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# Arts Board

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## LFB Summary Item for Which an Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
3	Funding Reduction (Paper #180)

To: Joint Committee on Finance  
 From: Bob Lang, Director  
 Legislative Fiscal Bureau

**ISSUE**

**Funding Reduction (Arts Board)**

[LFB Summary: Page 90, #3]

**GOVERNOR**

Reduce funding for the state aid for the arts appropriation by \$20,500 GPR annually. Require the Arts Board to submit a report to the Governor and the Joint Committee on Finance by October 1, 1997, concerning the agency's preference for allocating this reduction among the Board's sum certain GPR appropriations.

**DISCUSSION POINTS**

1. The Arts Board has four sum certain GPR appropriations among which it could allocate the \$20,500 annual funding reduction proposed in the bill. The following shows each of the appropriations and the 1996-97 base funding level:

General Program Operations	\$296,700
State Aid for the Arts	1,261,000
Challenge Grant Program	850,500
Wisconsin Regranting Program	<u>150,000</u>
Total	\$2,558,200

2. In addition to the \$20,500 annual reduction, the bill would reduce funding for the Board's challenge grant program from \$850,500 to \$819,800 annually. These reductions equal 2% of the agency's base, GPR budget.

3. Although the Governor's budget reduces the state aid for the arts appropriation by \$20,500 annually, it directs the Board to submit a report to the Governor and Joint Committee on Finance (JFC) by October 1, 1997, concerning the agency's preference for allocating this reduction among the Board's sum certain GPR appropriations. The bill is silent as to the approval of any appropriation adjustments. Presumably, JFC would need to meet under s. 13.10 of the statutes to consider any reallocation of the reduction. In addition to the Arts Board, four other agencies (Historical Society, Department of Justice, Department of Public Instruction and Public Defender Board) are required to identify their preference for allocating a portion of their base GPR reductions.

4. Arts Board staff indicate that the Board's recommendation would be that the entire reduction be taken from the state aid for the arts appropriation, which is where the reduction is currently made in the bill. In addition, in testimony on the bill, the Executive Secretary of the Board stated that the October 1, 1997 deadline for the required report would result in delaying grant payments to arts organizations, and expressed his preference for an earlier report date.

5. Given that the Board apparently does not intend to reallocate the reduction, the Committee could simply delete any reference to the allocation report for the Arts Board. The Board would always have the ability to approach JFC under s. 13.10 of the statutes to transfer monies between appropriations if its spending priorities change in the future.

6. Alternatively, the reporting requirement could be included in the budget, but modified to require approval of the report, and any related appropriation transfer, by JFC under a 14-day passive review process.

## ALTERNATIVES TO BILL

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation by requiring that the Board's report on the proposed allocation of the reduction, and any related transfer among appropriations, be subject to the approval of the Joint Committee on Finance under a 14-day passive review process. In addition, change the date by which the report would have to be submitted to the Committee and the Governor from October 1, 1997, to September 1, 1997.
3. Delete the requirement that the Arts Board submit a report on its preferred allocation of the reduction. The reduction would have to be taken from the state aid for the arts appropriation.

Prepared by: Merry Larsen

MO# AT#2 18D

JENSEN	<input checked="" type="radio"/>	N	A
OURADA	<input checked="" type="radio"/>	N	A
HARSDORF	<input checked="" type="radio"/>	N	A
ALBERS	<input checked="" type="radio"/>	N	A
GARD	<input checked="" type="radio"/>	N	A
KAUFERT	<input checked="" type="radio"/>	N	A
LINTON	<input checked="" type="radio"/>	N	A
COGGS	<input checked="" type="radio"/>	N	A

BURKE	<input checked="" type="radio"/>	N	A
DECKER	<input checked="" type="radio"/>	N	A
GEORGE	<input checked="" type="radio"/>	<input checked="" type="radio"/> N	A
JAUCH	<input checked="" type="radio"/>	N	A
WINEKE	<input checked="" type="radio"/>	N	A
SHIBILSKI	<input checked="" type="radio"/>	N	A
COWLES	<input checked="" type="radio"/>	N	A
PANZER	<input checked="" type="radio"/>	N	A

AYE 15 NO 1 ABS



ARTS BOARD

Percent-for-Art Program

Motion:

Move to modify the percent-for-art program to require that any funds allocated for a project which are not expended to purchase a work or works of art or to pay for the administrative costs of the program be returned to the appropriate fund.

Note:

Under the percent-for-art program, at least two-tenths of one percent of the cost of new state building projects exceeding \$250,000 must be used to purchase original works of art for display in or around the project and to pay for the program's administrative costs. Exempt from the program under current law are sheds, warehouses, highways, streets, buildings not open to the general public, game farms, fish hatcheries, nurseries and other production facilities operated by the Department of Natural Resources. After an architect is selected for the building project, the Arts Board is required to convene an advisory committee to recommend the selection of art work. The Board makes the final determination of the artist and the art work to be incorporated into the project.

This motion would require that any monies not expended on the acquisition of the art work or administration costs be returned to the appropriate fund.

[Change to Bill: None]

MO# 415

JENSEN	<input checked="" type="radio"/>	N	A
2OURADA	<input checked="" type="radio"/>	N	A
HARSDORF	<input checked="" type="radio"/>	N	A
1ALBERS	<input checked="" type="radio"/>	N	A
GARD	<input checked="" type="radio"/>	N	A
KAUFERT	<input checked="" type="radio"/>	N	A
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WINEKE	<input checked="" type="radio"/>	N	A
SHIBILSKI	<input checked="" type="radio"/>	N	A
COWLES	<input checked="" type="radio"/>	N	A
PANZER	<input checked="" type="radio"/>	N	A

AYE 11 NO 5 ABS

# ARTS BOARD

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# Agriculture, Trade and Consumer Protection

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To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### Agrichemical Cleanup Grants (DATCP)

[LFB Summary: Page 74, #2 and Page 75, #3]

## CURRENT LAW

The agrichemical cleanup grant program is provided base funding of \$2.3 million SEG (from the agrichemical management fund) and \$2.0 million GPR annually in continuing appropriations. The agrichemical management (ACM) fund receives fees and surcharges paid by commercial feed, fertilizer and soil and plant additive manufacturers and pesticide manufacturers, labelers and applicators. 1993 Act 16 increased the fees for pesticide and fertilizer products to cover the estimated costs of the newly-created grant program. Current annual revenues to the ACM fund are approximately \$7.4 million. Of that, approximately \$3.25 million (\$2.75 million for grant funding and \$0.5 million for staff to administer and enforce the program) is associated with the fee increases relating to the creation of the cleanup grant program. The remaining revenues are available to cover the cost of administering other DATCP programs.

In addition to the fees deposited to the ACM fund, an additional \$1.0 million annually in revenues associated with fees on pesticide and fertilizer products is transferred to the DNR to fund various environmental programs (groundwater, environmental repair, DNR's clean sweep and well compensation program). Similarly, approximately \$300,000 annually is transferred to the University of Wisconsin System for research.

## GOVERNOR

**Base Fees and Agrichemical Cleanup Program Surcharges.** Divide the current fees deposited to the agrichemical management fund into base fees and agrichemical cleanup program (ACCP) surcharges. Base fees would consist of those agrichemical fees that existed prior to the creation of the agrichemical cleanup grant program. Conversely, those fees that primarily represent the fees that were added in 1993 to fund the agrichemical cleanup grant program would be called the ACCP surcharges.

Base fee revenues of \$4.65 million would be deposited to the agrichemical management fund to fund \$5.1 million and 46.5 staff associated with DATCP's agricultural resource management programs (such as, clean sweep programs, groundwater standards, pesticide regulation and fertilizer, additives and commercial feed regulation) as well as the regulatory and other administrative costs of the grant program. In addition, the bill would specify that liming material revenues be deposited to the ACM fund. These revenues are currently deposited to the fund although current law does not specify where they are to be deposited.

Revenues received from the ACCP surcharges would no longer be deposited in the agrichemical management fund but rather, would be deposited to a program revenue appropriation to fund agrichemical cleanup grants (resulting in the base level funding of \$2.3 million SEG annually being converted to PR). Further, the bill would make a one-time transfer in 1997-98 of the unexpended revenues (estimated at \$8.5 million) associated with ACCP surcharges from SEG to PR.

**Fee Reductions.** Temporarily reduce fees and surcharges paid by commercial feed, fertilizer and soil and plant additive manufacturers and pesticide manufacturers, labelers and applicators. Further, allow DATCP, following the suspension of the ACCP surcharges, to restore the surcharges within the maximum levels established under the bill.

**GPR Funding.** Delete \$450,000 in 1997-98 and \$150,000 in 1998-99 in GPR funding for grants to responsible parties for the cleanup of agricultural chemical discharges. Further, require that the cleanup grants GPR appropriation unencumbered balance on the day before the effective date of the bill lapse to the general fund (estimated at \$2.7 million). The bill would also convert the GPR continuing appropriation to a biennial appropriation which would result in the unexpended appropriation balance lapsing to the general fund at the end of each biennium (estimated at \$100,000 under the bill).

## DISCUSSION POINTS

### Background

1. DATCP may order a person responsible for an agrichemical discharge to take corrective actions necessary to restore the environment to the extent practicable. If the responsible person takes corrective action to clean up the discharge, the person may apply to the Department for reimbursement of eligible costs associated with the cleanup. Eligible applicants must demonstrate to the Department that the discharge was promptly reported, the applicant is in compliance with DNR and DATCP rules relating to agrichemical discharges and the costs incurred are reasonable and are not reimbursable from insurance or other sources.

2. DATCP becomes aware of contaminated sites through: (a) corrective action orders from DNR and DATCP as a result of identifying problem sites during investigations or monitoring activities; and (b) facilities reporting spills and taking corrective actions. DATCP works with DNR in determining which agency takes the lead on a cleanup and in determining a workplan for cleaning up the site. DNR, generally leads the cleanup when the site involves something other than an agrichemical.

3. In general, two different types of sites exist: (a) newer spills, termed "acute spills," are generally low cost, narrow in scope, accidental in nature and can be cleaned up quickly; and (b) spills that require long-term soils or groundwater remediation are generally the result of a slow discharge over time, accumulated discharges that have occurred over time or large catastrophic spills. Some of the long-term cleanups, primarily the catastrophic spill, are covered by insurance which reduces the reimbursements from the cleanup program.

4. DATCP regulates the cleanup of approximately 80 acute spills annually, very few of which are large enough for reimbursement due to the grant program's deductibles. The Department estimates that 450 to 500 agrichemical facilities will have to conduct some type of corrective action involving long-term remediation. The Department is currently directing environmental cleanup (advising and reviewing cleanup workplans and costs) at more than 255 agrichemical sites, most of which were ordered by DATCP or DNR, where remediation is taking place. The Department anticipates initiating cleanup or overseeing the voluntary cleanup of approximately 40 long-term remediation sites annually over the next several years. Also, to date, approximately 40 cases have been closed.

5. The expenditures and fee schedules established with the cleanup program in 1993 were based on participation estimates made by the Department and agrichemical industry. However, cleanup reimbursement grants have consistently lagged behind DATCP projections. The first agrichemical cleanup program grants were issued in 1994-95. Through April, 1997, the program has paid over 100 reimbursement claims at 77 different sites totalling approximately \$2.3 million. Further, the Department will reimburse approximately 15-20 additional sites in June, 1997.

## Separating Base Fees and ACCP Surcharges

6. The bill would separate the existing fees deposited to the ACM fund into base fees and ACCP surcharges. The base fees would represent the agrichemical fees that existed prior to the creation of the cleanup program, as well as the portion of the fees added in 1993 to fund staff and laboratory costs associated with the cleanup program. The ACCP surcharges would primarily represent the fees that were added in 1993 to fund the agrichemical cleanup grants. The ACCP surcharges, along with a one-time \$8.5 million transfer in unexpended ACCP surcharge revenues from the ACM fund, would be deposited to a continuing program revenue account that would fund cleanup grants only. Separating the fees revenues would statutorily require that the ACCP surcharge revenues be used only to fund the cleanup grants.

7. The fee structure under the bill for those fees that currently contribute to the cleanup program is presented in Table 1. Other fees that are currently deposited to the ACM fund or are transferred to DNR and the UW System were not increased in 1993 to fund the cleanup program and would not be impacted under the bill.

**TABLE 1**

### Fee Structure for ACCP Fees

	Current Fee	Governor "Base Fee"	Governor ACCP "Surcharge"
Fertilizer License	\$25 or \$50*	\$30**	\$0 or \$20
Fertilizer Tonnage	\$1.00/ton	0.62	0.38
Restricted Use Dealer License	\$50 or \$100*	60**	\$0 or \$40
Individual Applicator License	60	40	20
Pesticide Business Location License	125	70	55
Nonhousehold Pesticide Manufacturer Registration:			
\$0-\$25,000 (sales)	325	320	5
\$25,000-\$75,000	1,060	890	170
\$75,000 +	\$3,060 + 1.3% of sales	\$3,060 + 0.2% of sales	1.1% of sales

\*Fee varies based on whether the fertilizer facility is also licensed as a restricted use pesticide dealer or distributor or commercial pesticide applicator.

\*\*Base license fees for those fertilizer facilities that are also licensed as a restricted use pesticide dealer or distributor or a commercial pesticide applicator would increase from \$25 to \$30. Also, base license fees for restricted use pesticide dealers that are also licensed as a commercial pesticide applicator would increase from \$50 to \$60.

8. The agrichemical industry has argued that depositing the ACCP surcharge revenues into a separate fund or account would provide assurance to those paying the surcharges that the revenues would only be used by DATCP to make cleanup grants. However, separating the base

fees and ACCP surcharges would limit DATCP's flexibility to use ACM fund base fee revenues to fund cleanups in event that additional grant funding is needed in future biennia. Further, it should be noted that while fees were increased in 1993 Act 16 in large part to fund the grant program, the Act did not require that those fee increases be used exclusively for cleanup grants and in fact, deposited the increased fees to the existing ACM fund which funds all of DATCP's agrichemical management programs.

9. Depositing the ACCP surcharges to a PR account as opposed to the segregated ACM fund would mean that the interest on the balance in the PR account associated with the ACCP revenues would accrue to the general fund rather than the segregated fund. Therefore, although not accounted for in SB 77, the Governor's proposal would result in \$430,000 in 1997-98 and \$390,000 in 1998-99 in interest earnings being deposited to the general fund as opposed to the segregated agrichemical fund.

10. As an alternative, the Committee could: (a) continue to deposit the "surcharge" fees to the current agrichemical management fund which also funds other DATCP programs; or (b) create a separate segregated fund (rather than PR under the bill) that could only fund agrichemical cleanup grants.

### **Base Fee Reductions**

11. The bill would partially reduce the base fees deposited to the segregated ACM fund for a two-year period. The effective date of the fee reduction would be upon enactment of the bill for pesticide products; on February 1, 1998, for commercial feed products; and August 1, 1998, for fertilizer products. Due to the tonnage fee cycle and the August 1, 1998, effective date of the fee change for fertilizer products, the two-year fee reduction would impact 1998-99 fee revenues for these products, with the remaining reduction impacting 1999-2000 revenues. Conversely, the two-year base fee reduction for pesticide and commercial feed products would reduce revenues during the 1997-99 biennium only.

12. In a March 11, 1997, letter to the Co-Chairs of the Joint Committee on Finance, DOA stated (and LRB agrees) the commercial feed base fee reduction was intended to be made effective February, 1999. Because the February, 1998, fee decrease in the bill would be applied to feed already sold for the first year of the two-year reduction, it is unlikely the fee decrease would be passed on to the product users. Delaying the effective date would allow the product users to be notified of the fee reduction and increase the likelihood that the reduction would be passed on (current law requires feed manufacturers to indicate the fees on the sales invoice or receipt). The proposed base fees, including the corrected commercial feed fees, for the two-year period would be as follows:

**TABLE 2**

**Two-Year Base Fee Reduction**

Fee	Base Fee	Two-Year Reduction	Estimated 1997-99 Reduction*
Fertilizer Tonnage (per ton)	\$0.32	\$0.07	\$91,000
Feed Tonnage (per ton)	0.25	0.10	230,000
Individual Pest Applicator License	40	\$10	112,500
Pesticide Registration \$0-25,000 (sales)			
- household	265	50	455,000
- nonhousehold	320	50	300,000
- industrial	315	50	50,000
Pesticide Registration \$25,000-75,000 (sales)			
- household	750	100	44,000
- nonhousehold	890	100	36,000
- industrial	860	100	8,000
Pesticide Registration >\$75,000 (sales)			
- household	\$1,500 + 0.2% of sales	300	105,000
- nonhousehold	\$3,060 + 0.2% of sales	300	132,000
- industrial	\$3,060 + 0.2% of sales	300	<u>36,000</u>
<b>Total</b>			<b>\$1,599,500</b>

\* In 1999-2000 the remaining reduction would be \$320,000

13. While manufacturers and distributors of pesticides, fertilizers and animal feeds pay the various license and tonnage fees and surcharges, for the most part, these fees are passed on to farmers or other users of the product. Unlike the base fee exemption for fertilizer products (and commercial feed as technically corrected), manufacturers and distributors of the pesticide products would receive a reduction in 1997-98 on products that have already been sold. Therefore, in the first year of the two-year base fee reduction, these manufacturers and distributors would not be able to reflect the fee reduction in the cost of their products to pesticide users. Delaying the effective date of the two-year fee reduction by one year would allow the savings to be passed on more readily (revenue would be increased in 1997-98 by \$639,300 and reduced by the same amount in 1999-2000).

**ACCP Surcharge Reductions**

14. While the fees were increased to their current levels in 1993 Act 16 and GPR grant funding was provided in anticipation of a much larger demand for cleanup grants, a significant portion of the revenues have gone unexpended to date. As a result, the ACM fund is maintaining a large balance. Therefore, the Governor, along with the industry and the Department, have

recommended reducing the surcharges for a two-year period to spend down the balance in the proposed ACCP account.

15. The bill would reduce the proposed ACCP surcharges on pesticide and fertilizer products for a two-year period. As a result, pesticide manufacturers would not have to pay ACCP surcharges for 1997-98 or 1998-99. Fertilizers manufacturers, due to the annual tonnage fee cycle and the August 1, 1998, effective date for surcharges on these products, would not have to pay ACCP surcharges in 1998-99 or 1999-2000 (\$500,000 would be received in 1997-98). This would result in approximately a \$4.3 million reduction in revenues during the biennium and approximately \$500,000 in the next biennium.

16. Similar to the base fee reduction, manufacturers and distributors of the pesticide products would receive a surcharge reduction in 1997-98 on products that have already been sold and therefore would not be able to reflect the first year of the two-year ACCP surcharge reduction in the price of their products. Delaying the effective date of the two-year ACCP surcharge reduction by one-year would allow the savings to be passed on more readily (revenues would be increased by \$1,900,000 in 1997-98 and reduced by the same amount in 1999-2000).

17. However, it has been argued that allowing pesticide manufacturers and distributors to keep the surcharge revenues in the first year of a two-year ACCP surcharge reduction could be viewed as allowing the industry to "make-up" for having to absorb the higher fees on products that were already sold when the fees were increased in 1993 Act 16. That is, because 1993 Act 16 was effective on August 11, 1993, and the increased fees were assessed on January 1, 1994, for the 12-month period of October 1, 1992, to September 30, 1993, most of the pesticide product had already been sold before the fees became effective. As a result, the pesticide industry was unable to reflect the fee increase in costs of their products sold prior to the effective date.

#### **Future ACCP Surcharge Adjustments**

18. Following the two-year reduction of ACCP surcharges, the bill would provide DATCP the authority, by administrative rule, to establish future ACCP surcharge levels. The Department could only adjust the surcharge levels as necessary to maintain a \$2.0 million to \$5.0 million balance in the ACCP account at the end of each fiscal year. The surcharge levels established by the Department could only range between zero and the maximum levels for the ACCP surcharge shown earlier in Table 1. Further, the Department indicates that the rules would also define the public notice process for adjusting the ACCP surcharge levels.

19. The Department indicates that having the authority to adjust the surcharge levels through the administrative rule process would allow the Department to set the surcharge levels in a timely fashion so as to ensure an adequate balance in the ACCP account and to provide suitable advance notice of the amended surcharge levels to those who assess and pay for the fees.

20. Allowing DATCP to adjust the ACCP surcharges based on the balance in the PR account is largely patterned after the funding mechanism used by Minnesota's Department of Agriculture in funding that state's agrichemical cleanup program. The Minnesota Department of Agriculture is provided the authority to adjust the agrichemical fees so as to maintain a fund balance between \$1.0 million and \$5.0 million.

21. Currently, only the Legislature has the authority to set or change the statutory fees associated with the agrichemical cleanup program. While the administrative rules process does allow for some level of legislative oversight, it could be argued that allowing DATCP to set the future ACCP surcharges by rule would limit the Legislature's authority on future ACCP surcharge changes. Further, if DATCP used the emergency rule process to set ACCP surcharge levels, the Legislature's role would be further limited.

22. If the Committee is concerned about the loss of legislative oversight associated with providing the Department authority to increase the ACCP surcharges by rule in the future, one alternative would be to require DATCP to submit any emergency rules that would adjust the ACCP surcharge level to the Finance Committee for approval under a 14-day passive review process before implementation.

23. If the authority to establish the future ACCP surcharge levels based on available revenues under administrative rule is not granted to DATCP, the ACCP surcharges would revert back to the maximum surcharge levels shown in Table 1 after the two-year suspension.

#### **ACM Fund and Account Balances**

24. Estimated cleanup grant expenditures, historically funded 53% from fees and 47% GPR, are expected to be \$3.05 million in 1997-98 and \$3.4 million in 1998-99. These estimates are based on \$1.5 million in known cleanup costs incurred by responsible parties, estimated grant demand, projected cleanup cost increases of 5% per year, and the level of workload that can be completed by existing staff and laboratory facilities.

25. Under current law and estimated program expenditures, the ACM fund would end the 1997-99 biennium with a \$16.8 million balance. Approximately \$11.3 million would be associated with the unexpended ACCP surcharge revenues to fund the agrichemical cleanup grant program and \$5.5 million associated with the base fee revenues that would fund other agrichemical management programs.

26. While grant expenditures have consistently lagged behind projections to date, DATCP estimates that approximately \$1.5 million in eligible cleanup costs that have not yet been reimbursed. Therefore, it could be argued that in the event expenditures are higher than anticipated, retaining a significant fund balance would allow the Department to meet the future demand by spending down the balance. If the Committee wanted to ensure that funding would

be available to meet future grant demand, the Committee could: (a) provide a one-year surcharge reduction; or (b) delete the recommended surcharge reduction.

27. Despite the proposed fee reductions, both the ACM fund and the ACCP account would likely end the 1997-99 biennium with substantial balances. The following table illustrates the fund balances under the proposed ACCP program revenue account and the segregated agrichemical management fund proposed under the bill.

**TABLE 3**

**Projected Balances for Proposed  
ACM Fund and ACCP PR Account**

	Proposed ACM Fund			Proposed ACCP PR Account	
	1997-98	1998-99		1997-98	1998-99
Balance	\$5,815,900	\$4,913,100	Balance	\$8,554,000	\$7,244,100
Current Revenues	4,628,400	4,628,400	Current Revenues	2,745,200	2,745,200
Interest	284,000	241,000	Interest	0	0
Base Fee Reduction	-639,300	-959,300	Surcharge Reduction	-1,912,100	-2,414,200
Expenditures	<u>-5,175,900</u>	<u>-5,139,900</u>	Industrial Pesticides*	-331,000	-331,000
			Expenditures	<u>-1,812,000</u>	<u>-2,117,000</u>
Balance	\$4,913,100	\$3,683,300	Balance	\$7,244,100	\$5,127,100

\*The recommended reduction on these products is addressed in a separate Legislative Fiscal Bureau budget paper.

28. It should be noted that after the two year base fee reduction, annual base fee revenues (approximately \$4.6 million) would not cover the base level expenditures (approximately \$5.2 million) from the proposed ACM fund. Therefore, while a considerable balance would remain in the fund, the balance could decline in future biennia. Conversely annual revenues under the ACCP surcharge at its statutory maximum (\$2.7 million currently) after the two-year ACCP surcharge reduction appear likely to cover some growth in cleanup expenditures.

**GPR Appropriation Changes**

29. While the Governor's recommendation would reduce future GPR funding for the program by \$600,000 in the biennium the program would continue to receive \$1,550,000 GPR in 1997-98 and \$1,850,000 GPR in 1998-99. DATCP is projecting GPR expenditures for cleanup grants of approximately \$1.5 million in 1997-98 and \$1.8 million in 1998-99.

30. The agrichemical cleanup grant program is the only state program that contains GPR funding for remediation of environmental contamination in which the responsible party is known.

Similar cleanup programs such as the PECFA program and DNR's environmental repair programs are paid for through segregated revenues (for example, fees on petroleum products and various landfill tipping fees, waste generator fees, sanitary permit surcharges and reimbursements from responsible parties for state-funded cleanups).

31. Further, it could be argued that the fees paid by the agricultural industry should pay for the entire costs of the program, because: (1) these facilities are responsible for the contamination that exists at their sites; and (2) a general fund subsidization of the cleanup cost associated with the use of agricultural products results in market distortions since the purchaser does not pay the true costs associated with the use of the product.

32. Given the low program demand to date, the segregated ACCP account would end the biennium with an estimated \$5.4 million balance with the two-year fee reduction under the bill (\$11.3 million under current law). Therefore, the Committee could consider eliminating the GPR funding for the program. Eliminating the GPR funding, and providing the additional authority for cleanup expenditures to be funded from ACCP surcharge revenues (estimated at \$1.5 million in 1997-98 and \$1.8 million in 1998-99), would leave the cleanup program account with a \$2.1 million balance at the end of the biennium (\$8.0 million with no fee holiday).

33. The Committee could consider eliminating the GPR funding from the program, which would make the program entirely funded from agricultural fees. However, it should be noted that in doing so, in future biennia, annual cleanup expenditures funded from fee revenues could exceed the annual revenues generated under the maximum surcharge levels established under the bill which could result in the need for additional revenues. Therefore, the Committee could delete the \$1.55 million in 1997-98 which would reduce GPR funding for the program in the biennium, but would leave the program with \$1.85 million GPR in 1998-99 as base funding for future biennia.

34. Conversely, The Agricultural Chemical Cleanup Council, established in 1992 legislation, has argued that the general public should contribute to the costs of cleanup because they have benefitted from the use of pesticides and fertilizers through both lower food prices and higher quality foods.

## **ALTERNATIVES TO BASE**

### **A. Separate Cleanup Grant Account**

1. Approve the Governor's recommendation to separate base fees and the ACCP surcharges. The base fees would be deposited to the ACM fund and the surcharges would be deposited to a continuing program revenue account (recognize an estimated \$820,000 in GPR-earned associated with the interest earnings on the unspent ACCP PR account balance).

<u>Alternative A-1</u>	<u>GPR</u>	<u>SEG</u>	<u>PR</u>	<u>TOTAL</u>
1997-99 REVENUE (Change to Base)	\$820,000	- \$8,500,000	\$8,500,000	\$820,000
[Change to Bill	\$820,000	\$0	\$0	\$820,000]
1997-99 FUNDING (Change to Base)	\$0	- \$4,77,200	\$4,477,200	\$0
[Change to Bill	\$0	\$0	\$0	\$0]

2. Modify the Governor's recommendation and create a segregated agricultural cleanup program fund that would receive the revenues associated with ACCP surcharges and could only fund agricultural cleanup grants (\$820,000 in interest earnings would accrue to the newly-created segregated fund).

<u>Alternative A-2</u>	<u>SEG</u>	<u>PR</u>	<u>TOTAL</u>
1997-99 REVENUE (Change to Base)	\$0	\$0	\$0
[Change to Bill	\$9,320,000	- \$8,500,000	\$820,000]
1997-99 FUNDING (Change to Base)	\$0	\$0	\$0
[Change to Bill	\$4,477,200	- \$4,477,200	- \$0]

3. Maintain current law (all fees and surcharges would continue to be deposited to the ACM fund).

<u>Alternative A-3</u>	<u>SEG</u>	<u>PR</u>	<u>TOTAL</u>
1997-99 REVENUE (Change to Base)	\$0	\$0	\$0
[Change to Bill	\$9,320,000	- \$8,500,000	\$820,000]
1997-99 FUNDING (Change to Base)	\$0	\$0	\$0
[Change to Bill	\$4,477,200	- \$4,477,200	- \$0]

## B. Base Fee Reduction

1. Approve the Governor's recommendation to: (a) provide a two-year base fee reduction as technically corrected to delay the effective date of the commercial feed base fee reduction (\$230,000 SEG in revenues in 1997-98); and (b) specify that limiting material fees be deposited to the ACM fund.

<u>Alternative B-1</u>	<u>SEG</u>
1997-99 REVENUE (Change to Base)	- \$1,599,500
[Change to Bill	\$230,000]

2. Modify the Governor's recommendation as technically corrected and: (a) delay the two year base fee reduction effective for pesticide products on January 1, 1999 (this would allow for the notification of the fee reduction to pesticide product users and revenues would increase by \$639,300 in 1997-98 and be reduced by that amount in 1999-2000); and (b) specify that liming material fees be deposited to the ACM fund.

<u>Alternative B-2</u>	<u>SEG</u>
1997-99 REVENUE (Change to Base)	- \$960,300
[Change to Bill	\$869,300]

3. Maintain current law (no two-year base fee reduction).

<u>Alternative B-3</u>	<u>SEG</u>
1997-99 REVENUE (Change to Base)	\$0
[Change to Bill	\$1,829,500]

### C. ACCP Surcharges

1. Approve the Governor's recommendation to provide a two-year reduction in surcharges. In addition, do one of the following:

a. Require that the first year of the nonhousehold pesticide surcharge reduction be effective on January 1, 1998 (in the first year, this would apply to products already sold to farmers) as recommended by the Governor.

<u>Alternative C-1a</u>	<u>SEG</u>	<u>PR</u>	<u>TOTAL</u>
1997-99 REVENUE (Change to Base)	- \$4,800,000	\$500,000	- 4,300,000
[Change to Bill	\$0	\$0	\$0]

b. Require that effective date for the two-year ACCP surcharge reduction for nonhousehold pesticide product registration be delayed by one year to January 1, 1999 (this would allow for the notification of the fee reduction to farmers or other pesticide product users and revenue reductions would occur in 1998-99 and 1999-2000).

<u>Alternative C-1b</u>	<u>SEG</u>	<u>PR</u>	<u>TOTAL</u>
1997-99 REVENUE (Change to Base)	- \$2,900,000	\$500,000	- \$2,400,000
[Change to Bill	\$0	\$1,900,000	\$1,900,000]

2. Modify the Governor's recommendation and provide a one-year surcharge reduction effective for nonhousehold pesticide products on January 1, 1999 (this would allow for the notification of the fee reduction to pesticide product users and revenues would increase by \$1,900,000).

<u>Alternative C-2</u>	<u>SEG</u>	<u>PR</u>	<u>TOTAL</u>
1997-99 REVENUE (Change to Base)	-\$2,900,000	\$500,000	-\$2,400,000
[Change to Bill]	\$0	\$1,900,000	\$1,900,000]

3. Maintain current law.

<u>Alternative C-3</u>	<u>SEG</u>	<u>PR</u>	<u>TOTAL</u>
1997-99 REVENUE (Change to Base)	\$0	\$0	\$0
[Change to Bill]	\$4,800,000	-\$500,000	\$4,300,000]

#### D. Future Surcharge Adjustments

1. Approve the Governor's recommendation to allow DATCP to set the ACCP surcharge levels, by rule, within the maximum levels established in the bill depending on the balance in the ACCP account.

2. In addition to the Governor's recommendation require that if DATCP uses the emergency rule process, the Department must, before the rules are submitted to the Legislative Council, receive approval from the Joint Committee on Finance under a 14-day passive review process.

3. Maintain current law. (The ACCP surcharges would be set at the maximum levels established in the bill -- after the two-year suspension, if approved).

#### E. GPR Funding

1. Approve the Governor's recommendation to: (a) eliminate \$450,000 GPR in 1997-98 and \$150,000 GPR in 1998-99; (b) lapse the unencumbered GPR continuing balance on the effective date of the bill (estimated at \$2.7 million); and (c) convert the appropriation to a biennial appropriation (estimated lapse of \$100,000 in 1998-99).

MO# Alt B2 P165

JENSEN	(Y)	N	A
OURADA	(X)	N	A
HARSDORF	(X)	N	A
ALBERS	(Y)	N	A
GARD	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON	(X)	N	A
COGGS	(Y)	N	A

BURKE	(Y)	(N)	A
DECKER	(Y)	N	A
GEORGE	(Y)	N	A
JAUCH	(X)	N	A
WINEKE	(X)	N	A
SHIBILSKI	(X)	N	A
COWLES	(X)	N	A
PANZER	(Y)	N	A

AYE 14 NO 1 ABS 1

MO# Alt 13  
under section C

JENSEN	(X)	N	A
OURADA	(X)	N	A
HARSDORF	(Y)	N	A
ALBERS	(Y)	(N)	A
GARD	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON	(Y)	(N)	A
COGGS	Y	(N)	A

BURKE	Y	(N)	A
DECKER	Y	(N)	A
GEORGE	Y	(N)	(A)
JAUCH	Y	(N)	A
WINEKE	Y	(N)	A
SHIBILSKI	(X)	N	A
COWLES	(X)	N	A
PANZER	(Y)	N	A

AYE 8 NO 7 ABS 1

MO# Alt 2  
paper 165

JENSEN	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
ALBERS	(Y)	N	A
GARD	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON	(X)	N	A
COGGS	(Y)	N	A

BURKE	(Y)	N	A
DECKER	(Y)	N	A
GEORGE	(Y)	N	(A)
JAUCH	(Y)	N	A
WINEKE	(X)	N	A
SHIBILSKI	(X)	N	A
COWLES	(X)	N	A
PANZER	(Y)	N	A

AYE 15 NO 0 ABS 1

MO# Alt 21

JENSEN	(X)	N	A
OURADA	(X)	N	A
HARSDORF	(X)	N	A
ALBERS	(X)	N	A
GARD	(X)	N	A
KAUFERT	(Y)	N	A
LINTON	(Y)	(N)	A
COGGS	Y	(N)	A

BURKE	Y	(N)	A
DECKER	Y	(N)	A
GEORGE	Y	(N)	(A)
JAUCH	Y	(N)	A
WINEKE	Y	(N)	A
SHIBILSKI	(X)	N	A
COWLES	(X)	N	A
PANZER	(Y)	N	A

AYE 9 NO 6 ABS 1  
9 6

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Agrichemical Cleanup Program -- Industrial Pesticides (DATCP)**

[LFB Summary: Page 75, Item #3 (Industrial Pesticides)]

## CURRENT LAW

Currently two categories of pesticides exist with regard to fees paid and eligibility for agrichemical cleanup grants; household and nonhousehold. In 1993 Act 16 fees on nonhousehold pesticides were increased to cover the costs of the newly-created agrichemical cleanup grant program. Household pesticides fees were not increased in 1993 to cover the costs of the grant program and cleanup of discharges of these products are not eligible for agrichemical cleanup grants. Manufacturers of these products also pay fees that are deposited to the agrichemical fund and are used to fund DATCP's agricultural resource management programs and are deposited to the Department of Natural Resources' (DNR) environmental fund and are used to fund environmental repair and groundwater programs.

Fees on nonhousehold pesticides were increased in 1993 with the creation of the agrichemical cleanup grant program. In addition, other fees ("base fees") are deposited to the agrichemical fund and are used to fund DATCP's agricultural resource management programs. A portion of these fees deposited to DNR's environmental fund are used to fund environmental repair and groundwater programs. Generally, all nonhousehold pesticides are eligible for agrichemical cleanup grants. However, nonhousehold pesticides containing pentachlorophenol, coal tar creosote and inorganic arsenical wood preservatives are not eligible for cleanup grants.

## GOVERNOR

Create a new category of nonhousehold pesticide products called "industrial pesticides" that would contain nonhousehold pesticide products that are used in certain industrial or manufacturing processes. Eliminate the fees on these products that were increased to help fund the agrichemical cleanup grant program (the ACM "surcharge" under the bill). The "base" fees would continue to apply to these products. No discharges related to these pesticides would be eligible for grants under the cleanup program.

Further, eliminate the cleanup program surcharge (45 cents per ton of product sold) paid by manufacturers and distributors of certain soil and plant additives.

## DISCUSSION POINTS

1. Nonhousehold pesticide products are any pesticide product that is not considered a household pesticide product. Nonhousehold products generally include agricultural related chemicals such as those used to control the growth of plants or enhance the production of plants. Nonhousehold products also include wood preservatives used in the lumber industry and finished wood product industry, products that control microbials that are used in the paper industries or industries using water cooling devices or any other nonhousehold substances used in preventing, destroying, repelling or mitigating any pests. Generally, all nonhousehold pesticides are eligible for agrichemical cleanup grants. However, nonhousehold pesticides containing pentachlorophenol, coal tar creosote and inorganic arsenical wood preservatives are not eligible for cleanup grants.

2. While the bill would exempt industrial pesticide products from the cleanup program surcharges, manufacturers and distributors of these products would continue to pay "base fees" to fund other DATCP agrichemical management programs. The bill would create the following fee structure for industrial pesticides:

### Industrial Pesticide Fees

Pesticide Registration Fee	Current	Governor "Base Fee"	Governor ACCP Surcharge
\$0-\$25,000 (sales)	\$325	\$315	\$0
\$25,000-\$75,000	1,060	860	0
\$75,000 +	\$3,060 + 1.3% of sales	\$3,060 + 0.2% of sales	0

3. The bill would eliminate the fees paid by manufacturers of wood preservatives containing pentachlorophenol, coal tar creosote or inorganic arsenicals that were increased to assist in funding the agrichemical cleanup grant program. Discharges related to these chemicals are not currently eligible for reimbursement. Manufacturers of these three products account for approximately \$77,000 of the estimated \$331,000 in the agrichemical cleanup program's revenues currently being paid by manufacturers of industrial pesticides under the bill.

4. It has been argued that manufacturers of these products should not have to pay for the cleanup program since they are ineligible for a cleanup grant. These preservatives, due to their hazardous nature, typically have high cleanup costs and were not made eligible for the agrichemical cleanup grant program when the program was created. Other wood preservative products which account for a small amount of the current surcharge revenues, and have received grants, would continue to pay toward the program and be eligible for the grant program.

5. The DNR environmental repair program has used the environmental repair cleanup appropriation from the segregated environmental fund for DNR-lead cleanups of contaminated sites where the responsible party is unknown or can not or will not clean up the site. This includes cleanup of at least five sites that are contaminated by wood treatment pesticides that include pentachlorophenol and dioxins. DNR spent approximately \$400,000 during the 1993-95 biennium on the five wood treatment sites, approximately \$1,280,000 during 1995-97 and anticipates spending approximately \$250,000 on the five sites during 1997-99.

6. Of the total nonhousehold pesticide registration fees assessed annually by DATCP, \$80 per licensed wood treatment pesticide product (approximately \$18,200 annually) is deposited into the environmental fund. These revenues are minimal compared to the DNR expenditures from the environmental fund on cleanup at wood treatment sites. It could be argued that, rather than eliminate the fees under the bill (the portion of the fees increased in 1993 to fund the agrichemical cleanup program), the fees could be retained and deposited into the environmental fund, where cleanup of wood treatment sites has been funded.

7. Those industrial pesticides used in industrial products and processes (such as by the pulp and paper industry) to control algae, fungi, bacteria and other microscopic organisms or mollusks have also been paying toward the agrichemical cleanup grant program and are eligible for reimbursement. The bill would delete these fees (cleanup "surcharge") and eliminate eligibility for cleanup grants. The revenues associated with these products account for \$254,000 in annual revenues.

8. DATCP indicates that spills associated with these products are likely to be limited in cost and there has not been any documented discharges of these products that have contributed to environmental contamination. Therefore, it is argued that because manufacturers of these products are likely to make limited use of the cleanup program, they should not have to fund the cost of the program. However, if the Committee wanted to ensure that any future spills related to these products would be funded, these products could be excluded from the definition of

industrial pesticides. This would mean that all manufacturers of those products that are currently eligible for grants and paying for the program would continue to be eligible and pay.

9. Spills related to soil and plant additives are not eligible for cleanup grants but pay toward the program (no known spills). Manufacturers and distributors would continue to pay a \$25 annual license fee as well as an annual fee of 25 cents per ton of product sold.

## ALTERNATIVES TO BASE

### A. Wood Preservatives

1. Approve the Governor's recommendation to exempt wood preservatives containing pentachlorophenol, coal tar creosote or inorganic arsenicals from the agricultural cleanup program surcharge.

<u>Alternative A1</u>	<u>SEG</u>
1997-99 REVENUE (Change to Base)	-\$154,000
[Change to Bill]	\$0

2. Retain the current pesticide surcharges paid by manufacturers of wood preservatives containing pentachlorophenol, coal tar creosote or inorganic arsenicals and deposit the fees into the environmental fund, which would increase revenues to the environmental fund by \$77,000 SEG annually.

<u>Alternative A2</u>	<u>SEG</u>
1997-99 REVENUE (Change to Base)	\$0
[Change to Bill]	\$154,000

3. Maintain current law (continue the pesticide fees paid by manufacturers of these products).

<u>Alternative A3</u>	<u>SEG</u>
1997-99 REVENUE (Change to Base)	\$0
[Change to Bill]	\$154,000

AGRICULTURE, TRADE AND CONSUMER PROTECTION

Agrichemical Cleanup Program -- Industrial Pesticides (Paper #166)

Motion:

Move to include the following products solely labeled for the use in controlling algae, fungi, bacteria, other microscopic organisms or mollusks to the definition of industrial pesticides:

- (a) other coating products; and
- (b) products used in construction.

Note:

The bill defines an industrial pesticide to include products solely labeled for the use in controlling algae, fungi, bacteria, other microscopic organisms or mollusks that are used in paints and varnishes or in commercial and industrial processes. The motion would add "other coatings" (such as laminates or finishes) to the products that an industrial pesticide could be used in and "construction" to the processes for which an industrial pesticide could be used.

MO# 515

JENSEN	<input checked="" type="radio"/>	N	A
OURADA	<input checked="" type="radio"/>	N	A
HARSDORF	<input checked="" type="radio"/>	N	A
ALBERS	<input checked="" type="radio"/>	N	A
GARD	<input checked="" type="radio"/>	N	A
KAUFERT	<input checked="" type="radio"/>	N	A
LINTON	<input checked="" type="radio"/>	N	A
COGGS	<input checked="" type="radio"/>	N	A
BURKE	<input type="radio"/>	<input checked="" type="radio"/>	A
DECKER	<input checked="" type="radio"/>	N	<input checked="" type="radio"/>
GEORGE	<input checked="" type="radio"/>	N	<input checked="" type="radio"/>
JAUCH	<input checked="" type="radio"/>	N	A
WINEKE	<input checked="" type="radio"/>	<input checked="" type="radio"/>	A
SHIBILSKI	<input checked="" type="radio"/>	N	A
1 COWLES	<input checked="" type="radio"/>	N	A
2 PANZER	<input checked="" type="radio"/>	N	A

AYE 13 NO 2 ABS 1

**B. Industrial Pesticides to Control Microscopic Organisms or Mollusks**

1. Approve the Governor's recommendation to exempt pesticides used in industrial products and processes (such as by the pulp and paper industry) to control algae, fungi, bacteria and other microscopic organisms or mollusks from the agrichemical cleanup program surcharge.

<u>Alternative B1</u>	<u>SEG</u>
1997-99 REVENUE (Change to Base)	-\$508,000
[Change to Bill]	\$0

2. Maintain current law (manufacturers of these products would continue to pay into the agrichemical management fund and would continue to be eligible for cleanup grants).

<u>Alternative B2</u>	<u>SEG</u>
1997-99 REVENUE (Change to Base)	\$0
[Change to Bill]	\$508,000

**C. Soil and Plant Additives**

1. Approve the Governor's recommendation to exempt certain soil and plant additives from the agrichemical cleanup program surcharge.

<u>Alternative C1</u>	<u>SEG</u>
1997-99 REVENUE (Change to Base)	-\$8,500
[Change to Bill]	\$0

2. Maintain current law (manufacturers of these products would continue to pay into the agrichemical management fund and would continue to be ineligible for cleanup grants).

<u>Alternative C2</u>	<u>SEG</u>
1997-99 REVENUE (Change to Base)	\$0
[Change to Bill]	\$8,500

Prepared by: Al Runde

MO# A2 p166

JENSEN	(Y)	N	A
OURADA	(X)	N	A
HARSDORF	(Y)	N	A
ALBERS	(Y)	N	A
GARD	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON	(Y)	N	A
COGGS	(Y)	N	A

ZBURKE	(Y)	N	A
DECKER	(Y)	N	A
GEORGE	(Y)	N	(A)
JAUCH	(Y)	N	A
WINEKE	(X)	N	A
SHIBILSKI	(X)	N	A
COWLES	(X)	N	A
PANZER	(Y)	N	A

AYE 15 NO 0 ABS 1

MO# B1 p166

JENSEN	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
ALBERS	(Y)	N	A
GARD	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON	(Y)	N	A
COGGS	(Y)	(N)	A

BURKE	(Y)	(N)	A
ZDECKER	(Y)	N	A
GEORGE	(Y)	N	A
JAUCH	(Y)	(N)	A
WINEKE	(Y)	N	A
SHIBILSKI	(X)	N	A
COWLES	(X)	N	A
PANZER	(Y)	N	A

AYE 11 NO 4 ABS 1

MO# C1 p166

JENSEN	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
ALBERS	(X)	N	A
GARD	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON	(Y)	(N)	A
COGGS	(Y)	N	A

BURKE	(Y)	N	A
ZDECKER	(Y)	N	A
GEORGE	(X)	N	A
JAUCH	(X)	N	A
WINEKE	(X)	N	A
SHIBILSKI	(X)	N	A
COWLES	(X)	N	A
PANZER	(Y)	N	A

AYE 14 NO 1 ABS 0

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### Minor Policy and Technical Changes -- Discontinued Pesticide Products (DATCP)

[LFB Summary: Page 75, #3]

## GOVERNOR

Reduce the current reporting period used to determine fee payments from the previous 15 months to three months on the sales of pesticide products that have been discontinued by a manufacturer.

## MODIFICATION TO BASE

Retain the current 15-month reporting period for discontinued pesticide products.

**Explanation:** The bill inadvertently reduces the current reporting period used to determine fee payments from the previous 15 months to three months on the sales of pesticide products that have been discontinued by a manufacturer. Department of Administration officials indicate that the change to the reporting period for these products was not intended to be in the bill and should be corrected to retain current law in this area.

[Note: Because the Committee is working from the base budget of this agency, this modification could also be accomplished by not incorporating "Discontinued Pesticide Products" of Page 78 of the LFB Summary into the budget bill.]

Prepared by: Al Runde

MO# Modifications  
to BRSE

JENSEN	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
ALBERS	(Y)	N	A
GARD	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON	(Y)	N	A
COGGS	(Y)	N	A

1 BURKE	(Y)	N	A
2 DECKER	(Y)	N	A
GEORGE	(Y)	N	A
JAUCH	(Y)	N	A
WINEKE	(Y)	N	A
SHIBILSKI	(Y)	N	A
COWLES	(Y)	N	A
PANZER	(Y)	N	A

AYE 15 NO 0 ABS 1

PAPER #167

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### Agrichemical Cleanup Program Changes (DATCP)

[LFB Summary: Page 79, #4]

## CURRENT LAW

DATCP administers an agricultural chemical grant program which reimburses commercial pesticide and fertilizer facilities and mixing and loading sites and farms for the costs associated with corrective actions taken to clean up agrichemical discharges. Reimbursement levels are: (a) 75% of the eligible costs of a cleanup of an initial discharge that exceed \$7,500 for a licensed facility or \$3,000 for other persons (primarily farms) but that do not exceed \$100,000 (subsequent spills are reimbursed at 50% for eligible costs over \$15,000); (b) 80% of the eligible costs of a cleanup of an initial discharge that exceeds \$100,000 but does not exceed \$300,000, if groundwater remediation is ordered (subsequent spills are reimbursed at 50%); or (c) 75% of the eligible costs of a cleanup of an initial discharge occurring in the transport of agrichemicals that exceed \$7,500 for a licensed facility or \$3,000 for other persons (primarily farms) but that do not exceed \$50,000 (50% of eligible costs for subsequent spills for eligible costs over \$15,000).

## GOVERNOR

*Maximum Eligible Reimbursable Costs.* Eliminate the maximum reimbursable cost of \$100,000 for soil contamination cleanups and \$300,000 for cleanups involving groundwater contamination. Rather, set a maximum \$400,000 per cleanup site lifetime limit for all initial or subsequent discharges at that site.

*Reimbursement For Initial Discharges.* Establish an 80% cost share rate for all eligible reimbursable costs, less the deductible (currently \$3,000 or \$7,500). Currently, the grant program

reimburses 75% of the first \$100,000 in eligible costs (and 80% thereafter), less the deductible, for initial discharges.

*Reimbursement For Subsequent Discharges.* Eliminate the distinction between initial discharges and subsequent discharges at the same site. This change would eliminate the \$15,000 deductible for subsequent discharges and increase the state cost share rate from 50% to 80% of eligible reimbursable costs. Reimbursement for subsequent discharges at the same site would also be limited by the lifetime per site limit of \$400,000 in eligible reimbursable costs under the bill.

*Reimbursement of Discharges Occurring During Transport.* Increase the state cost-share rate for eligible reimbursable costs from 75% to 80% for all discharges occurring during the transport of agrichemicals. Further, reduce the deductible for a licensed commercial agrichemical facility from \$7,500 to \$3,000, the current noncommercial facility deductible level. These discharges would continue to be limited to \$50,000 in eligible reimbursable costs per occurrence.

*Eligible Costs.* Allow that time spent by a responsible party in implementing a cleanup be included as an eligible reimbursable cost. Currently, the costs of a responsible party's time in planning and implementing a cleanup are not reimbursable.

Further: (a) reduce the threshold of costs for requiring departmental approval of agrichemical cleanup workplans from \$20,000 to \$7,500; (b) make reimbursement payments on a first come, first served basis; (c) clarify the fertilizer license suspension process; and (d) extend the penalty provisions for the program to include violations of the statutes pertaining to the program.

The bill would allow DATCP to make retroactive reimbursement at the higher levels (\$150,000 on a one-time basis) and would also restrict those sites to the \$400,000 lifetime cleanup limit.

## **DISCUSSION POINTS**

### **Program Demand and Cost Controls**

1. The agrichemical cleanup grant program is provided base funding of \$2.3 million SEG (from the agrichemical management fund) and \$2.0 million GPR annually in continuing appropriations. The agrichemical management (ACM) fund receives fees and surcharges paid by commercial feed, fertilizer and soil and plant additive manufacturers and pesticide manufacturers, labelers and applicators.

2. DATCP may order a person responsible for an agrichemical discharge to take corrective actions necessary to restore the environment to the extent practicable. If the

responsible person takes corrective action to clean up the discharge, the person may apply to the Department for reimbursement of eligible costs associated with the cleanup. Eligible applicants must demonstrate to the Department that the discharge was promptly reported, the applicant is in compliance with DNR and DATCP rules relating to agrichemical discharges and the costs incurred are reasonable and are not reimbursable from insurance or other sources.

3. When the agrichemical cleanup program was created there were concerns related to the potential costs of the program. These concerns led to various cost control measures, such as the cost share rates, deductibles, and per spill limits which are included in the current program.

4. The program's first grant payments were made in February, 1995. The level of grants to reimburse cleanup costs have been substantially lower than initially anticipated and much of the GPR and SEG revenues appropriated for the program have gone unexpended. As a result, under current law, the Agrichemical Management Fund would end the 1997-99 biennium with a \$16.8 million balance. However, other provisions in the bill would reduce revenues to the program by \$6.8 million SEG in the biennium and \$2.8 million in unexpended GPR funds. The bill would also reduce GPR funding to the program by \$450,000 in 1997-98 and \$150,000 in 1998-99.

5. In an attempt to increase grant activity, the Governor's recommendation would implement the program changes recommended by DATCP in its 1997-99 biennial budget request and by the agrichemical industry. The program changes amend or delete several of the cost controls enacted when the cleanup grant program was created. It has been argued that these cost controls are no longer needed because program funding is readily available. Further, DATCP contends that the recommended changes could remove potential impediments responsible persons may face when they consider applying for reimbursement.

6. DATCP has indicated it intends to make retroactive payments on grants based on the increased reimbursement levels under the bill. That is, based on the program changes, the Department would adjust the amounts already paid on cleanup claims (\$150,000 on a one-time basis). Similarly, these sites would be subject to the \$400,000 lifetime limit.

#### **Maximum Eligible Reimbursable Costs and Subsequent Spills**

7. Increasing the maximum limit for eligible costs to \$400,000 would increase the maximum grant that could be received for an initial discharge by \$84,625 (from \$229,375 to \$314,000) for commercial facilities and \$84,850 (from \$232,750 to \$317,600) for non-commercial facilities. DATCP indicates that it knows of two spills at this time that have received some reimbursement and will likely reach the \$400,000 limit in the biennium (resulting in an estimated \$169,250 in additional program costs in the biennium).

8. The proposed \$400,000 maximum per site life time limit could increase the costs of individual cleanups. That is, many of the cleanups are done by consultants or contractors that specialize in environmental contamination cleanups. It has been argued by some that the costs these firms charge for such cleanups tend toward the allowable state reimbursement levels. However, DATCP officials and the agrichemical cleanup council would continue to review cleanup costs and determine if they are reasonable and eligible for reimbursement.

9. DATCP and the agrichemical industry contend that while increasing the maximum grant levels for an initial spill would increase program costs in the short term, the \$400,000 lifetime per site limit on reimbursement could lower long-term program costs by limiting the amount of reimbursements that could be made for subsequent spills at the same site. Further, the level of cleanup reimbursements made at a site would transfer to the new owner if the properties are sold. Under the current program, there are no limits on the number of spills a facility operator or farmer can receive cleanup reimbursement for at the same site.

10. However, spills that occur during transport would not be subject to the \$400,000 lifetime per site limit because they would, in all likelihood, occur at a location other than an agrichemical facility. Therefore, the number of reimbursements for such spills would continue to be unlimited under the bill. The Committee could consider making spills that occur during transport subject to the proposed \$400,000 per site lifetime limit associated with the site from which the agrichemicals being transported originated.

11. DATCP has yet to provide reimbursement for a subsequent spill claim although they are aware of eight subsequent spills that have been, or are being, cleaned up. Further, DATCP officials have indicated that rules related to storage and handling of pesticide and fertilizer products have reduced the likelihood of future spills or a subsequent spill at the same site. In addition, installing these practices increases the facility's ability to obtain insurance against potential spills, which would reduce the amount of reimbursement that can be received. Therefore, it is uncertain what number of sites will have subsequent spills where the \$400,000 limit could be reached.

12. The long-term cost reductions associated with limiting subsequent spills would largely be dependent on the level to which these spills occur. To the extent that subsequent spills rarely occur, increasing the eligible cost limit to \$400,000 would more likely lead to increased program costs by increasing the payments at initial spills by up to approximately \$85,000.

#### **Soils Contamination Limit**

13. The bill would eliminate the \$100,000 limit on spills that only involve soils contamination. The Department is aware of two sites that have gone above the \$100,000 limit on contaminated soil remediation and could receive one-time retroactive payments under the bill

(approximately \$50,000 in additional program costs). The average soils contamination claim (not reimbursement, which would be lower) has been approximately \$74,000 under the program.

14. Concerns have been raised by some that removing the \$100,000 limit could increase the costs charged for soils cleanups above the current reimbursement levels in that the allowable reimbursement level for such spills would increase from \$69,375 for a licensed facility to \$314,000. However, DATCP contends that its reimbursement claims review process would ensure that costs would be adequately controlled.

15. The extent to which the costs of soil cleanups are allowed to increase could have a large impact on program costs because almost all sites go through some soil contamination cleanup, including those that proceed to groundwater remediation. Under current law, the \$100,000 limit on soils cleanup can only be exceeded if DATCP or DNR order groundwater remediation.

16. If the Committee is concerned about the potential increase in costs associated with eliminating the \$100,000 limit, the Committee could give DATCP the authority to waive, under limited circumstances developed by administrative rule, the \$100,000 limit. The rules would specify criteria (such as, the area contaminated by the spill, or type of contamination) whereby the \$100,000 limit could be exceeded and require responsible parties to receive DATCP approval prior to incurring any costs over \$100,000 if state reimbursement is to be sought. This would provide the potential for certain soils spills that cover large areas or require complex cleanup strategies to receive additional reimbursements while maintaining the \$100,000 limit for most soil cleanups.

#### **Increased Cost Share Rates**

17. Increasing the state's cost share rate from 75% to 80% for initial spills would increase future program costs by 6.7% on the first \$100,000 of cleanup costs or an estimated \$120,000 in 1997-98 and \$150,000 in 1998-99. Also, making the cost share rate increase retroactive would result in an estimated one-time increase of \$100,000 during the biennium to be paid to previously reimbursed claims. (These costs are recognized in overall program funding under the bill.)

18. While funding is currently available to cover an increase in the cost share rates, decreasing the amount of funds that a responsible party is required to pay toward a cleanup could somewhat reduce that person's incentive to monitor closely the costs associated with their cleanups. However, because the cleanup grant program is a reimbursement program and a responsible party is required to pay up front before knowing which costs will be considered reasonable or eligible for reimbursement, it could also be argued they are still likely to monitor the costs of their cleanup.

19. The bill also reduces the deductibles (from \$15,000 to \$7,500 or \$3,000 depending on the facility) and increases the state cost share rate from 50% to 80% for subsequent discharges at the same site. DATCP indicates that the higher deductible and lower cost share rate for subsequent spills may have resulted in some responsible parties holding back claims on a small, initial spill for fear that a larger second spill may occur which, if the first spill had been submitted, would be subject to the higher deductible and lower cost share rate. By treating these spills the same, the bill would remove this concern.

20. Further, DATCP indicates that it is often difficult to distinguish one spill from another, particularly in cases involving low discharge levels over a long period of time where the contamination has been cumulative or for spills that occur at a site that is currently involved in a cleanup. Having the same cost share rate for all spills would remove the potential administrative difficulty in determining which cost share rate should be associated with which portion of contamination at a site.

21. The higher deductible and lower cost share rate for subsequent spills was originally included to encourage good management practices in the handling and storing of pesticides and fertilizers. That is, a facility operator or farmer, knowing that a second spill would be reimbursed at a lesser amount, would take precautions to not spill again. Removing this incentive for good management practices could lead to a higher number of subsequent spills. However, it could be argued that the increased marketability of a property that has not had a spill, or that has a large reimbursement amount available under the \$400,000 lifetime limit in the bill, would provide incentive to continue good management practices.

### **Eligible Costs**

22. The bill would allow the time spent by a responsible party in implementing a cleanup (such as, excavation or hauling activities) to be included as eligible reimbursable costs. DATCP indicates that reimbursing a responsible persons time on cleanups would have a minimal impact on costs, because the costs, which currently are typically being done by contractors, are reimbursed under the current program. However, to the extent that it would be cheaper for a responsible party to do some of the cleanup activities rather than hiring out the activities, this provision could decrease costs.

23. On the other hand, it may be difficult to adequately monitor or audit activities conducted by a responsible party. The hours worked by the responsible party would effectively reduce their out of pocket cleanup costs. Further, it could be argued that it may not be appropriate under a regulatory program, in which the Department orders a cleanup of an agrichemical spill, to pay a person for time spent cleaning up a spill for which they are responsible.

24. Time spent by a responsible party in planning a cleanup would continue to be an ineligible cost.

25. Further, to assist the Department in planning for future amounts necessary to fund cleanups and to properly review expenditures, the Committee could consider requiring responsible parties to submit claims for reimbursement within three years of incurring the cleanup costs. This would prevent the Department from receiving reimbursement claims years after cleanup work was performed, which can make it difficult to assess and verify the eligible and reasonable costs associated with such claims.

### ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to: (a) reduce the deductibles and increase the cost-share rates for grants for initial and subsequent spills; (b) increase the level of eligible reimbursable cost to \$400,000, a maximum lifetime per site limit; (c) eliminate the \$100,000 limit on eligible costs for soils only cleanups; (d) reduce the deductible and increase the cost share rate for spills occurring during transport; and (e) make other program changes related to Department workplan approvals, reimbursement payment schedules, the fertilizer license suspension process and the program's penalty provisions.

2. Approve the Governor's recommendation to make program changes related to Department workplan approvals, reimbursement payment schedules, the fertilizer license suspension process and the program's penalty provisions.

In addition do one or more of the following:

a. Set a maximum \$400,000 per cleanup site lifetime limit for all initial or subsequent discharges at that site.

b. Set a maximum \$400,000 per cleanup site lifetime limit for all initial or subsequent discharges at that site and require that spills occurring during transport be subject to the \$400,000 limit for the site the agrichemicals originated from.

c. Eliminate the \$100,000 reimbursable cost limit for soil contamination cleanups.

d. Provide DATCP with the administrative rule authority to exceed the current \$100,000 eligible cost limit (would allow certain large or complex soil contamination spills to exceed the limit).

- e. Increase the cost share rate from 75% to 80% for initial spills at a site.
- f. Increase the cost share rate from 75% to 80% for all spills at a site.
- g. Reduce the deductible from \$15,000 to \$7,500 (or \$3,000 for noncommercial facilities) for subsequent spills at the same site (same deductible as initial spills).
- h. Reduce the deductible from \$7,500 to \$3,000 for commercial facilities and increase the cost share rates from 50% to 80% for spills occurring during transport.
- i. Allow time spent by a responsible party in implementing a cleanup to be included as an eligible reimbursable cost.
- j.** Require claims for reimbursement to be submitted to DATCP within three years of the costs being incurred.

3. Maintain current law (approximately \$420,000 in grant funding would lapse on June 30, 1999).

Prepared by: Al Runde

AIK 2 B D J  
 MO# 2 B D J  
 P# 168

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
ZGARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A
BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 15 NO 0 ABS 1

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### Animal Waste Management Grants (DATCP)

[LFB Summary: Page 80, Item #6]

## CURRENT LAW

DATCP may provide animal waste regulatory grants to landowners to correct a Department of Natural Resources (DNR) notice of discharge (NOD) of animal waste from the following appropriations: (a) a continuing, program revenue appropriation funded from transfers from DNR's nonpoint source water pollution abatement program appropriations (estimated at \$100,000 in base funding) to provide grants to landowners within a state designated priority watershed; (b) an annual, segregated appropriation from the nonpoint account of the environmental fund (\$950,000 in base funding) that also funds agricultural shoreland management and soil and water resource management (SWRM) program activities (soil erosion control, nutrient management planning and farmland preservation conservation compliance); and (c) a continuing GPR appropriation (\$2,455,700 in base funding) which is primarily used to fund basic allocation grants to counties for staff to conduct SWRM program activities.

## GOVERNOR

Provide the Department authority to award grants to any landowner, regardless of location, that has a received a NOD of animal waste. Currently, such grants are restricted to those landowners within a state designated priority watershed.

## DISCUSSION POINTS

DATCP, DNR and the counties work jointly in controlling nonpoint source water pollution and soil erosion in the state: DATCP through its Soil and Water Resource Management (SWRM) program, including cost share grants to landowners that have received a DNR notice of discharge; DNR through its nonpoint source pollution abatement program in designated state priority watersheds; and counties through grants from the SWRM and nonpoint programs for local staff to administer and implement the programs.

Under current law, DATCP under its SWRM program is provided funding to make grants to counties to conduct soil conservation and agricultural shoreland management program activities. Any funds that are not spent toward these activities are then required to be spent on cost share grants to recipients of a DNR notice of discharge (NOD) of water pollution, which have required approximately \$750,000 annually in funding. DATCP may use any remaining funds for other soil and water conservation program efforts such as nutrient and pesticide management planning.

The bill would allow the transfer of funds from DNR's nonpoint appropriations to DATCP for installation of farm practices to reduce pollution in any of the state's waters. However, the effect of the provision could be to free up base funding in DATCP for other programs (such as nutrient and pesticide management grants to counties) and a corresponding reduction in DNR's grants for county watershed staff and farm practices. Following is a discussion of a number of issues related to the Governor's recommendation.

### Notice of Discharge Process

1. DNR, under administrative rule NR 243, regulates livestock operations having less than 1,000 animal units if DNR determines that the operation is causing significant pollution discharges. DNR has authority to issue to such operations a notice of discharge (NOD), which specifies the corrective actions needed to control the discharge. The issuance of an NOD is primarily the result of an on-site investigation in response to a citizen complaint about a farm operator. An operator who fails to meet the requirements of the NOD within a specified time frame may be required to obtain a Wisconsin pollution discharge elimination system (WPDES) permit.

2. Under NR 243, only those operations issued a NOD are eligible for cost-sharing grants typically covering 50% to 70% of the cost of installing water pollution control practices or facilities necessary to meet the requirements of the NOD. DATCP administers the cost share grant program for animal waste related discharges under NR 243. Any operator or landowner that fails to meet the provisions of a NOD is issued a pollution discharge permit at which time the operation becomes ineligible for any cost-share assistance.

3. DNR, under the critical sites provisions added to the nonpoint program in 1994, can initiate the NOD process against a landowner without citizen complaint. However, DNR is not required to begin NR 243 actions on each site designated as critical. Critical sites are those sites that are significant sources of nonpoint source water pollution upon which best management practices must be implemented in order to obtain a reasonable likelihood that the water quality objectives contained in the watershed plans can be achieved. All priority watersheds selected after August, 1993, are required to designate critical sites in the individual nonpoint pollution control plan. Currently, 22 watershed projects are in the planning stages and are required to designate critical sites.

4. Critical sites are eligible for cost-sharing grants under DNR's nonpoint source water pollution abatement grant program. However, if the owner or operator of a critical site takes no action and the site still meets the critical sites criteria for the release of nonpoint source pollutants after cost-sharing has been available for 36 months, cost share grants are reduced by one-half and are made available for an additional year. If the required action is still not taken by the landowner, the landowner is issued an NOD and cost-sharing (again at half the initial cost share rate) would be available for up to two years under DATCP's grant program. Because the DNR rules on critical sites were promulgated in 1994 and 1995, no sites have had four years of cost share grants available under the nonpoint program and thus, the NR 243 process has not been initiated under the critical sites provisions.

### **Grant Funding**

5. DATCP may allocate GPR, SEG and PR funds for grants to livestock operators for the construction of animal waste management practices which are required as a result of a NOD. Grants are typically provided for construction of feedlot runoff control and manure storage facilities, vegetative filter strips and other best management practices. Additionally, funds are allocated to counties as reimbursement for technical assistance provided by their staff to NOD recipients. Technical assistance reimbursements are limited to 15 percent of the cost-shared amount or the actual cost for providing the service, whichever is less.

6. While DATCP has authority to use GPR funds to provide animal waste grants, the statutory priority for the SWRM program's GPR funds is for basic annual grants to counties for county salaries and fringe benefits, support, and training related to the county's soil and water conservation and farmland preservation cross compliance program activities. The program's current base funding is \$2,455,700.

7. Prior to recent administrative rule changes, the basic annual staffing grants to counties were \$7,000 or \$12,000, with the higher amount provided if the county had a county conservationist. However, DATCP recently amended its rule relating to these grants to include the \$7,000 and \$12,000 amounts and all other staff and support costs related to the county's soil and water conservation and farmland preservation cross compliance program activities. As a

result, all but \$250,000 of the GPR available in 1996-97 was allocated for the staffing grants. After funding basic staffing grants, the statutes require that cost share grants to NOD recipients have priority for any remaining GPR funds.

8. 1991 Wisconsin Act 309 provided DATCP with \$950,000 SEG from the nonpoint account of DNR's environmental fund from which statutory priority is given to agricultural shoreland management grants. The statutes require that any remaining SEG funding after the agricultural shoreland grants are funded, must first be used to provide regulatory animal waste cost-sharing and technical assistance reimbursements. DATCP has allocated approximately \$400,000 SEG for agricultural shoreland projects and \$500,000 SEG for regulatory animal waste grants in 1996-97. Prior to 1995-96, due to low program activity, only a small amount of the SEG funding was allocated to agricultural shoreland projects (conservation practices required under county agricultural shoreland ordinances). However, program activity has increased which again results in less funds available for NOD cost share grants.

9. If any GPR or SEG remains after the statutory priorities are met, DATCP is allowed to use the funds for other soil and water conservation program activities. Historically, enough GPR and SEG have remained to allow DATCP to fund activities such as county nutrient and pesticide management planning, soil erosion control and database development projects. In 1996-97, DATCP's SWRM program allocates approximately \$425,000 in combined GPR and SEG for such projects.

10. When the critical sites provisions were added to the nonpoint program, it was anticipated that the number of NOD recipients in priority watersheds would increase. As a result, the Land and Water Conservation Board (LWCB) was given authority to transfer funds from DNR's nonpoint program appropriations to the program revenue appropriation in DATCP to fund any increase in the number of NODs in priority watersheds.

11. While the PR appropriation is estimated at \$100,000 annually, the funds are provided from DNR's nonpoint appropriation on an as needed basis after approval of the LWCB and therefore, expenditures could be more or less than \$100,000 in a given year. However, given the current nonpoint program demand, it is uncertain whether revenues beyond the \$100,000 would be available for transfer in the 1997-99 biennium. Since the appropriation was created, DATCP has expended \$64,600 in 1995-96 and the LWCB transferred approximately \$38,500 in April, 1997 to be used in 1996-97.

12. While DATCP has funded grants to NOD recipients in priority watersheds from the PR appropriation, none of the NOD sites were the result of the critical sites provisions added to the nonpoint program. Rather, the sites were issued NODs under the NR 243 complaint process.

13. The Governor's proposal would provide DATCP with additional flexibility in using the PR appropriation. The provision would allow DATCP to fund a grant to an NOD recipient

that would currently be required to be funded from the Department's GPR and SEG appropriations. Further, because the PR appropriation is not limited under the bill, if the Department could justify to the LWCB the need for the funding, the Department could conceivably pay for all the grants to NOD recipients under the PR appropriation.

14. Because DATCP has had funds available to allocate to lower statutory priority projects, it would appear that additional GPR and SEG funds could be made available if needed for NOD cost share grants outside of priority watersheds. Therefore, it could be argued that the additional funding flexibility is not needed and the PR funds should be available only to NOD recipients (or critical sites NODs) located in a priority watershed.

15. It could be argued that because the Legislature created the PR appropriation to fund a potential increase in NODs as a result of the critical sites provisions, DATCP should not be allowed to fund NODs from transfers from DNR's nonpoint appropriations that were not issued as result of the nonpoint program's critical sites provisions. Further, any transfer of funds to DATCP's PR appropriation reduces the amount of funds available for cost share grants for county staff or to landowners under DNR's nonpoint source pollution abatement program.

16. Currently, transfers from the DNR to DATCP's PR appropriation must be approved by the LWCB, but not by the Legislature. If the Committee would like oversight of the funds transferred under the PR appropriation in the future, the Committee could require Joint Finance approval (in addition to LWCB approval) of future DATCP requests for the transfer of funds. This would allow the Committee to ensure that base funds have been appropriately allocated and unspent revenues are available under the nonpoint program to cover the amounts requested for transfer.

### **Future Funding**

17. NOD cost share grants have averaged approximately \$753,500 per year over the past five calendar years. The following table lists the funding for animal waste grants since 1992.

<u>Year</u>	<u>Amount</u>
1992	\$546,800
1993	712,500
1994	705,800
1995	1,048,900
1996	736,800

18. Despite the historical expenditures, the Department is allocating only \$500,000 for NOD cost share grants in 1996-97. Monies (approximately \$425,000) were then allocated to nutrient and pest management and other SWRM projects that are a lower statutory priority for funding. DATCP officials now indicate that some NOD cost share requests will remain unfunded through 1996-97, and will be funded out of 1997-98 funds. While the Department cannot accurately project how many grants will need to be funded in a year, past expenditures would indicate that approximately \$750,000 should be allocated each year for these grants.

19. If DATCP again allocates \$500,000 for NOD cost share grants and requests exceed that amount, and all other funds are allocated, DATCP could ask the Joint Finance Committee or LWCB to transfer funds from the nonpoint program which would reduce DNR's nonpoint activity (including county staffing grants).

20. In order to require that DATCP continue to expend enough of their GPR and SEG funds to cover historical NOD expenditures, while allowing DATCP flexibility in the use of the PR funds, the Committee could require the Department to expend \$650,000 (average expenditures less the estimated \$100,000 PR needed to fund priority watershed NODs) from its GPR and SEG funding sources before requesting additional funding from either the Joint Committee on Finance or the LWCB. This would make the NOD cost share grants the top priority for \$650,000 in SEG or GPR currently budgeted to DATCP's SWRM program.

21. DATCP indicates that requiring the Department to make a NOD cost share grants first priority for \$650,000 of the GPR or SEG would likely reduce the level of funding the Department could provide for basic annual staffing grants and agricultural shoreland projects. However, the Department has consistently had adequate funds for these programs, NODs and for lower priority statutory programs. Further, the Department contends that when the \$950,000 SEG was provided in 1991, approximately \$500,000 was identified for agricultural shoreland projects, with the remaining \$450,000 available for NOD cost share grants and nutrient and pesticide management projects.

22. Alternative A2 would allow for a certain level of funding (approximately \$450,000 SEG and \$200,000 GPR) to be available for NOD cost share grants despite the level of program activity under DATCP's SWRM and agricultural shoreland programs.

## ALTERNATIVES TO BASE

### A. Funding Transfer

1. Approve the Governor's recommendation to allow DATCP to award grants to any landowner, regardless of location, that has received a Department of Natural Resources (DNR) notice of discharge of animal waste from the PR appropriation that currently restricts such grants to only those landowners within a state designated priority watershed.

~~2.~~ Approve the Governor's recommendation to allow DATCP to award grants to any landowner that has received an NOD, regardless of location, from the PR appropriation. Further, require that DATCP expend \$650,000 in funding from its SEG and/or GPR funds for NODs, before requesting additional funding.

3. Maintain current law (the PR appropriation would continue to be restricted to grants to NOD recipients in a priority watershed).

**B. Transfer Authority**

1. Require Joint Committee on Finance approval, under a 14-day passive review process, of any transfers from DNR's nonpoint appropriations to DATCP's PR appropriation after receiving approval from the LWCB.

2. Maintain current law (the LWCB would continue to have authority to transfer funds).

Prepared by: Al Runde

MO# ATA 1 #169

JENSEN	<u>Y</u>	N	A
OURADA	<u>Y</u>	N	A
HARSDORF	<u>Y</u>	N	A
ALBERS	<u>Y</u>	N	A
GARD	<u>Y</u>	N	A
KAUFERT	<u>Y</u>	N	A
LINTON	<u>Y</u>	N	A
COGGS	<u>Y</u>	N	A
BURKE	<u>Y</u>	N	A
DECKER	<u>Y</u>	N	A
GEORGE	<u>Y</u>	N	A
JAUCH	<u>Y</u>	N	A
WINEKE	<u>Y</u>	N	A
SHIBILSKI	<u>Y</u>	N	A
COWLES	<u>Y</u>	N	A
PANZER	<u>Y</u>	N	A

AYE 8 NO 9 ABS 1

MO# ATA 2 #169

JENSEN	<u>Y</u>	N	A
OURADA	<u>Y</u>	N	A
HARSDORF	<u>Y</u>	N	A
ALBERS	<u>Y</u>	N	A
GARD	<u>Y</u>	N	A
KAUFERT	<u>Y</u>	N	A
LINTON	<u>Y</u>	N	A
COGGS	<u>Y</u>	N	A
BURKE	<u>Y</u>	N	A
DECKER	<u>Y</u>	N	A
GEORGE	<u>Y</u>	N	A
JAUCH	<u>Y</u>	N	A
WINEKE	<u>Y</u>	N	A
SHIBILSKI	<u>Y</u>	N	A
COWLES	<u>Y</u>	N	A
PANZER	<u>Y</u>	N	A

AYE 6 NO 9 ABS 1

FAIL

MO# ATA 32

JENSEN	<u>Y</u>	N	A
OURADA	<u>Y</u>	N	A
HARSDORF	<u>Y</u>	N	A
ALBERS	<u>Y</u>	N	A
GARD	<u>Y</u>	N	A
KAUFERT	<u>Y</u>	N	A
LINTON	<u>Y</u>	N	A
COGGS	<u>Y</u>	N	A
BURKE	<u>Y</u>	N	A
DECKER	<u>Y</u>	N	A
GEORGE	<u>Y</u>	N	A
JAUCH	<u>Y</u>	N	A
WINEKE	<u>Y</u>	N	A
SHIBILSKI	<u>Y</u>	N	A
COWLES	<u>Y</u>	N	A
PANZER	<u>Y</u>	N	A

AYE \_\_\_\_\_ NO \_\_\_\_\_ ABS \_\_\_\_\_

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### Gypsy Moth Control Program Staff (DATCP)

[LFB Summary: Page 81, #8]

## CURRENT LAW

DATCP administers a gypsy moth control program to survey, control and provide public education on plant pests and movement of plants or other materials to prevent the spread of serious plant pests. DATCP is provided 6.0 positions and approximately \$1.8 million for the program as follows: (a) an annual SEG appropriation funded from the forestry account of the conservation fund with base level funding of \$837,400; (b) a continuing SEG appropriation (\$200,000 in base funding) to which all monies received from a one cent surcharge on seedlings sold at state forest nurseries are deposited; and (c) a PR appropriation (\$74,600 in base funding) to which all monies received from nurseryman's license fees and surcharges are deposited. In addition, in 1996-97, approximately \$632,000 in federal funding from the National Forest Service and the Animal Plant Health and Inspection service will also be used to fund gypsy moth control program efforts in DATCP and DNR.

## GOVERNOR

Provide 1.0 management information system position and convert 3.0 project positions to permanent status (currently, two of the project positions are federally-funded) to be funded from the annual forestry account SEG appropriation. The positions would continue the gypsy moth trapping program at its current level, assist in administering the program and provide interagency coordination of gypsy moth control efforts. The positions would be paid from the program's base level funding by transferring \$148,200 in 1997-98 and \$158,000 in 1998-99 of supplies to permanent salaries and fringe benefits.

## DISCUSSION POINTS

1. The primary costs associated with DATCP's gypsy moth control program involve (a) hiring limited-term employee staff to distribute and collect moth traps; (b) the input of data associated with the gypsy moth survey which provides computerized tracking of where the moths are most prevalent; and (c) the spraying or use of other methods to control or eradicate the moths in the most prevalent areas.

2. Gypsy moth control expenditures are largely determined by: (a) the size of the areas surveyed to detect where the moths are most prevalent; and (b) the number of acres sprayed or treated to eradicate or control the spread of the moths. While any program activity could be funded from any of the appropriations, DATCP primarily funds the controls for spraying activity from the continuing SEG and PR appropriations as well as from federal funds. The annual SEG appropriation funds 4.0 staff as well as limited-term employees associated with the survey activities, information and education program activities and spray costs if needed. The four staff will maintain the current level of program activity. Further, the recent federal decision to quarantine four counties in the state is likely to necessitate at least this level of staffing for the foreseeable future.

3. Any unexpended funds from the annual SEG appropriation would lapse back to the conservation fund. In recent years, funds have been lapsed from the annual appropriation to the forestry account of the conservation fund (\$226,200 in 1994-95 and \$124,375 in 1995-96). DATCP indicates that expenditures have been lower than anticipated because the number of spray acres have been kept as low as possible without sacrificing control and due to technology advancements in technology related to the survey and spray activities. For example, global positioning mapping and satellite systems that guide spray pilots accurately within treatment blocks avoids the need for ground personnel to assist pilots and allows the spray planes to avoid environmentally sensitive areas. Further, geographic information systems have reduced the duplicative efforts related to entering and mapping survey data.

4. The unexpended SEG funds have primarily lapsed from unspent supplies and services funding for a portion of the program's annual gypsy moth survey, spray treatment and information and educational activities. For example, if program expenditures related to these activities are lower than budgeted, or if funding can be provided from the other appropriations or from federal sources, funding for supplies from the annual SEG appropriation remains unexpended and lapses.

5. DATCP's 1997-99 biennial budget request identified \$148,200 in 1997-98 and \$158,000 in 1998-99 in supplies funding from the SEG annual appropriation that would likely go unexpended. The Department requested, and the Governor recommends, that the funding be reallocated from supplies to fund the 4.0 positions from the program's base level funding. As a result, because the salary and fringe costs associated with the staff would be permanent and on-going costs, funding the additional positions from the annual appropriation could reduce the

likelihood that funds would continue to remain unexpended and lapse to the conservation fund's forestry account.

6. The continuing SEG appropriation had a \$332,600 balance at the end of 1995-96. The appropriation is expected to generate annual revenues of approximately \$150,000 during the 1997-99 biennium. While revenues deposited to the appropriation have been declining, it would appear the continuing appropriation could fund, from base funding levels, the two federal project positions (at a cost of \$84,800 annually) recommended to be converted to permanent status. This alternative would reduce the number of permanent positions funded from the annual appropriation which would increase the likelihood that funding would lapse to the conservation fund, in the event available program funding exceeds expenditures.

### ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to provide 4.0 permanent positions to be funded from a reallocation of supplies in the annual forestry account appropriation.

<u>Alternative 1</u>	<u>SEG</u>
1995-97 POSITIONS (Change to Base)	4.00
[Change to Bill]	0.00

2. Provide 2.0 permanent positions from the annual forestry account appropriation (reallocate \$63,400 in 1997-98 and \$73,200 in 1998-99 from supplies) and 2.0 positions (reallocate \$84,800 annually) from DATCP's continuing appropriation for gypsy moth control funded from the forestry account of the conservation fund.

<u>Alternative 2</u>	<u>SEG</u>
1995-97 POSITIONS (Change to Base)	4.00
[Change to Bill]	0.00

3. Maintain current law.

<u>Alternative 3</u>	<u>SEG</u>
1995-97 POSITIONS (Change to Base)	0.00
[Change to Bill]	- 4.00

Prepared by: Al Runde

MO# Alt #170

PAPER #170

JENSEN	Y	N	A
1 OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
2 DECKER	Y	N	A
GEORGE	Y	N	<del>A</del>
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 15 NO 0 ABS 1

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### Food Inspection Program (DATCP)

[LFB Summary: Page 81, Item #9]

## CURRENT LAW

DATCP administers a food inspection program that regulates the food supply from point of production to retail sale and consumption. The program involves inspection, sampling, compliance monitoring of those involved in the production and sale of food and the enforcement of state and federal food safety laws.

Base funding for DATCP's food inspection program is \$3,452,900 PR (52%) and \$3,153,100 GPR (48%). Program revenues are primarily provided from license and inspection fees paid by dairy farms, dairy plants, milk distributors, food processing plants, food warehouses and retail food establishments.

## GOVERNOR

Provide \$50,000 GPR annually in unallotted reserve for the Department's food inspection program activities. Funding could be released by DOA after reviewing the findings of a study of DATCP's food inspection program which is required under the bill. The Department would be required to study its food inspection programs procedures to: (a) identify areas in the programs that could become more efficient; (b) develop a plan to streamline its food inspection programs; and (c) identify any cost-savings that could be implemented based on the efficiencies and improved procedures. DATCP would submit its findings and plan to the Secretary of DOA by October 1, 1997.

## DISCUSSION POINTS

1. The state's food safety program efforts are designed to safeguard public health and ensure a safe and wholesome food supply. The program also provides economic benefits to the regulated facilities in that the assurance of safety can facilitate the sale of their products. That is, because most of the inspection services provided by the program are required before goods can be shipped out of state, the program facilitates the sale of dairy and food products in interstate and international markets. Therefore, because the program benefits both the general public and the industry, the Department believes that the program should be funded with both GPR and PR funds. The 1991-93 budget created a program that was 60% GPR and 40% PR, with program revenue fees established by Department rule.

2. While base funding for the entire food safety program is 52% PR and 48% GPR, certain programs funded from the PR appropriation have traditionally been 100% PR-funded. Factoring out these programs (lab certification, pasteurizer testing and sealing, dairy plant equipment plan reviews and grading program efforts), the remainder of DATCP's food safety program is approximately 50% PR and 50% GPR. The 1995-97 budget converted \$279,900 and 5.0 positions from GPR to PR which resulted in the approximate 50/50 funding split.

3. No additional staff have been added to DATCP's food safety program nor has the Department increased fees deposited to the food safety program since 1991 (excluding 100% PR programs). However, program costs have increased despite the same level of services. The program began the 1995-97 biennium with a \$602,000 balance but will end the biennium with a projected balance of \$225,000. The increased costs to the PR account are largely due to: (a) the shift of five staff from GPR to PR; and (b) the increased salary and supply costs for the existing staff.

4. It should be noted that the Department is currently holding program expenditures below authorized levels in order for the food safety program to end the current biennium with a positive balance. However, DATCP cannot reduce expenditures to a level that would maintain a positive balance in the account through the end of next biennium without laying off staff or otherwise curtailing essential program services. Therefore, the program revenue account will be in deficit in the next biennium unless revenues are increased. Under the current revenue structure and the expenditure levels provided under the bill, the PR account would end the 1997-99 biennium with a projected deficit of \$1.8 million.

5. Food safety license and inspection fees are set by administrative rule. The DATCP Board in March, 1997, approved for public hearing a rule that would increase the food safety fee revenues. The proposed fee increases would result in approximately \$1.3 million in revenues (a 22% increase) in the 1997-99 biennium and approximately \$900,000 (a 31% increase) annually thereafter. Agency officials indicate that based on industry feedback the draft rule that went to the Board would generate approximately \$200,000 less annually than the Department's original proposal.

6. The Department referred a copy of the draft rule to the Legislative Council Rules Clearinghouse on March 14, 1997. Following public hearings, the Department will prepare a final draft rule for approval by the DATCP Board. If the Board approves the rule, the Department will transmit the final draft rule to the Legislature for review by the appropriate Committees. If the Legislature, at that time, takes no action, the DATCP Secretary will sign the final rulemaking order and submit the rule for publication in the Wisconsin Administrative Register, at which time the rule takes effect (unless a delayed effective date is specified). The Department intends to implement the rule in late 1997. Most of the fee increases would apply on the effective date of the rule or upon the next license renewal. However, the milk producer license, reinspection and reinstatement fees would have a delayed effective date of July, 1999. Further, it should be noted that any extent to which the proposed fee increases in the draft rule are amended, program revenues associated with the rule would also be affected.

7. At the expenditure levels recommended by the Governor and including the proposed fee increase, the food safety program revenue account would end the 1997-99 biennium with approximately a \$303,000 deficit. The following table lists the program revenue balance under the fee proposal and the expenditure levels provided under the bill.

**Food Safety  
Program Revenue Account\***

	<u>1997-98</u>	<u>1998-99</u>
Beginning Balance	\$225,100	-\$67,300
Revenues	3,538,500	3,639,600
Expenditures**	<u>-3,830,900</u>	<u>-3,875,300</u>
Ending Balance	-\$67,300	-\$303,000

\* Includes 100% PR funded programs.

\*\* Includes approximately \$133,200 in estimated pay plan increases in the biennium.

8. While the table would indicate a potential program deficit, the Department states that expenditures will again be held within revenues to the extent necessary to maintain a 5% reserve balance (approximately \$190,000). Under the bill, \$179,900 PR annually is provided in unallotted reserve. Further, while the bill provides \$50,000 GPR annually to be held in unallotted reserve contingent upon the program efficiency study required under the bill, the Governor does not make a corresponding decrease in the PR expenditures to reflect the increased GPR expenditures for food safety. Therefore, if the Committee wants to ensure that the program revenue account ends the 1997-99 biennium with a positive balance (approximately \$156,800), the Committee could reduce the program's PR expenditure authority by \$229,900 annually to

reflect the elimination of PR funding currently budgeted in unallotted reserve (\$179,900) and the GPR funding provided under the bill (\$50,000). Excluding those programs that have historically been 100% PR funded, the authorized program funding would be \$3,143,800 GPR (51%) and approximately \$3,050,000 PR (49%).

9. While the Department indicates that program expenditures could be reduced by \$229,900, they also note such a reduction would reduce the Department's flexibility to expend at a higher level in the event revenues are higher than anticipated. However, in the event revenues increase beyond current expectations, the Department could submit a s. 16.515 request (14-day passive review) to increase expenditure authority as needed. Conversely, if revenues under the final rule are lower than currently anticipated, DATCP would again need to reduce expenditures below the authorized levels in order to maintain a positive balance.

10. If the Committee wants additional oversight over the program the \$50,000 GPR annually could be transferred to the Committee's appropriation (rather than being released by DOA under the bill). Further, any request for release of the funds would include the Department's study.

11. Another alternative would be to provide no additional GPR and reduce PR authority by \$179,900 annually (June 30, 1999, balance of \$56,800 PR). Program funding would be approximately 50% GPR and 50% PR.

**ALTERNATIVES TO BASE**

~~1.~~ Approve the Governor's recommendations to provide \$50,000 annually in unallotted reserve for the Department's food inspection program activities which could be released by DOA after reviewing the findings of a study of DATCP's food inspection program.

<u>Alternative 1</u>	<u>GPR</u>
1997-99 FUNDING (Change to Base)	\$100,000
[Change to Bill]	\$0]

2. Provide \$50,000 annually in the Joint Committee on Finance appropriation. Further, require that any request for release of the funds include the results of the Department's study.

<u>Alternative 2</u>	<u>GPR</u>
1997-99 FUNDING (Change to Base)	\$100,000
[Change to Bill]	\$0]

~~3.~~ In addition to one of the above, reduce the program's PR expenditure authority by \$229,900 annually in order to maintain a positive account balance.

<u>Alternative 3</u>	<u>PR</u>
1997-99 FUNDING (Change to Base)	- \$459,800
[Change to Bill	- \$459,800]

4. Delete \$179,900 PR annually to maintain expenditures within available revenues.

<u>Alternative 4</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
1997-99 FUNDING (Change to Base)	\$0	- \$359,800	- \$359,800
[Change to Bill	- \$100,000	- \$359,800	- \$459,800]

5. Maintain current law.

<u>Alternative 5</u>	<u>GPR</u>
1997-99 FUNDING (Change to Base)	\$0
[Change to Bill	- \$100,000]

Prepared by: Al Rinde

MO# Alt #24 #171

JENSEN (Y) N A  
 OURADA (Y) N A  
 HARSDORF (Y) N A  
 ALBERS (Y) N A  
 GARD (Y) N A  
 KAUFERT (Y) N A  
 LINTON (Y) N A  
 COGGS (Y) N A

1 BURKE (Y) N A  
 2 DECKER (Y) N A  
 GEORGE (Y) N A  
 JAUCH (Y) N A  
 WINEKE (Y) N A  
 SHIBILSKI (Y) N A  
 COWLES (Y) N A  
 PANZER (Y) N A

AYE 13 NO 2 ABS 1

MO# Alt #1 & 3 #171

JENSEN (Y) N A  
 OURADA (Y) N A  
 HARSDORF (Y) N A  
 ZALBERS (Y) N A  
 GARD (Y) N A  
 KAUFERT (Y) N A  
 LINTON (Y) N A  
 COGGS (Y) N A

BURKE (Y) N A  
 DECKER (Y) N A  
 GEORGE (Y) N A  
 JAUCH (Y) N A  
 WINEKE (Y) N A  
 SHIBILSKI (Y) N A  
 COWLES (Y) N A  
 PANZER (Y) N A

AYE 6 NO 9 ABS 1

FAIL