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-
- Executive Sessions ... ES
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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

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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.

CHAPTER 2 - BACKGROUND INFORMATION

Findings of Atrazine In Wisconsin Groundwater

Grade A Dairy Farm Well Water Quality Survey

Between August 1988 and February 1989, The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) conducted a survey of water quality at Grade A dairy farm wells in Wisconsin. Well water samples were collected from 534 randomly-selected Grade A dairy farms in Wisconsin and analyzed for many commonly used pesticides and nitrate-nitrogen. Of the 534 wells sampled, 66 contained atrazine above the detection level of 0.15 ppb. Thirty-nine wells contained atrazine above the PAL of 0.35 ppb and 3 wells were above the ES of 3.5 ppb. The average concentration for all wells containing atrazine was 1.0 ppb and the highest concentration found was 19.4 ppb.

From this study, a statistical estimate was made with 95% confidence that between 9 and 15% of Grade A wells in Wisconsin contain atrazine. In the South Central Agricultural Statistics District, which had the highest number of atrazine detects, it was estimated that 19 to 39% of Grade A wells contain atrazine. Dane county had by far the highest number of atrazine detects of any county.

Investigations at farms with contaminated wells did not conclusively identify the source of contamination. Further research is being supported by DATCP to help determine the source and extent of the atrazine contamination. This research is showing that the atrazine in Grade A wells can be the result of both use (non-point source) and improper handling, storage and disposal (point source).

DATCP Groundwater Monitoring Project for Pesticides

This study began in 1985 and utilizes monitoring wells to study pesticides in groundwater next to agricultural fields in highly susceptible areas. For this project, highly susceptible areas are defined as having sandy soil, shallow depth to groundwater, and irrigation. Groups of three monitoring wells have been installed at approximately fifty fields in the Central Sands, lower Wisconsin River valley, and other sandy soil areas of the state. The study was designed so that the findings in the monitoring wells reflect activities on the fields being monitored.

Atrazine has been used at 40 of the test sites and has been detected at 29 of the sites. Deethyl, deisopropyl, and diamino atrazine have been detected at 32, 11 and 5 of the sites, respectively. Some sites have had a detection of a metabolite in the absence of parent atrazine. The total atrazine concentration (the sum of atrazine plus the three metabolites) has exceeded the 3.0 ppb enforcement standard at 16 of the 40 monitoring sites.

This study has helped determine which pesticides need the most attention for groundwater protection purposes. It has also helped to identify which areas of the state are most susceptible to pesticide leaching and to indicate that not all sandy soil areas have the same susceptibility to groundwater contamination. The major conclusions of the study to date are that atrazine is the pesticide that is most frequently detected in groundwater and that the lower Wisconsin River valley is an area particularly susceptible to groundwater contamination by pesticides.

DATCP Rural Well Sampling Program

In the first half of 1990 DATCP conducted a groundwater sampling program in which 2,187 rural well owners had their well water tested for certain agricultural chemicals. The study was conducted in two phases. In the first phase, participating rural well owners submitted a water sample which was analyzed for triazine compounds and nitrate-nitrogen. The triazine tests were performed using an immunoassay screening procedure. The second phase of the program consisted of an official followup sample with a conventional laboratory analysis from any well which had a triazine detection at or above 0.35 ppb or nitrate-nitrogen above 10 ppm. The program was established to provide a service to the public and provide information to DATCP on the occurrence of herbicides in groundwater. The geographic distribution of wells tested was largely determined by the location of rural well owners who participated in the program.

The results of the Rural Well Sampling Program indicate widespread atrazine contamination in groundwater in many areas of Wisconsin. Of the 2,187 wells sampled in phase 1 of the program, the immunoassay screening showed triazine detections in 351 (16%). Two hundred and twenty (10%) were above the PAL for atrazine. Official followup samples were taken at 435 qualifying wells. Of these, 215 had atrazine detects, 127 were above the PAL and 11 were above the ES. Ten followup samples known to contain atrazine were also analyzed for the atrazine metabolites deethyl atrazine and deisopropyl atrazine. All ten samples contained deethyl atrazine and six samples contained deisopropyl atrazine.

The highest frequencies of atrazine detections are in the south central, southwest, and west central regions of the state. As in the Grade A Dairy Well Survey, Dane County had by far the highest number of atrazine detections. Several other counties, such as Columbia, Grant,

Sauk, Iowa, Lafayette, Rock, Walworth, and St. Croix also had a considerable number of relatively widely distributed detections. Most of the detections were at levels near or below the PAL of 0.35 ppb, but a few detects were at levels considerably above the 3.5 ppb ES. The department believes that the atrazine in these rural wells is due to both agricultural use (non-point source) and improper handling, storage and disposal (point source).

Atrazine Metabolite Testing in the Rural Well Survey

As part of the Rural Well Survey, the CIBA-GEIGY Corporation received split samples from the 236 wells that had a triazine finding at or above 0.35 ppb. These samples were analyzed by CIBA-GEIGY for atrazine, deethyl atrazine, deisopropyl atrazine and diamino atrazine. This represents the most rigorous analysis to date for atrazine residues in Wisconsin groundwater for two reasons. First, this was the first analysis of Wisconsin groundwater for diamino atrazine. Second, the 0.1 ppb level of detection for all four analytes is considerably lower than the current levels of detection at the Wisconsin state laboratories.

The results from these 236 wells showed atrazine present in 200 wells, deethyl present in 208 wells, deisopropyl present in 143 wells and diamino present in 195 wells. The average detect concentrations for these same four analytes were 1.1, 0.80, 0.45, and 1.0 ppb, respectively. The average total concentration (for total > 0) was 3.0 ppb. These results indicate that 71 wells exceed the new ES for atrazine and metabolites. Only 15 of these wells would have exceeded the old ES for atrazine alone. The newly-discovered presence of diamino atrazine played an important role in the increased number of wells exceeding the ES.

Triazine Testing at the Wisconsin State Laboratory of Hygiene

From April 1991 to the present the Wisconsin State Laboratory of Hygiene (SLOH) has been offering a program for immunoassay testing of triazines on a routine basis. This testing service is available to the public and government agencies. The cost of the test is \$17/sample and the level of detection and reporting is 0.1 ppb. The DNR Water Supply program receives all the triazine results from SLOH and offers a free followup gas chromatography analysis for wells exceeding a threshold concentration.

As of October 1994, SLOH had analyzed over 9,000 well samples by the triazine immunoassay method. Many of these samples have been collected by government agency staff as part of programs such as the Wisconsin Priority Watershed program. Considerable sampling has occurred in priority watersheds including portions of Chippewa, Eau Claire, Clark, Marathon, Wood, Dodge, Columbia, Green Lake, Lafayette, Green, Outagamie,

Winnebago and Waupaca Counties. Most of the remaining triazine samples analyzed by SLOH have been submitted by private citizens interested in having their drinking water tested.

Of the 9,951 triazine sample results that DATCP has received, 3,988 (40%) have shown a detection at or above the 0.1 ppb level of detection. Of these 3,988 detections, 1,674 (42%) have been reported at 0.1 ppb. This trend for pervasive, low-level detects as shown by this testing methodology is not completely understood, but there is no evidence that these detects are false positives.

These data show widespread triazine detections in eight counties with priority watershed testing. The percentage of detections ranges from 34% in Chippewa, Clark and Winnebago Counties to 71% for Lafayette County. The percentage of detects equal to or greater than 0.3 ppb for these same eight counties ranges from 9% for Chippewa County to 37% for Lafayette County. The frequency of detections in these 8 counties with Priority Watersheds that encompass a range of soil and hydrologic conditions indicate that atrazine has the potential to be present in groundwater in all areas of the state where it is used.

DATCP Exceedence Survey

DATCP conducted a study in 1995 to measure changes in pesticide concentrations in wells that had previously exceeded an enforcement standard. One-hundred-twenty-two (122) wells were resampled in this program. Most of these wells are in Atrazine Prohibition Areas. Sampling results for atrazine show that 84% of the wells have decreased in concentration and 16% have increased. Forty-three percent of the wells are still above the atrazine enforcement standard and 57% are now below. Well owners with previous exceedences were interviewed to determine what changes, if any, they had made to their water supplies in response to the exceedence. About 50% of the well owners continue to use their contaminated well and about 25% have installed new wells at an average cost of \$6,300. The remainder drink bottled water, haul water, or use water treatment.

Atrazine Registration Information

"Atrazine" is the accepted common name for the compound 2-chloro-4-ethylamino-6-isopropylamino-s-triazine. This name is recognized by the American National Standards Institute.

Atrazine was initially registered in the United States in 1958 by CIBA-GEIGY for weed control in corn. Additional labels were subsequently approved for other agricultural crops by the U.S. Department of Agriculture (USDA) and since 1970 by the U.S. Environmental Protection Agency (EPA). Atrazine has been registered for control of broadleaf and grass weeds in corn, sorghum, rangeland, sugarcane, macadamia orchards, guava, pineapple, turf grass sod, conifer reforestation, Christmas tree plantations, grass in orchards, proso millet, ryegrass, wheat, grass seed fields and for nonselective vegetation control in chemical fallow and non-crop land. A large portion of atrazine use has been to control weeds on corn and sorghum in the 28 states where these crops are grown. Manufacturers produced about 100-125 million pounds of atrazine in 1980 and about 15-25 million pounds were exported.

A number of herbicides have been registered for use in combination with atrazine. Some of these include alachlor, butylate, metolachlor, paraquat, propachlor, cyanazine, bentazon and simazine. Herbicide mixtures are often used in situations where atrazine alone is not completely effective due to the spectrum of weeds, soil conditions and other environmental factors.

Atrazine Use in Wisconsin

Atrazine Use on Crops

In Wisconsin, use of atrazine on crops has been primarily on corn including field corn, silage corn, sweet corn and seed corn. The Wisconsin Agricultural Statistics Service (WASS) reported that in 1990, 3,700,000 acres of corn for grain, and 160,900 acres of sweet corn were planted. This is a total of 3,860,900 acres of corn planted in these two categories. Data on seed corn acreage are not routinely collected by WASS.

Atrazine controls many annual grass and broadleaf weeds in corn and can be applied preplant (surface applied or incorporated), preemergence, or postemergence. The label application rates for the preplant and preemergence uses of atrazine are dependent on soil texture and organic matter content and, prior to the 1990 label changes and the 1991 Wisconsin Atrazine Rule, ranged from 2 pounds of active ingredient (a.i.)/acre on coarse textured soils to 4 pounds a.i./acre on fine textured soils with higher organic matter.

Atrazine has also been applied with oil as a postemergence treatment. This is a foliar spray and controls weeds by direct contact. The historical label rates for this application were 2

pounds a.i./acre if broadleaf and grass weeds were present or 1 pound if only broadleaf weeds were present.

Another important use of atrazine has been for control of quackgrass, a perennial grass weed that can be a significant problem in corn production. Atrazine can be applied for quackgrass control as either a split or single application. Prior to the 1991 Atrazine Rule and the 1990 label changes, the split applications consisted of 2 pounds of atrazine broadcast in the spring or fall followed by a second application in the spring before, during or after planting. For a single application, 3 to 4 pounds were applied in the fall or spring followed by a plowing 1-3 weeks later.

Wisconsin Pesticide Use Surveys

Several pesticide use surveys have been conducted in Wisconsin to provide information on atrazine use patterns.

1969. This early survey, conducted as part of a Great Lakes initiative with Illinois, Indiana, Michigan and Minnesota, provides information on pesticide use in Wisconsin for the 1969 growing season. In 1969, 1,995,000 acres of corn were treated at least once with herbicides. Herbicide use on corn accounted for 82% of the total crop acreage treated with herbicides. Approximately 10 years after it first started to be used, atrazine was by far the most commonly used herbicide on corn. Atrazine alone and in combination with other herbicides was applied to 91% of the corn acreage receiving a preemergence herbicide treatment and 83% of the acreage treated postemergence. The herbicides that were used in combination with atrazine for preemergence applications were propachlor, linuron, and prometryne. The average rate of atrazine application was 1.5 - 2.0 pounds a.i./acre.

1978. Another major pesticide use survey was conducted in Wisconsin in 1978 by the Wisconsin Agriculture Reporting Service. In 1978, 3,750,000 acres of corn were planted and 3,589,000, or 96%, were treated with herbicides. Atrazine was used on 3,000,000 acres, or 80% of the corn acres planted, making it by far the most commonly used herbicide. The average rate of application was 1.5 pounds atrazine a.i./acre and a total of 4,410,000 pounds of a.i. were used. The South Central, Southwest, and West Central Crop Reporting Districts accounted for the highest number of acres treated with atrazine and the largest quantity of active ingredient applied. Quackgrass and foxtail were the most common target weeds for atrazine applications.

1985. In 1985, a major pesticide use survey was conducted by WASS to collect information needed for managing pesticides in groundwater. In 1985, herbicides were applied to 98% of

the 4,300,000 acres of corn planted. Atrazine was applied to 3,362,000, or 77%, of the corn acreage. The average rate of application was 1.6 pounds of atrazine a.i./acre and the total quantity of atrazine used in the state was 5,165,000 pounds of a.i. The South Central, Southwest, and West Central Crop Reporting Districts were again the areas of highest atrazine use. Quackgrass, foxtail and velvetleaf were the most common target weeds for atrazine applications.

1990. In 1990, a pesticide use survey was conducted by WASS in a manner similar to the 1985 survey so that direct comparisons in pesticide use trends could be made. The number of acres planted to corn in 1990 was 3,700,000, down 14% from 1985. Atrazine was applied to 56% of the corn acres in 1990 compared to 77% in 1985. The average atrazine application in 1990 was 1.43 pounds of atrazine a.i./acre compared to 1.6 pounds in 1985. The overall effect is a 43% reduction in the quantity of atrazine used on corn in Wisconsin from 1985 to 1990.

1991. In March 1992 the United States Department of Agriculture National Agricultural Statistics Service published pesticide use information for the 1991 crop year. This report indicated that atrazine was used on 52% of the corn acres in Wisconsin at an average application rate of 1.04 pounds a.i./acre. A total of 2,048,000 pounds were applied in 1991 in Wisconsin.

1992. In October 1993 the United States Department of Agriculture National Agricultural Statistics Service published pesticide use information for the 1992 crop year. This report indicated that atrazine was used on 59% of the corn acres in Wisconsin at an average application rate of 0.89 pounds a.i./acre. A total of 2,088,000 pounds were applied in 1992 in Wisconsin.

1993. In March 1994 the United States Department of Agriculture National Agricultural Statistics Service published pesticide use information for the 1993 crop year. This report indicated that atrazine was used on 48% of the corn acres in Wisconsin at an average application rate of 0.89 pounds a.i./acre. A total of 1,447,000 pounds were applied in 1993 in Wisconsin.

1994. In March 1995 the United States Department of Agriculture National Agricultural Statistics Service published pesticide use information for the 1994 crop year. This report indicated that atrazine was used on 52% of the corn acres in Wisconsin at an average application rate of 0.84 pounds a.i./acre. A total of 1,626,000 pounds were applied in 1994 in Wisconsin.

1995. In March 1996 the United States Department of Agriculture National Agricultural Statistics Service published pesticide use information for the 1995 crop year. This report indicated that atrazine was used on 51 % of the corn acres in Wisconsin at an average application rate of 1.02 pounds a.i./acre. A total of 1,887,000 pounds were applied in 1995 in Wisconsin.

Summary of Trends in Atrazine Use

All sources of information on pesticide use in Wisconsin indicates that the use of atrazine has declined over the past ten years. The two components of pesticide use that are usually considered are the number of acres on which a compound is used and the rate of application, often expressed in pounds of a.i./acre/year. These two components together indicate the quantity of pesticide material used.

It is clear that the number of atrazine-treated acres in Wisconsin declined significantly between 1985 and 1994. The pesticide use surveys conducted by WASS indicate that the percentage of corn acres treated with atrazine decreased from 77% in 1985 to 52% in 1994. It is likely that this downward trend in atrazine use has resulted from an increased awareness of its environmental and carry-over problems and from the implementation of the atrazine rule. It is not clear at this time whether atrazine use will continue to decline or whether it will stabilize at or near current levels.

The average atrazine application rate decreased from 1.6 pounds a.i. in 1985 to 0.84 pounds a.i. in 1994. Opportunities for reducing application rates include using atrazine in combination with other herbicides, applying atrazine in a band over the corn row, and using additional mechanical weed control practices. Many farmers have utilized these strategies to reduce their atrazine application rates. In some cases, however, the atrazine rate that farmers are using is already at a level where further reductions are not possible. In these cases, further reducing atrazine use would mean switching to non-atrazine weed control strategies.

There are several reasons why farmers are reducing or eliminating their use of atrazine. One reason is the concern about carryover of atrazine phytotoxicity into the following year. Most crops that commonly follow corn in a rotation can be damaged by significant atrazine residues remaining in the soil. The importance of this consideration has increased recently as more farmers are realizing the benefits of crop rotation. If the number of years of corn in a dairy rotation is reduced, for example, use of atrazine becomes less desirable because of carryover problems in new alfalfa seedings.

Certain aspects of the Food Security Act of 1985 have also increased the concerns about atrazine carryover problems. To remain in the government program, farmers must set aside a certain portion of their corn base each year to meet soil conservation goals. Due to annual changes in program requirements, it is desirable for a participating farmer to have the flexibility to seed down a corn field for conservation reasons. The possibility of atrazine carryover does not promote this flexibility.

Another major reason for the decline in atrazine use appears to be concern over environmental problems such as groundwater contamination. Several important studies in the last five years have documented atrazine contamination in groundwater and many farmers have responded to this threat by shifting their weed control strategies away from atrazine. These farmers have realized that a water supply contaminated with pesticides is a liability to their family, their farm operation, and their real estate investment.

Other reasons for farmers reducing atrazine use are: the implementation of the Department's atrazine rule, changes in the crops being planted, conversion to lower chemical input farming practices, weed resistance, and poor weed control performance. In reality, an individual farmer's decision to discontinue or reduce the reliance on atrazine may be based on a combination of these reasons. The specific reason that precipitates the final decision probably varies from case to case, but groundwater contamination has certainly been a major factor.

Environmental Fate of Atrazine

Behavior in Soil

The environmental fate - and in particular the leaching potential - of a pesticide applied to the soil is dependent on the characteristics of the environment and the chemical compound. For the chemical itself, the leaching potential is related to its mobility and persistence. Mobility refers to the water solubility and soil adsorbance of the chemical and persistence is measured by the rate of degradation of the compound in the soil. For a pesticide to leach to groundwater as a result of field applications, it must have relatively high mobility and persistence in the soil.

Atrazine has environmental fate characteristics that indicate a high leaching potential and explain its widespread occurrence in groundwater. It is moderately mobile in the soil with a water solubility of 33 ppm and a soil adsorption coefficient of 3.2. (The soil adsorption

coefficient is the ratio of the amount of a pesticide adsorbed to soil to the amount dissolved in water). Persistence in soil is the factor which appears to give atrazine its high leaching potential; literature values indicate a surface soil half-life of 4 to 57 weeks depending on environmental conditions.

Because of the large number of management, environmental and climatic variables involved in the behavior of atrazine in the soil, it is currently impossible to establish a correlation between atrazine application rates and residue levels in groundwater. Even if a correlation could be established, it would only be applicable to the specific site where the research was conducted and to the weather conditions that prevailed during the course of the experiments.

Toxicology of Atrazine

Acute Toxicity

Based on acute animal studies, atrazine is known to be slightly toxic when ingested and only mildly irritating to exposed skin or eyes. Rats exhibit muscular weakness, hypoactivity, ptosis, dyspnea and prostration after oral administration of large amounts of atrazine.

Toxicological Properties - Acute Toxicity to Mammals

<u>Type of Animal Study</u>	<u>Technical Grade Atrazine</u>
Acute Oral LD50 (rat)	1,869 mg/kg
Acute Dermal LD50 (rabbit)	> 3,100 mg/kg
Eye Irritation (rabbit)	Nonirritating
Primary Skin Irritation	Mildly Irritating

Chronic Toxicity

The Wisconsin Department of Health and Family Services (DHFS) selected a 1964 2 year chronic feeding study in dogs with Atrazine 80W for chronic exposure risk assessment determinations. Based on this study, DHFS determined a no observable effect level (NOEL) of 0.35 mg/kg/day. In this study dogs showed increased heart and liver weights at the 3.5

mg/kg/day dosage level. Effects on dogs at the 1,500 ppm feeding level included reduced food intake, decreased body weight and reduced hemoglobin and hematocrit values. Another feeding study with dogs showed EKG alterations such as increased heart rate, decreased P-II values, atrial premature complexes, atrial fibrillations and moderate to severe cardiac lesions at the highest doses of atrazine fed (1,000 ppm).

Reproductive feeding studies (0 to 500 ppm) on rats showed no effects on the reproductive parameters studied. At the highest feeding rate (500 ppm), both parental rats had statistically significant decreases in body weight and food consumption and male rats had statistically significant increases in relative testes weight. The reproductive NOEL and LEL were 10 and 50 ppm respectively (2.5 and 25 mg/kg/day) and the parental NOEL and LEL were 50 and 500 ppm.

Teratological feeding studies on rats showed reduced body weight gain in the first half of the gestation cycle. Similar feeding studies with rabbits showed decreases in body weight and food consumption. Developmental feeding studies on rabbits showed an increase in resorption of the fetus, decreased fetal weights of male and female pups and delayed ossification of fetal appendages.

Lifetime feeding studies in rats are the basis for atrazine being classified by EPA as a class "C" or possible human carcinogen. The class "C" classification is assigned to a compound when there is limited animal evidence to indicate that a compound is a possible carcinogen. This classification can be based on studies which yield limited supportive animal evidence that a compound is carcinogenic. Such evidence can include (a) definitive malignant tumor response in a single species in a well-designed experiment (b) marginal tumor response in flawed studies (c) benign but not malignant tumors with an agent showing no response in a variety of short-term tests for mutagenicity, (d) marginal responses in a tissue known to have high and variable background rate. A compound classified as a Class A carcinogen is considered a known human carcinogen based on sufficient epidemiological evidence.

EPA has established a lifetime Maximum Contaminant Level (MCL) of 3.0 ppb for drinking water.

Wisconsin's Groundwater Standard for Atrazine

Pursuant to the Wisconsin Groundwater Law and based on a recommendation from DHFS, DNR established groundwater standards for atrazine in 1988 in NR 140, Wis. Admin. Code. The DHFS recommendation to DNR for the atrazine groundwater standards is contained in a DHFS document entitled "Public Health Related Groundwater Standards - 1986", Anderson,

Belluck and Sinha, 1988. The ES for atrazine was established at 3.5 ppb and the PAL was set at 0.35 ppb.

In 1991, DHFS recommended to DNR that the atrazine ES standard be lowered to 3.0 ppb to be consistent with the lifetime MCL established by EPA. DHFS also recommended that the groundwater standard for atrazine be modified to include the three chlorinated metabolites deethylatrazine, deisopropylatrazine, and diaminoatrazine. This recommendation was based on information from CIBA-GEIGY Corporation toxicologists indicating that these three chlorinated metabolites had toxicological properties similar to parent atrazine. In response to these recommendations, DNR adopted in January 1992 an ES of 3.0 ppb and a PAL of 0.30 ppb for total chlorinated atrazine residues.

CHAPTER 3 - ENVIRONMENT AFFECTED BY AND POTENTIAL ENVIRONMENTAL EFFECTS OF THE PROPOSED ACTION

The environment affected by the proposed new and expanded atrazine prohibition areas (PAs) includes portions of: Adams, Columbia, Marathon, Rock, Vernon, and Waupaca Counties. The total land area included in the proposed prohibition areas is approximately 13,000 acres.

No readily available information exists on the number of corn acres planted or the number of acres that have been treated with atrazine in the proposed PAs. It is estimated that approximately half the acres within the proposed PAs are planted to corn and approximately half the corn acres have received atrazine. This amounts to approximately 3,250 acres where atrazine prohibitions would specifically apply. The pre-PA rate of atrazine use on these 3,250 acres could have varied from less than 0.5 to 2.0 pounds/acre.

The proposed rule may lead to increased use of alternative herbicides which may also have environmental implications. Information gathered by the Department has indicated that Bladex (cyanazine), Roundup (glyphosate), Banvel (dicamba) and Accent (nicosulfuron) are among the most important alternative herbicides if atrazine use is reduced or eliminated. Many formulations of alternative herbicides are sprayed in liquid form, but the potential for drift and non-target exposures should not be significantly different than similar formulations of atrazine. Alternative herbicides, due to differences in mobility and persistence, do not generally have as great a potential to contaminate groundwater as atrazine. Also, many other corn herbicides, with the exception of Lasso (alachlor), have less restrictive groundwater ESs than atrazine. Little is known about the metabolites of alternative herbicides.

There is a possibility that some corn growers in the PAs might change their crop rotation as a result of further restrictions on the use of atrazine. Some corn growers are finding that weed problems which traditionally have been controlled by atrazine can be reduced by modifying the number of years of corn and other crops in the rotation. Shortening rotations, or reducing the number of years of certain crops in the rotation, can break the cycle of some weeds and reduce the need for atrazine and other herbicides.

The proposed rule authorizes the repeal of atrazine PAs, but no actual atrazine PAs are proposed for repeal under this rule proposal. This rule proposal establishes a process that could allow for renewed atrazine use in PAs in future years. Renewed atrazine use in the PAs would not be allowed to cause an exceedence of the ES. However, renewed use in a PA could lead to higher levels of atrazine in the groundwater than if the PA continued indefinitely. Renewed use of atrazine in a PA could also reduce the likelihood of compliance with the PAL.

The desired long-term effect of the proposed rule on the environment is a decrease in additional groundwater contamination by atrazine in the proposed PAs. This reduction in additional groundwater contamination would benefit the natural and human environments.

CHAPTER 4 - SIGNIFICANT ECONOMIC EFFECTS OF THE PROPOSED ACTION ON ATRAZINE USERS

(DATCP Analysis of the Technical and Economic
Feasibility of Reducing or Eliminating Atrazine Use)

Background

In 1990 DATCP conducted an extensive analysis of the technical and economic feasibility of reducing or eliminating atrazine use. This analysis consisted of per-acre cost comparisons for weed control strategies that utilized full or "conventional" atrazine rates, reduced atrazine rates, or no atrazine. The weed control strategies -- including various combinations of atrazine, other herbicides, and mechanical weed control -- were developed in consultation with the University of Wisconsin Agronomy Department. These strategies were realistic, but were hypothetical in the sense that they were designed in the office rather than portraying what a particular grower was actually using in the field. Cost comparisons for the various weed control strategies were made for representative cropping systems including continuous corn, corn in rotation with soybeans, and corn in rotation with alfalfa on coarse and medium/fine soil texture groups.

The results of this analysis indicated that the feasibility of reducing or eliminating atrazine use varied considerably across the many different weed control situations facing corn producers. In some situations, such as routine weed control in continuous corn or corn/soybean rotations, reducing or eliminating atrazine seemed reasonable. In other situations, such as in a rescue treatment for grass weeds that escaped the planned weed control program, atrazine played a more important role. This analysis is described in detail in Chapter 4 of the Environmental Impact Statement dated January 1991 that accompanied the original Ag 30.

To supplement the hypothetical analysis conducted in 1990, in 1991 DATCP reviewed all relevant Wisconsin field projects, both research and demonstration, that have compared the effectiveness and profitability of various levels of atrazine use. The information that was reviewed included relevant data from the Profits through Efficient Production Systems (PEPS) program, the UW Nutrient and Pest Management Program, the DATCP Sustainable Agriculture Program, and relevant field trials conducted by the UW Agronomy Department.

The 1991 report also discusses weed control issues on sweet and seed corn in response to comments received during the 1990 public hearings. Sweet and seed corn have unique weed control needs including a potentially greater need for atrazine.

Lastly, the report discusses changes in the herbicide/weed control picture that are influencing the feasibility of reducing or eliminating atrazine use. This review is described in detail in Chapter 4 of the Environmental Impact Statement dated September 1991 that accompanied the 1992 amendments to Ag 30.

Conclusions

ATCP 31.09, in interpreting the Groundwater Law, states that groundwater protection rules "shall be designed, to the extent technically and economically feasible, to minimize the level of the pesticide substance in groundwater and maintain compliance with the preventive action limit for the pesticide substance statewide". From the 1990 Economic Evaluation and the 1991 Update it is possible to make some conclusions on the technical and economic feasibility of reducing or eliminating atrazine use. These conclusions can help determine what additional restrictions on atrazine use are appropriate. Throughout the discussion, it is useful to distinguish between individual uses of atrazine and the specific types of corn.

Technical Feasibility

Technical feasibility is generally considered to address the existence of suitable alternative weed control measures that can replace the individual uses of atrazine. These alternatives could potentially include alternative herbicides and mechanical weed control. Addressing the question of whether there are technically feasible alternatives to atrazine is independent of any economic or cost considerations. For instance, we can consider whether there are technically feasible alternatives to atrazine in specific situations, like routine weed control in continuous corn or for quackgrass control in first year corn after alfalfa sod, independent of cost. Furthermore, it is useful to consider whether the feasibility of reducing atrazine use varies between the various types of corn, such as field, sweet, and seed corn.

Field Corn. The feasibility analysis and discussions with the DATCP Atrazine Technical Committee have indicated that it is technically feasible to **reduce** or **eliminate** atrazine use on field corn. Particularly with new herbicide products entering the market and advancing technologies and expertise in mechanical weed control, it is technically possible to handle all

weed control situations in field corn without the use of atrazine. In eliminating the use of atrazine, however, a higher level of management may be needed since weather and other factors make the timing of alternative weed control methods more critical.

Sweet and Seed Corn. The analysis indicated that on sweet corn and seed corn it is technically feasible to **reduce** atrazine use but it may not be technically feasible to **eliminate** atrazine use.

Sweet and seed corn have unique weed control needs and problems, including fewer registered alternative herbicides and higher potential for herbicide injury, that make atrazine a more integral component of the weed control strategy compared to field corn. There may be certain situations, such as when a rescue treatment is needed, where atrazine is the only technically feasible alternative. Although atrazine use is relatively more important on seed and sweet corn, it appears technically feasible to reduce application rates for routine use to 0.75-1.0 pound atrazine ai/acre.

Economic Feasibility

Economic feasibility goes beyond technical feasibility and considers the cost differences between atrazine and alternative weed control methods. It is possible, as in this analysis, to make per acre weed control cost comparisons for weed control strategies that use full atrazine, reduced atrazine, or no atrazine. It is also possible to use other economic parameters such as direct costs, production costs, or measures of profitability, such as gross margin analysis, to compare various weed control options. Furthermore, both micro and macroeconomic analysis can be conducted to determine the effects of modifying atrazine use on individual farms and the larger farm economy. No one method is specified for use by the Groundwater Law, so it is desirable to consider a range of economic indicators.

The guideline of economic feasibility in the Groundwater Law and ATCP 31 is somewhat difficult to interpret and implement because no specific measure or yardstick of economic feasibility is specified. Whereas it is possible to make cost comparisons between weed control strategies utilizing various levels of atrazine, it is much more difficult to interpret these results and decide what level of additional cost is acceptable in order to protect groundwater. Cost-benefit analysis is a possibility, but is often fraught with bias and was not specifically envisioned in the Groundwater Law. Short of some analytical or quantitative procedure for calculating acceptable or legitimate cost increases, we are left with a process of negotiation, qualitative input from the public, and group consensus to interpret how far it is feasible to further reduce atrazine use.

Field Corn. The 1990 and 1991 economic analyses indicated that it is economically feasible to **reduce** atrazine use on field corn. A one pound rate of atrazine has been used as a benchmark between higher and lower atrazine use rates in the analysis of the feasibility of reducing atrazine rates in the proposed AMAs. Data from the PEPs program, the NPM demonstrations, the DATCP Sustainable Agriculture Program, and the UW Agronomy field trials have consistently indicated that corn can be produced profitably using one pound or less of atrazine. This conclusion is corroborated by atrazine use patterns throughout Wisconsin. Most growers who continue to use atrazine use low application rates. At application rates of 1 pound or less, atrazine is used in premix products or to "spike" other herbicides in various tank mixes.

A determination of whether it is economically feasible to **eliminate** atrazine use on field corn depends largely on the extent of cost increase that is acceptable in order to further protect groundwater. Whereas our analysis has indicated that there is no significant cost disadvantage when reducing atrazine rates to one pound or less, it did indicate a potential cost increase when eliminating atrazine and switching to alternative herbicides. The extent of this cost increase depends largely on weed pressure and the extent to which mechanical weed control is practical. Some research indicates that a switch from atrazine to Bladex would lead to little if any cost increase if row cultivation is used. Other sources of data suggest a \$5 - \$10/acre cost increase if atrazine was eliminated in favor of alternative herbicides on field corn. Still other individuals have testified to the department that in a worst case scenario loss of atrazine could lead to a \$20-\$30 cost increase/acre. The decision making process must resolve the question of whether these cost increases are economically feasible to minimize groundwater contamination.

Sweet and Seed Corn. Discussions with the Atrazine Technical Committee and sweet corn producers has indicated that it is economically feasible to **reduce** atrazine use on sweet corn and seed corn. The use of atrazine premix products, low levels of atrazine in tank mixes with other herbicides, and mechanical cultivation should allow routine atrazine application rates on sweet and seed corn to be reduced to 0.75 - 1.5 pounds ai/acre with a provision to allow additional atrazine use for rescue treatments.

It was previously stated that it is probably not technically feasible to **eliminate** the use of atrazine on sweet and seed corn. Since this determination has been made, discussion of the economic feasibility of eliminating atrazine use on sweet and seed corn is not relevant.

CHAPTER 5 - PERSONS DIRECTLY AFFECTED BY THE PROPOSED ACTION AND HOW THEY WILL BE AFFECTED

Atrazine Users - Field, Sweet, Seed and Silage Corn Growers

Atrazine users in the prohibition areas (PAs) would be affected by the proposed rule. Growers in PAs would not be able to apply atrazine or mix and load atrazine unless over a spill containment pad constructed in compliance with ATCP 29.151. Portable pads are available at a cost of approximately \$1,800. Construction costs for acceptable concrete pads are estimated to be between \$1,500 and \$3,000. A description of the economic effects of reducing or eliminating atrazine use on corn crops is provided in Chapter 4.

Effects on the Pesticide Industry

Dealers and Distributors of Atrazine

Dealers and distributors of atrazine who service areas of proposed PAs would be affected by a reduction in the sales of atrazine. It is likely, however, that an increase in the sales of alternative herbicides would compensate for the reduction in atrazine sales.

Commercial Applicators of Atrazine

Commercial application services will be required to know where all the atrazine PAs are located to avoid inadvertent applications. Since many growers who cannot or chose not to use atrazine will use alternative herbicides, there should not be a significant reduction in business for commercial applicators. Any impact of the proposed rule on commercial applicators will depend on how they respond to changing weed control practices. Applicators that provide comprehensive services such as weed management consulting and non-atrazine or non-herbicide weed control programs may see an increase in business.

Manufacturers of Atrazine

Nineteen companies are licensed in Wisconsin to sell approximately 47 products containing atrazine. By eliminating atrazine use in the 8 proposed PAs, the proposed rule is expected to result in a small decrease in sales of atrazine products in Wisconsin. The extent of the impact on sales is related to the number of corn acres where atrazine use will be eliminated. The impact of the reduction in atrazine sales in Wisconsin on the national atrazine market will be small unless this action serves as a precedent for other states.

Persons in Affected Areas Who Use Groundwater as a Source of Drinking Water

Groundwater is the source of drinking water for approximately 70% of Wisconsin residents. Residents whose private wells have been sampled and found to contain atrazine and metabolite concentrations above the 3.0 ppb ES have been advised by letter to find an alternative source of water for drinking and cooking purposes. These people incur inconvenience and costs associated with purchasing either bottled water or transporting water from a clean source. In some instances new wells must be installed at a cost ranging from \$1,000 to more than \$15,000. Some of these new wells have been partially funded by the Wisconsin Private Well Compensation Program. Property values can also decline in areas with groundwater contamination. Some homeowners with atrazine in their well above the ES have had to subtract the cost of replacing the well from the selling price of their home.

The proposed PAs in the rule are expected to reduce negative impacts on the quality of groundwater in Wisconsin. Since atrazine use and contamination is more severe in the PAs, greater benefits are expected for residents of these areas. Eliminating atrazine use in the proposed PAs should reduce additional atrazine inputs to wells previously contaminated and decrease the potential for new wells to become contaminated. As a result, health concerns and psychological stress associated with contaminated drinking water should be reduced by the rule. Also, the costs, inconvenience and effort associated with using bottled or other alternative sources of water should be reduced as the levels of atrazine in groundwater decline. Reductions in property values due to groundwater contamination by atrazine should diminish.

The proposed rule authorizes the repeal of atrazine PAs, but no actual atrazine PAs are proposed for repeal under this rule proposal. This rule proposal establishes a process that could allow for renewed atrazine use in PAs in future years. Renewed atrazine use in the PAs would not be allowed to cause an exceedence of the ES. However, renewed use in a PA could lead to higher levels of atrazine in the groundwater than if the PA continued indefinitely. Renewed use of atrazine in a PA could also reduce the likelihood of compliance with the PAL.

Effects on Costs to Consumers

The proposed action is not expected to have a measurable effect on consumer food costs, specifically on corn-derived products. It is unlikely that corn production will decline as a result of decreased atrazine use. Corn prices, which are affected by several market forces including declining federal support programs and other factors such as weather, are not expected to change as a result of the proposed action.

State Agencies

DATCP would administer and enforce the proposed rule. Initially, a significant outreach effort will be needed to inform the regulated community of the new PAs. An increase in compliance and enforcement activities by DATCP will also be needed in the PAs.

Groundwater monitoring will need to continue to allow evaluation of the rule over time. Overall, a significant expenditure of staff, money and analytical services will be required.

DNR has authority to sample wells and is likely to continue these efforts. DHFS is expected to continue its cooperation with DNR and DATCP by offering information on possible health effects of atrazine and issuing health advisories regarding the use of water from contaminated wells.

CHAPTER 6 - ALTERNATIVES TO THE PROPOSED ACTION

No Action Beyond the Existing Rule

Under this option, no new PAs would be delineated and no repeal process for atrazine PAs would be established. The existing Chapter ATCP 30 promulgated in April 1997 would continue to apply to all areas of the state.

Advantages

An advantage of this option is that no additional rulemaking or compliance actions would be required for the Department. Also, from a weed control perspective, growers in the proposed PAs could continue using atrazine at the existing statewide levels.

Disadvantages

The main disadvantage of this option is that it would not provide adequate groundwater protection in the areas where exceedences of the atrazine ES have been found. A lack of response would not meet the department's mandates under the Groundwater Law. If a repeal process for atrazine PAs is not established, atrazine would not be available for weed control in existing PAs where concentrations have dropped and renewed use has been found to be safe.

Repeal Process Using the PAL as the Trigger Level

Under this alternative the repeal process would be the same except that the PAL (0.3 ppb) would be used as the trigger level to qualify a PA for repeal rather than 50% of the ES (or 1.5 ppb). The three consecutive samples from the wells in the PA that previously exceeded the ES would have to drop below the PAL before a PA could be considered for repeal.

Advantages

The main advantage of this alternative is that it would provide an extra margin of safety that the atrazine levels in the PA would remain below the ES. Also, this approach uses an existing groundwater standard rather than creating a new number (50% of the ES).

Disadvantages

The main disadvantage of using the PAL as the trigger level is that it may unreasonably slow down the process under which a PA could be repealed and atrazine use could safely resume. It could take many years for a well previously over the ES to drop below the PAL on three consecutive samples.

Repeal Process Using the ES as the Trigger Level

Under this alternative the repeal process would be the same except 2.9 ppb (just below the ES) would be used as the trigger level to qualify a PA for repeal rather than 50% of the ES (or 1.5 ppb). The three consecutive samples from the wells in the PA that previously exceeded the ES would have to drop below the ES before a PA could be considered for repeal.

Advantages

The advantage of this alternative would be that it would speed up the process by which a PA could be repealed and atrazine use could resume.

Disadvantages

The disadvantage of this approach is that it would not provide an adequate margin of safety to assure that a well previously above the ES had dropped and would remain below the ES. If a well dropped to 2.9 ppb, natural variability in the concentration over time could easily cause it to again exceed the 3.0 ppb ES.

Repeal Process Using One Sample Rather Than Three Consecutive Samples

Under this option wells in a PA that were previously above the ES would only have to have one sample result below the trigger level rather than three.

Advantages

The advantage of this option is that it would streamline the process of qualifying a PA for repeal and would save on well sampling and sample analysis costs.

Disadvantage

The disadvantage of this option is that one sample below the trigger level provides less assurance that the well will remain below the ES over time.

Statewide Prohibition

Under this option atrazine use would be completely eliminated. No atrazine could be used for any crop in any part of the state. A prohibition on atrazine use could be imposed for the 1998 growing season or phased-in over 2-3 years. This is obviously the most restrictive action the Department could take in response to atrazine contamination in groundwater. This action should receive consideration because the NR 140 groundwater ES includes atrazine and the three chlorinated metabolites. Sampling results for atrazine and metabolites have indicated that this new ES is being exceeded much more frequently than the old ES which was based solely on parent atrazine.

Advantages

The biggest advantage of this option is that it would provide the highest degree of groundwater and public health protection from contamination by atrazine. No additional atrazine would be introduced into the environment to further contribute to the existing problem. The aquifers of the state could then begin to cleanse through degradation, dispersion and discharge into surface water. This option would be relatively easy to administer and enforce compared to a system of use restrictions and PAs.

Disadvantages

The main drawback of this option is that it is not clear, based on current use patterns, whether atrazine use has the potential to exceed the ES in all areas of the state. A statewide prohibition

may eliminate atrazine use at low rates in areas where unacceptable contamination would not occur. This could lead to undue economic hardship on certain corn growers.

The Department has estimated the economic impact of eliminating the use of atrazine in Wisconsin. The overall analysis was based on separate analyses for continuous corn, corn in rotation with alfalfa, and corn in rotation with other crops. The results indicated that the total economic cost of prohibiting atrazine use in Wisconsin would be between 1.6 and 10.9 million dollars. This wide range reflects the considerable cost differences between possible alternative weed control strategies. In situations where increased mechanical weed control is feasible, for instance, the analysis indicated that the economic impact could be greatly reduced.

SUMMARY AND CONCLUSIONS

Groundwater monitoring initiatives in Wisconsin have discovered that the herbicide atrazine and its chlorinated metabolites are present in a variety of wells and aquifers around the state. The atrazine in groundwater is believed to have resulted from both use (non-point source) and improper handling, storage and disposal (point source). The distribution of atrazine detections in the state is widespread. Most areas where testing has occurred have shown detections and certain areas have more acute contamination problems.

Regulatory authority for protection of groundwater from pesticides including atrazine falls under the Wisconsin Groundwater Law (Ch. 160, Stats.) and Ch. ATCP 31, Wis. Adm. Code. Both the Groundwater Law and ATCP 31 describe the measures DATCP must take in response to documented groundwater contamination by pesticides. For groundwater contamination above the Enforcement Standard (ES), the department must prohibit the activity or practice which caused or may affect the contamination. For levels of contamination below the ES, the appropriate regulatory response is more complex. ATCP 31.09 states that any substance-specific groundwater protection rule "shall be designed, to the extent technically and economically feasible, to minimize the level of pesticide substance in groundwater and maintain compliance with the preventive action limit for the pesticide substance statewide."

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 promulgated in March 1992 established five additional AMAs and eight additional PAs in areas of the state where groundwater contamination is more acute. The 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 limited the use of atrazine in the entire state. Specifically, the maximum allowable atrazine application rates for the entire state were lowered to 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 is allowed on medium and fine textured soils if no atrazine was applied the

previous year. An exemption is allowed on seed and sweet corn if a rescue treatment is needed.

Additional amendments were promulgated in 1994, 1995, 1996, and 1997. These amendments created 46 new PAs 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. The proposed rule amendments would create two new PAs and enlarge five existing PAs. These actions are based on groundwater sample results for atrazine and metabolites that the Department has received in the last year. The proposed PAs are based on a single well exceeding the ES. The proposed expansion of five existing PAs is due to newly discovered exceedences of the atrazine ES near an existing PA boundary.

This rule proposal 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. 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 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, due to 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 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.

Several alternative regulatory strategies have been considered by DATCP staff. These include taking no action, using different trigger levels to determine when an atrazine PA qualifies for repeal, and prohibiting atrazine use statewide. Eliminating atrazine use statewide may provide greater protection of groundwater than the proposed rule but may also lead to greater economic hardship for farmers who desire to continue using atrazine.

It should be recognized that atrazine use on some sites under this rule may lead to groundwater contamination that exceeds the PAL.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER
PROTECTION

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

Dated: 10/15/97



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: January 16, 1998
TO: SENATOR ALICE CLAUSING
FROM: Mark C. Patronsky, Senior Staff Attorney
SUBJECT: Comments on Proposed Amendments to Chapter ATCP 31, the Groundwater Protection Program of the Department of Agriculture, Trade and Consumer Protection

This memorandum is in response to your request for my comments on a memorandum prepared by Tom Dawson, Director, Wisconsin Strategic Pesticide Information Project. Mr. Dawson identifies two concerns with and suggests an alternative to the proposed amendments to ch. ATCP 31 in Clearinghouse Rule 97-043. The rule amendments relate to creating a procedure for the repeal of pesticide prohibition areas.

The groundwater statutes are contained in ch. 160, Stats. In order to provide a context for the discussion of the concerns raised by Mr. Dawson, the first part of this memorandum describes the groundwater statutes and the agency responsibilities under those statutes. The second part of this memorandum describes the specific fact situation that is addressed in Clearinghouse Rule 97-043 and contains my responses to Mr. Dawson's comments.

Before commencing the discussion of Mr. Dawson's comments, it should be noted that his memorandum contains both an interpretation of the statutory text, as he argues should be applied to the fact situation associated with the proposed rule, and advocacy of a particular result under the statutes. This memorandum addresses only the question of how the statutes should be interpreted. This memorandum is not intended to comment on the groundwater protection policies espoused by Mr. Dawson.

A. GROUNDWATER STANDARDS AND REGULATORY AGENCY RULES

1. Identification of Substances

Administrative rules and enforcement activities related to groundwater protection are based on numerical standards for concentrations of substances in groundwater. Each regulatory agency is required to submit to the Department of Natural Resources (DNR) a list of substances

which: (a) have been detected in, or have a reasonable probability of entering, the groundwater resources of the state; and (b) are related to activities within the agency's authority to regulate. In addition, any person may petition a regulatory agency to include a substance on that agency's list. "Regulatory agency" is defined in ch. 160, Stats., as the Department of Agriculture, Trade and Consumer Protection (DATCP), the Department of Commerce, the Department of Transportation, the DNR and any other state agency which regulates facilities, activities or practices which are related to substances which have been detected in or have a reasonable probability of entering the groundwater resources of the state.

The DNR places each substance reported to it into one of three categories. The categories are used to determine the sequence in which standards are established. Substances are categorized as follows:

a. Category 1 (highest priority) substances are those which have been detected in groundwater in concentrations in excess of a "federal number" (a numerical standard established by the Federal Environmental Protection Agency or the National Academy of Sciences).

b. Category 2 substances are those which are of public health or welfare concern and have been detected in groundwater, but not in concentrations in excess of a federal number.

c. Category 3 (lowest priority) substances are those which are of public health or welfare concern and have a "reasonable probability" of being detected in groundwater.

2. Setting Standards for Substances

The DNR determines which of the substances submitted to the DNR by a regulatory agency are of public health concern and those which are only a public welfare concern. The list of substances of *public health* concern is submitted to the Department of Health and Family Services (DHFS) for its recommendation as to appropriate enforcement standards. The DNR then promulgates, by rule, *enforcement standards* for the substances of public health concern, using the DHFS recommendations. For substances which are of *public welfare* concern only, the DNR alone formulates the enforcement standard.

An enforcement standard is a numerical expression of the concentration of a substance in groundwater. Chapter 160, Stats., requires the DNR and DHFS, in establishing enforcement standards, to use existing federal numbers (usually drinking water standards) as enforcement standards, unless one does not exist for a substance or unless the agencies meet specified conditions in establishing a standard other than the federal number.

The DNR also promulgates, by rule, a *preventive action limit* for each substance for which an enforcement standard is established. The level of each preventive action limit is either 10%, 20% or 50% of the enforcement standard for the substance. The criteria for determining the percentage for each substance is specified by statute and is based on the health-related characteristics of the particular substance. The DNR may establish a more stringent preventive action limit if it concludes, to a reasonable degree of scientific certainty, that a more stringent level is necessary to protect public health or welfare.

3. Effects of Standards

The *enforcement standard* defines when a violation has occurred. When a substance is detected in groundwater, in concentrations equal to or greater than its enforcement standard, the facility, activity or practice which is the source of the substance is subject to immediate enforcement action.

The *preventive action limit* for a substance functions as a "warning" to assess the need for regulatory responses when a substance is detected in groundwater. When a preventive action limit is attained or exceeded, some regulatory response *may* be necessary. The regulatory agency having jurisdiction over the facility, activity or practice causing the substance to enter groundwater is required to evaluate the situation and take action necessary to maintain the concentration of the substance at the preventive action limit or at the lowest concentration feasible. Preventive action limits are intended to provide regulatory agencies with time to take preventive measures to ensure that enforcement standards are not violated.

4. Regulatory Agency Rules

Each regulatory agency is required by ch. 160, Stats., to adopt rules setting forth the range of responses which will be required of itself, or of a person controlling a facility, activity or practice which is the source of a substance, when a preventive action limit or an enforcement standard for that substance is attained or exceeded. The intent of this provision is to require that the regulatory agency identify, *in advance*, the type of regulatory responses which will be considered when a preventive action limit or an enforcement standard is attained or exceeded.

Chapter 160 additionally requires that, when the DNR promulgates an enforcement standard for a substance, each regulatory agency must review its rules, including design and management practices for facilities, activities or practices which are related to that substance, and, if necessary, revise the rules so that regulated facilities, activities or practices comply with the standards. Regulatory agencies must also review the existing rules when a preventive action limit or an enforcement standard is attained or exceeded for a substance related to a facility, activity or practice which that agency regulates. If necessary, the rules must be revised to maintain compliance with the standards at other locations of the facility, activity or practice in the future.

B. RESPONSES TO MR. DAWSON'S COMMENTS

The amendments in Clearinghouse Rule 97-043 relate to ch. ATCP 31, Wis. Adm. Code. This chapter of the administrative rules contains the groundwater protection program of DATCP. These rules are general in nature and guide DATCP decision-making in specific cases.

The proposed amendment to ch. ATCP 31 would relate to pesticide contamination with the following elements: (1) groundwater monitoring detects the concentration of a pesticide in groundwater at or above an enforcement standard; (2) the concentration is determined to result from use of the pesticide; (3) a prohibition on use of the pesticide has been imposed by DATCP in that vicinity; and (4) the concentration of the substance in groundwater diminished following

creation of the prohibition area until it is below the enforcement standard, but above the preventive action limit. Following the establishment of a prohibition area and subsequent reduction of the concentration of the pesticide below the enforcement standard, current s. ATCP 31.08 does not contain a procedure for review of the continued application of a prohibition area. The purpose of Clearinghouse Rule 97-043 is to create this procedure.

1. Mr. Dawson's First Concern

Mr. Dawson's *first concern* is that the rule should be redrafted to require the DATCP to meet a higher burden in order to lift a prohibition on the use of a pesticide when the concentration of the pesticide in groundwater is reduced to a level that is below the enforcement standard. He suggests draft language to accomplish this. Mr. Dawson argues that s. 160.25 (1), Stats., requires this higher burden to be met in order for any alternative to a prohibition to be entertained.

There are two problems with this argument. First, the argument relies on the mandate of s. 160.25 (1), Stats. This statute specifies the actions a regulatory agency is required to take when the concentration of a substance in groundwater attains or exceeds an enforcement standard. The reliance on this statute is misplaced because the rule applies to situations in which the concentration of a substance in groundwater, which was previously above the enforcement standard (thus triggering a prohibition), has subsequently been reduced below the enforcement standard. Because the concentration of the substance is no longer above the enforcement standard, s. 160.25 (1), Stats., does not apply.

The second problem with this argument is that it ignores the mandate of s. 160.25 (4), Stats., which expressly states the consequence of successful compliance with the enforcement standard. This is the fact situation that is being addressed by the proposed rule. The statute directs that when compliance with the enforcement standard is achieved, s. 160.23, Stats., applies rather than s. 160.25 (1), Stats., as stated by Mr. Dawson.

2. Mr. Dawson's Second Concern

Mr. Dawson's *second concern* is related to the interpretation of s. 160.25 (4), Stats., which is described in the previous paragraph of this memorandum. He interprets the cross-reference in s. 160.23 (4), Stats., as leading to s. 160.23 (1), Stats. This statute describes generally what a regulatory agency must do when a preventive action limit is exceeded. Mr. Dawson criticizes the rule for not meeting the requirement of s. 160.23 (1), Stats., which he believes sets a standard for lifting a prohibition.

However, Mr. Dawson makes no mention of s. 160.23 (4), Stats., which expressly states that when the concentration of a substance in groundwater is above a preventive action limit, but below an enforcement standard, a regulatory agency may not impose a prohibition unless it complies with four specific requirements set forth in that statute. Section 160.23 (4), Stats., makes it substantially more difficult for a regulatory agency to impose a prohibition when only a preventive action limit has been exceeded, because it requires the regulatory agency to determine, by the greater weight of the credible evidence, that no other remedial action would prevent the violation of the enforcement standard.

Mr. Dawson's argument is that the rule is not sufficiently restrictive regarding the removal of a prohibition. I believe a more persuasive argument can be made that the analysis and decision-making required under the proposed rule to repeal a site-specific prohibition may, in fact, be more restrictive than authorized under s. 160.23 (4), Stats., because it allows a prohibition to be lifted only if a renewed violation of the enforcement standard is not expected and does not allow consideration of whether any other remedial action would prevent violation of the enforcement standard when the prohibition is lifted.

3. Alternative Suggested by Mr. Dawson

As an *alternative* to the draft rule proposed by DATCP, Mr. Dawson suggests that the preventive action limit should be used as the "trigger" for considering the lifting of a prohibition. In other words, a prohibition, once established when the concentration of a substance exceeds the enforcement standard, would not be lifted until the concentration of the substance was reduced below the preventive action limit. Mr. Dawson's arguments in support of this proposal all relate to the statutory framework of two regulatory thresholds, one at the preventive action limit level and the other at the enforcement standard level. Mr. Dawson argues that the rule creates a "third" threshold, somewhere between the preventive action limit and the enforcement standard, at which a prohibition may be lifted, and that this "third threshold" is not authorized by the statute. In support of this, Mr. Dawson argues that s. 160.23 (1) (c), Stats., provides that when the preventive action limit is exceeded, one of the requirements is for the regulatory agency to "ensure the enforcement standard is not attained or exceeded at the point of standards application."

Mr. Dawson's argument appears to be that the only way to assure compliance with the enforcement standard, when only the preventive action limit has been exceeded, is to retain the prohibition in effect. This is not consistent with the requirement of the statute. Section 160.23 (1) (c), Stats., provides that the goal for regulatory agency action when a preventive action is exceeded is to ensure that the enforcement standard is not attained or exceeded. The statute does not specify the methods that may be used to achieve this goal and leaves that decision to regulatory agency discretion.

4. Conclusion

In summary, although I disagree with the specific arguments made by Mr. Dawson, as noted above, I agree with his general conception of the groundwater law, with its strong bias towards vigorous regulatory action when an enforcement standard is exceeded, and its goal of taking action to avoid the violation of an enforcement standard when a preventive action limit is exceeded. However, it is important to note that under the groundwater statute, regulatory decisions are not driven primarily by the past regulatory situation. In other words, the fact that an area has been subject to a prohibition on the use of a pesticide does not dictate a subsequent regulatory result. The decision on whether to maintain or remove a prohibition area after the concentration declines below the enforcement standard is based on the concentration of the substance in groundwater and predictions, within the framework of statutes and rules, and the likelihood of exceeding the enforcement standard again in the future.

It must also be understood that the groundwater statutes discussed in this memorandum are extremely brief. Except for s. 160.25 (4), Stats., which is discussed above, there is no specific procedure in the statute related to the situation in which an enforcement standard has been exceeded, a prohibition imposed and the concentration of the substance thereafter is reduced to below the enforcement standard. Mr. Dawson's arguments, my responses to them and the proposed rule are all interpretations of general provisions of the groundwater statutes that apply to all situations involving groundwater contamination, and do not expressly relate to any specific fact situation. This is not to say that the groundwater statutes are flawed because they are expressed in such general terms. The generality of the statutes is in fact a strength, because it allows the statutes to be applied in the full range of situations in which groundwater contamination may occur.

If I can provide further information on this subject, please feel free to contact me.

MCP:jmm;jt;ksm



PETERSON FARM

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Senate Ag Committee -
Clausing Chair
Winch
Lasee.
Zien.

1-27-98

JAN 27 1998

RE - Hearing Pub. 97-113 (DATCP-30)

I grow 500 Acres of Corn. and can not use Atrazine - I AM At a 20¢ per bushel disadvantage at the Market Place. with my neighbor who can use Atrazine.

I urge you to Consider the trigger of 50% of the enforcement standard as a way to give us Wisconsin farmers a level playing field at the Market place -

Thank you for your Consideration.
Philip Peterson

George J. Kraft
8640 Hwy. JJ
Amherst, WI 54406

January 28, 1998

Sen. Alice Clausing
P.O. Box 7882
Madison, WI 53707-7882

Dear Sen. Clausing:

**Re: Atrazine Rule Amendments (Clearinghouse Rule No. 97-113)
Proposed Revisions to ATCP 30**

As you previously invited my testimony on pesticides in groundwater matters, I hope I may offer some input on the current rule amendment being considered by the agriculture and environment committee.

In my opinion, the proposed amendment as regards the recision process inadequately protects Wisconsin's groundwater and misses the intent of Wisconsin's groundwater law. The Committee on Agriculture and Environmental Resources should consider asking DATCP to revise the proposal to make it more consistent with the intent of the groundwater law.

The crux of the problem is that DATCP's enforcement of Wisconsin's groundwater law with respect to pesticides is more lax than the way Wisconsin regulates virtually all other activities. Other pollution sources are required to meet standards at the water table or at a property boundary, and the Preventive Action Limit is used as a caution light telling agencies and regulated entities to take actions to make sure the Enforcement Standard is not exceeded. In contrast, DATCP waits to enforce the groundwater law until the ES is exceeded in someone's drinking water well before taking actions. By this time, it is possible for polluted groundwater to have traveled miles beyond the property boundary or field from which it originated. In addition, DATCP ignores the PAL.

Suggestions for fixing proposed ATCP 30

Some sort of recision process seems reasonable, but proposed ATCP 30 language needs to be made consistent with the intent of the groundwater law and with common sense. A sounder ATCP 30 needs to ensure that (1) all groundwater resources need to be protected, not just groundwater used currently in domestic wells where samples have been taken and (2) DATCP staff have to exercise better scientific judgement than what their proposed black-and-white procedure calls for. Some specific suggestions follow:

1. ATCP 30.31(1) and (2).

What it does: States under what circumstances DATCP may consider rescinding prohibitions, which, in part, are when at least 3 consecutive groundwater samples taken from points of standards application (usually drinking water wells), have dropped below 50% of the enforcement standard.

Issue (1): DATCP has invented an ad hoc number (50% of the ES) instead of using, say, the PAL.

Suggested fix: I'm not sure what an appropriate level for rescission should be. Much testimony at public hearing stated that the PAL should be used.

Issue (2): DATCP's charge is to ensure that all groundwater meets standards. Just because certain monitoring points are at less than 50% of the ES, other, unmonitored groundwater may still exceed the ES.

Suggested fix: Language should be added requiring DATCP to perform a scientific analysis showing that all groundwater in the prohibition areas likely meets standards. This language could be added simply to the existing proposal:

(30.31 (number)) The department determines, based on credible scientific evidence, that other groundwater in the prohibition area likely does not exceed the enforcement standard for atrazine.

2. ATCP 30.31 (3)

What it does: States that the department must determine that renewed use of atrazine products in the prohibition area is not likely to cause a renewed violation of the enforcement standard.

Issue (1) It does not say where this violation needs to occur. Presently, DATCP only enforces ES at domestic wells that may be miles away from where the pollution originated.

Suggested fix: State where the ES applies, specifically at the water table or a field edge.

3. General comment.

It seems that the groundwater law requires that DATCP eventually bring the concentration of the offending substance down below the preventive action limit. DATCP has no language to this effect in their proposal. In fact, it appears that they intend to use the Enforcement Standard as a degradation standard.

Thank you for your consideration,

George J. Kraft