

Chapter NR 80

USE OF PESTICIDES ON LAND AND WATER AREAS
OF THE STATE OF WISCONSINNR 80.01 Definitions
NR 80.02 Requirements

NR 80.03 Exemptions

NR 80.01 Definitions. As used in these rules the following terms mean:

(1) "Pesticide review board," means the board defined by chapter 146, laws of 1969.

(2) "Pesticide," has the meaning designated in 94.67, Wis. Stats.

(3) "Use by permit only pesticide," is one which in certain usages is a serious hazard to wild animals other than those target pests it is intended to control. The following is a list of such pesticides:

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|---------------|----------------|-----------------------------|
| (a) DDT | (d) Aldrin | (g) Lindane |
| (b) DDD (TDE) | (e) Dieldrin | (h) BHC |
| (c) Endrin | (f) Heptachlor | (i) Alkyl mercury compounds |

(4) "Registration" means compliance with the provisions of 94.68, Wis. Stats.

(5) "Forest land" means an urban or rural land principally devoted to the growing of trees for wood products or ornamental purposes but excluding nurseries, fruit growing trees or area primarily occupied by cut and piled wood.

(6) "Noncrop land" means an urban or rural land not normally used for growing agricultural produce, lawns, shrubbery, or flowers. All areas within buildings and their exterior surfaces are excluded.

(7) "Agricultural land" means a land devoted primarily to the growing of crops, pasture and agricultural products other than forest trees or shrubs but including nurseries.

(8) "Applications" means the use of a pesticide in any manner whatsoever but excluding pesticide manufacturing or formulating processes.

(9) "Rate of application" means the total amount of actual toxicant (not formulation) applied per unit area and ordinarily expressed in pounds per acre or in reference to shade trees or other trees treated individually in weight of actual toxicant per tree.

(10) "Description of area to be treated" means the description for rural area by township, range, section and forty; for urban area, by the legal descriptive system in common use.

(11) "Use" means the application of a pesticide outdoors in such manner that it will be introduced into and become a part of the natural environment. Use of the material within buildings or for termite control in the vicinity of buildings is excluded from the meaning of this term.

(12) "Waters of the state," has the meaning designated in chapter 144.01, Wis. Stats.

History: Cr. Register, October, 1970, No. 178, eff. 11-1-70; am. (3), (5), (6), (7), (8) and cr. (12), Register, May, 1973, No. 209, eff. 6-1-73.

NR 80.02 Requirements. (1) Except as noted in section NR 80.03 (exemptions) any person desiring to use any pesticide in the state whether on land or water shall send notification of intention to the secretary of the department. In this notification shall be included description of the area to be treated, interval or calendar period when such treatment shall be made, number of applications, purpose of treatment, pesticide to be used, method of application and rate of application. This notification shall be submitted at least 2 weeks in advance of the proposed treatment interval. Where circumstances require, applications may be submitted by telegraph, telephone, or special delivery mail and the two-week advance-notice requirement may be waived by the secretary. Notification forms may be obtained from the department.

(2) No use by permit only pesticide may be used without first obtaining a permit from the secretary of the department or his designated agent who will act after recommendation by the pesticide review board. The information to be furnished for obtaining such permit shall be the same as the requirements set forth under subsection (1) above for filing notice. Justification for the issuance shall be based on situations where the use is necessary in the basic interest of human health, preservation of our forests, preservation of crops on agricultural lands, or for research and experimental purposes.

(3) Except as otherwise provided in this chapter no person shall cause the death or destruction of any game as defined in section 29.01 (3) (a), Wis. Stats., through negligent legal use or illegal use of any pesticide (as defined in section NR 80.01 (11)).

(4) It is unlawful for any person to destroy or control game or fish classified as such by section 29.01, Wis. Stats., by the use of a pesticide, poison, or toxic substance unless a permit for that purpose has been obtained from the department. The following listed game species may be destroyed or controlled by pesticides, poisons or toxic substances—rodents not classified as fur-bearing animals, starlings, pigeons (rock doves), house sparrows, red-winged blackbirds and bronzed grackles (in cornfields only during the milk stage of the corn in the field being treated) without obtaining a permit from the department provided that:

(a) The pesticides employed are registered by the department of agriculture under 94.68, Wis. Stats., and are used strictly according to label directions and in accordance with Wis. Adm. Code chapter Ag 29.

(b) Pesticides employed to destroy or control starlings, pigeons (rock doves), house sparrows, red-winged blackbirds, and bronzed grackles except on agricultural lands be applied only by commercial applicators registered under Wis. Adm. Code chapter Ag 29 or by authorized government officials.

(c) Persons employed by the state of Wisconsin department of natural resources, department of agriculture, and the department of health and social services in the performance of their duties are also exempt from permit requirements.

(d) Experimental pesticides may be employed for the destruction or control of starlings, pigeons (rock doves), house sparrows, red-winged blackbirds and bronzed grackles under permit or notice as provided for in section 94.69 (7), Wis. Stats., and concurred in by the department.

(e) The carcasses of animals or birds destroyed under this section shall, wherever possible, be disposed of in such a manner that wildlife and domestic animals will not have access to such carcasses.

(5) Pesticides, seeds, seed pieces or other plant parts treated with a pesticide stored or held at outdoor locations, including loading or application sites, shall be covered or otherwise protected or secured to prevent public access or serious injury to wild animals other than those it is intended to control.

(6) Pesticides, seeds, seed pieces or other plant parts treated with a pesticide and their containers temporarily held at loading and spraying sites in connection with their use shall be secured in such a manner as to reasonably prevent serious hazard to wild animals or the contamination of waters of the state.

(7) No person shall use, store, transport or display pesticides, seeds, seed pieces or other plant parts treated with a pesticide contrary to label instructions or in a negligent manner so as to be a serious hazard to wild animals. Any use, storage, transport or display of pesticides, seeds, seed pieces or other plant parts treated with a pesticide in violation of these rules, or any use of a pesticide, seeds, seed pieces or other plant parts treated with a pesticide which a person knows or ought to know creates a high degree of risk and probability of serious injury to wild animals other than those it is intended to control is negligent use.

(8) No person shall apply to or cause a pesticide, seeds, seed pieces or other plant parts treated with a pesticide to enter waters of the state directly or through sewage systems. This does not apply to persons engaged in fish management or the treatment of waters under the supervision or rules of the department of natural resources, the use of use by permit only pesticides for the treatment of sewers for insect or rodent control by or under the supervision of qualified government officials or pest control operators, or under department of agriculture permit, or to chemicals accepted and registered for use in root control in sewage lines or in the cleaning, sanitizing, algaciding, slimiciding, or disinfection of toilets, urinals, sewers, sinks, swimming pools, food processing equipment, dishes, utensils, hospital equipment, walls, floors, or other surfaces or materials in any building or area where such uses are necessary for the protection of persons, animals or property.

(9) No person shall fill pesticide spray equipment, including mix or nurse tanks, from any waters of the state except public water supplies, farm ponds, or private wells or clean any pesticide spray equipment in such waters. This does not prohibit the filling of tanks used for water supply only from waters of the state, provided no pesticides or empty pesticide containers are carried on the tank vehicle. Pesticide spray equipment shall not be filled or cleaned adjacent to waters of the state where, because of the slope or other condition of the bank, spray materials could readily enter the water in case of

overflow, leaks or other causes, or rising waters could reach the filling or cleaning area and become contaminated as a result of prior surface contamination or other reasons.

(10) No person shall apply a pesticide by aircraft unless the aircraft meets the requirements of and is operated according to the regulations of the federal aviation administration and Wisconsin department of transportation.

(11) No person shall dispose of or hold pesticides or their containers for disposal contrary to directions on the label or in a manner which may contaminate waters of the state or create a serious hazard to wild animals other than those it is intended to control.

(12) Treated seeds shall be incorporated into the soil during planting and shall not be used or be exposed in such a manner that presents a serious hazard to wild animals or those it is intended to control.

History: Cr. Register, October, 1970, No. 178, eff. 11-1-70; cr. (4), Register, April, 1972, No. 196, eff. 5-1-72; am. (2), (4) (b), cr. (5) through (12), Register, May, 1973, No. 209, eff. 6-1-73.

NR 80.03 Exemptions. The following exemptions shall apply only if adequate safety precautions for the protection of wild animals are followed in each case.

(1) Pesticide usage which does not involve use as defined in section NR 80.01 (11) is exempt from the provisions of this chapter.

(2) Pesticides used in lawn and noncommercial garden areas are exempt from this chapter except for the use of use by permit only pesticides.

(3) Use of pesticides on agricultural lands or domestic animals is exempt from the provisions of this chapter except use by permit only pesticides may not be used unless a permit is obtained.

(4) Seed treatments using the use by permit only pesticides heptachlor, aldrin, dieldrin, and lindane are exempt from the provisions of this chapter.

(5) Lindane (gamma isomer of benzene hexachloride) is exempt from the provisions of this chapter when used according to the following registered uses:

(a) Mange and lice treatment of beef, (b) Swine, (c) Goats (except dairy goats), (d) Sheep, (e) Pets according to registered use pattern dosage, and precautionary measures.

(6) Pesticides used by the department of health and social services or official public health agencies acting under their direction for the prevention and control of disease or by physicians in the treatment of patients are exempt from this chapter.

(7) Dipping of tree roots in pesticide preliminary to tree planting or the application of pesticides on tree roots below the surface of the ground as trees are planted by a tree planting machine or in planting ornamentals and injection of the pesticide into trees and plants are exempt from the provisions of this chapter. Use of pesticides in root zone of woody plants is also exempt.

(8) Treatments made with lindane or BHC at a rate not to exceed $\frac{1}{4}$ pound per acre for the control of white pine weevil (tip weevil),

pine root collar, weevil or balsam gall midge are exempt from the provisions of this chapter except such treatments may not be made in the immediate vicinity of waters of the state where the material might be introduced into the water.

(9) Treatments made with dichlorvos (DDVP) at a rate not to exceed 1/10 pound per acre of naled (Dibrom) at a rate not to exceed ¼ pound per acre or malathion at a rate not to exceed ½ pound per acre for mosquito fogging are exempt from the provisions of this chapter, except they may not be used over public water areas or where their use may immediately introduce them into public waters of the state. Any other chemical of equivalent or less dermal and oral toxicity and persistence is also exempt for mosquito control purposes.

(10) Treatments made for aquatic nuisance control in waters of the state pursuant to section 144.025 (2) (i), Wis. Stats., that are for the control of weeds, algae or swimmers' itch done under the direct supervision of the department or by permit issued by them are exempt from the provisions of this chapter.

(11) Pesticides used under the direct supervision of the department in fish management work pursuant to provisions of section 29.62 and 29.623, Wis. Stats. in waters of the state are exempt from the provisions of this chapter.

(12) Any pesticide treatment including use by permit only pesticides used by or under the supervision of a higher education institution for research purposes outdoors is exempt from the provisions of this chapter provided that the area of each treatment does not exceed ¼ acre (including all replicates).

History: Cr. Register, October, 1970, No. 178, eff. 11-1-70; cr. (12), Register, April, 1972, No. 196, eff. 5-1-72; am. (2), (3), (4), (8), (10), (11) and (12), Register, May, 1973, No. 209, eff. 6-1-73.