



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: June 6, 2007

TO: Gary Poulson - Revisor of Statutes Office
131 West Wilson Street, Suite 800

FROM: Rodney J. Nilsestuen, Secretary

SUBJECT: **ATCP 30 Soil Fumigant Rule; Final Draft Rule**
(Clearinghouse Rule #06-136)

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby submits the following rule for publication:

CLEARINGHOUSE RULE #: **06-136**

SUBJECT: **Soil Fumigant Pesticides**

ADM. CODE REFERENCE: **ATCP 30**

DATCP DOCKET #: **04-R-01**

We are enclosing a copy of the final draft rule, as adopted by DATCP. We are also providing the following information for publication with the rule, as required by s. 227.114(6), Stats.

Final Regulatory Flexibility Analysis (Summary)

This rule regulates commercial pesticide applicators and agricultural producers that apply or receive applications of metam sodium and chloropicrin soil fumigants. Many of the regulated businesses are small businesses, but others are large. Most of the regulated farmers are potato growers.

This rule protects neighboring farms and businesses from adverse effects of improper soil fumigant applications. Many of the protected businesses are small businesses.

This rule imposes new regulations on the use of chloropicrin soil fumigants (see above). Approximately 71,000 acres of potatoes were planted in Wisconsin in 2004. Chloropicrin is currently applied on approximately 2,000 acres of potatoes and 25 acres of state-owned seedling nurseries in Wisconsin. Chloropicrin applications are made by commercial pesticide applicators

that have the equipment and expertise to handle and apply chloropicrin. Chloropicrin-treated acreage is expected to increase due to pest problems and the efficacy of chloropicrin products.

DATCP estimates that this rule will cost \$8,000 to \$12,000 per year for the industry as a whole, mainly for increased costs of applying chloropicrin to approximately 2,000 acres of potatoes. Increased pesticide applicator costs will generally be passed on to farmers. Most of the farms that use chloropicrin are small businesses, but the single largest user (accounting for approximately 25% of the treated acreage) is not a small business.

This rule relaxes some current requirements related to metam sodium applications (post-application inspection requirements and setbacks for “tarped” applications). Farmers and pesticide application businesses that apply metam sodium soil fumigants may experience a small decrease in costs as a result of these changes.

By establishing clear application standards and procedures, this rule protects neighboring farms, businesses and individuals from improper applications. It also helps protect complying pesticide users from liability for improper applications.

This rule applies to large and small businesses alike. An exemption for small business would undermine the effectiveness of the rule in preventing human exposure to metam sodium and chloropicrin. This rule will not have a significant adverse economic impact on small business. Therefore, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats.

Comments from Legislative Committees (Summary)

On April 13, 2007, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education on April 19, 2007 and the Assembly Committee on Agriculture and April 23, 2007. As of May 21, 2007 no action was taken by these committees.