily" as he believes is the case for the 50% level. He stated that the protocol for the monitoring project is wrong, and that it should be used to determine the trigger level. Mr. Seefelt presented a written copy of his oral testimony as an exhibit.
2. Russ Weisensel (WI Agribusiness Council): Mr. Weisensel amended his oral testimony given in Stevens Point on 9/24/97. He noted that other states do not include pesticide metabolites in groundwater standards and, therefore, would not consider Wisconsin's wells over standards. He submitted an article from the American Cancer Society titled, "Cancer Facts & Figures - 1997" and a demonstration EPA Risk Model assessment for aspirin as exhibits.
3. Betsy Ahner (WI Fertilizer and Chemical Association): Ms. Ahner supports the proposed changes to ATCP 30 and thinks that the repeal process is the "fair thing to do" for Wisconsin farmers. She stated that, "Atrazine poses no adverse health effects to humans through food, drinking water, or handling.", and she cited several studies to support this idea. She expressed concern that atrazine alternatives are more expensive and less effective, at that increased use of ALS inhibitors as alternatives to atrazine will lead to

**SUMMARY OF ORAL TESTIMONY
PROPOSED AMENDMENTS TO ATCP 30**

weed resistance of these compounds. Ms. Ahner presented a written copy of her oral testimony as an exhibit.

4. Caryl Terrell (John Muir Chapter-Sierra Club): Ms. Terrell opposes the repeal of atrazine prohibition areas because we do not know enough about atrazine. As evidence of this, she submitted a list describing what we do and do not know about atrazine that was part of the 1/17/96 DATCP board packet. She had no comment on the specific prohibition areas (PAs). She also had several questions and suggestions for language changes related to the proposed rule language and the Environmental Impact Statement (EIS). Ms. Terrell opposes the use of 50% of the enforcement standard (ES) as the repeal level, and feels that the preventive action limit (PAL) should be used instead. She wanted language changes in the EIS to reflect her belief that the preventive action limit (PAL) will always be exceeded if renewed atrazine use at current use rates is allowed in repealed prohibition areas.

5. Liz Wessel (Citizens for a Better Environment): Ms. Wessel opposes the repeal of atrazine prohibition areas and believes we should use the preventive action limit (PAL) as the repeal level. She stated that using anything other than the preventive action limit (PAL) would not meet the legal requirements of the groundwater law. She believes that atrazine users and manufacturers, and not DATCP, should bear the burden of proving that renewed use of atrazine will not cause groundwater contamination. Ms. Wessel also made several comments about the Environmental Impact Statement (EIS). She asked what the process will be for doing environmental impact analysis once a prohibition area (PA) is repealed.

SUMMARY OF WRITTEN TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

Thirteen people submitted written testimony on the proposed amendments to Chapter ATCP 30, Wis. Admin. Code. The written record was open until October 8, 1997. In general, three people supported the proposal, five were opposed to some aspect of the proposal, and five submitted testimony for informational purposes. The following is a summary of the comments that we received.

1. Donald and Dorothy Hodges (residents of Columbia County): The Hodges are in favor of the new proposed atrazine prohibition area in Columbia County. They cite the increase in population in this area and the need to have a clean water supply in the future.
2. Layne and Connie Quamme (residents of Columbia County): The Quammes offered more general comments on their concern about atrazine use and well contamination in their area. They want DATCP to work toward a complete prohibition on atrazine use and are supportive of the work we have done so far on this issue. They feel there are better ways to control weeds than with atrazine.
3. John Bethke (resident of Vernon County): Mr. Bethke supports the proposed atrazine prohibition in his area. He feels that clean groundwater is extremely important and wants us to monitor and protect it.
4. Gordon Harvey (professor Agronomy Department - University of Wisconsin at Madison): Mr. Harvey generally favors the proposed process that may eventually allow prohibition areas to be repealed. He feels that no other herbicide is as good as atrazine at economically controlling weeds. He is opposed to the specific language in the rule draft that says "the first test may not occur sooner than 6 months after the effective date of the prohibition area". He thinks any starting point for the repeal process should be tied to the sample that was above the enforcement standard rather than the date the prohibition area was established.
5. Jane Haasch (resident of Waupaca County): Ms. Haasch has had nitrate problems in her well. She wants to see a ban on the use of pesticides in Wisconsin. She cites some cancer statistics and states that because of health risks, atrazine bans must be permanent. She feels that residents should be notified when pesticides are being used.
6. Jane Straece (resident of Adams County): Ms. Straece's farm is located near an atrazine prohibition area in Adams County. She has not used atrazine for 15 years. She feels that good stewardship of the land and water is the responsibility of the landowner. For those who don't have good stewardship, she wants us to impose regulations.
7. Robert Keller (resident of Adams County): Mr. Keller thinks it is thoroughly incomprehensible that DATCP would even consider this proposal to repeal prohibition areas

SUMMARY OF WRITTEN TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

(PAs) given the scope of the atrazine problem in Wisconsin. He is adamantly opposed to all atrazine use in Wisconsin. He feels farmers should be using more organic farming methods.

8. Louise Pease (resident of Portage County): Ms. Pease is in favor of maintaining the atrazine prohibition areas. She thinks we should use the preventive action limit rather than the enforcement standard. She doesn't want the regulations to be relaxed.
9. Patricia Mather (resident of Portage County): Ms. Mather opposes the proposal to repeal atrazine prohibition areas. She submitted five articles concerning the health and environmental effects of atrazine. "Toxic Deception Tells Scary Story", "Chromosomal Damage Induced by Herbicide Contamination at Concentrations Observed in Public Water Supplies", "Intrauterine Growth Retardation in Iowa Communities with Herbicide-contaminated Drinking Water Supplies", and "Pesticides in Near-Surface Aquifers: An Assessment Using Highly Sensitive Analytical Methods and Tritium". She feels these articles point out that 1) You don't have to drink thousands of gallons of water with atrazine per day to increase the risk of health problems such as cancer, and 2) that there are problems other than cancer that are associated with pesticide exposure such as intrauterine growth retardation and chromosomal damage. She is also concerned about possible conflict of interest on the DATCP Board. She doesn't think the Board is listening to the concerns of the public. The evidence against atrazine has not changed. Water is a common resource that should not be allowed to be contaminated by any individual. She thinks the prohibitions on atrazine should remain.
10. Sue Anderson (resident of Portage County): Ms. Anderson wants DATCP to consider the needs of groundwater users when they are considering a repeal of an atrazine prohibition area. She wants us to use the preventive action limit for the trigger level, and test for atrazine in the groundwater in fields where it is used.
11. James Dunning (resident of Sauk County): Mr. Dunning submitted written testimony on behalf of the Ho-Chunk Nation which owns property and has a community well within an existing prohibition area in Sauk County. This well has had detects of atrazine in the past. In order to maintain a safe supply of drinking water for the community served by this well, he requests that prohibition area PA97-57-01 be maintained.
12. Marlene Hogue (resident of Ashland County): Ms. Hogue submitted written testimony against the idea of repealing atrazine prohibition areas. She feels that atrazine has caused too many problems in the our drinking water to justify its use. She feels atrazine would again be overused if it is not highly regulated. She says we need to consider all the people affected by atrazine rather than just the farms who want to control weeds as cheaply as possible.

SUMMARY OF WRITTEN TESTIMONY PROPOSED AMENDMENTS TO ATCP 30

13. Susan Sylvester (Department of Natural Resources): DNR submitted testimony that included several major points:

- We should use the preventive action limit rather than 50% of the enforcement standard (ES) as the repeal trigger level.
- We should use a definition of "Points-of-Standards-Application" that includes monitoring wells.
- ATCP 30 should clarify what will happen if we reintroduce atrazine in a prohibition area and atrazine levels in groundwater start to increase.
- ATCP 30 should include language to say that renewed atrazine use in a prohibition area "is likely to achieve and maintain compliance with the preventive action limit".

APPENDIX B

FISCAL ESTIMATE

DOA-2048 (R 10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.
 Proposed Amendment
 ATCP 30
 Amendment No. (If Applicable)

Subject Creation of Additional Atrazine Prohibition Areas and Creation of Procedures to Repeal Prohibition Areas

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Source Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations s.20.115(7s)

Assumptions Used in Arriving at Fiscal Estimate

State Government

The rule will be administered by the Agricultural Resource Management (ARM) Division of the Department of Agriculture, Trade and Consumer Protection (DATCP). The following estimate is based on enlarging 5 existing prohibition areas (PAs), creating 2 additional PAs, and establishing procedures to repeal prohibition areas in 1998.

Administration and enforcement of the proposal will involve new costs for the department. Specialist and field investigator staff time will be needed for inspections and enforcement in the new PAs (0.1 FTE, cost approximately \$4,000). Enforcement activities will be conducted in conjunction with current compliance inspections but at increased levels to ensure compliance with the additional prohibition areas. Compliance activities will be especially important in the first few years as growers, commercial applicators, dealers, and agricultural consultants in the PAs require education to comply with the new regulations.

Soil sampling conducted in the additional PAs to determine compliance with the rules will require an estimated \$2,000 in analytical services. In addition, a public information effort will be needed to achieve a high degree of voluntary compliance with the rule. Direct costs to produce and distribute the informational materials will be \$4,000.

Total Annual Costs to Create PAs: \$10,000

The following cost estimates are associated with procedures to repeal prohibition areas. These estimates are the same as reported in the fiscal estimate developed for the 1997 amendment to ATCP 31, which established a generic prohibition area repeal process based on the atrazine example. The purpose and costs associated with the groundwater sampling necessary to meet repeal requirements follow.

First, the department must reasonably conclude that atrazine concentrations throughout the prohibition area are below the enforcement standard (ES). To do this

well(s) upon which the pesticide prohibition area is based must be sampled a minimum of three times to qualify the prohibition area for repeal. When an existing atrazine prohibition area meets the criteria for repeal of the prohibition area, up to six wells within the prohibition area must also be tested for atrazine. Additionally, the well which initially tested above the enforcement standard within the prohibition area must be tested 2 and 5 years after repeal of the prohibition area.

Annual Well Sampling Costs in PAs:

	# of wells	Collection (\$50/sample)	Analysis (\$250/sample)
Sample all wells that have exceeded a pesticide ES to determine whether they meet repeal criteria:	120	\$6,000	\$30,000
Sample up to 6 wells in prohibition areas where repeal criteria are met (4 new areas/year):	24	\$1,200	\$6,000
Sample wells that had exceeded the ES in repealed prohibition areas at 2 and 5 years (4 areas/year)	8	\$400	\$2,000
Subtotal:		\$7,600	\$38,000

Second, the department must determine whether renewed use of atrazine will maintain compliance with the enforcement standard. This will require groundwater monitoring at agricultural field sites in areas where the pesticide is being reintroduced. This will involve establishment of 21 sites with 3 monitoring wells per site. Installation of the monitoring wells is a one-time cost. These wells will have samples collected and analyzed quarterly.

One time Costs: Installation of 63 monitoring wells @ \$1,050 per well = \$66,150

Annual Costs to Monitor Renewed Use:

	#of wells	# of samples	Collection (\$50/sample)	Analysis (\$250/sample)
Sample monitoring wells quarterly:	63	252	\$12,600	\$63,000
Subtotal:			\$12,600	\$63,000
Total Annual Costs to Repeal PAs:			\$20,200	\$101,000

Total Costs:

The groundwater sample collection and analysis required by this proposal will involve new costs for the department. The Department estimates additional staff costs of 0.1 FTE at \$4,000 for compliance and \$20,200 for groundwater sample collection for \$24,200 of increased cost of State Operations - Salaries and Fringes. The \$6,000 in compliance sampling and public information costs and \$101,000 for groundwater sampling total \$107,000 in increased State Operations - Other Costs. Total one-time costs are \$66,150 for installation of monitoring wells. With the exception of the (0.1) FTE required for compliance, the increased costs of this amendment can not be absorbed by the department.

The Department anticipates no additional costs for other state agencies. Water sampling programs within the Department of Natural Resources and local health agencies may receive short term increased interest by individuals requesting samples.

FISCAL ESTIMATE WORKSHEET

1997 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm.Rule No. ATCP 30	Amendment No.
--	---------------

Subject

Creation of Additional Atrazine Prohibition Areas and Creation of Procedures to Repeal Prohibition Areas

I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$66,150

II. Annualized Cost:

Annualized Fiscal Impact on State funds from:

A. State Costs by Category

Increased Costs

Decreased Costs

State Operations - Salaries and Fringes

\$ 24,200

\$ -

(FTE Position Changes)

(0.1 FTE)

(- FTE)

State Operations - Other Costs

107,000

-

Local Assistance

-

Aids to Individuals or Organizations

-

TOTAL State Costs by Category

\$ 131,200

\$ -

B. State Costs by Source of Funds

Increased Costs

Decreased Costs

GPR

\$

\$ -

FED

-

PRO/PRS

-

SEG/SEG-S

131,200

-

III. State Revenues -

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$ -

GPR Earned

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

TOTAL State Revenues

\$

\$ -

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ 131,200

\$ 0

NET CHANGE IN REVENUES

\$ 0

\$ 0

Agency Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

DATCP
Jim Vanden Brook - (608) 224-4501

Barbara Knapp
Barbara Knapp (608) 224-4746

6/25/97

On Local Units of Government

The rule does not mandate that local government resources be expended on sample collection, rule administration or enforcement. The rule is therefore not expected to have any fiscal impact on local units of government. County agricultural agents will likely receive requests for information on provisions of the rule and on weed control strategies with reduced reliance on atrazine. This responsibility will probably be incorporated into current extension programs with no net fiscal impact.

Long - Range Fiscal Implications

Agency/prepared by: (Name & Phone No.)

DATCP (608)
Jim Vanden Brook - 224 - 4501

Authorized Signature/Telephone No.

Barbara Knapp
Barbara Knapp (608) 224-4746

Date

6/25/97

APPENDIX C

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE & CONSUMER PROTECTION

Chapter ATCP 30, Wis. Adm. Code
Use of Atrazine

Final Regulatory Flexibility Analysis

Businesses Affected:

The amendments to the atrazine rule will affect small businesses in Wisconsin. The greatest small business impact of the rule will be on users of atrazine -- farmers who grow corn. The proposed prohibition areas contain approximately 13,000 acres. Assuming that 50% of this land is in corn and that 50% of these acres are treated with atrazine, then 3,250 acres of corn will be affected. This acreage would represent between 20 and 50 producers, depending on their corn acreage. These producers are small businesses, as defined by s. 227.114 (1)(a), Stats. Secondary effects may be felt by distributors and applicators of atrazine pesticides, crop consultants and equipment dealers. Since the secondary effects relate to identifying and assisting farmers in implementing alternative weed control methods, these effects will most likely result in additional or replacement business and the impacts are not further discussed in this document.

Specific economic impacts of alternative pest control techniques are discussed in the environmental impact statement for this rule.

Reporting, Recordkeeping and Other Procedures Required for Compliance:

The maximum application rate for atrazine use in Wisconsin is based on soil texture. This may necessitate referring to a soil survey map or obtaining a soil test. While this activity is routine, documentation would need to be maintained to justify the selected application rate. A map delineating application areas must be prepared if the field is subdivided and variable application rates are used. This procedure is already required under the current atrazine rule.

All users of atrazine, including farmers, will need to maintain specific records for each application. This procedure is already required under the current atrazine rule.

Atrazine cannot be used in certain areas of the State where groundwater contamination exceeds the atrazine enforcement standard in s. NR 140.10 Wis. Adm. Code.

Professional Skills Required to Comply:

The rule affects how much atrazine can be applied and on which fields. Because overall use of atrazine will be reduced in the State, alternative weed control techniques may be needed in some situations. These techniques may include different crop rotations, reduced atrazine rates, either alone or in combination with other herbicides, or combinations of herbicides and mechanical weed control measures.

While alternative weed control techniques are available, adoption of these techniques on individual farms will in some cases require assistance. In the past this type of assistance has been provided by University Extension personnel and farm chemical dealers. In recent years many farmers have been using crop consultants to scout fields, identify specific pest problems and recommend control measures. The department anticipates these three information sources will continue to be used as the primary source of information, both on whether atrazine can be used and which alternatives are likely to work for each situation.

Dated this 15th day of October, 1997.

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

APPENDIX D

FINAL ENVIRONMENTAL IMPACT STATEMENT
FOR
PROPOSED 1998 AMENDMENTS TO RULES ON THE
USE OF PESTICIDES CONTAINING ATRAZINE

Prepared by

**Wisconsin Department of Agriculture,
Trade and Consumer Protection**

October 1997

ABSTRACT

The Atrazine Rule, Ch. ATCP 30, Wis. Adm. Code, was promulgated in March 1991 to protect Wisconsin's groundwater. This rule restricted the use of atrazine on a statewide basis and established one atrazine management area (AMA) and six prohibition areas (PAs) in which the use of atrazine was further restricted or prohibited.

Amendments to the Atrazine Rule were promulgated in March 1992. These amendments established five additional AMAs and eight additional PAs in areas of the state where groundwater contamination was known to be more acute. The 1992 AMAs were located in portions of Columbia, Dane, Green, Lafayette, and St. Croix Counties.

Additional amendments to the atrazine rule were promulgated in March 1993. These amendments further limit the use of atrazine across the entire state. Specifically, the maximum allowable atrazine application rates for the state were lowered to 0.75 pound/acre for coarse textured soils and 1.0 or 1.5 pounds/acre for medium/fine textured soils. The 1.5 pound/acre rate is allowed on medium/fine textured soils if no atrazine was applied in the previous year. If a rescue treatment is needed on sweet or seed corn, an additional amount of atrazine can be applied provided the total annual application does not exceed 1.5 pounds/acre on coarse soils and 2.0 pounds/acre on medium/fine soils.

Additional amendments were promulgated 1994, 1995, 1996, and 1997. These amendments created 46 new PAs in and enlarged 11 existing PAs where the Enforcement Standard (ES) for atrazine had been attained or exceeded.

Under this proposal, all statewide provisions in the current atrazine rule remain in effect: routine application rates are limited to 0.75 - 1.5 pounds/acre, atrazine applications are limited to the time period April 15 through July 31, atrazine use in conjunction with irrigation requires an irrigation management plan, atrazine use and mixing-loading require certification, and record keeping is required of persons applying atrazine.

The proposed rule would create two new PAs and enlarge five existing PAs where the Enforcement Standard (ES) for atrazine has been attained or exceeded. This action is based on groundwater samples for atrazine that the department has received in the last year. Most of the proposed new PAs are based on a single well exceeding the ES. The proposed expansion of five existing PAs is due to new findings of atrazine above the ES near existing PA boundaries.

The proposed rule also establishes criteria and procedures for the repeal of atrazine PAs where contamination has declined and evidence indicates that renewed use of atrazine will not cause a violation of the ES. The proposed rule would authorize, but not mandate, the repeal of atrazine PAs. Although no actual atrazine PAs are being proposed for repeal under this rule proposal, it would establish a process that could allow for renewed atrazine use in PAs in future years. Renewed use of atrazine in a PA could lead to higher levels of atrazine in groundwater than if the PA continued indefinitely.

The Environmental Impact Statement (EIS) contains: a description and discussion of the proposed rule; background information on atrazine, including information on the use of atrazine and findings of atrazine residues in groundwater; a discussion of the environment and persons affected by the proposed rule; and the significant economic effects of the proposed action. The EIS also discusses and compares possible alternative actions.

This EIS finds that promulgation of the proposed rule would not create any new adverse environmental impacts from the use of alternative herbicides. Alternative herbicides, because of differences in mobility and persistence, generally have less potential to contaminate groundwater as compared to atrazine. The major effect the proposed rule is expected to have on the environment is a reduction in additional groundwater contamination by atrazine across the state and in the PAs. This reduction in additional groundwater contamination will benefit both the natural and human environments. The proposed process to repeal atrazine PAs will not have any impact on the environment because no PAs are being proposed for repeal at this time.

Specific questions on the EIS or the proposed atrazine rule should be directed to the Division of Agricultural Resource Management, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, Wisconsin, 53708-8911. Phone 608/224-4503.

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CHAPTER 1 - The Proposed Rule

Background

The Atrazine Rule, Ch. ATCP 30, Wis. Adm. Code, was promulgated in March 1991 to protect Wisconsin's groundwater. This rule restricted the use of atrazine on a statewide basis and established one atrazine management area (AMA) and six prohibition areas (PAs) in which the use of atrazine was further restricted or prohibited. Statewide, atrazine application rates were limited to 1.0 - 2.0 pounds/acre depending on surface soil texture and whether atrazine was used the previous year. The AMA established in the Lower Wisconsin River Valley limited atrazine application rates to 0.75 pounds/year.

Amendments to the Atrazine Rule were promulgated in March 1992. These amendments established five additional AMAs and eight additional PAs in areas of the state where sample results received by the Department by April 1, 1991 showed more acute contamination. The maximum atrazine application rates in the AMAs were 0.75 pounds/acre for coarse soils and 1.0 pounds/acre for medium and fine soils.

Additional amendments to the Atrazine Rule were promulgated in March 1993. These amendments further limited the use of atrazine statewide and included 54 atrazine PAs areas where the groundwater ES for atrazine had been exceeded. Because the new statewide restrictions were similar to the restrictions in the existing AMAs, the existing AMAs were not included in the rule.

Specifically, the 1993 rule amendments established statewide maximum allowable atrazine application rates of 0.75 pounds/acre for coarse textured soils and 1.0 or 1.5 pounds/acre for medium/fine textured soils. The 1.5 pounds/acre rate is allowed on medium/fine textured soil if no atrazine has been applied the previous year. If a rescue treatment is needed on seed and sweet corn, an additional amount of atrazine can be used as long as the total annual amount of atrazine use does not exceed 1.5 pounds/acre on coarse textured soils and 2.0 pounds/acre on medium/fine textured soils.

Additional amendments to the Atrazine Rule were promulgated in 1994, 1995, 1996, and 1997. These amendments created 46 new PAs and enlarged 11 existing PAs. The total land area involved in these 57 PAs is approximately 164,000 acres. These actions were based on groundwater sample results for atrazine and metabolites that the Department received in this four year period. The total number of acres in atrazine prohibition areas by 1997 was over 1.1 million acres.

The Proposal

Statewide Limitations

Under this proposal, all statewide provisions in the current Atrazine Rule remain in effect: routine application rates are limited to 0.75 - 1.5 pounds/acre, atrazine applications are limited to the time period April 15 through July 31; atrazine use in conjunction with irrigation requires an irrigation management plan; atrazine use and mixing-loading requires certification; and recordkeeping is required for persons applying atrazine.

Prohibition Areas

Currently, 96 PAs totaling over 1.1 million acres are included in ATCP 30. The proposed rule amendments would create two new PAs (Columbia and Waupaca Counties) and enlarge five existing PAs (Rock, Marathon, Adams, Columbia, and Vernon Counties). The total land area in the proposed PAs is approximately 13,000 acres. This proposed action is based on groundwater sample results for atrazine and metabolites that the Department has received in the last year. The proposed new PAs are based on a single well exceeding the ES. The proposed expansion of 5 existing PAs is due to newly discovered exceedences of the atrazine Enforcement Standard (ES) near an existing PA boundary. A map showing existing and proposed PAs is shown in Figure 1.

Within every prohibition area, atrazine applications are prohibited. The proposed rule also prohibits atrazine mixing or loading in existing and new prohibition areas unless conducted over a spill containment surface which complies with ss. ATCP 29.151 (2) to (4).

Repeal of Existing Atrazine Use Prohibition Areas

ATCP 30 directs the Department to prohibit atrazine use where appropriate under the groundwater law. Atrazine PAs may be established where the sum of atrazine and its chlorinated metabolites equals or exceeds the ES of 3.0 ppb under NR 140, Wis. Admin, Code.

Under ATCP 30, an atrazine PA may remain in effect indefinitely unless the department determines that resumption of use is not likely to cause a renewed violation of the enforcement standard. There are currently no clear procedures under ATCP 30 or ATCP 31 for repealing

an existing atrazine PA, nor are there clear criteria for determining under what circumstances a repeal is justified. Retesting of wells within existing atrazine PAs has shown that in some cases atrazine contamination has declined to levels below the enforcement standard.

This rule proposal establishes criteria and procedures for the repeal of atrazine PAs where contamination has declined and evidence indicates that renewed use of atrazine will not cause a violation of the enforcement standard. The proposed rule would authorize, but not mandate, the repeal of atrazine PAs. No actual atrazine PAs are being proposed for repeal under this rule proposal.

Under this proposed rule, the department may repeal an atrazine PA if all the following conditions are met:

- 1) The department determines that renewed use of atrazine in the PA is not likely to result in a renewed violation of the enforcement standard.
- 2) Tests on at least three consecutive groundwater samples, from the wells in the PAs that were previously at or above the ES, show that the atrazine concentration has dropped to 50% of the enforcement standard or 1.5 ppb. The three consecutive samples must be collected at intervals of at least six months, with the first sample being collected at least six months after the effective date of the PA.
- 3) Tests conducted at other well sites in the PA show no other concentrations of atrazine that exceed 1.5 ppb.

Discussion

How the Proposed PAs were Selected and Delineated

At well sites that exceed the ES for atrazine, an investigation is conducted to determine the source of the atrazine contamination in groundwater. As part of the investigation, each well owner is interviewed about atrazine use and handling practices around the well site. If it appears that the groundwater contamination is mainly from use of atrazine in the area (nonpoint source), a PA is proposed. If the groundwater contamination is believed to be mainly from point sources, a PA is not proposed unless it appears that use of atrazine in the area is significantly contributing to the existing contamination. In the case of isolated wells exceeding the ES, single well PAs are proposed. If clusters of wells exceeding the ES are identified, multiple well PAs are proposed.

The various types of boundaries that can be used to delineate PAs include soil and geologic boundaries, groundwater or surface water divides, legal land descriptions, and public roads. For the 8 proposed new or expanded PAs, legal land descriptions, rivers and roads are used for boundaries. In some cases the boundaries correspond to roads. Surface water features are used to modify PA boundaries where appropriate. The advantages of using legal land descriptions for the smaller single well PAs is that the recharge area for a well can be approximated more accurately than by using roads. The disadvantage of legal land descriptions is that they can split individual farm fields.

The size of most of the proposed new PAs is 2,560 acres (4 square miles). This land area is thought to be a reasonable approximation of the recharge area for the contaminated wells. A PA may be smaller in size if a river or other groundwater divide exists near the well site.

Atrazine PA Repeal Process

Under the proposed rule, certain conditions must be met before the department will consider repealing an atrazine PA. One major condition is that each well in the PA that was previously over the ES must show three consecutive results below a trigger level of 50% of the ES, or 1.5 ppb. Each of these three samples must be collected at least six months apart. The purpose of the three consecutive samples and the 1.5 ppb trigger level is to assure that once the well has dropped below the ES, normal variability over time will not cause it to again exceed the ES. The department conducted an analysis of wells in atrazine PAs and determined that when atrazine concentrations dropped to 1.5 ppb (50% of the ES) it was unlikely that the atrazine concentration would again go over 3 ppb.

Another important condition of the proposed process to repeal atrazine PAs is to assure that renewed use of atrazine in the PA at current allowable rates will not result in a renewed violation of the ES. In order to study the effects on groundwater of renewed atrazine in PAs, a groundwater monitoring study will be conducted at 21 representative sites around the state. Monitoring wells will be used in this study because of the unacceptable lag time involved with most water supply wells between atrazine application to a field and possible detection in the well. This study will be designed as follows:

Geologic Setting. Monitoring will take place in settings where the water table is in unconsolidated materials. In other words, we should avoid areas where the water table is in sandstone or carbonate bedrock. This will make interpretation of the results much easier. The unsaturated zone should be of equal or greater permeability than the overlying soil. Depth to groundwater should be less than 30 feet. The water table should not be within the root zone of the crop being grown.

Soils. Field monitoring will be aimed at evaluating atrazine movement in different soil landscapes under current atrazine use rates. The two main soil variables to consider will be texture and organic matter. Monitoring will cover the soil settings described below in the matrix. The numbers in the matrix refer to the number of monitored fields that will be needed to characterize each soil setting. More emphasis will be placed on medium textured soil where much of the corn production occurs in Wisconsin. The slope on the monitored fields should be less than 5%.

Organic Matter Categories

<u>Soil Texture</u>	<u>≤1 %</u>	<u>1-2 %</u>	<u>2-3.5%</u>
coarse	3	3	1
medium		5-6	5-6
fine		1-2	1-2

Monitoring Well Configuration. Fields to be monitored should be at least 10 acres in size. Groundwater flow direction should be determined from existing information or on-site evaluation. Three wells should be installed along a grass strip inside the field and perpendicular to the groundwater flow direction. Each well should have a five foot well intake screen with 3-4 feet of open interval below the water table.

Atrazine Use on Monitored Fields. Atrazine should be used on monitored fields at or near the highest legal use rate at least three years during a five year study period.

Transferability of Monitoring Results. It will not be feasible to monitor every field or even every PA where there is renewed atrazine use. The idea is to be able to transfer the results from "representative" monitored fields to other areas that have similar soil and geologic characteristics. The department will seek advice from the Atrazine Technical Advisory Committee to determine how the results will be used and how they will be applied to other similar areas.

Advantages and Disadvantages of the Proposed Rule

Advantages

The advantage of the proposed rule is that it prohibits the use of atrazine in areas of the state where well sampling has found atrazine levels above the ES. This action should allow the groundwater quality to gradually improve due to dilution, degradation and recharge of cleaner water to the aquifer. The process to repeal atrazine PAs would allow atrazine to be used for weed control in repealed PAs if it can be shown that renewed use will not cause unacceptable groundwater contamination.

Disadvantages

Current data for atrazine and metabolites indicate that more wells will exceed the ES as additional sampling programs are conducted. As a consequence, a disadvantage of this approach is that the rule could become increasingly complex as the need to delineate additional PAs increases. Also, this approach may allow continued use of atrazine in areas where the ES has been exceeded but groundwater testing has not yet occurred.

Repeal of atrazine PAs could cause additional groundwater contamination, although research and monitoring conducted as part of the repeal process should show where renewed use would be safe. It is possible that renewed use of atrazine in a repealed PA could cause the enforcement standard to be exceeded. In this case the PA would be reinstated.