

Clearinghouse Rule 08-090

DATCP Docket No. 07-R-08
Rules Clearinghouse No. _____

Hearing Draft Rule
August 6, 2008

**PROPOSED ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

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

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

In order to protect Wisconsin groundwater, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers rules that limit atrazine herbicide application rates throughout the state, and prohibit atrazine applications in areas where groundwater contamination levels attain or exceed state enforcement standards adopted by the Department of Natural Resources. Based on new groundwater test data, this rule will expand and join 2 current atrazine prohibition areas in Columbia County.

Statutes Interpreted

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

Statutory Authority

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

Explanation of Statutory Authority

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP has authority to adopt pesticide rules under s. 94.69(1), Stats. Under ss. 160.19(2) and 160.21(1), Stats., DATCP must regulate

pesticide use, as necessary, to prevent groundwater contamination and restore groundwater quality.

Related Rules or Statutes

Under the state groundwater law, ch. 160, Stats., DATCP must regulate pesticide use as necessary to prevent groundwater contamination and restore groundwater quality. DATCP has adopted general rules for its groundwater protection program under ch. ATCP 31, Wis. Adm. Code. DNR has adopted groundwater enforcement standards and preventive action limits for atrazine and its metabolites under NR 140, Wis. Adm. Code.

This rule is consistent with the state groundwater law (ch. 160, Stats.) and DATCP's general groundwater protection rules (ATCP 31), and is designed to attain compliance with the groundwater enforcement standards and preventive action limits specified by DNR rules (NR 140).

Background

Atrazine is a widely used agricultural herbicide that has been found in groundwater throughout the state. Current DATCP rules under ch. ATCP 30, Wis. Adm. Code, limit atrazine application rates throughout the state to ½ the current federal label rate. The current rules also *prohibit* the use of atrazine where atrazine contamination of groundwater has attained or exceeded the state groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 102 designated areas, including major prohibition areas in the lower Wisconsin River Valley and much of Dane and Columbia counties.

Rule Content

Based on new groundwater sampling data, this rule expands and joins 2 current atrazine prohibition areas in Columbia County. The expansion will increase the total statewide acreage of atrazine prohibition areas by approximately 1,830 acres. By joining 2 prohibition areas, this rule will reduce the total number of prohibition areas from 102 to 101. This rule includes maps describing the revised prohibition areas.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface that complies with s. ATCP 29.45, Wis. Adm. Code.

Fiscal Impact

Administration and enforcement of this rule will involve some new costs for DATCP. Staff time will be needed to monitor compliance (0.1 FTE, cost approximately \$7,800). Compliance monitoring will be coordinated with current compliance monitoring activities. Soil sampling and testing may be used to monitor compliance, and may require an estimated \$1,000 in analytical services.

Total costs are estimated at \$8,800. DATCP expects to absorb these costs within its current budget. There will be no additional costs to any other state agencies or local governments. A complete *Fiscal Estimate* is attached.

Business Impact

This rule will affect 4 or 5 farmers, in the expanded prohibition areas, who currently use atrazine to control weeds in corn. Those farmers, who are “small businesses,” will no longer be able to use atrazine. However, other effective weed control products are available, so the rule will not have a significant effect on the affected farmers. This rule may also have a slight effect on distributors and applicators of atrazine herbicides, crop consultants and equipment dealers, but the effect will not be significant.

This rule will not have a significant adverse impact on small business, and is not subject to the delayed small business effective date provided in s. 227.22(2)(e), Stats. A complete *Business Impact Analysis* is attached.

Environmental Impact

This rule will not have any adverse environmental impacts, and will help to protect and restore groundwater quality in Columbia County. The attached *Environmental Impact Statement* provides background information related to DATCP’s overall regulation of atrazine herbicides. This rule is consistent with the state groundwater law, and with the overall protocol for atrazine regulation that has been in effect since 1991.

Federal Regulations

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

The maximum atrazine application rate in Wisconsin is ½ of the maximum federal rate. However, the current federally-registered atrazine label suggests that atrazine should not be used on permeable soils with groundwater near the soil surface. Wisconsin has clearer, more definite restrictions on atrazine use, based on actual findings of groundwater contamination in this state.

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

Surrounding State Regulations

Wisconsin atrazine regulations are stronger than those in adjacent states:

- Iowa restricts atrazine application rates to 1/2 the federal label rate in 23 counties (7 with county-wide restrictions and 16 with restrictions in some townships).
- Minnesota has a program of voluntary use limitations when surface water or groundwater contamination exceeds a level of concern. This program suggests pesticide use restrictions or management practices to reduce surface water or groundwater contamination. To date, this program has not been implemented anywhere in Minnesota.
- Illinois and Michigan have no atrazine regulations.

Data and Analytical Methodologies.

This rule is based on groundwater sample results for atrazine and atrazine metabolites obtained from the affected areas during the past year. Groundwater samples contained atrazine contamination in excess of 3.0 ug/L (the state enforcement standard established by DNR groundwater rules under ch. NR 140, Wis. Adm. Code).

Preliminary contamination findings were based on groundwater samples analyzed by the University of Wisconsin – Stevens Point. DATCP confirmed the existence of groundwater contamination, in excess of the state enforcement standard, based on DATCP analysis of groundwater samples collected by DATCP. DATCP collected and analyzed the samples using official collection and analytical methods.

DATCP Contact

Questions and comments related to this rule may be directed to:
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DATCP will publish a hearing notice which will specify hearing dates, times and places, and a deadline date for submitting hearing comments.

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

3 **SECTION 2.** Chapter ATCP 30 Appendix A prohibition area maps numbered
 4 98-11-02 and 01-11-01 are repealed.

1 **SECTION 3.** Chapter ATCP 30 Appendix A prohibition area map number
2 09-11-01 is created in the form attached.

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

Dated this _____ day of _____, 2008.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary