

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Department of Agriculture

(agency name)

Administrative Order No. 1869

(1) I, C. Alan Pettibone, director of Washington State Department of Agriculture

do promulgate and adopt at Olympia, WA (place)

the annexed rules relating to:

Chapter 16-228 Use of Endrin on Orchards

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. WSR 85-13052 and WSR 85-16075 filed with the code reviser on June 18, 1985 and August 2, 1985. These rules shall take effect:

- XX thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

- XX (a) This rule is promulgated pursuant to RCW 17.21 RCW and is intended to administratively implement that statute.
(b) This rule is promulgated pursuant to RCW which directs that the

(agency)

has authority to implement the provisions of

(name of act or RCW citation)

- (c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED August 15

STATE OF WASHINGTON

FILED

AUG 16 1985

CODE REVISER'S OFFICE WSR 85-17-044

By C. Alan Pettibone

Director

Title

AMENDATORY SECTION (Amending Order 1817, filed 4/10/84)

WAC 16-228-010 DEFINITIONS. (1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture of the state of Washington, or a duly authorized representative.

(3) "Agricultural commodity" means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by humans or animals.

((2)) (4) "Authorized agent" is any person who is authorized to act on behalf of a certified applicator for the purpose of purchasing pesticides.

((3)) (5) "Bait box" for rodenticides is a box constructed of durable metal, wood, plastic, or other treated synthetic material. It shall be designed to hold rodent bait securely, allow rodents to enter and leave, and prevent unauthorized persons and domestic animals from gaining access to the bait. The cover shall be provided with a lock that can be unlocked only by a combination, key, special tool, or forced entry. Fragile materials are unacceptable.

((4)) (6) "Bait station" may be any location where baits are placed to allow target pests to gain access to the bait.

((5)) (7) "Bulk fertilizer" is a commercial fertilizer, agricultural mineral, or lime, distributed in nonpackaged form.

((6)) (8) "Certified applicator" means any individual who is certified by the director to use or supervise the use of any pesticide which is classified by the Environmental Protection Agency (EPA) as a restricted use pesticide or by the state as restricted to use by certified applicators including, but not limited to licensed commercial applicators, licensed commercial operators, licensed public operators, licensed private-commercial applicators, licensed demonstration and research applicators, and certified private applicators.

((7)) (9) "Controlled disposal site" means any place where solid or liquid waste is disposed: PROVIDED, That the area has been designated as a disposal site for waste materials by the appropriate jurisdictional agency: PROVIDED FURTHER, That the site is fenced, barricaded or otherwise enclosed or attended by some person in charge to facilitate control-access of domestic animals, pets, and unauthorized persons.

((8)) (10) "Dry pesticide" is any granular, pelleted, dust or wettable powder pesticide.

((9)) (11) "EPA" means the United States Environmental Protection Agency.

((10)) (12) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

((11)) (13) "Fertilizer" as included in this order means any liquid or dry mixed fertilizer, fertilizer material, specialty fertilizer, agricultural mineral, or lime.

((12)) (14) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended.

((13)) (15) "Floor level" is considered to be the floor upon which people normally walk--not shelves, ledges, overhead beams, tops of stacked materials, surfaces of equipment, or similar places.

((14)) (16) "Food service establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; industrial-feeding establishment; retail grocery; retail food market; retail meat market; retail bakery; private, public, or nonprofit organization routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

((45)) (17) "Fumigant" means any substance or combination of substances that produce gas, fumes, vapors, or smoke, and is used to kill pests in some kind of enclosure.

((46)) (18) "Highly toxic" for the purpose of this ((order)) chapter, are those pesticides determined to be in the Toxicity Category I and are labeled on the front panel with the signal word "danger." In addition if the product was assigned to Toxicity Category I on the basis of its oral, inhalation or dermal toxicity (as distinct from skin and eye local effects) the word "poison" shall appear in red on a background of distinctly contrasting color and the skull and crossbones shall appear in immediate proximity to the word "poison."

((47)) (19) "Private applicator" means a certified applicator who uses or supervises the use of (a) any EPA restricted use pesticide; or (b) any state restricted use pesticide restricted to use only by certified applicators by the director for the purposes of producing any agricultural commodity on land owned or rented by the private applicator or the private applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

((48)) (20) "Private-commercial applicator" means a certified applicator who uses or supervises the use of (a) any EPA restricted use pesticide; or (b) any state restricted use pesticide restricted to use only by certified applicators for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

((49)) (21) "State restricted use pesticide" means any pesticide determined to be a restricted use pesticide by the director under the authority of chapters 17.21 and 15.58 RCW that are restricted to use only by certified applicators.

((20)) (22) "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

AMENDATORY SECTION (Amending Order 1805, filed 8/1/83)

WAC 16-228-235 PURPOSE OF ((ORDBR)) RULES--ENDRIN USE. The purpose((s)) of ((this-administrative-order-are-(4)-to-provide-for--an-orderly--two-year--phase-out--in--the-use-of-the-pesticide-endrin-for-orchard-use-in-the-state-of-Washington,-(2)-to-provide--for--a--public-hearing--prior--to-the-1985-application-season-to-determine-whether-it-is-necessary-to-have-a-crisis-permit-process--for--endrin,-(3))) the following rules is to prohibit the use of endrin except for crisis use, and to establish criteria for the crisis use ((if--any)) of endrin((,-and-(4)-to-establish-an-endrin-advisory-committee-to-advise-the-director-regarding-the-use-of-endrin)).

AMENDATORY SECTION (Amending Order 1805, filed 8/1/83)

WAC 16-228-245 ENDRIN APPLICATION ((#0))--CRITERIA FOR DETERMINING CRISIS USE ON ORCHARDS. (1) All references to endrin in WAC 16-228-010 through 16-228-230 shall apply: PROVIDED, That when there is a conflict WAC 16-228-235 through ((16-228-290)) 16-228-275 shall prevail.

(2) ((Applications--of-endrin-shall-not-be-made-to-an-orchard-in-the-state-of-Washington-until)) A crisis permit process for the use of endrin is hereby established which includes but is not limited to the following procedures. The department shall not grant a crisis permit unless an applicant establishes the following:

(a) ((The-orchard-has-been-inspected-by)) A licensed pest control consultant shall have inspected the orchard and prepared a written recommendation containing information required by WAC 16-228-250 and certifying that the criteria in subsection (3) of this section have been met; ((and))

(b) The Washington state department of game has been requested and provided an opportunity to have a game department representative inspect the orchard and submit a written report to the department stating whether the criteria in subsection (3) of this section have been met. The orchardist shall ((contract)) contact the department of game and request such an inspection at or about the time the request for inspection is made to the licensed pest control consultant;

(c) Two copies of any reports made by the game representative and the consultant's recommendations shall be given to the grower and one copy shall be sent to the department; and

(d) To apply for a crisis permit, the grower shall submit to the department copies of any reports and recommendations of the game representative and consultant, together with additional information which the department may require, and a request for a crisis permit. If after reviewing the request and supporting documentation, the department concludes that endrin is the only feasible method of controlling meadow voles in the applicants' orchards, that meadow voles pose a substantial threat to the orchard, and that there is a crisis that precludes the option of trying additional alternatives to endrin, the department may issue a crisis permit for the use of endrin to the applicant. The permit shall specify the amount of endrin which may be used and the time and place where it may be applied, and no applicator shall apply a greater amount of endrin than specified in the permit, or apply endrin in a different place or time than is specified in the permit or without meeting the minimum application restrictions of WAC 16-228-260. The department may specify additional restrictions on the permit if it is deemed necessary. The department shall either deny or grant a permit within ten working days of receipt of the permit application.

(3) The inspection by the consultant and game representative shall be for the purpose of determining whether there is a need for meadow vole control after the following criteria have been met:

(a) There is proof of meadow vole activity. This ((must)) shall be measured by ((some-type-of)) a population level monitoring technique ((7-i.e., number-of-meadow-voles-per-tree-or-amount-of-visible-feeding-on-apples-on-ground, or there-is-documentation-indicating there-has-been-a-problem-of-meadow-vole-populations-migrating-into-the-orchard-from-bordering-lands-after-snowfall)) specified by the department of agriculture;

(b) Alternative rodenticides have been used and have not been effective under proper application and weather conditions;

(c) Proper cultural and integrated pest management practices such as mowing of cover crop ((and)), weed control around trees and removal of picking bins, pruning and debris have been followed during the past year and have not been effective.

(d) The application shall not become a source of contamination of streams, rivers, ponds or lakes because of close proximity or direct surface drainage to these bodies of water.

(4) No sale, distribution or application of endrin for orchard use in Washington state shall be allowed without a crisis permit from the department of agriculture.

AMENDATORY SECTION (Amending Order 1805, filed 8/1/83)

WAC 16-228-250 ENDRIN--WRITTEN RECOMMENDATION--LICENSED CONSULTANT--GAME REPRESENTATIVE. ((4)) The game representative may prepare a written recommendation which shall contain documentation of the criteria set forth in WAC 16-228-245(3). The licensed pest control consultant shall prepare a written recommendation which shall contain documentation of the criteria set forth in WAC 16-228-245(3) and, in addition, shall include the following:

- ((a)) (1) Name and address of the grower;
- ((b)) (2) Address or location of orchard;
- ((c)) (3) Number of acres to be treated;
- ((d)) (4) Number of trees per acre;
- ((e)) (5) Amount of endrin needed to treat the orchard;
- ((f)) (6) Rate of application;
- ((g)) (7) Any special precautions of which the orchardist should be made aware.

((2)-Two-copies-of-the-consultant's-recommendation-and-the-game-representative's-report,-if-any,-must-be-given-to-the-grower,-one-copy-must-be-sent-to-the-department-of-agriculture-within-seven-days-after-the-recommendation-or-report-is-made,-and-one-copy-must-be-retained-by-the-consultant-

((3)-This-section-shall-be-valid-until-December-31,-1984.))

AMENDATORY SECTION (Amending Order 1805, filed 8/1/83)

WAC 16-228-255 ENDRIN--DISTRIBUTION--DEALER RECORDS. (1) Endrin shall be distributed for meadow vole control only by a licensed pesticide dealer to certified applicators or their duly authorized representative. A ((copy-of-any-written-recommendation-by-the-licensed-consultant-and-game-representative-and,-where-applicable,-a)) copy of the crisis permit issued by the department, ((must)) shall be presented to the dealer before the endrin is delivered and no sale of endrin shall exceed the amount specified in the crisis permit.

(2) Licensed dealers shall keep records on each sale of endrin which shall include the following:

- (a) Name and address of the certified applicator;
- (b) Applicator or operator certificate or license number;
- (c) Name of authorized agent;

- (d) Date of purchase;
- (e) Brand name and Environmental Protection Agency registration number;
- (f) Amount sold;
- (3) Pesticide dealers shall keep the ~~((written recommendations or))~~ crisis permits and dealer records for a period of two years from the date of distribution. Pesticide dealers shall submit copies of the sales records to the director within thirty days of the date of each sale.

AMENDATORY SECTION (Amending Order 1805, filed 8/1/83)

WAC 16-228-260 ENDRIN--APPLICATION RESTRICTIONS. (1) The application of endrin shall be restricted to a swath of four feet on each side of the apple tree row. Application shall be made only with ground equipment that is designed to restrict the spray to the four-foot swath with a minimum of drift.

(2) Spray pressure shall not exceed fifty psi: PROVIDED, That when a drift control agent has been added to the spray mixture, the spray pressure shall not exceed four hundred psi. Handgun applications using a spray pressure exceeding seventy-five psi ~~((must))~~ shall be made with the operator walking next to the four-foot application swath and spraying from the tractor seat shall be prohibited.

(3) Applications shall not be made if the wind velocity is more than five miles per hour from any direction.

(4) Endrin shall not be applied to a snow cover.

(5) Recommendations prepared by licensed pest control consultants shall be on a form prepared by the department and shall set forth these restrictions in the recommendation, together with a certification that the applicators and orchardists who are to use the endrin have been informed of and understand the restrictions set forth in WAC 16-228-260 and 16-228-265.

AMENDATORY SECTION (Amending Order 1805, filed 8/1/83)

WAC 16-228-265 ENDRIN--POSTING REQUIREMENTS. (1) Orchards sprayed with endrin ~~((must))~~ shall be posted with signs for a period of not less than thirty days from the date of application with the words "POISON - KEEP OUT" printed in both English and Spanish in letters large enough to be legible at a distance of thirty feet and accompanied by a skull and crossbones symbol. The sign also shall contain the statement "area sprayed with endrin."

(2) The signs shall be posted so as to be readily visible from any point of entry into the orchard.

(3) Workers shall be notified that there shall not be reentry into the orchard for thirty days after the application unless rubber boots are worn.

AMENDATORY SECTION (Amending Order 1805, filed 8/1/83)

WAC 16-228-275 ENDRIN--APPLICATOR RECORDS. (1) The applicator ~~((must))~~ shall keep records on the use of endrin which shall include the following:

- (a) Name and address of grower;
- (b) Location or address of orchard treated;

- (c) Date of application;
 - (d) Number of acres treated;
 - (e) Amount of endrin used;
 - (f) Type of equipment used;
 - (g) Meadow vole population threshold criteria used;
 - (h) Name of licensed consultant making recommendation;
 - (i) Cultural practices and other rodenticides used prior to the use of endrin;
 - (j) Name of person or firm who supplied the endrin which was applied;
 - (k) Disposal method for empty containers and spray tank residues;
 - (l) A certification that all restrictions on application were observed.
- (2) Applicators shall submit a copy of these records to the department within thirty days after the date of application. The applicator shall be required to keep these records for a period of two years.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-228-240 ENDRIN USE IN ORCHARDS--1983 TO 1984.
- WAC 16-228-270 PERMIT.
- WAC 16-228-280 ENDRIN ADVISORY COMMITTEE.
- WAC 16-228-285 ENDRIN USE IN ORCHARDS AFTER DECEMBER 31, 1984--CRISIS PERMITS--PERMIT REQUIREMENTS.