

Pt. 2

98-014 ATP-P-323335-  
FERTILIZER STORAGE

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

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the  
2 following order to repeal ATCP 32.01(10), (12) and (13), 32.11, 33.01(10), (11), (14) and  
3 (15), 33.12, 35.16(5)(note), 35.16(7) and (note), 35.24, 35.28(4) and (5) and 35.34; to  
4 renumber ATCP 32.01(2m), (3) to (5), (7) to (9) and (11), 33.01(2m), (4), (5), (7) to (9), (12)  
5 and (13), 35.04(note) and (7), and 35.28(3)(d); to renumber and amend ATCP 32.01(6) and  
6 (14), and 33.01(3), (6) and (16); to amend ch. ATCP 32(note), ATCP 32.04(3), (5), (6)(title),  
7 (6)(a), and (6)(b)(intro.) and 8., 32.10, 33.02(5)(b)(intro.), 33.11, 35.01(1), (3), (6), (10),  
8 (14), (14)(note) and (15), 35.02(1)(e)1. and 2., and (2)(b) and (c), 35.04(5), 35.08(1), (5)(b)  
9 and (5)(b)(note), 35.10(1) to (4), (6) and (6)(note), 35.12(1) to (3), (6)(a) to (c), (8) and (10),  
10 35.14(3)(intro.), (4), (15), (16), (24), (27), (28) and (30), 35.16(1), (6)(a)(intro.) and 1., and  
11 (8)(b), 35.18(2), 35.20(title) and (1), 35.25, 35.28(3)(a), 35.30(2) and (3) and 35.32(1) and  
12 (3); to repeal and recreate ATCP 32.02(1), (3), (5) to (9), 32.03, 32.04(1), (2), (4)(a) and (c),  
13 (7) and (9), 32.05 to 32.08, ch. ATCP 33(note), 33.02(1), 33.02(5)(b)3., 33.02(6) to (9),  
14 33.03, 33.04, 33.06, 33.07, 33.09, 33.09(note), 33.10, 33.10(note), 35.01(9) and (19),  
15 35.06(1) and (4), 35.16(2), (3), (4), (4)(note) and (5), 35.18(title) and (1), 35.22, 35.26, and  
16 35.28(1) and (2); and to create ATCP 32.01(11) to (14), (16) and (17), 32.04(2)(note) and  
17 (4)(d)4., 33.01(11) to (14), (17) and (18), 33.06(note), 35.01(7m), (20m), (22m) and (22r),  
18 35.03, 35.04(6), 35.14(2)(note), (3)(c), (31) and (32), and 35.16(2m); relating to fertilizer  
19 bulk storage, pesticide bulk storage and the agricultural chemical cleanup program.

1 SECTION 1. Ch. ATCP 32(note) is amended to read:

2  
3 NOTE: See ch. ATCP 33 for rules on pesticide bulk storage. Under ch. ATCP 35,  
4 the department may reimburse certain agricultural chemical contamination cleanup  
5 costs. This may include partial reimbursement for the cost of a containment structure,  
6 required by s. ATCP 32.03 or 32.04, which must be removed in order to clean up  
7 contamination beneath the structure. A person may not claim reimbursement for a  
8 structure built after January 1, 1998 unless the soil beneath the structure was tested for  
9 contamination before the structure was built. See ss. ATCP 35.04(5) and (6) for more  
10 information.

11  
12 SECTION 2. ATCP 32.01(10), (12) and (13) are repealed.

13 SECTION 3. ATCP 32.01(2m) and (3) to (5), (7) to (9) and (11) are renumbered (3)  
14 to (6), (8) to (10) and (15).

15 SECTION 4. ATCP 32.01(6) and (14) are renumbered (7) and (18) and amended to  
16 read:

17 ATCP 32.01(7) "Groundwater" means any of the waters of the state, ~~as defined in s.~~  
18 ~~144.01(19), Stats.,~~ occurring in a saturated subsurface geological formation of rock or soil.

19 (18) "Waters of the state" has the meaning ~~specified under s. 144.01(19) given in s.~~  
20 ~~281.01(18), Stats.~~

21 SECTION 5. ATCP 32.01(11) to (14), (16) and (17) are created to read:

22 ATCP 32.01(11) "Mini-bulk container" means either of the following:

23 (a) A storage container, designed for ready handling and transport, that holds more  
24 than 55 gallons (208 liters) but not more than 300 gallons (1,135 liters) of liquid fertilizer.

1 (b) A container that holds at least 100 pounds (45 kilograms) but not more than 2500  
2 pounds (1136 kilograms) of dry fertilizer.

3 (12) "Mobile container" means any storage container, anchored to a vehicle, trailer or  
4 axles, that an operator uses to store liquid bulk fertilizer. "Mobile container" includes rail  
5 cars, application equipment and nurse tanks.

6 (13) "Operator" means all of the following persons, and includes their employees and  
7 agents:

8 (a) A person who owns or controls a storage facility, unless both of the following  
9 apply:

- 10 1. The person is not a fertilizer manufacturer or distributor.
- 11 2. The person is storing fertilizer only for his or her own use.

12 NOTE: A farmer who stores fertilizer solely for the farmer's own use is not an  
13 "operator" under par. (a).

14  
15 (b) A fertilizer manufacturer or distributor who contracts with another person to store  
16 bulk fertilizer for the manufacturer or distributor.

17 NOTE: If a fertilizer manufacturer or distributor contracts with a farmer for on-farm  
18 storage of a bulk fertilizer owned by the manufacturer or distributor, the  
19 manufacturer or distributor is responsible as an "operator" of that storage  
20 facility under par. (b).

21  
22 (14) "Person" means an individual, corporation, partnership, cooperative association,  
23 limited liability company, trust, or other organization or entity.

1 (16) "Storage container" means a container used to store liquid bulk fertilizer at a  
2 storage facility.

3 (17) "Storage facility" means a place where bulk fertilizer is held in storage. "Storage  
4 facility" does not include a field or other site at which a mobile container is temporarily  
5 parked while being unloaded if all of the following apply:

6 (a) None of the persons who own or control the parking site are fertilizer  
7 manufacturers or distributors.

8 (b) The fertilizer is unloaded at the parking site with the consent of a person who owns  
9 or controls the parking site.

10 (c) The fertilizer is unloaded at the parking site for no more than 3 persons.

11 (d) The mobile container, if unloaded for any person other than the person who owns  
12 or controls the parking site, has a capacity of no more than 500 gallons.

13 **SECTION 6.** ATCP 32.02(1), (3), and (5) to (9) are repealed and recreated to read:

14 **ATCP 32.02(1) GENERAL REQUIREMENTS.** (a) Storage containers and  
15 appurtenances shall be constructed, installed and maintained to prevent the discharge of liquid  
16 bulk fertilizer.

17 (b) Storage containers and appurtenances shall be constructed of materials that resist  
18 corrosion, puncture and cracking.

1 (c) Materials used to construct or repair a storage container or appurtenance may not  
2 react chemically or electrolytically with stored bulk fertilizer in a way that may weaken the  
3 storage container or appurtenance, or create a risk of discharge.

4 (d) Metals used for storage container valves, fittings or repairs shall be compatible  
5 with other metals in the storage container, so that the combination of metals does not cause or  
6 increase corrosion or electrolytic reactions that may weaken the storage container or its  
7 appurtenances, or create a risk of discharge.

8 (e) Storage containers and appurtenances shall be designed to handle foreseeable  
9 mechanical stresses, including static head and pressure buildup from pumps and compressors.

10 (3) LIQUID LEVEL GAUGING DEVICE. (a) Every storage container shall be  
11 equipped with a gauging device that an operator can use to determine, safely and reliably, the  
12 level of liquid in the storage container. A gauging device is not required if the operator has  
13 other means to determine, safely and reliably, the level of liquid in the storage container.

14 (b) If a storage container has an external sight gauge, the storage container shall also  
15 have a valve that can stop the flow of liquid from the storage container to the sight gauge.  
16 The operator shall close and secure the valve when the operator is not using the sight gauge.

17 (5) ANCHORING STORAGE CONTAINERS. An operator shall anchor a storage  
18 container, as necessary, to prevent flotation or instability that could occur as a result of liquid  
19 accumulations within a secondary containment structure under s. ATCP 32.04.

1 (6) SECURITY. (a) Except as provided under par. (b), an operator shall secure a  
2 storage container and its appurtenances by doing at least one of the following:

3 1. Keeping them in a locked building.

4 2. Keeping them in a locked outdoor enclosure. The enclosure shall consist of a  
5 secure wall or fence that is at least 5 feet tall at every point, and free of gaps that would allow  
6 unauthorized persons to enter.

7 3. Locking all valves on the storage container and its appurtenances.

8 (b) Paragraph (a) does not apply if either of the following applies:

9 1. The operator is present at the storage facility.

10 2. The storage container and its appurtenances are empty.

11 (7) FILLING STORAGE CONTAINERS. An operator may not fill a storage  
12 container beyond the capacity for which it is designed, taking into account the density and  
13 potential thermal expansion of the fertilizer stored in the container.

14 (8) INSPECTION AND MAINTENANCE. (a) An operator shall routinely inspect  
15 and maintain storage facilities, storage containers and appurtenances to minimize the risk of a  
16 discharge. An operator shall inspect storage container valves and appurtenances for leakage at  
17 least weekly except when no bulk fertilizer is stored in the containers.

18 (b) Except as provided in par. (c) or (d), an operator shall measure the liquid fertilizer  
19 level in each storage container at least once a week.

1 (c) Except as provided in par. (d), An operator shall measure the fertilizer level in a  
2 storage container at least monthly from April 1 to July 31 if the operator is transferring liquid  
3 fertilizer into or out of the storage container at least weekly.

4 (d) Paragraphs (b) and (c) do not apply to a storage container if all of the following  
5 apply:

6 1. The storage container is located within a fully enclosed building.

7 2. The storage container is located within a secondary containment structure that  
8 complies with s. ATCP 32.04 and has a concrete liner or is a prefabricated structure.

9 3. The operator visually inspects the storage container for leakage at least weekly.

10 (e) On the same day that an operator inspects, measures or performs maintenance  
11 under this section, the operator shall make a written record of the inspection, measurement or  
12 maintenance. The operator shall keep the record at the storage facility or at the nearest local  
13 office from which the operator administers the storage facility.

14 (9) LABELING STORAGE CONTAINERS. An operator shall clearly and  
15 conspicuously label every storage container with the name or grade of fertilizer which it  
16 contains.

17 SECTION 7. ATCP 32.03 is repealed and recreated to read:

18 ATCP 32.03 LOADING AREAS. (1) SPILL CONTAINMENT REQUIRED. An  
19 operator who mixes or loads liquid bulk fertilizer, or who mixes or loads nonliquid bulk



1 fertilizer after January 1, 2000, shall mix or load that fertilizer over a spill containment  
2 surface that complies with this section.

3 (2) SPILL CONTAINMENT SURFACE; GENERAL. A spill containment surface  
4 under sub. (1) shall comply with all of the following:

5 (a) It shall be designed to catch and contain all reasonably foreseeable spills of  
6 fertilizers mixed or loaded over that spill containment surface.

7 (b) It shall be made of asphalt, concrete or other nonabsorbent materials approved by  
8 the department, and shall be durable enough to withstand all foreseeable loading conditions.

9 NOTE: The department will maintain a list of approved paving and lining materials  
10 for various fertilizer compounds, and will provide the current list to interested  
11 persons upon request. The department may add approved materials to this list if  
12 the person requesting approval provides the department with information  
13 demonstrating the adequacy of the materials under intended conditions of use.  
14 Persons seeking approval should provide information related to chemical  
15 compatibility, permeability, physical characteristics and durability. A tarpaulin  
16 may be used as a spill containment surface for nonliquid fertilizers if it complies  
17 with this section.

18  
19 (c) It shall extend beneath any conveyor used to load or unload fertilizer unless the  
20 conveyor is fully enclosed within a housing that is adequate to contain all spillage from the  
21 conveyor.

22 (3) SPILL CONTAINMENT SURFACE; LIQUID FERTILIZERS. (a) A spill  
23 containment surface under sub. (1) shall comply with all of the following if any liquid bulk  
24 fertilizer is mixed or loaded over that surface:

1           1. It shall be curbed or sloped to contain spillage, and to prevent liquids from adjacent  
2 surfaces from flowing onto it.

3           2. It shall drain into or form a liquid-tight catch basin that meets the capacity  
4 requirements under sub. (4).

5           (b) A tarpaulin may not be used as a spill containment surface for liquid bulk  
6 fertilizers.

7           (4) CATCH BASIN. (a) Except as provided under par. (b), the catch basin under  
8 sub. (3)(a)2. shall have an available capacity of at least 1,500 gallons (5,680 liters). To attain  
9 this required capacity, the catch basin may include a sump equipped with an automatically  
10 activated pump that transfers liquids to an above-ground container that complies with s. ATCP  
11 32.02(1) and is located within a secondary containment structure that complies with s. ATCP  
12 32.04.

13           (b) If an operator does not load or unload any storage container having a capacity of  
14 more than 1,000 gallons, the available capacity of the catch basin under sub. (3)(a)2. shall be  
15 at least 125 percent of the capacity of the largest storage container which the operator loads or  
16 unloads at the storage facility.

17           (5) RECOVERING DISCHARGES. An operator shall promptly recover fertilizer  
18 discharged onto a spill containment surface if that discharge reduces the effective capacity of  
19 that surface or the catch basin to which the surface drains.

1           (6) **STORING SPILLS AND RINSATE.** A container used to hold liquid fertilizer  
2 spills or rinsate shall be located within a secondary containment structure that complies with s.  
3 ATCP 32.04. No spilled fertilizers or spilled materials containing fertilizers may be stored  
4 below ground level.

5           (7) **PREVENTING DAMAGE BY MOVING VEHICLES.** An operator shall protect  
6 storage containers and appurtenances, including pipes, against reasonably foreseeable risks of  
7 damage by trucks and other moving vehicles engaged in loading or unloading bulk fertilizer.

8           **SECTION 8.** ATCP 32.04(1) and (2) are repealed and recreated to read:

9           ATCP 32.04(1) **GENERAL REQUIREMENTS.** Except as provided in sub. (9),  
10 storage containers shall be enclosed in a secondary containment structure that is adequate, in  
11 the event of a discharge, to prevent the movement of liquid fertilizer to groundwater or other  
12 waters of the state. A secondary containment structure shall consist of at least one of the  
13 following:

14           (a) A wall and liner that comply with subs. (3) and (4).

15           (b) A prefabricated structure that complies with sub. (5).

16           (c) A drainage and basin structure that complies with sub. (6).

17           (2) **CAPACITY.** The capacity of a secondary containment structure shall equal or  
18 exceed the sum of all the following:

19           (a) The greatest volume of liquid that could be discharged from the largest storage  
20 container located within the secondary containment structure.

1 (b) Twenty-five percent of the capacity of the largest storage container located within  
2 the secondary containment structure if the structure is not fully covered by a roof, or 10% of  
3 the capacity of the largest storage container located within the secondary containment structure  
4 if the structure is fully covered by a roof.

5 (c) The total volume of discharged liquid that would be displaced by the submerged  
6 portions of all storage containers, fixtures and materials located within the secondary  
7 containment structure if the structure were filled to capacity with discharged liquid.

8 **SECTION 9.** ATCP 32.04(2)(note) is created to read:

9 NOTE: A secondary containment structure for liquid pesticides may be located within  
10 or may share a wall with a secondary containment structure for liquid fertilizer,  
11 so that the capacity of the fertilizer secondary containment structure includes the  
12 capacity of the pesticide secondary containment structure.  
13

14 **SECTION 10.** ATCP 32.04(3) is amended to read:

15 ATCP 32.04(3) WALLS. The walls of a secondary containment ~~facility structure~~  
16 shall be constructed of earth, steel, concrete or solid masonry, and shall be designed to  
17 withstand a full hydrostatic head of any discharged liquid. Cracks and seams shall be sealed to  
18 prevent leakage. Walls constructed of earth or other permeable materials shall be lined as  
19 provided under sub. (4): Earthen walls shall have a horizontal-to-vertical slope of at least 3 to  
20 one, unless a steeper slope is consistent with good engineering practice, and shall be protected  
21 from erosion. Walls may not ~~exceed~~ extend more than 6 feet (1.8 meters) ~~in height~~ above  
22 interior grade unless ~~provisions are made~~ the operator provides for normal access and

1 necessary emergency access to tanks, valves and other equipment, and for safe exit from the  
2 secondary containment facility structure.

3 **SECTION 11.** ATCP 32.04(4)(a) and (c) are repealed and recreated to read:

4 ATCP 32.04(4)(a) General requirement. The base of a secondary containment  
5 structure, and any earthen walls of the structure shall be lined with one of the following:

- 6 1. An asphalt or concrete liner that complies with par. (b).
- 7 2. A synthetic liner that complies with par. (c) and does not use bentonite or clay as a  
8 hydraulic barrier.
- 9 3. A soil liner that complies with par. (d).

10 (c) Synthetic liners. Synthetic liners shall be approved by the department. The  
11 department may approve a synthetic liner if all of the following apply:

- 12 1. The liner is at least 30 mils (0.8 millimeters) thick.
- 13 2. The liner manufacturer certifies that the liner is chemically compatible with all  
14 fertilizers that may be stored within the secondary containment structure.
- 15 3. The liner manufacturer provides a written estimate of the liner's effective life. An  
16 operator may not use a synthetic liner beyond that effective life, except with the department's  
17 written approval.
- 18 4. The liner is protected by a 6 inch (15 centimeter) protection layer below the liner,  
19 and a 12 inch (30 centimeter) protection layer above the liner. Both protection layers shall be  
20 composed of soil, sand, or smooth gravel less than 1/2 inch in diameter. The protection layers

1 shall be free of large rocks, angular stones, sticks or other materials that may puncture the  
2 liner.

3 5. A qualified representative of the liner manufacturer is present when the liner is  
4 installed, and supervises the installation.

5 6. Liner seams constructed at the installation site are tested, and repaired if necessary,  
6 according to the manufacturer's recommendations.

7 **SECTION 12.** ATCP 32.04(4)(d)4. is created to read:

8 ATCP 32.04(4)(d)4. An operator shall reconstruct or recompact every soil liner and  
9 every bentonite treated liner at least once every 15 years. Before an operator reconstructs or  
10 recompacts a liner, the operator shall analyze the liner material for compliance with subs. 2.  
11 and 3., and for nutrients stored within the secondary containment structure during the past 15  
12 years. An operator is not required to remove a storage container having a capacity of 50,000  
13 gallons or more before reconstructing or recompacting the liner of a secondary containment  
14 structure enclosing that container.

15 **SECTION 13.** ATCP 32.04(5), (6)(title), (6)(a), and (6)(b)(intro.) and 8. are  
16 amended to read:

17 ATCP 32.04(5)(title) **PREFABRICATED STRUCTURES.** A prefabricated facility  
18 ~~shall be composed of secondary containment structure shall consist of~~ a rigid prefabricated  
19 basin having ~~both~~ a base and walls constructed of steel or synthetic materials ~~which are~~  
20 ~~resistant to that resist~~ corrosion, puncture ~~or~~ and cracking. Materials used in the facility

1 ~~structure~~ shall be chemically compatible with the ~~products being~~ all fertilizers that may be  
2 stored within the ~~secondary containment facility structure~~. ~~A~~ An operator shall obtain a  
3 written confirmation of compatibility from the basin manufacturer ~~shall be kept, and shall keep~~  
4 that confirmation on file at the storage facility or at the nearest local office from which the  
5 ~~operator administers the storage facility is administered~~. The prefabricated ~~facility structure~~  
6 and the foundation on which it is placed shall be designed and installed to withstand all  
7 foreseeable loading conditions, including the tank load and a full hydrostatic head of any  
8 discharged liquid. If multiple basins are connected to provide the capacity required under sub.  
9 (2), the basins shall be connected in a manner ~~which assures~~ that ensures an unrestricted  
10 transfer of discharge liquid between basins.

11 (6)(title) DRAINAGE AND BASIN STRUCTURE.

12 (6)(a) A drainage and basin ~~facility consists~~ structure shall consist of a curbed and  
13 lined base which diverts upslope runoff and drains completely into a lined holding basin  
14 having the capacity specified in sub. (2). The base and the drainage path shall be lined in  
15 compliance with sub. (4). The holding basin shall be lined in compliance with sub. (4)(c) or  
16 (4)(d), except that if a soil liner is used, the soil liner shall be at least 12 inches (30  
17 centimeters) thick and shall be constructed in lifts ~~not to exceed~~ of not more than 6 inches (15  
18 centimeters) ~~in thickness each~~.

19 (6)(b)(intro.) ~~A drainage and basin facility may be used for secondary containment~~  
20 ~~purposes upon written approval by the department~~ An operator may use a drainage and basin

1 structure as a secondary containment structure if the department reviews and approves that  
2 structure for that use. Proposed drainage and basin facilities shall be individually reviewed by  
3 ~~the department, and may be approved if the department~~ The department may approve the use  
4 of a drainage and basin structure for secondary containment if the department finds that the  
5 ~~proposed facility structure~~, when compared to other possible methods of secondary  
6 containment, provides substantially similar protection for the waters of the state. Persons  
7 seeking department approval for a proposed drainage and basin facility under this paragraph  
8 shall submit a written proposal to the department. The proposal shall include all of the  
9 following:

10 (6)(b)8. Any other information which the department may require, if the information  
11 has a reasonable bearing on the request for approval of the drainage and basin facility  
12 structure.

13 **SECTION 14.** ATCP 32.04(7) and (9) are repealed and recreated to read:

14 ATCP 32.04(7) INSPECTION AND MAINTENANCE. (a) General. An operator  
15 shall inspect every secondary containment structure at least once every 12 months, and shall  
16 maintain the structure to comply with this section. The operator shall make a written record  
17 of every inspection and maintenance action on the day of the inspection or maintenance. The  
18 operator shall keep the record at the storage facility or at the nearest local office from which  
19 the operator administers the storage facility.



1 (b) Accumulated precipitation. An operator may not allow precipitation to accumulate  
2 in a secondary containment structure to the point where the accumulation may tend to do any  
3 of the following:

- 4 1. Impair the adequacy of the structure for discharge containment purposes.
- 5 2. Cause or increase the corrosion of storage containers or appurtenances.
- 6 3. Impair the stability of storage containers.

7 (9) EXEMPTIONS. (a) Exemptions from secondary containment requirements. The  
8 secondary containment requirements under this section do not apply to any of the following:

- 9 1. A mobile container stored for less than 15 days at a storage facility that has a spill  
10 containment surface and catch basin that comply with s. ATCP 32.03(2) to (4).
- 11 2. An empty and cleaned storage container. For mini-bulk containers that cannot be  
12 opened, the operator shall clean the outside of the container before storing it outside a  
13 secondary containment structure.
- 14 3. An empty railcar.
- 15 4. An abandoned storage container for which the operator has taken the actions  
16 required under s. ATCP 32.06.

17 (b) Large storage containers: exemption from liner requirements. An operator is not  
18 required to install a liner beneath a storage container having a capacity of 100,000 gallons  
19 (378,000 liters) or more if all of the following apply:

- 20 1. The storage container was constructed on site and put into use before July 1, 1985.

1           2. The storage container has a second bottom constructed of steel or another material  
2 approved by the department. The department may approve a second bottom constructed of a  
3 material other than steel if, considering the substances held in the storage container, that  
4 second bottom protects the waters of the state to the same degree as a liner under sub. (4). A  
5 person requesting department approval shall provide the department with a plan, certified by a  
6 licensed professional engineer, which shows that the second bottom provides the required  
7 protection.

8           3. The operator installs the second bottom over the original bottom, with a minimum  
9 6 inch (15 centimeter) layer of coarse sand or fine smooth gravel separating the original  
10 bottom from the second bottom. The operator shall maintain a system for detecting leaks from  
11 the second bottom to the sand or gravel layer.

12           4. The operator tests the original bottom of the storage container for leaks before  
13 installing the sand or gravel layer and second bottom. The operator shall keep the test record  
14 on file at the storage facility, or at the nearest local office from which the operator administers  
15 the facility.

16           5. The operator tests the second bottom for leaks before storing any liquid fertilizer on  
17 it. The operator shall keep the test record on file at the storage facility, or at the nearest local  
18 office from which the operator administers the facility.

1           6. The operator tests the second bottom for leaks at least once every 2 years, using an  
2 effective leak detection method. The operator shall keep the test records at the storage facility,  
3 or at the nearest local office from which the operator administers the facility.

4           **SECTION 15.** ATCP 32.05 to 32.08 are repealed and recreated to read:

5           **ATCP 32.05 UNDERGROUND LIQUID STORAGE PROHIBITED.** No person  
6 may store liquid bulk fertilizer below ground level. This section does not prohibit a person  
7 from temporarily collecting spills or rinsate in a watertight catch basin, pursuant to s. ATCP  
8 32.03.

9           **ATCP 32.06 ABANDONED CONTAINERS.** (1) **GENERAL.** A storage container  
10 or loading area catch basin is abandoned, for purposes of this section, if it is out of service for  
11 more than 6 months because of a weakness or leak, or is out of service for more than 2 years  
12 for any reason.

13           (2) **UNDERGROUND CONTAINERS.** (a) An operator shall do one of the following  
14 to every abandoned underground storage container or catch basin that the operator owns or  
15 controls:

- 16           1. Thoroughly clean it and remove it from the ground.
- 17           2. Thoroughly clean it, sever and seal all its connections and vents, and fill it with an  
18 inert solid.

1 (b) The operator shall keep a permanent record of every abandoned underground  
2 storage container and catch basin that the operator owns or controls. The record shall include  
3 all of the following:

- 4 1. The size and location of the container or catch basin.
- 5 2. The actions which the operator has taken under par. (a).

6 (3) ABOVE-GROUND CONTAINERS. An operator shall thoroughly clean every  
7 abandoned above-ground container which the operator owns or controls, and shall sever and  
8 seal all of its valves and connections. The operator shall leave open all hatches on the  
9 container, but shall screen the hatches to prevent access by wildlife or unauthorized persons.

10 NOTE: Hatches must be left open for venting and to maintain container integrity.

11 **ATCP 32.07 PREPARING TO CONTROL AND RECOVER DISCHARGES.**

12 (1) DISCHARGE RESPONSE PLAN. The operator of a storage facility shall prepare a  
13 written discharge response plan for that storage facility. The operator shall:

- 14 (a) Keep the plan current at all times.
- 15 (b) Keep a copy of the plan readily available at the storage facility and at the nearest  
16 local office from which the operator administers the storage facility.
- 17 (c) Make the plan available to the department for inspection and copying upon request.
- 18 (d) Notify the local fire department, police department and emergency planning  
19 committee of the plan, and any revisions to the plan, and provide them with copies upon  
20 request.

1 NOTE: Federal law under 42 USC 11002 and 11003 also requires response plans for  
2 certain chemicals. A single response plan may satisfy requirements under sub.  
3 (1) and federal law.  
4

5 (2) PLAN CONTENTS. A discharge response plan under sub. (1) shall include all of  
6 the following:

7 (a) The identity and telephone number of each person or agency to be contacted in the  
8 event of a discharge, including the person responsible for the stored fertilizer.

9 (b) The types of fertilizer stored at the facility.

10 (c) The location of every storage container, and the type of liquid bulk fertilizer stored  
11 in that container. A plan need not refer to mini-bulk containers individually, provided that it  
12 discloses the collective location and contents of the mini-bulk containers.

13 (d) Procedures for controlling, recovering and responding to a discharge of liquid bulk  
14 fertilizer at the storage facility.

15 (e) Procedures for using or disposing of a recovered discharge.

16 NOTE: The department can help an operator identify options for using, treating or  
17 disposing of recovered liquid fertilizer.  
18

19 (3) EQUIPMENT AND SUPPLIES. (a) An operator shall have all of the following  
20 readily available for any emergency action which may be needed in response to a fertilizer  
21 discharge:

22 1. Pumps, recovery containers, and personal protective equipment and clothing.

23 2. Persons capable of deploying and operating the equipment under par. (a).

1 (b) An operator may arrange with a local fire department or other persons to provide  
2 the equipment and personnel required under par. (a) if the operator makes those arrangements  
3 in advance as part of the operator's discharge response plan.

4 (c) The operator of a storage facility shall keep available, at that storage facility,  
5 absorbent materials that may be used to control and clean up small discharges of liquid bulk  
6 fertilizer.

7 (d) An operator shall promptly decontaminate equipment and supplies used to control  
8 and recover liquid fertilizer discharges, before using them again.

9 (4) TRAINING. Persons employed at a storage facility shall be trained in discharge  
10 response procedures, pursuant to the discharge response plan.

11 (5) REPORTING. The operator of a storage facility shall immediately notify the state  
12 of Wisconsin department of natural resources whenever a reportable amount of a hazardous  
13 material under ch. NR 706 is discharged at that storage facility.

14 NOTE: See s. 292.11(2)(a), Stats. An operator should also report fertilizer discharges  
15 to the department of agriculture, trade and consumer protection at (608) 224-  
16 4518.

17  
18 **ATCP 32.08 RECORDKEEPING; LIQUID FERTILIZER STORAGE.** (1)

19 RECORDS REQUIRED. An operator storing liquid bulk fertilizer shall make and keep all of  
20 the following records:

21 (a) A record of every discharge from the storage facility, including the date and time  
22 of discharge, the type of liquid bulk fertilizer discharged, the cause of the discharge, any

1 action taken to control or recover the discharge, and the method used to dispose of any  
2 recovered discharge. On the day that the operator discovers the discharge, the operator shall  
3 record all of the required information that is available to the operator. Whenever the operator  
4 acquires additional information or takes action to control, recover, use or dispose of the  
5 discharge, the operator shall immediately update that record to include that additional  
6 information or action.

7 (b) Inspection and maintenance records required under ss. ATCP 32.02(8) and  
8 32.04(7).

9 (c) Records of liquid fertilizer levels in storage containers, as required under s. ATCP  
10 32.02(8).

11 (d) An annual inventory reconciliation, prepared by August 15 of each year, which  
12 does all of the following:

13 1. Compares the amount of liquid fertilizer in inventory on June 30 of that calendar  
14 year to the amount in inventory on July 1 of the preceding calendar year.

15 2. Accounts for all liquid fertilizer added to or removed from inventory during the  
16 intervening one year period, based on the operator's purchase, sales and production records.

17 3. Identifies any unexplained loss of inventory.

18 (e) Manufacturers' compatibility statements required under s. ATCP 32.04(4)(c) and  
19 (5).

1 (f) Records of abandoned underground storage containers, catch basins and secondary  
2 containment structures, as required under s. ATCP 32.06(2)(b).

3 (2) RECORD RETENTION. An operator shall keep the records required under sub.  
4 (1) for at least 3 years, except that:

5 (a) An operator shall keep records under sub. (1)(a) for at least 5 years.

6 (b) An operator shall keep permanent records under sub. (1)(e) and (f).

7 (3) RECORD LOCATION; INSPECTION AND COPYING. An operator shall keep  
8 the records required under sub. (1) at the storage facility, or at the nearest local office from  
9 which the operator administers that facility. The operator shall make the records available to  
10 the department for inspection and copying upon request.

11 **SECTION 16.** ATCP 32.10 is amended to read:

12 **ATCP 32.10 EXEMPTIONS.** The department may exempt any person from a  
13 requirement under this chapter ~~if compliance is not technically feasible, but only~~ if the  
14 department finds that alternative measures provide substantially similar protection for the  
15 waters of the state. A person requesting an exemption shall provide the department with  
16 adequate information to show that alternative measures provide substantially similar protection  
17 for the waters of the state.

18 **SECTION 17.** ATCP 32.11 is repealed.

19 **SECTION 18.** Chapter ATCP 33(note) is repealed and recreated to read:

20

21

22

NOTE: See also the following:



- 1 • Section ATCP 29.40 contains general rules on pesticide storage, including  
2 bulk storage.
- 3
- 4 • Under ch. ATCP 35, the department may reimburse certain agricultural  
5 chemical contamination cleanup costs. This may include partial  
6 reimbursement for the cost of a containment structure, required by s. ATCP  
7 33.03 or 33.04, which must be removed in order to clean up contamination  
8 beneath the structure. A person may not claim reimbursement for a  
9 structure built after January 1, 1998 unless the ground beneath the structure  
10 was tested for contamination before the structure was built. See ss. ATCP  
11 35.04(5) and (6) for more information.
- 12
- 13 • Under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC 136  
14 et. seq.), pesticide sellers who repackage pesticides by delivering them from  
15 bulk storage to customers must do the following things, among others:  
16
  - 17 \* Register the seller's facility as a pesticide producing  
18 establishment.
  - 19 \* File annual pesticide production reports.
  - 20 \* Maintain books and records.
  - 21 \* Provide labeling to purchasers of bulk pesticides.
  - 22 \* Deliver pesticides from bulk storage only to customers.
  - 23 \* Maintain a formal repackaging agreement with the pesticide  
24 product registrant.
- 25
- 26 • Chapter ATCP 32 contains rules for fertilizer bulk storage.
- 27
- 28 • Chapter ILHR 10 contains rules related to the storage of flammable bulk  
29 pesticides.
- 30

31 **SECTION 19.** ATCP 33.01(10), (11), (14) and (15) are repealed.

32 **SECTION 20.** ATCP 33.01(2m), (4), (5), (7) to (9), (12) and (13) are renumbered  
33 (3), (5), (6), (8) to (10), (15) and (16).

34 **SECTION 21.** ATCP 33.01(3), (6) and (16) are renumbered (4), (7) and (19) and  
35 amended to read:

1           ATCP 33.01(4) "Discharge" means a spill, leak, accidental or intentional release, or  
2 other emission of bulk pesticide from a ~~storage container~~, container or appurtenance, and  
3 includes a discharge into secondary containment. ~~It "Discharge"~~ does not include a fully  
4 contained transfer of bulk pesticide which is made pursuant to storage, sale or distribution.

5           (7) "Groundwater" means any waters of the state, ~~as defined in s. 144.01(19), Stats.,~~  
6 occurring in a saturated subsurface geological formation of rock or soil.

7           (19) "Waters of the state" has the meaning ~~specified under s. 144.01(19)~~ given in s.  
8 281.01(18), Stats.

9           **SECTION 22.** ATCP 33.01(11) to (14), (17) and (18) are created to read:

10          (11) "Mini-bulk container" means either of the following:

11          (a) A storage container, designed for ready handling and transport, that holds more  
12 than 55 gallons (208 liters) but not more than 300 gallons (1,135 liters) of liquid pesticide.

13          (b) A container that holds more than 100 pounds (45 kilograms) but not more than  
14 1,000 pounds (454 kilograms) of dry pesticide.

15          (12) "Mobile container" means any storage container, anchored to a vehicle, trailer or  
16 axles, that an operator uses to store liquid bulk pesticide. "Mobile container" includes rail  
17 cars, application equipment and nurse tanks.

18          (13) "Operator" means all of the following persons, and includes their employees and  
19 agents:

1 (a) A person who owns or controls a storage facility, unless both of the following  
2 apply:

- 3 1. The person is not a pesticide manufacturer or distributor.
- 4 2. The person is storing pesticide only for his or her own use.

5 NOTE: A farmer who stores pesticide solely for the farmer's own use is not an  
6 "operator" under par. (a).

7  
8 (b) A pesticide manufacturer or distributor who contracts with another person to store  
9 bulk pesticide for the manufacturer or distributor.

10 NOTE: If a pesticide manufacturer or distributor contracts with a farmer for on-farm  
11 storage of a bulk pesticide owned by the manufacturer or distributor, the  
12 manufacturer or distributor is responsible as an "operator" of that storage  
13 facility under par. (b).

14  
15 (14) "Person" means an individual, corporation, partnership, cooperative association,  
16 limited liability company, trust, or other organization or entity.

17 (17) "Storage container" means a container used to store liquid bulk pesticide at a  
18 storage facility.

19 (18) "Storage facility" means a place where bulk pesticide is held in storage. "Storage  
20 facility" does not include a field or other site at which a mobile container is temporarily  
21 parked while its pesticide contents are unloaded for a person, other than a pesticide  
22 manufacturer or distributor, who owns or controls that site.

23 **SECTION 23.** ATCP 33.02(1) is repealed and recreated to read:

1 (1) GENERAL REQUIREMENTS. (a) Storage containers and appurtenances shall be  
2 constructed, installed and maintained to prevent the discharge of liquid bulk pesticide. (b)  
3 Storage containers and appurtenances shall be constructed of materials that resist corrosion,  
4 puncture and cracking.

5 (c) Materials used to construct or repair storage containers and appurtenances may not  
6 react chemically or electrolytically with stored bulk pesticide in a way that may weaken the  
7 storage container or appurtenance, create a risk of discharge, or adulterate the pesticide.

8 (d) Metals used for storage container valves, fittings or repairs shall be compatible  
9 with other metals in the storage container, so that the combination of metals does not cause or  
10 increase corrosion that may weaken the storage container or its appurtenances, or create a risk  
11 of discharge.

12 (e) Storage containers and appurtenances shall be designed to handle foreseeable  
13 mechanical stresses, including static head and pressure buildup from pumps and compressors.

14 **SECTION 24.** ATCP 33.02(5)(b)(intro.) is amended to read:

15 ATCP 33.02(5)(b)(intro.) A storage container may not be made of ferrous metals,  
16 ~~unless any of the following occur~~ one of the following applies:

17 **SECTION 25.** ATCP 33.02(5)(b)3. is repealed and recreated to read:

18 ATCP 33.02(5)(b)3. The department approves the use of ferrous metals based on  
19 documentation showing that the storage container is used only to store noncorrosive pesticide  
20 labeled for wood preservation.

1           **SECTION 26.** ATCP 33.02(6) to (9) are repealed and recreated to read:

2           ATCP 33.02(6) **ANCHORING STORAGE CONTAINERS.** An operator shall anchor  
3 a storage container, as necessary, to prevent flotation or instability that could occur as a result  
4 of liquid accumulations within a secondary containment structure.

5           **(7) SECURITY.** (a) An operator shall keep a storage container and its appurtenances  
6 in a locked building, or a locked outdoor enclosure under par. (c), unless one of the following  
7 applies:

- 8           1. The operator is present at the storage facility.
- 9           2. The storage container and its appurtenances are empty and have been triple-rinsed.
- 10          3. The storage container is a mobile container whose exterior surfaces are free of  
11 visible pesticide residues, and whose valves are secured according to par. (b).

12          (b) An operator shall lock all valves on an outdoor storage container and its  
13 appurtenances unless one of the following applies:

- 14          1. The operator is present at the storage facility.
- 15          2. The storage container and its appurtenances are empty and have been triple-rinsed.

16          (c) An outdoor enclosure under par. (a) shall be surrounded by a secure wall or fence.  
17 The wall or fence shall be at least 5 feet tall at every point, and shall be free of gaps that  
18 would allow unauthorized persons to enter the enclosure.

19          **(8) FILLING STORAGE CONTAINERS.** An operator may not fill a storage  
20 container to more than 95% of capacity unless one of the following applies:

1 (a) The storage container is constructed or located to ensure constant temperature  
2 control.

3 (b) The storage container is a mini-bulk container and is not filled beyond the designed  
4 maximum capacity indicated by the uppermost calibration on the container.

5 (9) INSPECTION AND MAINTENANCE. (a) An operator shall routinely inspect  
6 and maintain storage facilities, storage containers and appurtenances to minimize the risk of a  
7 discharge. An operator shall inspect valves and other appurtenances for leakage at least  
8 weekly, and shall inspect vents for proper operation at least monthly.

9 (b) Except as provided in par. (c), an operator shall measure and record the liquid  
10 pesticide level in every storage container at least weekly.

11 (c) Paragraph (b) does not apply to a storage container if all of the following apply:

12 1. The storage container is located within a fully enclosed building.

13 2. The storage container is located within a secondary containment structure that  
14 complies with s. ATCP 33.04 and has a concrete liner or is a prefabricated structure.

15 3. The operator visually inspects the storage container for leakage at least weekly.

16 (d) On the same day that an operator inspects, measures or performs maintenance  
17 under this section, the operator shall make a written record of the inspection, measurement or  
18 maintenance. The operator shall keep the record at the storage facility, or at the nearest local  
19 office from which the operator administers the storage facility.

20 **SECTION 27.** ATCP 33.03, 33.04 and 33.06 are repealed and recreated to read:

1           **ATCP 33.03 LOADING AREAS.** (1) SPILL CONTAINMENT REQUIRED. No  
2 person may mix or load a bulk pesticide except over a spill containment surface that complies  
3 with this section.

4           (2) SPILL CONTAINMENT SURFACE; GENERAL. A spill containment surface  
5 under sub. (1) shall comply with all of the following:

6           (a) It shall be designed to catch and contain all reasonably foreseeable spills of  
7 pesticides mixed or loaded over that spill containment surface.

8           (b) It shall be made of asphalt, concrete or other nonabsorbent materials approved by  
9 the department, and shall be durable enough to withstand all foreseeable loading conditions.

10           NOTE: The department will maintain a list of approved paving and lining materials  
11 for various pesticide compounds, and will provide the current list to interested  
12 persons upon request. The department may add approved materials to this list if  
13 the person requesting approval provides the department with information  
14 demonstrating the adequacy of the materials under intended conditions of use.  
15 Persons seeking approval should provide information related to chemical  
16 compatibility, permeability, physical characteristics and durability. A tarpaulin  
17 may be used as a spill containment surface for nonliquid pesticides if it complies  
18 with this section.

19  
20           (c) It shall extend beneath any conveyor used to load or unload pesticides, unless the  
21 conveyor is fully enclosed within a housing that is adequate to contain all spillage from the  
22 conveyor.

23           (3) SPILL CONTAINMENT SURFACE; LIQUID PESTICIDES. (a) A spill  
24 containment surface under sub. (1) shall comply with all of the following if any liquid bulk  
25 pesticide is mixed or loaded over that surface:

1           1. It shall be curbed or sloped to contain spillage, and to prevent liquids from adjacent  
2 surfaces from flowing onto it.

3           2. It shall drain into or form a liquid-tight catch basin that complies with sub. (4).

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

6           (c) A pesticide mixed with a liquid carrier is considered a liquid pesticide under this  
7 subsection. The impregnation of a nonliquid fertilizer with a liquid pesticide does not  
8 constitute the mixing or loading of a liquid pesticide under this subsection.

9           (4) CATCH BASIN. (a) Except as provided under par. (b), the catch basin under  
10 sub. (3)(a)2. shall have an available capacity of at least 1,500 gallons (5,680 liters). To attain  
11 this required capacity, the catch basin may include a sump equipped with an automatically  
12 activated pump that transfers liquids to an above-ground container that complies with s. ATCP  
13 33.02(1) and is located within a secondary containment structure that complies with s. ATCP  
14 33.04.

15           (b) If an operator does not load or unload any storage container having a capacity of  
16 more than 1,000 gallons, the available capacity of the catch basin under sub. (3)(a)2. shall be  
17 at least 125 percent of the capacity of the largest storage container loaded or unloaded at the  
18 storage facility.

19           (5) RECOVERING DISCHARGES. An operator shall promptly recover a pesticide  
20 discharged onto a spill containment surface.



1 (6) **STORING SPILLS AND RINSATE.** A container used to hold liquid pesticide  
2 spills or rinsate shall be located within a secondary containment structure that complies with s.  
3 **ATCP 33.04.** No spilled pesticides or spilled materials containing pesticides may be stored  
4 below ground level.

5 (7) **PREVENTING DAMAGE BY MOVING VEHICLES.** Storage containers and  
6 appurtenances, including pipes, shall be protected against reasonably foreseeable risks of  
7 damage by trucks and other moving vehicles engaged in loading or unloading bulk pesticides.

8 **ATCP 33.04 SECONDARY CONTAINMENT; LIQUID PESTICIDE.** (1)  
9 **GENERAL REQUIREMENTS.** Except as provided in sub. (9), storage containers shall be  
10 enclosed in a secondary containment structure that is adequate, in the event of a discharge, to  
11 prevent the movement of liquid pesticide to groundwater or to other waters of the state. A  
12 secondary containment structure shall consist of a wall and liner that comply with subs. (4)  
13 and (5), or a prefabricated structure that complies with sub. (6).

14 (2) **CAPACITY.** The capacity of a secondary containment structure shall equal or  
15 exceed the sum of all the following:

16 (a) The greatest volume of liquid that could be discharged from the largest storage  
17 container within the secondary containment structure.

18 (b) Twenty-five percent of the capacity of the largest storage container located within  
19 the secondary containment structure if that structure is not fully covered by a roof, or 10% of

1 the capacity of the largest storage container located within the secondary containment structure  
2 if that structure is fully covered by a roof.

3 (c) The total volume of discharged liquid that would be displaced by the submerged  
4 portions of all other storage containers, fixtures and materials located within the secondary  
5 containment structure if the structure were filled to capacity with discharged liquid.

6 (3) STORAGE WITH OTHER COMMODITIES. No commodity, other than liquid  
7 pesticide, pesticide diluent, empty pesticide containers, or pesticide discharges recovered  
8 under sub. (8) and s. ATCP 33.03(3), may be stored within a liquid pesticide secondary  
9 containment structure.

10 NOTE: A liquid pesticide secondary containment structure may be located within or  
11 may share a wall with a liquid fertilizer secondary containment structure  
12 constructed under s. ATCP 32.04, provided that the capacity of the pesticide  
13 secondary containment structure is adequate to contain the full amount of any  
14 bulk liquid pesticide discharge.

15  
16 (4) WALLS. The walls of a secondary containment structure shall be constructed of  
17 steel or concrete, except that solid masonry block may be used for secondary containment of  
18 minibulk containers inside a building. Walls shall be designed to withstand a full hydrostatic  
19 head of any discharged liquid. Cracks and seams shall be sealed to prevent leakage. Walls  
20 may not extend more than 6 feet (1.8 meters) above interior grade.

21 (5) LINER. (a) General requirement. The base of a secondary containment structure  
22 shall be lined with one of the following:

23 1. An asphalt or concrete liner that complies with par. (b).

1           2. A synthetic liner that complies with par. (c) and does not use bentonite or other clay  
2 material as a hydraulic barrier.

3           (b) Asphalt and concrete liners. Asphalt and concrete liners shall be designed  
4 according to good engineering practices to withstand any foreseeable loading conditions,  
5 including a full hydrostatic head of discharged liquid. Cracks and seams shall be sealed to  
6 prevent leakage. Asphalt liners shall be sealed and well maintained to prevent deterioration.

7           (c) Synthetic liners. Synthetic liners shall be approved by the department. The  
8 department may approve a synthetic liner if all of the following apply:

9           1. The liner is at least 30 mils (0.8 millimeters) thick.

10          2. The liner manufacturer certifies that the liner is chemically compatible with all  
11 pesticides that may be stored within the secondary containment structure.

12          3. The liner manufacturer provides a written estimate of the liner's effective life. The  
13 operator may not use the liner beyond that estimated life except with the department's written  
14 approval.

15          4. The liner is protected by a 6 inch (15 centimeter) protection layer below the liner,  
16 and a 12 inch (30 centimeter) protection layer above the liner. Both protection layers shall be  
17 composed of soil, sand, or smooth gravel less than 1/2 inch in diameter. The protection layers  
18 shall be free of large rocks, angular stones, sticks or other materials that may puncture the  
19 liner.

1           5. A qualified representative of the liner manufacturer is present when the liner is  
2 installed, and supervises the installation.

3           6. Liner seams constructed at the installation site are tested, and repaired as necessary,  
4 according to the manufacturer's recommendations.

5           (6) PREFABRICATED STRUCTURES. A prefabricated secondary containment  
6 structure shall be composed of a rigid prefabricated basin having a base and walls constructed  
7 of steel or synthetic materials that resist corrosion, puncture and cracking. Materials used in  
8 the structure shall be chemically compatible with all of the pesticides that may be stored within  
9 the structure. An operator shall obtain a written confirmation of compatibility from the basin  
10 manufacturer, and shall keep that confirmation on file at the storage facility or at the nearest  
11 local office from which the operator administers the storage facility. The prefabricated  
12 structure and the foundation on which it is placed shall be designed and installed to withstand  
13 all foreseeable loading conditions, including the tank load and a full hydrostatic head of any  
14 discharged liquid. If multiple basins are connected to provide the capacity required under sub.  
15 (2), the basins shall be connected in a manner that ensures an unrestricted transfer of  
16 discharged liquid between basins.

17           (7) INSPECTION AND MAINTENANCE. (a) General. An operator shall inspect  
18 every secondary containment structure at least once every 12 months, and shall maintain the  
19 structure to comply with this section. The operator shall make a written record of every  
20 inspection and maintenance action on the day of the inspection or maintenance. The operator

1 shall keep the record at the storage facility or at the nearest local office from which the  
2 operator administers the storage facility.

3 (b) Accumulated precipitation. An operator may not allow precipitation to accumulate  
4 in a secondary containment structure to the point where the accumulation may tend to do any  
5 of the following:

- 6 1. Impair the adequacy of the structure for discharge containment purposes.
- 7 2. Cause or increase the corrosion of storage containers or appurtenances.
- 8 3. Impair the stability of storage containers.

9 (8) DISCHARGE RECOVERY. An operator shall, to the maximum extent feasible,  
10 recover all discharges that occur at a storage facility. An operator shall keep pumps and  
11 recovery containers readily available to recover discharges, as provided in s. ATCP 33.09(3).

12 (9) EXEMPTIONS. The secondary containment requirements under this section do  
13 not apply to any of the following:

14 (a) A mobile container stored for less than 15 days at a storage facility that has a spill  
15 containment surface and catch basin that comply with s. ATCP 33.03(2) to (4).

16 (b) An empty and cleaned storage container. For mini-bulk containers that cannot be  
17 opened, the operator shall clean the outside of the container before storing it outside a  
18 secondary containment structure.

19 (c) An empty railcar.

1 (d) An abandoned storage container for which the operator has taken the actions  
2 required under s. ATCP 33.06.

3 **ATCP 33.06 ABANDONED CONTAINERS.** (1) GENERAL. A storage container  
4 or loading area catch basin is abandoned, for purposes of this section, if it is out of service for  
5 more than 6 months because of a weakness or leak, or is out of service for more than 2 years  
6 for any reason.

7 (2) UNDERGROUND CONTAINERS. (a) An operator shall do one of the following  
8 to every abandoned underground storage container or catch basin that the operator owns or  
9 controls:

- 10 1. Thoroughly clean it and remove it from the ground.  
11 2. Thoroughly clean it, sever and seal all its connections, and fill it with an inert solid.

12 (b) An operator shall keep a permanent record of every abandoned underground  
13 storage container and catch basin that the operator owns or controls. The record shall include  
14 all of the following:

- 15 1. The size and location of container or catch basin.  
16 2. The actions which the operator has taken under par. (a).

17 (3) ABOVE-GROUND CONTAINERS. An operator shall thoroughly clean every  
18 abandoned above-ground storage container, catch basin or secondary containment structure  
19 that the operator owns or controls, and shall sever and seal all of its valves and connections.

1 The operator shall leave open all hatches on the container, basin or structure, but shall screen  
2 the hatches to prevent access by wildlife or unauthorized persons.

3 **SECTION 28.** ATCP 33.06(note) is created to read:

4 NOTE: Hatches must be left open for venting and to maintain container integrity.

5 **SECTION 29.** ATCP 33.07, 33.09, 33.09(note), 33.10 and 33.10(note) are repealed  
6 and recreated to read:

7 **ATCP 33.07 RECORDKEEPING; LIQUID PESTICIDE STORAGE.** (1)

8 **RECORDS REQUIRED.** An operator storing liquid bulk pesticide shall make and keep all of  
9 the following records:

10 (a) A record of every discharge from the storage facility, including the date and time  
11 of discharge, the type of liquid bulk pesticide discharged, the cause of the discharge, any  
12 action taken to control or recover the discharge, and the method used to dispose of any  
13 recovered discharge. On the day that the operator discovers the discharge, the operator shall  
14 record all of the required information that is available to the operator. Whenever the operator  
15 acquires additional information or takes action to control, recover, use or dispose of the  
16 discharge, the operator shall immediately update the record to include that additional  
17 information or action.

18 (b) Inspection and maintenance records required under s. ATCP 33.02(9)(a) and  
19 33.04(7)(a).

1 (c) Records of liquid pesticide levels in storage containers, as required under s. ATCP  
2 33.02(9)(b).

3 (d) An annual inventory reconciliation, prepared by October 30 of each year, which  
4 does all of the following:

5 1. Compares the amount of liquid pesticide in inventory on September 30 of that  
6 calendar year to the amount in inventory on October 1 of the preceding calendar year.

7 2. Accounts for all liquid pesticide added to or removed from inventory during the  
8 intervening one year period, based on the operator's purchase, sales and production records.

9 3. Identifies any unexplained loss of inventory.

10 (e) Manufacturers' compatibility statements required under ss. ATCP 33.04(5)(c) and  
11 (6).

12 (f) Records of abandoned underground storage containers, catch basins and secondary  
13 containment facilities, as required under s. ATCP 33.06(2)(b).

14 (2) RECORD RETENTION. An operator shall keep the records required under sub.

15 (1) for at least 3 years, except that:

16 (a) An operator shall keep records under sub. (1)(a) for at least 5 years.

17 (b) An operator shall keep permanent records under sub. (1)(e) and (f).

18 (3) RECORD LOCATION; INSPECTION AND COPYING. An operator shall keep  
19 the records required under sub. (1) at the storage facility, or at the nearest local office from



1 which the operator administers that facility. The operator shall make the records available to  
2 the department for inspection and copying upon request.

3 **ATCP 33.09 PREPARING TO CONTROL AND RECOVER DISCHARGES.**

4 (1) DISCHARGE RESPONSE PLAN. The operator of a storage facility shall prepare a  
5 written discharge response plan for that storage facility. The operator shall:

6 (a) Keep the plan current at all times.

7 (b) Keep a copy of the plan readily available at the storage facility and at the nearest  
8 local office from which the operator administers the storage facility.

9 (c) Make the plan available to the department for inspection and copying upon request.

10 (d) Notify the local fire department, police department and emergency planning  
11 committee of the plan, and any revisions to the plan, and provide them with copies upon  
12 request.

13 NOTE: Federal law under 42 USC 11002 and 11003 also requires response plans for  
14 certain chemicals. A single response plan may satisfy requirements under sub.  
15 (1) and federal law.

16  
17 (2) PLAN CONTENTS. A discharge response plan under sub. (1) shall include all of  
18 the following:

19 (a) The identity and telephone number of each person or agency to be contacted in the  
20 event of a discharge, including the person responsible for the stored pesticide.

21 (b) For each pesticide stored at the facility, the pesticide labeling required under s.  
22 94.70, Stats.

1 (c) The location of every storage container at the facility, and the product name of the  
2 bulk pesticide stored in that container. A plan need not refer to mini-bulk containers  
3 individually, provided that it discloses the collective location and contents of mini-bulk  
4 containers.

5 (d) Procedures for controlling, recovering and responding to a discharge of bulk  
6 pesticide at the facility.

7 (e) Procedures for using or disposing of a recovered discharge.

8 NOTE: The department can help an operator identify options for using, treating or  
9 disposing of recovered pesticides.

10  
11 (3) EQUIPMENT AND SUPPLIES. (a) An operator shall have all of the following  
12 readily available for any emergency action which may be needed in response to a pesticide  
13 discharge:

- 14 1. Pumps, recovery containers, and personal protective equipment and clothing.
- 15 2. Persons capable of deploying and operating the equipment under par. (a).

16 (b) An operator may arrange with a local fire department or other persons to provide  
17 the equipment and personnel required under par. (a) if the operator makes those arrangements  
18 in advance as part of the operator's discharge response plan.

19 (c) The operator of a storage facility shall keep available, at that storage facility,  
20 absorbent materials that may be used to control and clean up small discharges of liquid  
21 pesticides.

1 (d) An operator shall promptly decontaminate equipment and supplies used to control  
2 and recover pesticide discharges, before using them again.

3 (4) TRAINING. Persons employed at a storage facility shall be trained in discharge  
4 response procedures, pursuant to the discharge response plan.

5 (5) REPORTING. The operator of a storage facility shall immediately notify the state  
6 of Wisconsin department of natural resources whenever a reportable amount of a hazardous  
7 material under ch. NR 706 is discharged at that storage facility.

8 NOTE: See s. 292.11(2)(a), Stats. An operator should also report pesticide discharges  
9 to the department of agriculture, trade and consumer protection at (608) 224-  
10 4518.

11  
12 **ATCP 33.10 LABELING STORAGE CONTAINERS.** (1) LABEL REQUIRED.

13 Every storage container shall bear a legible label that complies with the federal insecticide,  
14 fungicide and rodenticide act as amended (7 USC 136 et seq.) and regulations issued under  
15 that act. The label shall include the identification number of the pesticide producing  
16 establishment from which the pesticide in that storage container originated. Pesticides sold in  
17 bulk shall be accompanied by labeling showing the net contents of the bulk sale container.

18 NOTE: A facility at which an operator repackages a pesticide from a storage container  
19 to mini-bulk or other containers is considered a "pesticide producing  
20 establishment" under the federal act. The operator of that facility must obtain a  
21 pesticide producing establishment number from the federal environmental  
22 protection agency, and must include that establishment number on every mini-  
23 bulk or other container filled at that facility.

24  
25 (2) LABEL PLACEMENT. The label under sub. (1) shall be visible from outside the  
26 secondary containment structure in which the storage container is located. The operator shall

1 keep a copy of the label, and any other labeling provided by the pesticide product registrant,  
2 with each copy of the discharge response plan required under s. ATCP 33.09(1).

3 NOTE: With each sale from a bulk pesticide storage container, the operator must  
4 supply the customer with the pesticide labeling required under ss. 94.676 and  
5 94.70, Stats.  
6

7 SECTION 30. ATCP 33.11 is amended to read:  
8

9 **ATCP 33.11 EXEMPTIONS.** The department may exempt any person from a  
10 requirement under this chapter ~~if compliance is not technically feasible, but only~~ if the  
11 department finds that alternative measures provide substantially similar protection for the  
12 waters of the state. A person requesting an exemption shall provide the department with  
13 adequate information to show that alternative measures provide substantially similar protection  
14 for the waters of the state.

15 SECTION 31. ATCP 33.12 is repealed.

16 SECTION 32. ATCP 35.01(1), (3) and (6) are amended to read:

17 ATCP 35.01(1) "Active groundwater remediation" means active physical, biological  
18 or chemical manipulation of groundwater, or of the rock or soil media in which groundwater is  
19 situated, for the purpose of ~~maintaining or improving groundwater quality reducing the amount~~  
20 ~~of agricultural chemical contamination or minimizing the spread of contamination.~~ "Active  
21 groundwater remediation" includes treatment by means of aeration, bio-augmentation, planned  
22 nutrient loading or pump-and-treat methods.

1 (3) "Agricultural chemical" means a substance that is a fertilizer or a nonhousehold  
2 pesticide, and that is a hazardous substance as defined in s. ~~144.01(4m)~~ 292.01(5), Stats.

3 (6) "Approved workplan" means a workplan for corrective action that is approved by  
4 the department under s. ~~ATCP 35.18~~ 35.18(1)(a).

5 **SECTION 33.** ATCP 35.01(7m) is created to read:

6 ATCP 35.01(7m) "Contiguous land" means land included in the same parcel or an  
7 adjacent parcel. "Contiguous land" includes parcels that are separated only by a road,  
8 railway, or utility right-of-way, or by a government-owned land corridor or waterway not  
9 wider than 66 feet.

10 **SECTION 34.** ATCP 35.01(9) is repealed and recreated to read:

11 ATCP 35.01(9) "Contract services" means services provided by a contractor as part of  
12 a corrective action. "Contract services" includes all of the following services:

13 (a) Excavating.

14 (b) Trucking.

15 (c) Landspreading.

16 (d) Waste disposal services.

17 (e) Drilling, including at-depth soil sampling and well installation.

18 (f) Laboratory services.

19 (g) Professional consulting services.

20 (h) General contractor services.

1 (i) Other services provided by contractors.

2 **SECTION 35.** ATCP 35.01(10), (14), (14)(note) and (15) are amended to read:

3 ATCP 35.01(10) "Corrective action" means an action, consisting of one or more  
4 corrective measures under sub. (12), that is taken or ordered in response to a discharge in this  
5 state, and that is necessary to restore the environment to the extent practicable and to minimize  
6 the harmful effects of the discharge to the air, lands or waters of this state. "Corrective action"  
7 includes an action taken or ordered by the department of natural resources under s. 144.76  
8 292.11(7), Stats., in response to a discharge, but does not include an action ordered by the  
9 department of natural resources under s. ~~144.73 (1) or 144.735 (2)~~ 291.37(2) or 291.95, Stats.  
10 "Corrective action" does not include any action taken, or ordered required to be completed,  
11 taken before January 1, 1989.

12 (14) "Discharge" means the discharge, as defined in s. ~~144.76 (1) (a)~~ 292.01(3),  
13 Stats., of an agricultural chemical.

14 NOTE: Under s. ~~144.76 (1) (a)~~ 292.01(3), Stats., "discharge" includes, but is not  
15 limited to, spilling, leaking, pumping, pouring, emptying, emitting or dumping.  
16

17 (15) "Discharge site" means the area affected by one or more discharges ~~that are the~~  
18 ~~subject of a corrective action. If a discharge occurs at a site which a commercial application~~  
19 ~~business or a distributor of agricultural chemicals operates to store, mix or load agricultural~~  
20 ~~chemicals,~~ "Discharge site" includes all contiguous land that is owned, leased or  
21 controlled by ~~that commercial application business or distributor of agricultural chemicals~~ the

1 responsible person at the time the discharge occurs, plus any other area affected by the  
2 discharge.

3 **SECTION 36.** ATCP 35.01(19) is repealed and recreated to read:

4 ATCP 35.01(19) "Household pesticide" means a pesticide that is any of the following:

5 (a) A sanitizer.

6 (b) A disinfectant.

7 (c) A germicide.

8 (d) An insect repellent that is applied to the human body or to clothing.

9 (e) A pesticide that is used exclusively for the treatment of household pets.

10 (f) A pesticide product that is labeled exclusively for household, lawn or garden use if  
11 the product either is sold in ready-to-use form or is sold exclusively in container sizes of less  
12 than one gallon.

13 (g) A solid or liquid pesticide product that is used exclusively for the treatment of  
14 swimming pools, spas or hot tubs.

15 **SECTION 37.** ATCP 35.01(20) is amended to read:

16 ATCP 35.01(20) "Indirect cost" means any general cost of doing business that cannot  
17 be directly and exclusively attributed to a corrective action. "Indirect cost" includes costs for  
18 equipment, supplies, services, real estate, structures and improvements, overhead, managerial  
19 and staff support, staff training, taxes, insurance, financing and other items which are not

1 directly and exclusively attributable to a corrective action or whose use is not limited to the  
2 corrective action.

3 **SECTION 38.** ATCP 35.01(20m), (22m) and (22r) are created to read:

4 ATCP 35.01(20m) "Industrial pesticide" means any of the following pesticides that is  
5 not a household pesticide:

6 (a) A pesticide that is solely labeled for use on wood and contains pentachlorophenol,  
7 coal tar creosote or inorganic arsenical wood preservatives.

8 (b) A pesticide that is labeled for use in controlling algae, fungi, bacteria, other  
9 microscopic organisms or mollusks in or on one or more of the following, and is labeled for  
10 no other use except a use described in sub. (19)(f) or (g):

11 1. Textiles, paper, leather, plastic, vinyl or other synthetic materials, metal or rubber.

12 2. Paints, varnishes, other coating products, lubricants or fuels.

13 3. Commercial, construction, manufacturing or industrial fluids, including adhesives,  
14 additives and pigments.

15 4. Commercial, construction, manufacturing or industrial processes, equipment,  
16 devices or containers, other than those used in the production or storage of human food or  
17 animal feed.

18 5. Air washing, cooling or heat transfer systems.

19 6. Medical equipment.

20 7. Drinking water or wastewater systems.



1 (22m) "Landspread" means to spread or deposit on land, other than in a landfill  
2 approved by the department of natural resources under s. 289.31, Stats., soil or water  
3 removed from a discharge site.

4 (22r) "Nonhousehold pesticide" means a pesticide that is not a household pesticide or  
5 industrial pesticide.

6 **SECTION 39.** ATCP 35.02(1)(e)1. and 2. are amended to read:

7 ATCP 35.02(1)(e)1. Applicable department rules under chs. ATCP 29 to 33 and this  
8 chapter.

9 (e)2. Applicable rules of the department of natural resources under chs. NR 700, 706,  
10 708 and 712 to 726.

11 **SECTION 40.** ATCP 35.02(2)(b) and (c) are amended to read:

12 ATCP 35.02(2)(b) If the recipient of a summary order under par. (a) requests a  
13 hearing on that order, the department shall hold an informal hearing within 10 days after the  
14 department receives the hearing request unless the ~~order~~ recipient of the order consents to a  
15 later date for the informal hearing. If a contested matter is not resolved at the informal  
16 hearing, the ~~order~~ recipient of the order is entitled to a class 2 contested case hearing under  
17 ch. 227, Stats., and ch. ATCP 1.

18 (c) The department is not required to stay a summary order issued under par. (a)  
19 pending the outcome of a hearing under par. (b). If, after a hearing under par. (b), the  
20 department determines that a summary order under par. (a) was not justified, the department

1 shall reimburse the ~~order~~ recipient of the order for reasonable corrective action costs  
2 necessarily incurred by the ~~order~~ recipient to comply with the unjustified order.

3 **SECTION 41. ATCP 35.03 is created to read:**

4 **ATCP 35.03 LANDSPREADING.** (1) SOIL. No person may landspread soil that is  
5 removed from a discharge site, and contains an agricultural chemical, unless the department  
6 issues to that person a permit authorizing that landspreading. Landspreading shall comply  
7 with conditions that the department specifies in the permit.

8 NOTE: Landspreading is a potential method for destroying or recycling agricultural  
9 chemicals removed from a discharge site as part of a corrective action. The  
10 department may approve landspreading which applies agricultural chemicals at  
11 rates that are comparable to normal agronomic practice.  
12

13 (2) WATER. No person may landspread water that is removed from a discharge site,  
14 and is contaminated with an agricultural chemical, unless all of the following apply:

15 (a) The department issues to that person a permit authorizing that landspreading.

16 (b) The department of natural resources issues to that person a pollution discharge  
17 elimination system permit, if required under ch. 283, Stats., which authorizes that  
18 landspreading.

19 (c) The landspreading complies with conditions specified by the department and the  
20 department of natural resources under pars. (a) and (b).

21 (3) PERMIT APPLICATION. A person applying for a landspreading permit under  
22 sub. (1) or (2)(a) shall apply on a form prescribed by the department. The application shall  
23 include all of the following:

1 (a) The name of the applicant and any other persons involved in the landspreading.

2 (b) The source and quantity of soil or water that will be spread on land.

3 (c) The kinds and amounts of agricultural chemical contaminants present in the soil or  
4 water under par. (b).

5 (d) The proposed application rate for each agricultural chemical under par. (c).

6 (e) The locations at which the soil or water will be spread on land.

7 (f) Other relevant information which the department may require.

8 (4) ACTION ON PERMIT APPLICATION. The department may approve  
9 landspreading which applies agricultural chemicals at rates that are comparable to those used  
10 in normal agronomic practice. The department shall grant or deny a permit application under  
11 sub. (3) within 30 days after the department receives a complete application.

12 (5) PERMIT CONDITIONS. The department may specify conditions which apply to a  
13 permit issued under sub. (1) or (2)(a), including any applicable requirements under chs. 94,  
14 281 to 285 and 289 to 299, Stats. The department shall specify the conditions in writing, as  
15 part of the permit.

16 (6) REPORT. Within 30 days after a permit holder landspreads soil or water pursuant  
17 to a department permit under sub. (1) or (2)(a), the permit holder shall provide the department  
18 with documentation showing all of the following:

19 (a) That the owner of land on which the soil or water was landspread authorized the  
20 landspreading.

1 (b) That the landowner under par. (a), and any other person planning to grow crops on  
2 the land within 9 months after the landspreading occurs, were informed of the kinds and  
3 amounts of agricultural chemicals applied as a result of the landspreading, and agreed to take  
4 account of those applications when considering the need for and amount of future applications  
5 of agricultural chemicals to that land.

6 **SECTION 42.** ATCP 35.04(5) is amended to read:

7 ATCP 35.04(5) Costs to remove a spill containment structure that was installed  
8 ~~constructed before January 1, 1998,~~ to comply with s. ATCP ~~29.151, 30.26~~ 29.45, 30.36,  
9 32.03, 32.04, 33.03 or 33.04 if the department agrees that removal is was necessary to  
10 complete, in the most cost-effective way, a corrective action ordered by the department or the  
11 department of natural resources. The cost to remove a containment structure under this  
12 paragraph may include its depreciated value, calculated as construction cost less depreciation  
13 claimed to date for tax purposes.

14 **SECTION 43.** ATCP 35.04(5)(note) and (6) are renumbered ATCP 35.04(note) and  
15 (7).

16 **SECTION 44.** ATCP 35.04(6) is created to read:

17 ATCP 35.04(6) Costs to remove a spill containment structure, including its  
18 construction cost less depreciation claimed to date for tax purposes, if all the following apply:

19 (a) The structure was constructed after January 1, 1998, to comply with ATCP 29.45,  
20 30.36, 32.03, 32.04, 33.03 or 33.04.

1 (b) Before the structure was constructed, the department determined on the basis of  
2 credible laboratory tests that the construction site was free of agricultural chemical  
3 contamination.

4 (c) The department subsequently required the responsible person to remove the  
5 structure as part of a corrective action ordered by the department or the department of natural  
6 resources.

7 **SECTION 45.** ATCP 35.06(1) is repealed and recreated to read:

8 **ATCP 35.06(1) APPLICATION REQUIRED.** A responsible person who seeks  
9 reimbursement of corrective action costs shall complete and submit to the department all of the  
10 following:

11 (a) An "application cover sheet" containing all of the following:

- 12 1. The responsible person's name and address.
- 13 2. The name and address of the person directing the corrective action on behalf of the  
14 responsible person, if other than the responsible person.
- 15 3. A statement indicating whether the responsible person has applied or will apply to  
16 another government agency for reimbursement of corrective action costs incurred for the same  
17 discharge site.
- 18 4. Other relevant information requested by the department.

19 (b) A "multiple responsible persons form" containing all of the following:

1           1. A certification that the responsible person has made a reasonable effort to notify  
2 other responsible persons as required under s. ATCP 35.20(2).

3           2. Other relevant information requested by the department.

4           (c) A "total reimbursement costs form" containing all of the following:

5           1. The total eligible corrective action costs for which the responsible person seeks  
6 reimbursement from the department.

7           2. Other relevant information requested by the department.

8           (d) An "insurance information form" containing all of the following:

9           1. A statement indicating whether any portion of the corrective action costs for which  
10 the responsible person seeks reimbursement may be covered by insurance, or a statement from  
11 the responsible person's insurance company stating that the insurance company has denied the  
12 responsible person's claim for reimbursement of the corrective action costs.

13           2. Other relevant information requested by the department.

14           (e) A map showing the town, range, section and quarter-quarter section location of the  
15 discharge site. If the agricultural chemical was discharged while being transported from a site  
16 owned or controlled by a person who owned or controlled the agricultural chemical at the time  
17 of the discharge, the application shall include a second map showing the town, range, section  
18 and quarter-quarter section location of the site from which the agricultural chemical was being  
19 transported.

1 (f) An accurate legal description of the land parcel on which the discharge site is  
2 located. If the agricultural chemical was discharged while being transported from a site owned  
3 or controlled by a person who owned or controlled the agricultural chemical at the time of the  
4 discharge, the application shall also include an accurate legal description of the land parcel on  
5 which that site is located. A parcel description under this paragraph shall correspond to the  
6 most recent parcel description filed with the register of deeds in the county where the land  
7 parcel is located.

8 (g) A summary statement identifying each eligible corrective action cost for which the  
9 applicant seeks reimbursement from the department. The statement shall include each eligible  
10 corrective action cost, paid by the applicant prior to the date of the reimbursement application,  
11 for which the applicant seeks reimbursement. The summary statement shall allocate each cost  
12 to one of the following categories:

- 13 1. Soil investigation.
- 14 2. Soil remediation.
- 15 3. Laboratory and other analysis.
- 16 4. Groundwater investigation.
- 17 5. Groundwater remediation.
- 18 6. Miscellaneous.

19 NOTE: Under s. ATCP 35.08(5)(b), if any person applies for reimbursement of an  
20 ineligible cost, the department may deduct twice the amount of that cost from  
21 that person's reimbursement claim if the responsible person knew or should  
22 have known that the cost was not eligible. If a responsible person is not certain  
23 whether a corrective action cost is eligible for reimbursement under this

1 chapter, the responsible person may contact the department for a preliminary  
2 opinion under s. ATCP 35.08(1).

3  
4 (h) Invoices or other information documenting each of the costs under par. (g).

5 Documentation shall identify the nature of the materials or services provided, the amount  
6 charged for the materials or services, the identity of the provider, and the dates on which the  
7 materials or services were provided.

8 (i) Canceled checks or other information documenting that the applicant has paid all of  
9 the costs under par. (g).

10 (j) For each cost item under par. (g), a summary of all the following:

11 1. Every bid required under s. ATCP 35.16(2)(a), including every accepted and  
12 rejected bid. For each bid, the summary shall indicate the name of the contractor and the  
13 amount of the bid.

14 2. Every cost estimate required under s. ATCP 35.16(2)(b)3., including the name of  
15 the contractor and the amount of the cost estimate.

16 3. Every authorization required under s. ATCP 35.16(2)(b)5., including the name of  
17 the contractor and the amount of the authorization.

18 (k) A spreadsheet that identifies and matches each invoiced cost in par. (h) with the  
19 documentation under pars. (i) and (j) supporting that invoiced cost.

20 (L) A substitute W-9 tax form.

21 (m) Other relevant information required by the department.

22  
23 NOTE: To obtain application materials, contact the Department of Agriculture, Trade  
24 & Consumer Protection, Agricultural Resource Management Division, P.O.



1 Box 8911, Madison, WI 53708. The department will provide application  
2 materials, including illustrative examples and all of the forms required under  
3 pars. (a) to (d) and (L). Reimbursement paid to a responsible person under this  
4 chapter may be reportable, for tax purposes, as income received by that person.  
5

6 **SECTION 46.** ATCP 35.06(4) is repealed and recreated to read:

7 **ATCP 35.06(4) FAILURE TO SEEK REIMBURSEMENT IN PRIOR**

8 **APPLICATION.** A responsible person may not apply for reimbursement of eligible corrective  
9 action costs which the responsible person paid before making a prior reimbursement  
10 application to the department, unless those costs were not eligible for reimbursement under  
11 this chapter at the time of that prior application.

12 **SECTION 47.** ATCP 35.08(1) and (5)(b) are amended to read:

13 **ATCP 35.08(1) PRELIMINARY OPINION.** ~~Before or after the department receives~~  
14 ~~an application under s. ATCP 35.06, the~~ The department may issue a preliminary opinion on  
15 whether an applicant is eligible for reimbursement of corrective action costs. The preliminary  
16 opinion is not binding on the department.

17 (5)(b) ~~If, after consulting with the agricultural chemical cleanup council, the~~  
18 department finds that any portion of an applicant's reimbursement claim is ineligible, and that  
19 the applicant knew or should have known that it was ineligible, the department shall deduct  
20 twice the amount of the ineligible claim from the applicant's total claim. Deductions under  
21 this paragraph may not exceed the total amount of the applicant's claim. The department may  
22 not make a deduction under this paragraph from a reimbursement claim awarded before July 1,

1 1999 unless the agricultural chemical cleanup council adopts a motion approving the  
2 deduction.

3 SECTION 48. ATCP 35.08(5)(b)(note) is amended to read:

4 NOTE: The department will invoke sub. (5)(b) in cases where a claim is clearly  
5 ineligible, either because it is clearly prohibited under s. ATCP 35.14 or  
6 because there is no plausible basis for claiming reimbursement under this  
7 chapter. Applicants In order to protect themselves against a double deduction  
8 under sub. (5)(b), applicants may discuss questionable items with the  
9 department before submitting a claim.

10  
11 SECTION 49. ATCP 35.10(1) to (4), (6) and (6)(note) are amended to read:

12 ATCP 35.10(1) The responsible person files with the department, by October 14, 2000  
13 or within 3 years after incurring the corrective action costs, whichever is later, a  
14 reimbursement application that complies with s. ATCP 35.06.

15 (2) The responsible person complies with every corrective action order issued by the  
16 department under s. ATCP 35.02 or the department of natural resources under s. ~~144.76 (7)~~  
17 ~~(e)~~ 292.11(7)(c), Stats.

18 (3) The responsible person, upon discovering the discharge, promptly reports the  
19 discharge to the department or, if the responsible person is required to report the discharge  
20 under s. ~~144.76 (2)~~ 292.11 (2), Stats., to the department of natural resources.

21 (4) If the responsible person is a commercial application business, the responsible  
22 person is in compliance, at the time of the discharge, with s. ~~ATCP-29.11 (1)~~ 29.20.

1 (6) The corrective action complies with applicable requirements under chs. ~~144 and~~  
2 ~~147 281 to 285 and 289 to 299~~, Stats., this chapter, chs. ATCP 29 to 33, and chs. NR 700,  
3 ~~706~~, 708 and 712 to 726.

4 NOTE: For corrective actions under this chapter, the department is authorized to  
5 review compliance with chs. NR 700, ~~706~~, 708, and 712 to 726, and to grant  
6 required approvals and variances under those chapters on behalf of the  
7 department of natural resources.  
8

9 SECTION 50. ATCP 35.12(1) to (3), (6)(a) to (c), (8) and (10) are amended to read:

10 ATCP 35.12(1) Taken in response to a discharge that is an intentional use of an  
11 agricultural chemical for an agricultural purpose, unless the corrective action is ordered by the  
12 department under s. ATCP 35.02 or by the department of natural resources under s. ~~144.76~~  
13 ~~(7)(e) 292.11(7)(c)~~, Stats. An intentional use of an agricultural chemical includes an  
14 application of that chemical, but does not include handling, mixing, loading or disposal that is  
15 incidental to an application.

16 (2) Taken by the department of natural resources under s. ~~144.442 (4), (6) or (8)~~  
17 ~~292.31(1), (3) or (7)~~, Stats.

18 (3) Taken by the department of natural resources under s. ~~144.76 (7)(a) 292.11(7)(a)~~,  
19 Stats., because the applicant failed or refused to respond adequately to a discharge.

20 (6)(a) A facility required to be licensed under s. ~~144.44 (4) 289.31~~, Stats.

21 (6)(b) A facility that would be required to be licensed under s. ~~144.44 (4) 289.31~~,

22 Stats., except that the department of natural resources has issued a specific exemption under s.

1 ~~144.44 (7) 289.43~~, Stats., or rules promulgated under s. ~~144.435 (1) or (2) 289.05(1) or (2)~~,  
2 Stats.

3 (6)(c) A closed or abandoned solid or hazardous waste disposal facility that, if  
4 operating today, would require a license under s. ~~144.44 (4) 289.31~~, Stats., or a specific  
5 license exemption under s. ~~144.435 (1) or (2) 289.05(1) or (2)~~, Stats.

6 (8) Taken in response to a discharge caused by ~~that responsible person's~~ an intentional  
7 or grossly negligent violation of law committed by the responsible person or the responsible  
8 person's agent, including an intentional or grossly negligent violation of ss. 94.645, 94.67 to  
9 94.71, 94.73 or ~~144.76 292.11~~, Stats., or of any rule or order adopted under those sections.

10 (10) Taken without a reasonable prospect of success, ~~or without any reasonable~~  
11 ~~prospect of~~ or environmental benefit.

12 **SECTION 51.** ATCP 35.14(2)(note) is created to read:

13 NOTE: An example of a reasonable cost allocation formula may be obtained from the  
14 Department of Agriculture, Trade & Consumer Protection, Agricultural  
15 Resource Management Division, P.O. Box 8911, Madison WI 53708  
16

17 **SECTION 52.** ATCP 35.14(3)(intro.) is amended to read:

18 ATCP 35.14(3)(intro.) A responsible person's indirect costs, ~~including indirect costs~~  
19 ~~for equipment, supplies or services~~. This does not prohibit the department from reimbursing  
20 any of the following:

21 **SECTION 53.** ATCP 35.14(3)(c) is created to read:

1           ATCP 35.14(3)(c) Costs for equipment owned by the responsible person and used  
2 during a corrective action for excavating, trucking or landspreading, provided that all of the  
3 following apply:

4           1. The equipment is reasonably sized and designed to perform the corrective action.

5           2. The hours or units of equipment use are reasonable and necessary for the task  
6 performed.

7           3. The equipment costs are determined according to a reasonable cost allocation  
8 formula.

9           4. The equipment costs do not exceed reasonable rental costs for equivalent  
10 equipment, including any operator costs.

11           **SECTION 54.** ATCP 35.14(4), (15), (16), (24), (27), (28) and (30) are amended to  
12 read:

13           ATCP 35.14(4) The cost of ~~for the time which~~ that the responsible person, or any  
14 officer of the responsible person, spends ~~on planning or implementing~~ a corrective action. This  
15 does not prohibit the department from reimbursing normal employe wages, salaries, expenses  
16 or fringe benefit allocations for time which employes, other than officers, ~~actually~~ spend ~~on~~  
17 implementing a corrective action.

18           (15) Costs incurred by any federal, state or local government entity. The department  
19 may reimburse a responsible person for corrective action costs incurred by the department of  
20 natural resources under s. ~~144.76 (7) (a)~~ 292.11(7)(a), Stats., and charged to the responsible

1 person, provided that the responsible person reimbursed the department of natural resources  
2 and did not fail or refuse to take corrective action in response to an order or directive from the  
3 department or the department of natural resources.

4 (16) Costs for a contractor's services that exceed the contractor's bid price for those  
5 ~~services under s. ATCP 35.16(2), except as provided under s. ATCP 35.16(2)(c). This~~  
6 ~~subsection does not prohibit reimbursement of contract service costs incurred, at the specified~~  
7 ~~contract rate, for additional hours or units of service authorized under s. ATCP 35.16(2)(b)2.~~

8 (24) Costs to prepare an application under s. ATCP 35.06, to contest an application  
9 decision under s. ATCP 35.32 or to consult with the department on the application.

10 (27) Supplementary charges for expedited services, including expedited laboratory  
11 ~~analysis, expedited mail service or parcel delivery service, or other services performed on an~~  
12 ~~expedited basis, unless the expedited service charges are approved in advance by unless the~~  
13 ~~department approves those charges in advance.~~

14 (28) Contractor charges that are not based on services provided by the contractor and  
15 documented under s. ATCP 35.06(1)(k) ~~and (l)~~ 35.06(1)(g) and (h).

16 (30) Costs for the rental or use of land ~~used for the application of~~ on which the  
17 responsible person landspreads soil or water under s. ~~94.73(2)(d), Stats., ATCP 35.03~~ unless  
18 the department's permit under s. ~~94.73(2)(d), Stats., ATCP 35.03~~ prohibits the harvesting of  
19 crops from ~~that land~~ that would otherwise be cropped.

20 **SECTION 55.** ATCP 35.14(31) and (32) are created to read:

1 ATCP 35.14(31) Costs for subcontractor service charges or markups.

2 (32) Costs to plant or till land on which the responsible person landspreads soil or  
3 water under s. ATCP 35.03, unless the department requires that land to be planted or tilled.

4 **SECTION 56.** ATCP 35.16(1) is amended to read:

5 ATCP 35.16(1) **GENERAL REQUIREMENT.** If a responsible person hires a  
6 contractor to provide a contract service, the department may not reimburse the responsible  
7 person for the cost of that contract service unless the responsible person contracts that service  
8 ~~is contracted according to this section and the responsible person provides the department with~~  
9 ~~the documentation required under sub. (7).~~

10 **SECTION 57.** ATCP 35.16(2) is repealed and recreated to read:

11 ATCP 35.16(2) **BIDS AND ESTIMATES REQUIRED.** (a) The department may not  
12 reimburse a responsible person for contract services performed at a discharge site unless the  
13 responsible person selects the contractor to provide services at that site on the basis of at least  
14 3 competitive bids. The department may require a responsible person to obtain additional bids  
15 if the department finds that existing bids are unreasonable.

16 (b) Except as provided in par. (c), the department may not reimburse a responsible  
17 person for contract service costs that exceed the contractor's bid for those services under par.

18 (a).

1 (c) The department may reimburse a responsible person for contract services not  
2 included in the contractor's initial bid under par. (a), or for additional hours or units of service  
3 beyond those included in the bid under par. (a), if all of the following apply:

4 1. The contractor providing the additional services was selected by the competitive  
5 bidding procedure under par. (a).

6 2. The contractor bills for the additional services at the same per-unit price at which  
7 the contractor agreed to provide equivalent services, if any, in the contractor's initial bid under  
8 par. (a).

9 3. The contractor provides the responsible person with a cost estimate for the  
10 additional services before performing those services. The department may require the  
11 responsible person to obtain competitive bids for the additional services if the department finds  
12 that the cost estimate is unreasonable.

13 4. The responsible person provides the department with a copy of the cost estimate  
14 under subd. 3 before authorizing the contractor to proceed if the total cost of the additional  
15 services exceeds \$1,500.

16 5. The responsible person gives the contractor written authorization to proceed with  
17 the additional services, after receiving the contractor's estimate under subd. 3.

18 6. The cost for the additional services does not exceed the contractor's estimate under  
19 subd. 3.



1           7. The additional services do not involve the selection, design or installation of active  
2 groundwater remediation.

3           (d) A responsible person requesting reimbursement from the department shall keep  
4 copies of all bids and estimates required under this subsection, and shall make those copies  
5 available to the department for inspection and copying upon request. The responsible person  
6 shall keep copies of the bids and cost estimates for at least 2 years after the department has  
7 paid or denied all reimbursements to which those bids or cost estimates pertain.

8           **SECTION 58.** ATCP 35.16(2m) is created to read:

9           ATCP 35.16(2m) **BID AND ESTIMATE CONTENTS.** Every bid under sub. (2)(a)  
10 and every cost estimate under sub. (2)(c)3. shall include all of the following:

11           (a) A clear description and itemization of the contract services included in the bid or  
12 estimate. The description shall be based on an approved workplan or, if there is no workplan,  
13 on a good faith estimate of the scope of the project as stated in the bid or estimate.

14           (b) A total bid price or cost estimate for all of the contract services included in the bid  
15 or estimate, and a subtotal price for each of the component services itemized in the bid or  
16 estimate.

17           (c) The following information related to every service priced on an hourly or per unit  
18 basis:

19           1. The price per hour or per unit of service.

1           2. A reasonable, good faith estimate of the number of hours or units of service to be  
2 provided.

3           3. The total estimated price for the service, based on the estimate under subd. 2.

4           4. The estimated date by which the contractor will perform the service.

5           (d) Every certification required of the contractor under sub. (6).

6           **SECTION 59.** ATCP 35.16(3), (4), (4)(note) and (5) are repealed and recreated to  
7 read:

8           **ATCP 35.16(3) SERVICES PRICED ON AN HOURLY OR PER UNIT BASIS.** (a)

9 Bids and cost estimates for the following services shall be priced on an hourly or per unit  
10 basis:

11           1. Excavating.

12           2. Trucking.

13           3. Landspreading and other waste treatment or disposal services.

14           4. Drilling, including at-depth soil sampling and well installation.

15           5. Laboratory services.

16           6. Services normally billed on an hourly or per unit basis.

17           (b) Bids and cost estimates for professional or personal services, including  
18 engineering, hydrogeologic, field technician and general contracting services, shall be priced  
19 on an hourly basis.

1 (4) RESPONSIBLE PERSON; CHOICE OF CONTRACTORS. (a) The department  
2 may require a responsible person to explain that person's choice of contractors.

3 (b) A responsible person may select any contract service provider, but may not claim  
4 reimbursement of any corrective action costs that exceed the low bid for any of the following  
5 contract services:

- 6 1. Excavating.
- 7 2. Trucking.
- 8 3. Landspreading and waste disposal services.
- 9 4. Drilling, including at-depth soil sampling and well installation.

10 NOTE: A responsible person may obtain full reimbursement for services provided by  
11 a consultant or laboratory that is not the lowest bidder, provided that other  
12 requirements under this section are met. A responsible person should consider  
13 bid amounts, but may consider other factors including professional  
14 qualifications and special project needs.

15  
16 (5) SEPARATE CONTRACTORS. (a) No contractor who provides any of the  
17 following contract services for a corrective action may provide contract services other than the  
18 following contract services for that corrective action:

- 19 1. Excavating.
- 20 2. Trucking.
- 21 3. Landspreading and other waste treatment or disposal services.
- 22 4. Drilling, including at-depth soil sampling and well installation.

1 (b) No contractor who provides laboratory services for a corrective action, other than  
2 immuno assay services or field testing services using hand-held devices, may provide other  
3 contract services related to that corrective action.

4 (c) Paragraphs (a) and (b) do not apply to a general contractor who subcontracts with  
5 independent subcontractors to provide services under par. (a) or (b) for a corrective action,  
6 provided the subcontractors comply with pars. (a) and (b).

7 **SECTION 60.** ATCP 35.16(5)(note) is repealed.

8 **SECTION 61.** ATCP 35.16(6)(a)(intro.) and 1. are amended to read:

9 ATCP 35.16(6)(a)(intro.) In every bid or cost estimate under sub. (2), the bidding  
10 contractor shall certify both of the following:

11 (6)(a)1. That the contract services will comply with applicable requirements under this  
12 chapter, chs. ATCP 29 to 33, and chs. NR 700, 706, 708 and 712 to 726.

13 **SECTION 62.** ATCP 35.16(7) is repealed.

14 **SECTION 63.** ATCP 35.16(8)(b) is amended to read:

15 ATCP 35.16(8)(b) The department may reimburse contract service costs totalling not  
16 more than ~~\$500~~ \$3,000 for each contractor, regardless of compliance with subs. (2) to (6).

17 **SECTION 64.** ATCP 35.16(note) is repealed.

18 **SECTION 65.** ATCP 35.18(title) and (1) are repealed and recreated to read:

19 **ATCP 35.18(title) REIMBURSEMENT CONDITIONS.** (1) **WORKPLAN**  
20 **REQUIRED.** (a) Except as provided under par. (b) or (c), the department may not reimburse

1 a responsible person for any of the following unless the department approves a written  
2 workplan for the corrective action before the responsible person takes that corrective action:

3 1. Eligible corrective action costs exceeding \$7,500 if the responsible person took the  
4 corrective action after October 13, 1997.

5 2. Eligible corrective action costs exceeding \$20,000 if the responsible person takes  
6 the corrective action on or after August 12, 1993 but on or before October 13, 1997.

7 (b) Paragraph (a) does not apply to a reasonable and necessary corrective action taken  
8 on an emergency basis.

9 (c) A responsible person is not required to obtain department approval for a workplan  
10 under par. (a) if the responsible person submits the workplan to the department at least 30  
11 days before taking the corrective action, and the department neither approves nor rejects the  
12 workplan within 30 days after the department receives the workplan.

13 **SECTION 66.** ATCP 35.18(2) is amended to read:

14 **ATCP 35.18(2) ADDITIONAL SITE INVESTIGATION OR CORRECTIVE**  
15 **ACTION.** The department may, ~~in a workplan under sub. (1) or by order under s. ATCP~~  
16 ~~35.02,~~ require a responsible person to perform additional investigation, or take additional  
17 corrective action, as a precondition to the reimbursement of any corrective action cost under  
18 this chapter.

19 **SECTION 67.** ATCP 35.20(title) and (1) are amended to read:

1           **ATCP 35.20(title) MULTIPLE RESPONSIBLE PERSONS.** (1)

2 REIMBURSEMENT LIMIT. If more than one responsible person is eligible for  
3 reimbursement under this chapter for corrective action taken in response to one or more  
4 discharges at the same discharge site, the combined amount paid to those responsible persons  
5 may not exceed the maximum amount specified ~~under this chapter~~ for a single responsible  
6 person discharge under s. ATCP 35.22(4)(a) or a discharge site under s. ATCP 35.22 (1) or  
7 (2).

8           **SECTION 68.** ATCP 35.22 is repealed and recreated to read:

9           **ATCP 35.22 REIMBURSEMENT AMOUNTS.** (1) GENERAL

10 REIMBURSEMENT FORMULA. Except as provided in subs. (2) or (4), the department  
11 shall reimburse a responsible person for each discharge site an amount equal to 80% of the  
12 corrective action costs that are greater than \$3,000 and less than \$400,000. To this amount  
13 the department shall add interest costs under s. ATCP 35.25. The total amount reimbursed  
14 under this subsection, including interest costs under s. ATCP 35.25, may not exceed  
15 \$317,600.

16           (2) DIFFERENT REIMBURSEMENT FORMULA FOR SOME PERSONS. (a)

17 Except as provided in sub. (4), the department shall reimburse a responsible person for each  
18 discharge site an amount equal to 80% of the corrective action costs that are greater than  
19 \$7,500 and less than \$400,000 if any of the following applies at the time the discharge occurs  
20 or is discovered:

- 1 1. The responsible person is required to be licensed under ss. 94.67 to 94.71, Stats.
- 2 2. The responsible person employs more than 25 persons
- 3 3. The responsible person has gross annual sales of more than \$2,500,000.

4 (b) To the amount under sub. (a), the department shall add interest costs under s.  
5 ATCP 35.25. The total amount reimbursed under this subsection, including interest costs  
6 under s. ATCP 35.25, may not exceed \$314,000.

7 (3) TRANSPORTATION DISCHARGES. For purposes of subs. (1) and (2),  
8 whenever an agricultural chemical is discharged while being transported from a site owned or  
9 controlled by a person who owns or controls the discharged agricultural chemical, the  
10 discharge is deemed to occur at that site.

11 (4) PREAPPROVAL REQUIRED FOR SOME CORRECTIVE ACTION COSTS. (a)  
12 The department may not reimburse corrective action costs that exceed \$100,000 for any  
13 discharge unless the department, after determining that the costs are reasonable and necessary  
14 based on the nature, size and complexity of the corrective action, approves the additional costs  
15 before the responsible person incurs them. The department may specify conditions and  
16 limitations on its approval.

17 (b) Paragraph (a) does not require prior department approval of reasonable and  
18 necessary corrective action costs that a responsible person incurred before October 14, 1997.

19 (c) A discharge under paragraph (a) includes all discharges that occur at a discharge  
20 site before the responsible person initiates corrective action in response to any of those

1 discharges. A subsequent discharge is considered a separate discharge under par. (a), subject  
2 to a separate \$100,000 limit.

3 (d) A reimbursement under this subsection may not exceed the limits provided under  
4 subs. (1) and (2).

5 SECTION 69. ATCP 35.24 is repealed.

6 SECTION 70. ATCP 35.25 is amended to read:

7 **ATCP 35.25 INTEREST ON APPROVED REIMBURSEMENT AMOUNTS.** The  
8 department shall add interest to a reimbursement amount calculated under s. ATCP 35.22-~~or~~  
9 ~~35.24~~, at a rate equal to the prime interest rate on the ~~January 31, May 31 or September 30~~  
10 ~~date that first follows the department's receipt of~~ date when the department receives a complete  
11 reimbursement application. ~~Interest shall be calculated on a compounded rate from the same~~  
12 ~~January 31, May 31 or September 30 date,~~ The department shall calculate interest from that  
13 date for the unpaid balance approved under s. ATCP 35.22-~~or ATCP 35.24.~~ ~~Amounts,~~  
14 ~~including interest, not paid June 30 of any year shall be calculated and a new interest rate~~  
15 ~~equal to the prime rate on June 30 of that year be applied to the unpaid balance.~~

16 SECTION 71. ATCP 35.26 is repealed and recreated to read:

17 **ATCP 35.26 PARTIAL CORRECTIVE ACTION; REIMBURSEMENT.** (1)

18 Upon completing any of the following portions of a corrective action, a responsible person  
19 may apply for and receive reimbursement of eligible corrective action costs which the  
20 responsible person pays prior to the reimbursement application date:



1 (a) An emergency response, if any.

2 (b) A soil investigation approved by the department. If the soil investigation  
3 concludes that active soil remediation is necessary, the department shall approve an active soil  
4 remediation plan before reimbursing the responsible person for the soil investigation.

5 (2) The department may not reimburse any portion of a corrective action under sub.  
6 (1) unless the responsible person demonstrates, to the department's satisfaction, that the  
7 responsible person is proceeding in a timely manner with the remainder of the corrective  
8 action. The department may withhold reimbursement pending department approval of a  
9 workplan for the remainder of the corrective action.

10 (3) If, after receiving any reimbursement under sub. (1), a responsible person fails to  
11 complete a corrective action as required under this subsection, the department may direct the  
12 responsible person to return that reimbursement by a specified date. If the department  
13 properly directs a responsible person to return a reimbursement, the responsible person shall  
14 return the reimbursement according to the department's directive.

15 (4) Reimbursement under sub. (1) for a portion of a corrective action does not affect  
16 the reimbursement rate that applies to a discharge under s. ATCP 35.22(4)(a) or to a discharge  
17 site under s. ATCP 35.22(1) or (2).

18 **SECTION 72.** ATCP 35.28(1) and (2) are repealed and recreated to read:

19 ATCP 35.28(1) GENERAL. (a) Except as provided in par. (b), the department shall  
20 reimburse responsible persons for approved corrective action costs, in the total amount

1 approved for each corrective action under s. ATCP 35.08(4)(c), in the order in which the  
2 department receives complete reimbursement applications from those responsible persons.

3 (b) If the balance in the agricultural chemical cleanup fund under s. 25.468, Stats., is  
4 less than \$1,000,000, the department shall reimburse approved corrective action costs in  
5 installments as provided in subs. (2) and (3), up to the total amount approved for each  
6 corrective action under s. ATCP 35.08(4)(c).

7 (c) The department shall make payments under this section from the appropriations  
8 under s. 20.115 (7)(e) and (wm), Stats. Notwithstanding any other provision of this chapter,  
9 payment is subject to the availability of funds in those appropriations.

10 (2) INITIAL INSTALLMENT. Upon making a decision under s. ATCP 35.08(4), the  
11 department shall pay a responsible person an initial installment of \$50,000 for each discharge  
12 under s. ATCP 35.22(4)(a), or the total reimbursement amount approved for that corrective  
13 action under s. ATCP 35.08(4)(c), whichever is less. The department shall pay initial  
14 installments to responsible persons in the order in which the department receives complete  
15 reimbursement applications from those responsible persons.

16 **SECTION 73.** ATCP 35.28(3)(a) is amended to read:

17 ATCP 35.28(3)(a) If an initial installment under sub. (2) is less than the full  
18 reimbursement amount approved for a corrective action under s. ATCP 35.08(4)(c), the  
19 department shall pay one or more subsequent installments to that responsible person or that

1 person's designee until the department has paid the full approved amount. ~~No installment~~  
2 ~~under this paragraph may exceed \$100,000 in any fiscal year.~~

3 **SECTION 74.** ATCP 35.28(3)(d) is renumbered 35.28(3)(c).

4 **SECTION 75.** ATCP 35.28(4) and (5) are repealed.

5 **SECTION 76.** ATCP 35.30(2) and (3) are amended to read:

6 ATCP 35.30(2) The responsible person may next apply the proceeds against that  
7 portion of the responsible person's eligible corrective action costs which exceeds the maximum  
8 amount on which the department may pay reimbursement under s. ATCP 35.22-~~or 35.24.~~

9 (3) The responsible person shall pay to the department a percentage of any remaining  
10 proceeds which equals the applicable reimbursement rate specified under s. ATCP 35.22-~~or~~  
11 ~~35.24~~, except that the total amount repaid under this subsection need not exceed the total  
12 amount of reimbursement which the department paid to the responsible person for the same  
13 corrective action.

14 **SECTION 77.** ATCP 35.32(1) and (3) are amended to read:

15 ATCP 35.32(1) **REQUEST FOR HEARING.** A person adversely affected by the  
16 department's disapproval of a reimbursement application under s. ATCP ~~35.08~~ 35.08(5) may,  
17 within 30 days after receiving notice of that disapproval, request a hearing before the  
18 department to contest that disapproval. A request for hearing shall be made in writing and  
19 shall specify the grounds for the request.

1 (3) FORMAL HEARING. If a contest related to the disapproval of a reimbursement  
2 application is not resolved after an informal hearing under sub. (2), a person adversely affected  
3 by the department's disapproval of the application may request a full contested case hearing on  
4 the disapproval. A request for a full contested case hearing shall be filed with the department,  
5 in writing, within 30 days after the date of the informal hearing under sub. (2). ~~The contested~~  
6 ~~case proceeding shall be conducted as a class 3 proceeding under ch. 227, Stats., and ch.~~  
7 ~~ATCP 1.~~

8 SECTION 78. ATCP 35.34 is repealed.

9 EFFECTIVE DATE: The rules contained in this order shall take effect on the first  
10 day of the month following publication in the Wisconsin administrative register, as provided  
11 under s. 227.22(2)(intro.), Stats.

12  
13

14 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Ben Brancel, Secretary