

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

Senate Committee on  
Agriculture and  
Environmental  
Resources  
(SC-AER)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

- Appointments ... Appt
- 
- Clearinghouse Rules ... CRule
- 97hr\_SC-AER\_CRule\_97-113\_pt01
- 
- Committee Hearings ... CH
- 
- Committee Reports ... CR
- 
- Executive Sessions ... ES
- 
- Hearing Records ... HR
- 
- Miscellaneous ... Misc
- 
- Record of Comm. Proceedings ... RCP
-

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.

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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.

Final Draft  
12/9/97

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

1 The state of Wisconsin department of agriculture, trade and  
2 consumer protection proposes the following order to repeal  
3 portions of chapter ATCP 30 Appendix A, and to create ATCP 30.31  
4 and (note) and portions of chapter ATCP 30 Appendix A, relating  
5 to atrazine use restrictions.

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

Statutory authority: ss. 93.07(1), 94.69(9), 160.19(2), and  
160.21(1), Stats.

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

In order to protect Wisconsin groundwater, the department has adopted atrazine rules under ch. ATCP 30, Wis. Adm. Code. The current rules restrict the statewide rate at which atrazine pesticides may be applied. The current rules also prohibit the use of atrazine on approximately 1.2 million acres in areas where groundwater contamination attains or exceeds the enforcement standard established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code.

This rule amends the current ATCP 30 rules as follows:

- It prohibits atrazine use on approximately 13,000 additional acres based on new groundwater test data. The rule creates 2 new prohibition areas and enlarges 5 others.
- It establishes conditions which must be met before the department may repeal or reduce the size of an atrazine prohibition area.

**New or Expanded Prohibition Areas**

Current rules prohibit the use of atrazine in 96 designated areas. These include large prohibition areas in the lower Wisconsin river valley, Dane County and Columbia County, and smaller prohibition areas throughout the state.



This rule repeals and recreates 5 current prohibition areas to expand those areas, and creates 2 new prohibition areas. The rule includes maps describing each of the new and expanded prohibition areas.

Within a prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface which complies with ss. ATCP 29.151(2) to (4), Wis. Adm. Code.

#### **Standards for Repealing Prohibition Areas**

This rule spells out conditions which must be met before the department may repeal or reduce the size of an atrazine prohibition area. In future annual updates to the atrazine rule, the department may repeal or reduce the size of prohibition areas in which these conditions are met. This rule does not repeal or reduce the size of any atrazine prohibition area.

Under this rule, the department must find all of the following before it repeals or reduces the size of a prohibition area:

- Tests on at least 3 consecutive groundwater samples, drawn from each well site in the prohibition area at which the atrazine concentration previously attained or exceeded the groundwater enforcement standard, show that the atrazine concentration at that well site has fallen to and remains at not more than 50% of the enforcement standard. The 3 consecutive samples must be collected at each well site at intervals of at least 6 months, with the first sample being collected at least 6 months after the effective date of the prohibition. A monitoring well approved by the department may be substituted for any well site which is no longer available for testing.
- Tests (if any) conducted at other well sites in the prohibition area, during the same retesting period, reveal no other atrazine concentrations that exceed 50% of the enforcement standard.
- The department determines, based on credible scientific evidence, that renewed use of atrazine in the prohibition area is not likely to cause a renewed violation of the enforcement standard.

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

3           **SECTION 2.** Prohibition area maps numbered 94-01-01, 94-11-  
4 01, 93-37-01, 93-54-01, and 96-63-01, contained in Appendix A to

1 ch. ATCP 30, are repealed.

2 **SECTION 3.** The attached prohibition area maps, numbered  
3 98-01-01, 98-11-01, 98-11-02, 98-37-01, 98-54-01, 98-63-01 and  
4 98-69-01, are created in Appendix A to ch. ATCP 30.

5 **SECTION 4.** ATCP 30.31 and (note) are created to read:

6 **ATCP 30.31 REPEALING PROHIBITION AREAS.** The department may  
7 repeal or reduce the size of a prohibition area under s. ATCP  
8 30.30 if all the following conditions are met:

9 (1) Tests on at least 3 consecutive groundwater samples,  
10 drawn from each well site in the prohibition area at which the  
11 concentration of atrazine and its metabolites previously attained  
12 or exceeded the enforcement standard under s. NR 140.10, show  
13 that the concentration at that well site has fallen to and  
14 remains at not more than 50% of the enforcement standard. The 3  
15 consecutive samples shall be collected at each well site at  
16 intervals of at least 6 months, with the first sample being  
17 collected at least 6 months after the effective date of the  
18 prohibition. A monitoring well approved by the department may be  
19 substituted for any well site which is no longer available for  
20 testing.

21 (2) Tests conducted at other well sites in the prohibition  
22 area during the same retesting period, if any, reveal no other  
23 concentrations of atrazine and its metabolites that exceed 50% of  
24 the enforcement standard under s. NR 140.10.

25 (3) The department determines, based on credible scientific  
26 evidence, that renewed use of atrazine products in the

1 prohibition area is not likely to cause a renewed violation of  
2 the enforcement standard.

3 NOTE: The department may reinstate a repealed prohibition  
4 area if groundwater testing at a point of standards  
5 application shows an increasing trend of atrazine  
6 contamination, suggesting that contamination may again  
7 attain or exceed the enforcement standard.

8 **EFFECTIVE DATE.** The rules contained in this order shall  
9 take effect on the first day of the month following publication  
10 in the Wisconsin administrative register, as provided under s.  
11 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Ben Brancel,  
Secretary

# **APPENDIX A**

## SUMMARY OF TESTIMONY PROPOSED AMENDMENTS TO ATCP 30 FOR 1998

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### 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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PROPOSED AMENDMENTS TO ATCP 30 FOR 1998**

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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**

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

**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  
PROPOSED AMENDMENTS TO ATCP 30 FOR 1998**

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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"> <li>• DATCP should <u>never</u> repeal an atrazine prohibition area once the groundwater enforcement standard (ES) has been exceeded.</li> <li>• 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.).</li> </ul>
<p>SUPPORT CHANGES TO ATCP 30</p>	<ul style="list-style-type: none"> <li>• The proposed ATCP 30 changes represent a fair approach to groundwater protection and pesticide regulation/agricultural development.</li> <li>• 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.</li> </ul>

**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

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- 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 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  
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**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.

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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

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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

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**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 watch 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

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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

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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

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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

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(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 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

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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
<b>Total Annual Costs to Repeal PAs:</b>			<b>\$20,200</b>	<b>\$101,000</b>

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 (R.10/94)

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		-
<b>TOTAL State Costs by Category</b>	<b>\$ 131,200</b>	<b>\$ -</b>
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S	131,200	-
III. State Revenues -	Increased Rev.	Decreased Rev.
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$ -</b>

**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.) DATCP Jim Vanden Brook - (608) 224-4501	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 6/25/97
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# 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