

Summary of Public Hearing Testimony on Proposed Amendments to ch. ATCP 30 Wis. Adm. Code

INTRODUCTION

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) held two public hearings to record oral testimony on proposed changes to ch. ATCP 30, Wis. Adm. Code (Pesticide Product Restrictions). DATCP has proposed revisions to ch. ATCP 30, Wis. Adm. Code to expand and join two current atrazine prohibition areas in Columbia County, and to create a new atrazine prohibition area (PA) in Sauk County adjacent to the Lower Wisconsin River Valley. The hearings were held at the Prairie du Sac Town Hall on October 26, 2010, and at the Pardeeville Public Library on October 27, 2010. DATCP also accepted written testimony until November 12, 2010.

A total of 16 people filled out "Public Hearing Appearance Cards" at the hearings, with only one providing oral testimony. Five of the 16 attendees completed a card to register an opinion in support of the proposed changes to ch. ATCP 30, Wis. Adm. Code. Nine of the 16 attendees completed an appearance card in opposition to the proposed changes to ch. ATCP 30, Wis. Adm. Code, and two of the 16 attended the hearings for informational purposes only.

Informational materials available at the hearing included state and county maps showing all of the data that DATCP has on atrazine concentrations in private water supply wells and maps of the proposed expansion of an atrazine prohibition area in Columbia County. A number of DATCP groundwater reports, general reference materials, and other information also were available.

PUBLIC HEARING TESTIMONY

Prairie du Sac Town Hall – October 26, 2010

Three people attended this public hearing and filled out appearance cards at the Prairie du Sac Town Hall. One of the attendees was a local landowner who farmed land both inside and outside the proposed PA, one was the State Government Affairs Manager for Syngenta, and the third was the representative of the local environmental advocacy group "Citizens for Safe Water Around Badger". Of these people:

- one attended the hearings for informational purposes only; and
- two registered in support of the proposed atrazine prohibition area as proposed.

No oral testimony was provided at this Hearing.

FROM THE FILES OF:

Citizens for Safe Water Around Badger
E12629 Weigand's Bay South
Merrimac, WI 53561
(608) 643-3124
Email: info@cswab.org
Website: www.cswab.org

Angie W. Cox Public Library in Pardeeville - October 27, 2010

A total of 13 people filled out appearance cards at the public hearing that was held at the Angie W. Cox Public Library in Pardeeville on proposed changes to ch. ATCP 30, Wis. Adm. Code. One of the attendees (State Governmental Affairs Manager for Syngenta) was also present at the public hearing held the previous night at the Prairie du Sac Town Hall. Three people represented the Wisconsin Corn Growers Association, eight attendees were corn growers either in or adjacent to the proposed atrazine PA, and three attendees were private citizens who live either in or near the proposed atrazine PA. Of these people:

- two attended the hearing for informational purposes only,
- three registered in support of the atrazine prohibition area as proposed,
- ten (one card included husband plus wife) registered in opposition to the atrazine prohibition area as proposed.

The following is a summary of the oral testimony provided at the Public Hearings held at the Angie W. Cox Library in Pardeeville:

- Oral testimony was provided by one corn grower who farms land both inside and outside of a neighboring PA. While he was opposed to the proposed PA as written, he was primarily concerned about the fact that once land is included in a prohibition area, it is never allowed to be taken out, even though there is a provision for repealing a prohibition in ch. ATCP 30 Wis. Adm. Code. He also indicated that it isn't fair that DATCP can create a PA based on a single well test.

Written Testimony (Public Hearing Appearance Cards)

Written comments were provided on eight of the 15 Public Hearing Appearance Cards. The following summarizes those comments:

- One registered in support of the proposed rule changes and further supports a statewide ban on atrazine to protect groundwater and prevent exposures to young children and unborn human fetuses.
- One registered in support of the proposed rule change as written because the soil in the area is very sandy and there are already water problems in the area.
- One registered in opposition to the proposed rule change because the Wisconsin Corn Growers are concerned about the direction of the rules, and that more areas are closed to atrazine use, but areas are never re-opened.
- Two registered in opposition to the proposed rule change and would like the option to use atrazine if desired (or if necessary).
- One registered in opposition to the proposed rule change because it impacts their farming operation.
- One registered in opposition to the proposed rule change because they feel the proposed PA in Columbia County is too large for the small number of wells that were tested, and that the farmers within the PA are put at an economic disadvantage.

- One pointed out that the Environmental Impact Statement needs to be updated because the US EPA no longer classifies atrazine as a Class “C” carcinogen.

Written Testimony (Letters and e-Mail)

The written record was open until November 12, 2010.

- Written testimony in support of the proposed atrazine prohibition areas was provided by the Citizens for Safe Water around Badger (already counted in the “Public Hearing Testimony” summary) plus a coalition of twelve environmental advocacy groups, and two private citizens. In addition to their support of the proposed rule change:
 1. They believe that a statewide ban [on atrazine] or other significant action is necessary to prevent further exposures and continued contamination of groundwater.
 2. They state that DATCP must regulate pesticide use as necessary to *prevent* groundwater contamination and restore groundwater quality, and that current law only prohibits the use of atrazine if a groundwater standard is exceeded.
- Written testimony in support of the proposed atrazine prohibition areas was provided by eight local private citizens who submitted a letter of support to DATCP by regular mail.
- Written testimony in support of the proposed atrazine prohibition areas was provided by two local private citizens who submitted a letter of support for the proposed rule change to DATCP by e-mail.
- Written testimony in opposition to the proposed atrazine prohibition areas was provided by the Wisconsin Corn Growers Association. This association opposes the proposed expansions for several reasons, including:
 1. The hearings were convened without the consideration of the state Atrazine Technical Advisory Committee.
 2. The fact that no groundwater samples were collected from the wells during the 2010 growing season.
 3. The fact that the public hearing in Pardeeville was scheduled to be open until 8:00 P.M., but the meeting location was locked after 7:30 P.M.

Furthermore, the Wisconsin Corn Growers Association “demands that areas that have tested atrazine free for years should be released from atrazine restriction areas”.

DATCP RESPONSES

Several of those responding as opposed to the proposed rule change, including the Wisconsin Corn Growers Association, did so because they believe that once an area is included as a prohibition area, it is never taken out.

A process does exist for repealing or changing the size of an atrazine prohibition area. Section ATCP 30.375 Wis. Adm. Code, "Repealing prohibition areas", requires all of the following conditions to be met before the department may repeal or change the size of an atrazine prohibition area.

- Tests on at least three consecutive groundwater samples, drawn from each well site in the prohibition area at which the atrazine concentration previously exceeded the groundwater enforcement standard under s. NR 140.10 Wis. Adm. Code, show that the concentration of atrazine and its metabolites at that well site have fallen to and remains at not more than 50% of the enforcement standard. The three consecutive samples must be collected at intervals of at least six months, with the first sample being collected at least six months after the effective date of the prohibition.*
- Tests conducted at other well sites in the prohibition area during the same retesting period, if any, reveal no other concentrations of atrazine and its metabolites that exceed 50% of the enforcement standard under s. NR 140.10 Wis. Adm. Code.*
- The department determines, based on credible scientific evidence, that renewed use of atrazine products in the prohibition area is not likely to cause a renewed violation of the enforcement standard.*

This comment from the Wisconsin Corn Growers Association and others only relates to the first of the three repeal conditions. The association is correct that a number of wells that led to the creation of PAs now meet the first repeal condition. With no additional use of atrazine in a PA, it is expected that impacted well(s) will gradually "clean up". Repeal condition two evaluates atrazine concentration in other wells in the PA and is only considered if conditions one and three are met. To evaluate condition three, DATCP conducted the "Atrazine Reuse Study" from 1998 to 2005. The results of this study showed that renewed use of atrazine on test fields in PAs caused concentrations in monitoring wells to exceed the ch. NR 140 Wis. Adm. Code Enforcement Standard. Following a review of the study, the Atrazine Technical Advisory Committee concluded at their March 29, 2006 meeting by an 8-2 vote that condition three of the repeal process had not been met. At the ATCP Board's June 28, 2006 meeting, DATCP presented the Atrazine Reuse Study report and the conclusion that the study did not support repealing any PAs at that time. To this date, the department is not aware of any other studies related to the three repeal conditions that support repealing or reducing the size of any PAs.

The Wisconsin Corn Growers Association question why the public hearings were convened without consideration by the Atrazine Advisory Technical Committee.

The Atrazine Technical Advisory Committee (ATAC) was renamed the Agrichemical Technical Advisory Committee in 2008. Meetings of the ATAC are called when the department is considering major policy issues related to ch. ATCP 30 Wis. Adm. Code or other groundwater contamination issues. For example, the department used this committee when it considered a change in the allowable application dates for atrazine and also when considering whether to repeal PAs following the Atrazine Reuse Study. Adding new prohibition areas to ch. ATCP 30 Wis. Adm. Code is a routine rule update that does not require the expertise of the ATAC. The department does intend to notify the ATAC by mail about the new prohibition areas if they are approved.

The Wisconsin Corn Growers Association also questioned "why testing wasn't performed during the 2010 growing season"?

The trigger for conducting a groundwater investigation and proposing new PAs is when a private well has two sample results over the 3 ug/l ch. NR 140 Wis. Adm. Code Enforcement Standard. This trigger was met in both the proposed PAs. Furthermore, the two wells (one in Sauk County and one in Columbia County) that started the process for creating the proposed PAs were sampled after the 2010 growing season and the concentration of atrazine increased in both of the wells. A third well which was found to exceed the enforcement standard during the investigation in Columbia County and was also found to have increasing atrazine levels in 2010.

The Wisconsin Corn Growers Association voiced a concern about the fact that the Public Hearing in Pardeeville was scheduled to be open until 8:00 P.M., but the meeting location was locked after 7:30 P.M.

This is unfortunate but true. The Library staff informed DATCP that the meeting room was available until 8:00 P.M., but that the library had to lock its front door at 7:30 P.M., when the library closed for the day. DATCP wrongly assumed that we would be able to see people trying to get in after the doors were locked after 7:30 P.M. and let them in. Unfortunately, the meeting room was in the basement of the library and the front door of the library could not be seen. Therefore, if anyone came to the hearing between 7:30 P.M. and 7:45 P.M., they would not have been able to enter the building. Once the problem was recognized by DATCP staff (at about 7:45 P.M.), DATCP staff monitored the front door for any interested citizens. None showed up.

The public hearing was only one of four ways in which a person could provide testimony on the proposed rule change. The others being telephone, e-mail, or regular mail. All of these other methods (and phone numbers and e-mail address) were provided in local press releases.

Two growers opposed the proposed atrazine prohibition area because they want to have the option of using atrazine if desired (or necessary).

DATCP is required to prohibit the use of atrazine in areas where the ch. NR 140 Wis. Adm. Code Enforcement Standard concentration for atrazine has been exceeded. The only exception to this can be made for bona fide research using atrazine within PAs. There are other pesticides available to local growers that are effective tools for weed control.

Two growers opposed the proposed atrazine PAs because they felt that taking away atrazine would impact their farming operation and put them at an economic disadvantage compared to those farming outside the prohibition area.

DATCP is aware that there can be some additional costs when atrazine is no longer available for use. However, there are other products available that provide effective weed control and can help minimize the financial impact of atrazine being removed from the growers weed control options.

One grower questioned the size (too big) of the proposed PA in Columbia County.

The size of the proposed PA in Columbia was determined based on the geographic distribution of the impacted private drinking water supply wells, the proximity of the impacted wells to the two adjacent PAs in northern Columbia County (PA 991101 and PA 931102), and the likely discharge area of the shallow groundwater into the Fox River.

One group pointed out that the Environmental Impact Statement needs to be updated because the US EPA no longer classifies atrazine as a Class "C" carcinogen.

While the Environmental Impact Statement indicates that atrazine is not considered to be a Class "C" carcinogen, the paragraph in which this was written was somewhat unclear. DATCP has modified that paragraph, clearly stating that the US EPA no longer considers atrazine to be a likely human carcinogen.

One group registered in support of the proposed rule changes and further supports a statewide ban on atrazine to protect groundwater and prevent exposures to unborn and young children.

A statewide prohibition on the use of atrazine is beyond this specific rule proposal. The ch. ATCP 30 Wis. Adm. Code, which includes reduced rates statewide and prohibition areas where the enforcement standard has been exceeded, is adequate to protect public health and the environment. The comment about being more proactive in finding areas where atrazine has exceeded the ch. NR 140 Wis. Adm. Code Enforcement Standard is acknowledged. Each year the department conducts sampling in targeted areas in an effort to find wells that exceed the enforcement standard. If multiple wells with levels above the standard are found in an area, larger prohibition areas are proposed. DATCP does have the authority to prohibit the use of a

pesticide on a statewide basis. However, the criteria outlined in ch. ATCP 31.08(3), Wis. Adm. Code have not been met to prohibit the use of atrazine statewide.