

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

Proposed Hearing Draft
 December 2, 2011

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

2 The Wisconsin department of agriculture, trade and consumer protection proposes the following
 3 order *to repeal* ATCP 29.11(2)(c)3.(note) and 29.23; *to amend* 29.01(43)(note), 29.11(2)(a)1.,
 4 2., and 3.,(b)1., 2., and 3., (c)1., 2., and 3., 29.15(4)(b), 29.15(8)(f) and (g), 29.21(2)(d),
 5 29.22(intro) and (4), 29.25(2)(b) and (c), 29.31(5)(title) and (a), 29.31(11)(a)2. and (note),
 6 29.33(3)(d), 29.45(1)(b)(note), 29.45(3)(b), 29.54(1)(e), 29.54(7)(a)1. and (note),
 7 29.54(7)(e)(note), 29.54(10), (12) and (13), 29.55(1)(d) and (2)(a), 29.55(3)(c), 29.56(1)(e)2.,
 8 29.56(2), 29.56(2)(a)(note), 29.56(7)(c)(intro), 29.56(7)(c)4.(note), 29.70(2), 29.71(2), and
 9 29.72(4); *to renumber and amend* ATCP 29.31(5)(b)2. to 9; *to repeal and recreate* ATCP
 10 29.45(3)(b)(note), 29.45(4) and (5), 29.54(1)(a), and 29.61 (note); and *to create* ATCP
 11 29.01(8m), (24m), (25m) and (28m), 29.10(2)(b)6., 29.22(intro)(note), 29.31(5)(b)2., 29.45(3)(d)
 12 and (e), 29.54(1)(am), (gm), and (km), 29.54(5)(e), (f) and (g), 29.55(3)(a)8., 29.58, and
 13 29.70(2)(k)(note); *relating to* pesticide use and control.

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

The Wisconsin department of agriculture, trade and consumer protection (DATCP) regulates the sale and use of pesticides in this state. This rule modifies current rules related to pesticides. Among other things, this rule:

- Repeals the provision that veterinarians and animal technicians who use pesticides for animal treatment be required to obtain individual commercial applicator licenses. This change will make the current rule consistent with a recent law change that removes the requirement for veterinary clinics to obtain special veterinary clinic pesticide use permits.

- Modifies an existing pesticide applicator certification category to include pesticide applications to natural areas, which is of interest to those committed to rehabilitating or maintaining natural areas and also is an area of business growth for pesticide applicators.
- Allows regulated persons to give certain notices and submit certain permit applications by electronic transmission to customers, if customers choose to receive important pesticide safety information in that way. It also reduces paperwork for some businesses by eliminating duplicative recordkeeping requirements and clarifies that certain paperwork will be submitted to the department primarily by electronic means.
- Updates current rules related to structural pesticide applications, including rules related to perimeter barrier applications and application notices.
- Harmonizes current rules with existing rules related to fertilizer and pesticide bulk storage.
- Updates current rules related to non-agricultural chemigation systems. The rule also provides minimum requirements for the installation and use of urban pesticide misting systems.
- Creates labeling requirements for pesticide bait stations that are set out by commercial applicators, such as rodent bait stations, which often are placed outdoors in areas that are accessible to animals and the public.
- Modernizes the rules related to spill containment and spill containment surfaces. The rule also clarifies that spill containment surface repairs shall be made according to good engineering practices and manufacturer specifications.
- Removes obsolete pesticide license fee provisions to avoid confusion when reading the rule.
- Updates the administrative rule note regarding current worker protection provisions to remove outdated requirements, which are set by federal regulations.
- Makes a number of other minor drafting changes designed to update, clarify and correct current rules.

Statutory Authority

Statutory Authority: ss. 93.07(1), 94.69(1), and 94.705(2), Stats.

Statutes Interpreted

Statutes Interpreted: ss. 94.645(2) and (3), 94.67, 94.676, 94.69(1), 94.703, 94.704, and 94.705, Stats.

Rule Content

This rule updates administrative rules relating to pesticide use and control. Some of the key changes include the following:

Veterinary Clinics Applying Pesticides

2009 Wis. Act 139 repealed a statutory provision that required veterinary clinics to have an annual DATCP permit to use, repackage or prescribe pesticides as part of a veterinary treatment. This rule modifies current rules to reflect that statutory change. This rule also clarifies that veterinarians and certified veterinary technicians are not required to have an individual commercial applicator license in order to use a pesticide as part of a veterinary treatment.

Applying Pesticides to Natural Areas; Applicator Certification

Under current rules, commercial pesticide applicators must be certified for competence in relevant application categories. This rule expands the current turf and landscape category to include applications to natural areas. Applicators applying pesticides to natural areas must have relevant knowledge related to the restoration and maintenance of natural areas and the treatment of common pests affecting natural areas.

Pesticide Mixing and Loading Sites; Spill Containment

DATCP recently updated its rules in ch. ATCP 33 related to fertilizer and pesticide bulk storage. This rule updates related pesticide rules in ch. ATCP 29 to make them consistent with ch. ATCP 33, including construction and maintenance standards for pesticide mixing and loading sites. The updated standards include standards related to construction materials, sumps, catch basins, spill containment and cleanup.

Urban Pesticide Misting Systems

Under the existing rule, chemigation systems generally are defined as systems that mix pesticides with irrigation water and apply the pesticide irrigation water mixture to plants. These types of pesticide application systems must meet certain standards and posting requirements. Existing standards and posting requirements apply to chemigation systems, but the current rule does not differentiate whether the systems are for use in agricultural or non-agricultural settings. In the past, chemigation systems were developed primarily for use in agriculture.

New forms of non-agricultural chemigation systems are being installed at residential and commercial sites for the purpose of controlling pests such as mosquitoes. These urban pesticide misting systems are considered to be a type of chemigation but do not use irrigation water and are not used to apply water to lands, crops or plants. These chemigation systems disperse a mixture of pesticides and water into the air in the form of a mist to kill or control pests such as mosquitoes. In this rule, the definition of “non-agricultural chemigation system” is created and includes urban pesticide misting systems. The rule establishes standards and posting requirements specifically for these types of systems.

Perimeter Barrier Applications

This rule creates a definition for “perimeter barrier applications” and establishes that these are pesticide applications made on or within ten feet of a building or structure to discourage pests. The rule also clarifies the notification requirements for these applications.

Worker Protection Provisions

Under the existing rule and in a Note to s. ATCP 29.61, DATCP summarized worker protection requirements established by the United State Environmental Protection Agency (EPA) that are on the labels of pesticides or simply referenced on other pesticide labels. Some of the requirements in the Note are outdated. In this rule, DATCP notifies persons that worker protection requirements established by the EPA may be obtained at an EPA internet site or that DATCP will provide, upon request, a summary of those requirements.

Electronic Notifications

Many of the notification requirements throughout the rule require written notification to customers. In this proposed rule, DATCP is explicitly permitting the use of electronic notifications if the customer agrees to that method of notification. DATCP is also allowing persons to apply for special pesticide permits via electronic methods in order to decrease the time it takes to submit, review and issue these permits. DATCP is also clarifying the rules related to the landscape registry to allow explicitly for electronic registration and publication.

Pesticide Bait Stations

Many bait stations used by commercial applicators containing a pesticide to control rodents are not labeled or have labeling that becomes unreadable due to being outside and exposed to the elements. The concern is that human or non-target species exposure to unknown products may delay timely medical assistance. This rule establishes labeling requirements for bait stations containing a pesticide to control rodents and used by commercial pesticide applicators. The exterior of the bait stations must be labeled with the company responsible for maintaining the bait station and the EPA registration number of the pesticide(s) in the bait station. This information must be readily accessible and remain legible while the bait station is in service.

Other Changes

The rule makes a number of other minor drafting changes designed to update, clarify and correct current rules, including deleting outdated time frames.

Fiscal Impact

This rule will not have a significant state or local fiscal impact. A Fiscal and Economic Impact Analysis is attached.

Economic Impact Analysis

In addition to soliciting comments from the public, this rule was developed in consultation with an advisory committee that included a diverse cross-section of affected industry, consumers, and government officials. The advisory committee did not find that this rule will adversely affect in a material way the economy, a sector of the economy, productivity, jobs or the overall economic competitiveness of the state. The committee endorsed the provisions of this rule, which are designed to update, clarify and modernize the existing rule. The department does not anticipate any significant expenses imposed upon the regulated community as a result of these changes. A complete Economic Impact Analysis is attached.

Business Impact

This rule will add minimal, if any, costs to affected pesticide applicators and pesticide application businesses. Moreover, this rule will not have a significant effect on local markets, on the sale or distribution of pesticide products, or on the overall economy of this state. Pesticide application businesses may experience cost savings as a result of clarifying existing regulations, improving regulatory consistency and modifying administrative requirements, including the ability to provide certain notices and submit certain permit applications by electronic means.

Any pesticide applicator who chooses to obtain a natural area certification may experience a minimal additional cost every five years to purchase a new training manual (\$45). Many commercial application businesses cover the cost of training manuals for their employees. The average cost per year for the manual is \$9. The restoration of natural areas is considered to be a growth area for business and may positively impact pesticide businesses through increased revenue.

Businesses that are not currently labeling their bait stations may have some minimal economic costs to comply with the bait station labeling requirement. Costs may include purchasing stickers or another bait station labeling system (*e.g.*, conforming “luggage tags”) and personnel time to fill out the label. Businesses will have a number of cost-effective ways to meet this requirement, including the ability to design their own or choose from among a wide-variety of labeling systems.

Businesses should not have any direct costs to comply with the non-agricultural chemigation and urban pesticide misting system requirements. Few, if any, pesticide application businesses in Wisconsin currently are known to be using these application systems. If pesticide application businesses do decide to sell these systems in the future, costs to comply with these regulations could be included in the initial cost of the system.

Because ch. ATCP 33 was revised in 2006, many businesses are already in compliance with the spill containment and sump requirements. Those businesses not required to comply with ch. ATCP 33 may have some minor costs to comply if a spill containment surface fails and a repair would be inadequate. If a new spill containment surface is required, and the facility is not already regulated under ch. ATCP 33, there will be some incremental costs to comply with the proposed

requirements, which now prohibit some materials (*e.g.*, asphalt) that were previously allowed. These materials are now prohibited because they have been prone to failure and unable to contain spills. A complete Business Impact Analysis is attached.

Environmental Assessment

The majority of these rule changes are administrative in nature and are not expected to affect the environment. Administrative changes include the removal of the administrative rule licensing requirements for veterinarians and animal technicians due to a recent law change, clarifying an administrative rule note describing the worker protection standard (which is set by federal regulations), harmonizing this rule with ch. ATCP 33 (Bulk Storage of Pesticides and Fertilizers), enabling more efficient communication between pesticide application businesses and customers and a more efficient permit application process, removing duplicative recordkeeping requirements, and removing obsolete rule provisions, including references to past fee holidays and veterinary clinic permits (already deleted in statute). The substance of these rule changes will not directly affect the natural environment but may reduce duplicative recordkeeping and unnecessary paperwork by pesticide businesses and the department.

The addition of the turf and landscape pesticide applicator certification category to include natural areas may have a positive environmental impact because it facilitates the rehabilitation or preservation of natural areas. Expertise by pesticide applicators could lead to a reduction in the harm to native plants during the removal of (non-native) invasive plants, which ensures that the adverse effects to these natural areas are minimized.

This rule updates the regulations on chemigation to include non-agricultural chemigation systems and urban pesticide misting systems (which are a type of non-agricultural chemigation system). While these systems are not widely used in Wisconsin at this time, underground irrigation systems and urban pesticide misting systems are being installed more frequently in residential settings in many states (often to control mosquitoes). Chapter ATCP 29 already includes regulations on agricultural chemigation systems, such as backflow prevention devices to prevent contamination of groundwater by pesticides. This proposed rule will extend those environmental protections to non-agricultural chemigation systems that may use underground irrigation systems. Reasonable regulations on these systems are needed to prevent harm to humans, non-target wildlife species, and groundwater (drinking water) contamination.

The proposed rule also will require exterior labeling of bait stations. Bait stations often contain highly toxic rodenticides, which can be deadly to children, pets, and non-target wildlife if accidentally ingested. Bait station labeling will maintain a more safe environment by ensuring veterinarians, homeowners, and others will have the information they need to respond rapidly and appropriately if non-target animals or individuals accidentally ingest pesticides from bait stations.

This proposed rule updates the current rules related to spill containment and the repair of spill containment surfaces. This rule is expected to protect the public, soil and groundwater from pesticide contamination. A complete Environmental Assessment is attached.

Federal and Surrounding State Programs

Federal Programs

The EPA regulates pesticides at the federal level under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and through the use of pesticide product labels. The EPA has delegated authority to Wisconsin to enforce federal pesticide regulations and to assure proper use and handling of pesticides in this state. EPA recently established new regulations related to bait stations for ten rodenticides.

Surrounding State Programs

Surrounding states, including Michigan, Minnesota, Illinois and Iowa are also delegated authority by EPA to enforce federal pesticide regulations. Each state also has state-specific pesticide regulations, similar to Wisconsin's. The state-specific regulations must be at least as stringent as EPA's, but may be more or less stringent than Wisconsin's, depending on the topic.

Chemigation

Nearly all states have chemigation laws, including Illinois, Michigan and Minnesota. EPA has minimum standards in place for states that do not have their own regulations, such as Iowa. Minnesota's chemigation regulations are more stringent than Wisconsin's and require applicators obtain a chemigation permit annually before chemigating. This rule updates Wisconsin's chemigation laws to reflect emerging industry practices.

Urban pesticide misting systems are an emerging application method. Surrounding states have existing regulations that govern the use of these systems (including label, drift, and pesticide applicator certification requirements), although they do not apply only to this specific type of application. Wisconsin's proposed requirements to monitor windspeed and prevent time-delayed applications complement label requirements and will help ensure applicators avoid serious pesticide use violations and help protect human and companion animal health.

Natural Areas Certification

None of the surrounding states has a separate certification category for natural areas applications. Surrounding states include these applicators in the turf and landscape category, which is what is proposed in this rule. Surrounding states also include these applicators in the field and vegetable crop category, when the natural areas are in a grassland-type setting.

Bait Station Labeling

Many states are considering modifying their bait station requirements in response to EPA's new rodenticide regulations. Iowa does not require bait station labeling but does require notification to the Department of Agriculture prior to use of certain hazardous rodenticides, which is more stringent than what this rule proposes. Minnesota, Illinois and Michigan do not require exterior labeling of bait stations at this time. Other states, including California, New York and Tennessee, require exterior labeling of rodenticide bait stations similar to what Wisconsin is proposing.

Electronic Information

Surrounding states allow electronic transmittal of information between commercial application businesses and customers, as Wisconsin is proposing.

DATCP Contact

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

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1 **SECTION 1:** ATCP 29.01(8m) and (note), (24m), (25m) and (28m) are created to read:

2 **ATCP 29.01 Definitions.** In this chapter:

3 ATCP 29.01(8m) “Bulk pesticide” means liquid pesticide in a container larger than 55
4 gallons (208 liters), or dry pesticide in undivided quantities greater than 100 pounds (45
5 kilograms).

6 (24m) “Natural area” means native, undeveloped or wild land and land that is preserved
7 or restored and managed for its natural or native features, including but not limited to parks,
8 forests, and native grassland on public and private land.

9 (25m) “Perimeter barrier application” means a pesticide application that is made on or
10 within 10 feet of a building or structure to prevent or discourage pests from entering that building
11 or structure.

12 (28m) “Pesticide bait station” means a tamper-resistant package, container or device
13 holding a pesticide used to control rodents.

14 **SECTION 2:** 29.01(43)(note) is amended to read:

1 **Note:** See additional definitions in s. 94.67, Stats., and ss. ATCP 29.11(1),
2 29.54(1), 29.55(1), 29.56(1), ~~and 29.60, and 30.01.~~

3
4 **SECTION 3:** ATCP 29.10(2)(b)6. is created to read:

5 ATCP 29.10(2)(b)6. The repackaging of a bulk pesticide.

6 **SECTION 4:** ATCP 29.11(2)(a)1., 2. and 3., (b)1., 2. and 3., and (c)1., 2. and 3. are
7 amended to read:

8 ATCP 29.11(2)(a)1. If the applicant sold less than \$25,000 of the product during the
9 preceding year for use in this state, \$265, ~~except that the fee is \$215 for each of the license years~~
10 ~~beginning January 1, 1999 and January 1, 2000.~~

11 2. If the applicant sold at least \$25,000 but less than \$75,000 of the product during the
12 preceding year for use in this state, \$750, ~~except that the fee is \$650 for each of the license years~~
13 ~~beginning January 1, 1999 and January 1, 2000.~~

14 3. If the applicant sold at least \$75,000 of the product during the preceding year for use
15 in this state, \$1,500, ~~except that the fee is \$1,200 for each of the license years beginning January~~
16 ~~1, 1999 and January 1, 2000.~~

17 (b)1. If the applicant sold less than \$25,000 of the product during the preceding year for
18 use in this state, \$315, ~~except that the fee is \$265 for each of the license years beginning January~~
19 ~~1, 1999 and January 1, 2000.~~

20 2. If the applicant sold at least \$25,000 but less than \$75,000 of the product during the
21 preceding year for use in this state, \$860, ~~except that the fee is \$760 for each of the license years~~
22 ~~beginning January 1, 1999 and January 1, 2000.~~

23 3. If the applicant sold at least \$75,000 of the product during the preceding year for use
24 in this state, \$3,060, ~~except that the fee is \$2,760 for each of the license years beginning January~~
25 ~~1, 1999 and January 1, 2000.~~

1 (c)1. If the applicant sold less than \$25,000 of the product during the preceding year for
2 use in this state, \$320, ~~except that the fee is \$270 for each of the license years beginning January~~
3 ~~1, 1999 and January 1, 2000.~~

4 2. If the applicant sold at least \$25,000 but less than \$75,000 of the product during the
5 preceding year for use in this state, \$890, ~~except that the fee is \$790 for each of the license years~~
6 ~~beginning January 1, 1999 and January 1, 2000.~~

7 3. If the applicant sold at least \$75,000 of the product during the preceding year for use
8 in this state, \$3,060 plus 0.2% of gross revenues from product sales during the preceding year for
9 use in this state, ~~except that for each of the license years beginning January 1, 1999 and January~~
10 ~~1, 2000 the fee is \$2,760 plus 0.2% of gross revenues from product sales made during the~~
11 ~~preceding year for use in this state.~~

12 **SECTION 5.** ATCP 29.11(2)(c)3.(note) is repealed.

13 **SECTION 6.** ATCP 29.15(4)(b) is amended to read:

14 ATCP 29.15(4)(b) ~~Beginning with the license year that begins on January 1, 2008, an An~~
15 ~~agricultural chemical cleanup surcharge of \$28.~~

16 **SECTION 7.** ATCP 29.15(8)(f) and (g) are amended to read:

17 ATCP 29.15(8)(f) The ~~identity~~ first name, last name and address of the purchaser or
18 intended recipient, ~~including name, address, seller or~~ and the commercial application business
19 license number, restricted use dealer license number, and applicator license and certification
20 number, if any, and applicator certification number if any of the purchaser or intended recipient.

21 (g) ~~The name and address~~ The first name, last name and address of the person to whom
22 the seller delivered custody of the pesticide, if other than the purchaser or intended recipient.

23 **SECTION 8.** ATCP 29.21(2)(d) is amended to read:

1 ATCP 29.21(2)(d) ~~The~~ A specific description of the location of the pesticide application
2 site. The pesticide application site description shall contain sufficient information and detail that
3 the location of the pesticide application can be readily determined from the description.

4 **SECTION 9.** ATCP 29.22(intro) and (4) are amended to read:

5 **ATCP 29.22 Commercial application business; information to customers.** Within 30
6 days after making a pesticide application for a customer, either directly or through an employee,
7 a person required to be licensed under s. ATCP 29.20 shall provide that customer with all of the
8 ~~following~~ information in subs. (1) to (9) in writing. The information may be provided to the
9 customer electronically if the customer consents in writing to such notification prior to the
10 application.

11 (4) ~~The~~ A specific description of the location of the pesticide application site. The
12 pesticide application site description shall contain sufficient information and detail that the
13 location of the pesticide application can be readily determined from the description.

14 **SECTION 10.** ATCP 29.22 (intro)(note) is created to read:

15 Note: Types of electronic communication include, but are not limited to, email and text.

16 **SECTION 11.** ATCP 29.23 is repealed.

17 **SECTION 12.** ATCP 29.25(2)(b) and (c) are amended to read:

18 ATCP 29.25(2)(b) A veterinarian, ~~affiliated with a veterinary clinic, whose operator~~
19 ~~holds a permit under s. ATCP 29.23,~~ who uses or directs the use of a pesticide as part of a
20 veterinary treatment which that veterinarian is licensed to provide in this state.

21 (c) An animal technician, affiliated with a veterinary clinic ~~whose operator holds a~~
22 ~~permit under s. ATCP 29.23,~~ who uses a pesticide as part of a veterinary treatment which that
23 technician is certified to provide under ch. 453, Stats.

1 **SECTION 13.** ATCP 29.31(5)(title) and (a) are amended to read:

2 ATCP 29.31(5) TURF, ~~AND~~ LANDSCAPE AND NATURAL AREA PEST CONTROL.

3 (a) *Category description.* This category includes individuals who use or direct the use of
4 pesticides to control pests affecting turf or landscape, or to restore or maintain the ecological
5 integrity of natural areas.

6 **SECTION 14.** ATCP 29.31(5)(b)2. to 9. are renumbered ATCP 29.31(5)(b)3. to 10. and,
7 as renumbered, ATCP 29.31(5)(b)3. is amended to read:

8 ATCP 29.31(5)(b)3. Common pests affecting turf ~~and landscape,~~ landscape and natural
9 areas.

10 **SECTION 15.** ATCP 29.31(5)(b)2. is created to read:

11 ATCP 29.31(5)(b)2. Restoration and maintenance of natural areas.

12 **SECTION 16.** ATCP 29.31(11)(a)2. and (note) are amended to read:

13 ATCP 29.31(11)(a)2. To control pests in or around food handling establishments, human
14 dwellings, schools, institutions, industrial establishments, warehouses, grain elevators or like
15 facilities. It includes individuals making perimeter barrier ~~treatments, within 10 feet of a~~
16 ~~building or structure, to prevent or discourage pests from entering that building or structure~~
17 applications. It also includes individuals making spot or directed applications to landscapes to
18 control structural, household or nuisance pests such as ants, fleas, wasps, bees and hornets. It
19 does not include individuals making applications under sub. (5) to control pests of turf or
20 ornamentals; nor does it include individuals making applications under sub. (8) to control
21 mosquitoes.

22 **Note:** Landscape applications other than perimeter barrier ~~treatments within~~
23 ~~10 feet of a building,~~ applications must comply with s. ATCP 29.56.

24 **SECTION 17.** ATCP 29.33(3)(d) is amended to read:

1 ATCP 29.33(3)(d) ~~The~~ A specific description of the location of the pesticide application
2 site. The pesticide application site description shall contain sufficient information and detail that
3 the location of that application site can be readily determined from the description.

4 **SECTION 18.** ATCP 29.45(1)(b)(note) is amended to read:

5 **Note:** See also ~~ss.~~ ch. ATCP 33.

6 **SECTION 19.** ATCP 29.45(3)(b) is amended to read:

7 ATCP 29.45(3)(b) It shall be liquid tight and made of ~~asphalt,~~ portland cement concrete
8 or other nonabsorbent materials ~~approved by the department, and.~~ It shall be strong enough to
9 withstand all foreseeable loading conditions, including the filled weight of all vehicles,
10 application equipment or other equipment that may be used or located on it. A tarpaulin may not
11 be used as a spill containment surface for liquid pesticides.

12 **SECTION 20.** ATCP 29.45(3)(b)(note) is repealed and recreated to read:

13
14 **Note:** Spill containment surfaces constructed prior to *[Revisor, please insert rule's*
15 *effective date here]* may be made of asphalt or other materials approved by the
16 department.
17

18 **SECTION 21.** ATCP 29.45(3)(d) and (e) are created to read:

19 ATCP 29.45(3)(d) A spill containment surface shall be inspected at least semi-annually
20 and be maintained to ensure compliance with this section. All repairs to a spill containment
21 surface shall be made according to good engineering practices and manufacturer specifications.

22 (e) A spill containment surface shall be removed if it cannot be maintained in
23 compliance with this section for at least 2 years after the date of an initial repair or if corrective
24 action is needed to remove environmental contamination beneath the spill containment surface.

25 **SECTION 22.** ATCP 29.45(4) and (5) are repealed and recreated to read:

1 ATCP 29.45(4) SPILL CONTAINMENT SURFACE; LIQUID PESTICIDES. (a) The spill containment
2 surface under sub. (1) shall meet all of the requirements under sub. (3) and all of the following
3 requirements if any liquid pesticide is mixed or loaded over that surface:

4 1. The spill containment surface shall be liquid tight.

5 2. The catch basin shall have a capacity of at least 1,000 gallons or 125% of the capacity
6 of the largest storage container loaded or unloaded at the storage facility, whichever is less.

7 3. The spill containment surface shall have one or more fully functioning pumps that can
8 be used to remove liquid from the surface of the mixing and loading pad. Each pump shall be
9 plumbed or have a readily available hose connection to a container that shall be designed,
10 constructed, inspected and maintained to operate effectively and to prevent discharges under all
11 reasonably foreseeable use conditions. The pump shall self activate or shall be susceptible to
12 immediate activation whenever needed.

13 4. The spill containment surface shall be served by a pump and storage container that at
14 all times has an unused capacity of at least 200 gallons.

15 5. If the spill containment surface drains to a sump area, the sump area shall meet all
16 requirements set forth under sub. (5).

17 6. The spill containment surface shall be protected against precipitation runoff from
18 surrounding surfaces.

19 7. The spill containment surface may not have any precipitation drain through which
20 spilled pesticide could discharge.

21 (b) A tarpaulin may not be used as a spill containment surface for liquid pesticides.

22 (c) A pesticide mixed with a liquid carrier is considered a liquid pesticide under

1 this subsection. The impregnation of a nonliquid fertilizer with a liquid pesticide does not
2 constitute the mixing or loading of a liquid pesticide under this subsection.

3 (5) SUMP AREA. If the spill containment surface drains to a sump area, the sump area
4 shall meet all of the following requirements:

5 (a) The sump area shall be designed, constructed and maintained to contain all liquid that
6 drains to the sump.

7 (b) The sump area shall be liquid-tight.

8 (c) The sump area shall have a pump and storage container described in sub. (5) with an
9 unused capacity, at all times, of at least 200 gallons.

10 (d) The capacity of a sump installed after *[Revisor, please insert rule's effective date*
11 *here]* shall not be more than 50 gallons.

12 (e) The sump area shall be routinely inspected and maintained in compliance with this
13 section and shall make and keep records of inspection and maintenance for at least 3 years.

14 (f) The sump area shall be repaired, when necessary, to good engineering practices and
15 manufacturer specifications.

16 (g) The sump area shall be removed if it cannot be maintained in compliance with this
17 section, or if corrective action is needed to remove environmental contamination from beneath
18 the sump area. A leaking sump area shall be removed unless the sump is repaired and remains
19 liquid-tight for at least 2 years after the date of repair.

20 **Note:** Construction standards for sumps at fertilizer and pesticide bulk storage
21 facilities are found in s. ATCP 33.38. In addition, The *Wisconsin minimum*
22 *design standards for concrete agricultural containment (February, 2005)*,
23 written by Professor David W. Kammel, department of biological systems
24 engineering, University of Wisconsin-Extension, is on file with the
25 department and the legislative reference bureau. Copies are available from
26 the department, free of charge, at the following address:
27

1 Department of Agriculture, Trade and
2 Consumer Protection
3 Agricultural Resource Management Division
4 P.O. Box 8911
5 Madison, WI 53708-8911
6 Phone: (608) 224-4500
7 Web: <http://datcp.wi.gov>
8

9 **SECTION 23.** ATCP 29.54(1)(a) is repealed and recreated to read:

10 ATCP 29.54(1) DEFINITIONS. In this section:

11 (a) “Agricultural chemigation system” means a chemigation system that mixes pesticides
12 with irrigated water and applies the pesticides with the irrigation water in an agricultural setting.

13 **SECTION 24.** ATCP 29.54(1)(am), (gm) and (km) are created to read:

14 ATCP 29.54(1)(am) “Automatic low pressure drain valve” means a self-activating device
15 which is designed and constructed to drain the water supply pipeline in a chemigation system if
16 water pressure falls or the water supply pump ceases operation.

17 (gm) “Non-agricultural chemigation system” means a chemigation system that is used to
18 apply pesticides in a non-agricultural setting, including to urban lawns and gardens.

19 (km) “Urban pesticide misting system” means a non-agricultural chemigation system that
20 draws water from any source, mixes the water with a pesticide and applies the mixture outdoors
21 and into the air to kill, repel, or otherwise control pests in an urban setting, including a residential
22 or commercial area.

23 **SECTION 25.** ATCP 29.54(1)(e) is amended to read:

24 ATCP 29.54(1)(e) “Chemigation system” means a device or system which mixes
25 pesticides with irrigation water drawn from any source and which applies the pesticides with the
26 irrigation water. “Chemigation system” includes agricultural chemigation systems, non-

1 agricultural chemigation systems, urban pesticide misting systems and all of the components of
2 those systems. “Chemigation system” does not include any of the following:

- 3 1. A hand-held or hose-end sprayer.
- 4 ~~2. A device or system used only to apply residential lawn and garden pesticides.~~
- 5 ~~3~~2. A device or system used only to inject pesticides directly into plants.
- 6 ~~4~~3. A device or system used only to apply pesticides directly to the roots of ornamental
7 trees and shrubs.

8 **SECTION 26.** ATCP 29.54(5)(e), (f) and (g) are created to read:

9 ATCP 29.54(5)(e) No pesticide may be injected into an urban pesticide misting system
10 unless the pesticide is labeled for application by misting.

11 (f) A rain sensor and a wind sensor must be installed on an urban pesticide misting
12 system to prevent drift and control runoff.

13 (g) A legible copy of the label must be securely attached to an urban pesticide misting
14 system’s reservoir tank or on the outside of the system timer.

15 **SECTION 27.** ATCP 29.54(7)(a)1. and (note), are amended to read:

16 ATCP 29.54(7)(a)1. In compliance with ~~ASSE Standards 1013.80~~ s. SPS 382.41.

17 **Note:** ~~ASSE Standard 1013.80, published by the American society of sanitary~~
18 ~~engineers, is on file with the secretary of state, the legislative reference~~
19 ~~bureau and the department. The department can provide a list, by~~
20 ~~manufacturer and model, of reduced pressure principle backflow~~
21 ~~preventers which comply with ASSE Standard 1013.80. The department~~
22 ~~of commerce safety and professional services can provide a list of~~
23 ~~persons qualified to test reduced pressure principle backflow preventers.~~

24
25 **SECTION 28.** ATCP 29.54(7)(e)(note) is amended to read:

26 **Note:** ~~To obtain a current list of approved check valves, by manufacturer and model,~~
27 ~~contact the department of agriculture, trade and consumer protection, agricultural~~
28 ~~resource management division, at P.O. Box 8911, Madison, WI, 53708 8911. UL~~
29 ~~Standard 312, published by the underwriters’ laboratory, is on file with the secretary~~

1 of state, ~~the legislative reference bureau and the department~~ and the legislative
2 reference bureau.

3
4 **SECTION 29.** ATCP 29.54(10), (12) and (13) are amended to read:

5 ATCP 29.54(10) CHECK VALVE; PESTICIDE INJECTION LINE. In every chemigation system,
6 check valve shall be installed in the pesticide injection line between the pesticide injection unit
7 and the point at which pesticides are injected into the ~~irrigation~~ water supply. The check valve
8 shall be spring loaded and have a minimum opening or cracking pressure of 10 pounds per
9 square inch.

10 (12) WATER PRESSURE FAILURE; AUTOMATIC SHUT-OFF. In every chemigation system, a
11 low pressure switch shall be effectively designed and installed to shut off power to the ~~irrigation~~
12 application system if water pressure decreases to the point that the pesticide application no
13 longer complies with the pesticide label directions.

14 (13) PURGING A CHEMIGATION SYSTEM. After pesticide injection is completed, water
15 shall be pumped through a chemigation system for at least the flush time of the ~~irrigation~~
16 application system.

17 **SECTION 30.** ATCP 29.55(1)(d) and (2)(a) are amended to read:

18 ATCP 29.55(1)(d) “Residential application” means the application of a pesticide, other
19 than a germicide, sanitizer or disinfectant, to a residential structure. “Residential application”
20 includes perimeter barrier applications, but does not include an individual’s application of a
21 pesticide to a dwelling unit in which that individual resides, provided that the individual does not
22 apply the pesticide to other dwelling units or common areas in the residential structure, or its
23 perimeter barrier.

24 (2)(a) A written notice offering to provide pre-application information under par. (b).
25 The written notice may be provided electronically to the customer if the customer consents in

1 writing to such notification. The person shall make the offer before making the first residential
2 application for the customer, and shall repeat the offer at least annual if there is a continuing
3 contract for more than one year.

4 **SECTION 31.** ATCP 29.55(3)(a)8. is created to read:

5 ATCP 29.55(3)(a)8. A specific description of the location of the pesticide application
6 site. The pesticide application site description shall contain sufficient information and detail that
7 the location of the pesticide application can be readily determined from the description.

8 **SECTION 32.** ATCP 29.55(3)(c) is amended to read:

9 ATCP 29.55(3)(c) A person making a residential application to any common area within
10 a residential structure, or making a perimeter barrier application, shall provide the information
11 under par. (a) by posting clearly legible notices in common entryways or other conspicuous
12 locations so that all residents are likely to see the notices.

13 **SECTION 33.** ATCP 29.56(1)(e)2. is amended to read:

14 ATCP 29.56(1)(e)2. A perimeter barrier ~~treatment~~ application ~~made on or within 10 feet~~
15 ~~of a building or structure to prevent or discourage pests from entering that building or structure.~~

16 **SECTION 34.** ATCP 29.56(2) is amended to read:

17 ATCP 29.56(2) INFORMATION TO CUSTOMER. A person hired by a customer to make a
18 landscape application shall provide that customer with all of the following either in writing or
19 electronically if the customer consents in writing to such notification:

20 **SECTION 35.** ATCP 29.56(2)(a)(note) is amended to read:

21 **Note:** See Appendix A for an example of a written or electronically transmitted
22 notice under par. (a). Nothing in this section authorizes a commercial applicator
23 to make a landscape application which the customer has not affirmatively
24 authorized.

25 **SECTION 36.** ATCP 29.56(7)(c)(intro) is amended to read:
26

1 ATCP 29.56(7)(c) An individual shall register with the department by February 1 of each
2 year to be included in the registry that takes effect on March 15 of that year. An individual shall
3 register on ~~a~~ an electronic or paper form provided by the department. The registration form shall
4 include all of the following information which shall be included in the registry under par. (a):

5 **SECTION 37.** ATCP 29.56(7)(c)4.(note) is amended to read:

6
7 **Note:** Individuals may obtain registration forms and submit registrations at the
8 following website address:

9
10 http://datcp.wi.gov/Plants/Pesticides/Landscape_Registry/index.aspx

11
12 Forms may also be obtained by mailing a request to Lawncare Registry
13 Coordinator, DATCP, PO Box 8911, Madison, WI 53708-8911, or by calling
14 (608) 244-4616.

15
16 ~~Department of Agriculture, Trade and Consumer Protection; Division of~~
17 ~~Agricultural Resource Management; Landscape Application Registry; P.O.~~
18 ~~Box 8911; Madison, WI 53708 8911. Individuals may also obtain registration~~
19 ~~forms by calling the department at 608 244 4616. A registration complies with~~
20 ~~the filing deadline under par. (c) if the registration is postmarked, ~~or~~ delivered~~
21 ~~to the department or entered onto the department's website by February 1. The~~
22 ~~department may accept registrations filed after February 1 for inclusion in the~~
23 ~~March 15 registry, but is not required to do so.~~

24
25 **SECTION 38.** ATCP 29.58 is created to read:

26 **ATCP 29.58 Pesticide bait station.** (1) A person licensed under s. ATCP 29.20 or
27 certified under s. ATCP 29.31(11) who uses a pesticide bait station shall mark it with the
28 following information:

29 (a) The name of the person responsible for maintaining the pesticide bait station.

30 (b) The EPA registration number of all the pesticide products that are currently in use
31 within the pesticide bait station.

1 (2) The information in sub. (1) shall be in English and placed on a readily accessible
2 exterior surface of the pesticide bait station that is resistant to deterioration and remains legible
3 throughout the length of time the pesticide bait station is serviced.

4 **SECTION 39.** ATCP 29.61(note) is repealed and recreated to read:

5 **Note:** Some federal requirements under 40 CFR 170 are stated in full on the pesticide
6 label, while others are merely referenced. The department will provide a free
7 summary of the federal rules upon request. The entire federal worker protection
8 standards rule can also be accessed at
9 www.epa.gov/pesticides/safety/workers/PART170.htm. 40 CFR 170 requires specific
10 pesticide safety practices including, but not limited to: pesticide product application
11 posting, training of equipment operators and pesticide workers and handlers, and use
12 of preventative emergency response measures including sanitation, decontamination
13 and availability of emergency medical treatment. To obtain summary materials,
14 contact the department at: Department of Agriculture, Trade and Consumer Protection;
15 Division of Agricultural Resource Management; Worker Protection Program; P.O.
16 Box 8911, Madison, WI 53708-8911 or call (608) 224-4545.

17
18 **SECTION 40.** ATCP 29.70(2) is amended to read:

19 ATCP 29.70(2) PERMIT APPLICATION. Unless expressly approved in advance by the
20 department to submit via paper, An an application for an emergency use permit under sub. (1)
21 shall be in writing, submitted by electronic means to the department. The application and shall
22 include all of the following:

23 **SECTION 41.** ATCP 29.70(2)(k)(note) is created to read:

24 **Note:** The use of certain pesticides, such as use of atrazine in an atrazine prohibition area,
25 may require a permit under ch. ATCP 30.

26
27 **SECTION 42.** ATCP 29.71(2) is amended to read:

28 ATCP 29.71(2) PERMIT APPLICATION. Unless expressly approved in advance by the
29 department to submit via paper, A a person seeking an experimental use permit under sub. (1)
30 shall apply to the department in writing by electronic means. The application shall include all of

1 the following:

2 **SECTION 43.** ATCP 29.72(4) is amended to read:

3 ATCP 29.72(4) APPLYING FOR REGISTRATION. A person licensed under s. ATCP 29.10
4 may apply for a special local needs registration under sub. (1). ~~The~~Unless expressly approved in
5 advance by the department to submit via paper, the application shall be made in writing and
6 submitted by electronic means to the department. The application shall include all of the
7 following:

8 **SECTION 44. EFFECTIVE DATE AND INITIAL APPLICABILITY.** This rule takes effect on
9 the first day of the month following publication in the Wisconsin administrative register, as
10 provided under s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2011.

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary