

Report From Agency

DATCP Docket No. 10-R-10
Rules Clearinghouse No. 11-046

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 adopts
- 2 the following order *to repeal and recreate* Appendix A of ch. ATCP 30, *relating to*
- 3 pesticide product restrictions.

Analysis 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 concerning atrazine pesticide application rates. The current rules prohibit atrazine applications in areas where groundwater contamination levels meet or exceed state enforcement standards adopted by the Department of Natural Resources (“DNR”). Based on advancements in computer mapping software introduced since the rule was first promulgated in 1991, this rule updates existing maps in Ch. ATCP 30 Appendix A (“Atrazine Prohibition Areas”).

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 ch. NR 140, Wis. Adm. Code.

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

Plain Language Analysis

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 to half the current federal label rate. The current rules also prohibit the use of atrazine where atrazine contamination of groundwater has met or exceeded the state groundwater enforcement standard under ch. NR 140, Wis. Adm. Code.

Current rules prohibit atrazine use in approximately 100 designated prohibition areas, including in the lower Wisconsin River Valley and much of Dane and Columbia Counties. Within an Atrazine Prohibition Area, atrazine may not be applied. 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.

Rule Content

This rule will update existing maps in Ch. ATCP 30, Wis. Adm. Code Appendix A ("Atrazine Prohibition Areas"). These maps show areas where use of atrazine is prohibited because testing of local groundwater for the pesticide atrazine indicates that state standards have been met or exceeded.

DATCP is *not adding to or changing* any of the current Atrazine Prohibition Areas on any of the maps in Appendix A. Maps presently being used contain surface features that require updating, such as new roadways, modified street names, and other features. Moreover, current mapping software allows for reliance on data from numerous sources to provide for improved accuracy in mapping. The maps in this rule provide more accurate, up-to-date maps of the same Atrazine Prohibition Areas than are presently in ch. ATCP 30 Appendix A.

Federal Regulations

Under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") and implementing regulations, pesticides and pesticide labels (submitted by pesticide manufacturers) *must be approved and registered* with the Environmental Protection Agency ("EPA"). Pesticide labels are required to provide detailed information stating how to use the pesticide products in a safe and legal manner. Pesticide labels must carry a statement indicating that it is a violation of law to use the product in a manner inconsistent with its labeling. Under FIFRA, states are permitted to have stricter requirements regarding pesticide use than those on the federally approved label.

Atrazine product labels approved by EPA under FIFRA establish an application rate of use (“label rate”) depending on factors such as crop type, timing of crop emergence, and erodibility of soils. Some approved atrazine labels indicate that atrazine has been found in groundwater and advise the user to avoid applying atrazine to sandy and loamy sand soils where groundwater is close to the surface and soils are very permeable. EPA classifies products containing atrazine as “restricted use” pesticides due to ground and surface water concerns.

EPA does not require the establishment of prohibition areas for atrazine in its regulations. Wisconsin establishes and maps prohibition areas based on groundwater data that documents atrazine presence in groundwater above state groundwater enforcement standards.

Surrounding State Regulations

Wisconsin’s maximum atrazine application rates are set by administrative rule at about half the rates normally allowed under the federal label. Neighboring states are not required to map Atrazine Prohibition Areas in its regulations. Neighboring states’ regulations relating to atrazine prohibitions are as follows:

- Iowa restricts atrazine application rates to half the federal label rate in 23 counties (7 with county-wide restrictions and 16 with restrictions in some townships).
- Minnesota has a program of voluntary use limitations when surface water or groundwater contamination exceeds a level of concern. This program suggests pesticide use restrictions or “best management practices” will reduce surface water or groundwater contamination.
- Illinois and Michigan have no atrazine regulations.

Factual and Analytical Methodologies

This rule merely replaces existing (in many cases outdated) maps with updated maps that were created in 2011 using advanced computerized mapping technology. The data underlying the mapping software used to create the maps in Appendix A of this rule is more current and accurate (containing changes such as roadways that have been added since the existing maps were made, modified street names, and adjustments to other surface features shown on maps) than the data underlying maps in the existing rule, which were created in the 1990s.

Fiscal and Economic Impact

There will be no additional costs or economic impact to any other state agencies, local governments, public utility rate payers, businesses, or the state’s economy as a whole. A complete *Fiscal Estimate and Economic Impact Analysis* is attached.

Business Impact

This rule will have no adverse economic impact on businesses, large or small. The rule will assist Wisconsin businesses that use atrazine because the rule revises maps that have become or

are becoming outdated due to the passage of time. Using updated maps that contain correct street names, new roadways, and other mapped features will reduce confusion for users of atrazine and make it easier to prevent the inadvertent applications of that pesticide where it is prohibited due to its detection in groundwater. A complete *Business Impact Analysis* is attached.

Environmental Impact

This rule will not have any adverse environmental impacts.

DATCP Contact

Questions and comments related to this rule may be directed to:

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The department held a public hearing for this rule on November 8, 2011, and accepted written comments until November 15, 2011. No one attended the hearings, and no written comments were submitted.

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

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

Dated this _____ day of _____, 2012.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____

Ben Brancel, Secretary