

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington
Department of Agriculture

(agency name)

Administrative Order No. 1805

(1) I, M. Keith Ellis, director of Washington State Department of Agriculture

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

Endrin use in apple orchards WAC 16-228.

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

This action is taken pursuant to Notice No. WSR 83-12-044 filed with the code reviser on June 1, 1983. These rules shall take effect: [X] 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:

[X] (a) This rule is promulgated pursuant to RCW 17.21.030 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.

STATE OF WASHINGTON APPROVED AND ADOPTED July 29

AUG 1 1983

By M. Keith Ellis Director of Agriculture

Title

CODE REVISER'S OFFICE WSR 83-16-045

NEW SECTION

WAC 16-228-235 PURPOSE OF ORDER. The purposes of this administrative order are (1) 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) 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.

NEW SECTION

WAC 16-228-240 ENDRIN USE IN ORCHARDS--1983 to 1984. (1) From the effective date of this order until December 31, 1984, the sale and use of endrin in Washington state orchards shall not exceed six thousand gallons. In administering this provision, the department shall observe the following limitations:

(a) 1983 sale and use of approximately four thousand gallons or less;

(b) 1984 sale and use of approximately two thousand gallons or less;

(2) In administering this provision, the department shall make a fair allocation for distributors, retailers and users of the chemical based upon existing inventories and the historical sale, use and distribution of endrin in local areas in Washington state.

NEW SECTION

WAC 16-228-245 ENDRIN APPLICATION TO ORCHARDS. (1) All references to endrin in WAC 16-228-010 through WAC 16-228-230 shall apply: PROVIDED, That when there is a conflict WAC 16-228-235 through WAC 16-228-290 shall prevail.

(2) Applications of endrin shall not be made to an orchard in the state of Washington until:

(a) The orchard has been inspected by a licensed pest control consultant; and

(b) The Washington state department of game has been requested and provided an opportunity to have a department representative inspect the orchard. The orchardist shall 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.

(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 be measured by some type of population level monitoring technique, 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;

(b) Alternative rodenticides have been used and have not been effective;

(c) Proper cultural and integrated pest management practices such as mowing of cover crop and weed control around trees 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.

NEW SECTION

WAC 16-228-250 WRITTEN RECOMMENDATION--LICENSED CONSULTANT--GAME REPRESENTATIVE. (1) 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) Name and address of the grower;
- (b) Address or location of orchard;
- (c) Number of acres to be treated;
- (d) Number of trees per acre;
- (e) Amount of endrin needed to treat the orchard;
- (f) Rate of application;
- (g) 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.

NEW SECTION

WAC 16-228-255 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 permit issued by the department, must be presented to the dealer before the endrin is delivered.

(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 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.

NEW SECTION

WAC 16-228-260 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 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 WAC 16-228-265.

NEW SECTION

WAC 16-228-265 POSTING REQUIREMENTS. (1) Orchards sprayed with endrin must 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 re-entry into the orchard for thirty days after the application unless rubber boots are worn.

NEW SECTION

WAC 16-228-270 PERMIT. (1) Until December 31, 1984, a special permit shall be obtained by the grower from the Washington state department of agriculture:

(a) To make an application of endrin after November 30;

(b) To make an application of endrin to any one orchard for two consecutive years; or

(c) To allow border applications of endrin to exceed the four-foot swath limit after evidence of renewable infestation from bordering lands has been documented by a licensed pest control consultant.

(2) No special permit shall be issued except upon the criteria and recommendations required by WAC 16-228-235 through WAC 16-228-265.

(3) This section shall be valid until December 31, 1984. After that date, no application of endrin shall be made to orchards in Washington, unless the department of agriculture establishes a crisis permit process as provided in WAC 16-228-285.

NEW SECTION

WAC 16-228-275 APPLICATOR RECORDS. (1) The applicator must 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;
- (1) 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.

NEW SECTION

WAC 16-228-280 ENDRIN ADVISORY COMMITTEE. (1) The director shall appoint an endrin advisory committee as an ad hoc committee of the pesticide advisory board, which shall have the following membership:

(a) A representative of the department of ecology, as designated by the director of that agency;

(b) A representative of the department of social and health services, as designated by the director of that agency;

(c) A representative of the department of agriculture, as designated by the director of that agency;

(d) A representative of the department of game, as designated by the director of that agency;

(e) A representative of Washington State University, as designated by the president of that university;

(f) An orchardist residing in the state of Washington;

(g) A licensed pest control consultant residing in the state of Washington; and

(h) A member of the environmental community residing in the state of Washington.

(2) Upon appointment, the endrin advisory committee shall commence a review of the orchard uses of endrin in Washington considering location, amount, frequency and effectiveness of use. The committee shall also study:

(a) Methods of cultural practices to reduce meadow vole populations in orchards;

(b) Methods of determining the size of meadow vole populations; and

(c) Feasible alternatives to use of endrin in orchards.

(3) The committee's findings shall be set forth in a report to the director of the department of agriculture and the pesticide advisory board, to be submitted prior to December 31, 1984. The committee and the board may, based upon findings of the study, recommend further restrictions regarding distribution, use and application of endrin after December 31, 1984.

(4) The department of agriculture will provide the endrin advisory committee members with travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereinafter amended for each day spent in actual attendance at or traveling to and from meetings of the committee, or special assignments for the committee as approved by the director.

NEW SECTION

WAC 16-228-285 ENDRIN USE IN ORCHARDS AFTER DECEMBER 31, 1984--CRISIS PERMITS--PERMIT REQUIREMENTS. (1) After December 31, 1984 and prior to the 1985 application season, the director may conduct a public hearing to determine the criteria for crisis use permits, if it appears that such permits may be needed, taking into consideration the recommendations of the endrin advisory committee and the pesticide advisory board. The director shall not establish a crisis permit process unless the director first finds from the record that:

(a) A substantial need exists among Washington orchardists for a crisis permit process for endrin use;

(b) Alternatives to endrin are insufficient to meet this need;

(c) The horticulture community has requested the establishment of a crisis permit process based on incidents which show an inability to control meadow voles despite the use of alternatives to endrin.

(2) If the director makes the findings required by subsection (1), these determinations shall be set forth in writing and shall explain the basis for his decision.

(3) If the director makes the findings required by subsection (1), a crisis permit process for the use of endrin may be established which shall include but not be limited to the following procedures. The department shall not grant a crisis permit unless an applicant establishes the following:

(a) The criteria in WAC 16-228-245 have been met.

(b) 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 WAC 16-228-245 have been met.

(c) The Washington state department of game has been requested and provided an opportunity to have a department representative inspect the orchard and submit a written report to the department stating whether the criteria in WAC 16-228-245 have been met. The orchardist shall 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.

(d) 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.

(e) To apply for a permit, the grower shall submit to the department copies of any reports and recommendations of the game representative and consultant, together with any 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 for 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 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 may apply a greater amount of endrin than specified in the permit, or apply such 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.

(f) No dealer shall sell any endrin for orchard use after December 31, 1984, except to a purchaser who provides a copy of a crisis permit for the use of endrin from the department of agriculture, and no sale of endrin shall exceed the amount specified in such crisis permit. Dealers shall record the sale of endrin together with a copy of the permit submitted by the purchaser, and such records shall be submitted to the department of agriculture within thirty days of sale. The dealer shall also keep a copy of such records and permits for a period of two years from the date of each sale.

(4) No sale, distribution or application of endrin for orchard use in Washington shall be allowed after December 31, 1984, without a crisis permit from the department of agriculture.

NEW SECTION

WAC 16-228-900 PENALTIES. Any person who violates the provisions of these regulations shall be guilty of a misdemeanor pursuant to RCW 15.58.330 and RCW 17.21.310.