

CR 93-235

STATE OF WISCONSIN )  
 ) ss.  
DEPARTMENT OF AGRICULTURE )  
TRADE AND CONSUMER PROTECTION )

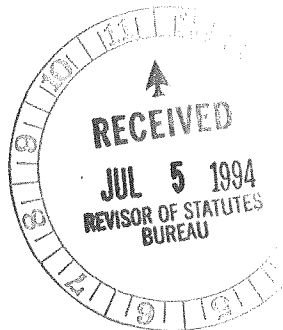
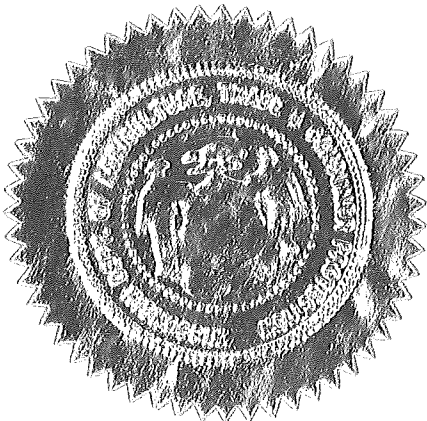
Docket No. 2533

CERTIFICATION:

I, Alan T. Tracy, Secretary, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the annexed order creating chapter ATCP 35, Wisconsin Administrative Code, relating to the Agricultural Chemical Cleanup Fund was duly approved and adopted by the Department on June 30<sup>th</sup>, 1994.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 30<sup>th</sup> day of June, 1994.



*Elizabeth Kohl*  
Deputy Secretary  
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Alan T. Tracy  
Secretary

9-1-94

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RECORDED & INDEXED  
U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C.

WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

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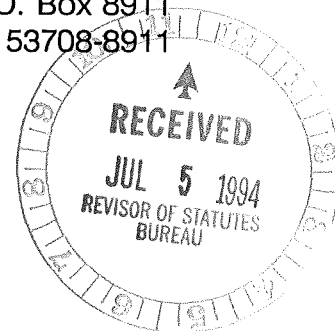
**MEMORANDUM**

DATE: June 27, 1994

TO : Gary Poulson - Revisor of Statutes Office  
131 W. Wilson Street, Suite 800

FROM: Alan T. Tracy, Secretary

SUBJECT: **Clearinghouse Rule No. 93-235, Chapter ATCP 35, Relating to the  
Agricultural Chemical Cleanup Program**



*[Handwritten signature]*  
for

I am submitting the following information for filing the above rule.

**Final Regulatory Flexibility Analysis**

The proposed rule provides the structure under which the Agricultural Chemical Clean Up program will operate. This program will provide approximately \$4.3 million annually in cost-share dollars to parties which have incurred costs associated with cleaning up pesticide or fertilizer contamination. The rule will detail how, when, how much and to whom the cost-share dollars will be distributed.

The revised rule change to ATCP 29 would require licensed pesticide dealers to report information on their Wisconsin pesticide distribution. This revision is necessary because of recent statute changes which increased fees on pesticides that are used in Wisconsin. Pesticide manufacturers have established a mechanism for passing these fees onto their Wisconsin customers and eventually to Wisconsin growers. Dealers located just outside Wisconsin may have Wisconsin sales, but are not being assessed the increased fee. A competitive disadvantage may be established by this manufacturer imposed price increase. Fee payment by manufacturers may also be underestimated. A reporting system is being established under this proposal to allow tracking of these concerns.

**Businesses Affected:**

The proposed rule will affect small businesses in Wisconsin. The specific small businesses it will affect are those that handle agricultural pesticides or fertilizers. This group includes farmers along with commercial applicators and dealers of pesticide and fertilizer. Individuals or facilities that have been identified as having pesticide or fertilizer contamination existing on their property and have incurred costs for cleaning up contamination may be eligible to receive reimbursement from the Agricultural Chemical Cleanup Fund. Because the rule details how the fund dollars will be distributed, the rule will affect small businesses.



The rule specifies which cleanup costs are eligible, and costs that are ineligible. The rule also details procedures the responsible party must follow to be eligible for reimbursement. In doing so, the rule will ensure that the money is allocated for cost-effective practices, thereby conserving funds so that the limited supply of money will be available for a larger group of applicants.

#### Reporting, Recordkeeping and Other Procedures Required for Compliance:

As discussed above, the ATCP 29 revision does require additional reporting activities beyond those required under existing rules and laws. These reporting requirements will have the biggest impact on facilities along the state's border. These firms have sales of pesticides both in Wisconsin and other states and will be required to separate out pesticide sales exclusively in Wisconsin. These firms may also see the largest benefit from this rule revision by maintaining a competitive market with out-of-state dealers.

Any reporting and recordkeeping necessary for the ATCP 35 program would be voluntary. Only those persons seeking reimbursement of their costs are required to record, compile and report these expenses.

A responsible person is required to promptly report the discharge upon discovering the spill to be eligible for reimbursement of the cleanup costs. This reporting requirement is consistent with s. 144.76, Stats., which requires that spills be reported to the department of natural resources.

This proposed rule specifies the procedures and requirements for applicants seeking reimbursement for corrective action costs associated with the cleanup of agricultural chemical and fertilizer contamination. Individuals and firms seeking reimbursement would be required to submit an application to the department. The application must include detailed information about the discharge site, the responsible person(s), a detailed description of corrective action taken or anticipated, documentation of costs incurred and additional information related to other sources of reimbursement.

#### Professional Skills Required to Comply:

The rule requires that financial information and a detailed corrective action description related to the cleanup be submitted to the department. This information will need to be submitted in an organized manner. Therefore, the applicants may need the services of a consultant or accountant in preparing the reimbursement application.

#### Comments from Legislative Committees

The rule was referred to the Senate Committee on Transportation, Agriculture and Rural Affairs on May 18, 1994 and to the Assembly Natural Resources Committee on May 24, 1994. The department received no comments from either committee.



ORDER OF THE STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
ADOPTING RULES

1 The state of Wisconsin department of agriculture, trade and  
2 consumer protection adopts the following order to repeal ATCP  
3 29.01(5), to repeal and recreate ATCP 29.11(1), and to create  
4 ATCP 1.03(1)(a)(10) and ch. ATCP 35, relating to the department's  
5 agricultural chemical cleanup program.

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Analysis Prepared by the Department of  
Agriculture, Trade and Consumer Protection

Statutory Authority: ss. 93.07(1), 94.69(4) and 94.73(11),  
Stats.

Statutes Interpreted: ss. 94.703 and 94.73, Stats.

This rule codifies the agricultural chemical cleanup program created under s. 94.73, Stats. Under this rule, the department may order a responsible person to take corrective action to clean up environmental contamination resulting from the discharge of an agricultural chemical. Under this rule, the department may also reimburse a responsible person for certain corrective action costs. This rule specifies standards and procedures for the reimbursement of corrective action costs.

Pesticide Dealers and Distributors; Reports

Under s. 94.73, Stats., the reimbursement of cleanup costs is financed in part by fees paid by pesticide manufacturers. Fees are paid on pesticides distributed in this state. In order to verify fee payments, this rule requires every distributor and retail distributor of restricted use pesticides to report to the department, by October 30 of each year, both of the following:

- The name and address of each person from whom the distributor or retail dealer received any pesticide during the preceding 12-month period ending September 30.
- The amount of each pesticide which that dealer or distributor distributed to end users for use in Wisconsin during the preceding 12-month period ending September 30.

### Corrective Action Order

Under this rule, the department may order a responsible person to take a corrective action to clean up environmental contamination resulting from the discharge of an agricultural chemical. A responsible person includes a person who owns or controls a discharged agricultural chemical, a person who causes a discharge, or a person on whose property an agricultural chemical is discharged. An agricultural chemical means a fertilizer or nonhousehold pesticide.

In its order, the department may direct a responsible person to take specified corrective measures, including any of the following:

- Investigation to determine the extent and severity of environmental contamination caused by a discharge, including sampling and analysis of soils, groundwater or other media.
- Containment, removal, treatment or monitoring of environmental contamination caused by a discharge.
- Transportation, storage, land application or disposal of materials contaminated by a discharge.

### Reimbursement of Corrective Action Costs

Under this rule, the department may reimburse a responsible person for reasonable costs which that person incurs for a necessary corrective action, regardless of whether that corrective action was ordered by the department or the department of natural resources ("DNR"). The department may not reimburse corrective action costs related to a corrective action taken before January 1, 1989.

Under this rule, the department may reimburse the following corrective action costs, and no others:

- The cost of qualified professional services needed for the effective planning and implementation of a corrective action, including engineering, hydrogeologic, field technician, hazardous waste disposal or general contractor services.
- Costs to sample and analyze soils, groundwater or other media. This may include costs for soil boring, installation of monitoring wells, sample collection, sample analysis and related activities.
- Costs to excavate contaminated soils and other contaminated materials, including backfilling and grading to restore the contours or drainage characteristics of land altered by the corrective action.



- Costs to collect, handle, transport, treat and dispose of contaminated soils, groundwater and other contaminated materials.
- Costs to remove a spill containment structure that was installed to comply with department rules for pesticide mixing and loading facilities, or pesticide or fertilizer bulk storage facilities, provided that the removal of that structure is necessary to complete a corrective action in the most cost-effective manner. The department may also reimburse the depreciated value of the structure.
- Interest on approved reimbursement amounts, as calculated by the department under this rule.

#### Application for Reimbursement

Under this rule, a responsible person who seeks reimbursement of corrective action costs must submit an application to the department. The department will begin accepting applications on the effective date of this rule. Each application must include specified information, including the following:

- The applicant's name and address.
- Information establishing the applicant's eligibility for reimbursement as a "responsible person."
- The location of the discharge site, the types of agricultural chemicals discharged, and the dates when the discharges occurred if known.
- A description of any corrective measures taken to date, and a description of any further corrective measures proposed for the same discharge site. The description must include any relevant orders or approved workplans.
- The name and address of the person supervising the corrective action, if other than the applicant.
- The name and address of every other responsible person, known to the applicant, who may have a claim for reimbursement of corrective action costs at the same discharge site.
- Notice of any prior reimbursement related to the same discharge site, if the applicant is aware of any prior reimbursement.
- An itemized description of the corrective measures and costs for which the applicant seeks reimbursement, including invoices and other documents showing the type of work

performed, the persons who performed the work, the dates when the work was performed, and the specific costs incurred.

- Canceled checks or other documents proving that the applicant has paid the claimed costs.
- A statement indicating whether any portion of the corrective action costs for which the applicant seeks reimbursement may arguably be covered by insurance. If any portion of the corrective action costs may arguably be covered by insurance, the application must include documentation showing that the applicant has filed an insurance claim for those costs, and that the insurer has denied the claim.
- A statement indicating whether the applicant has applied or will apply to any other governmental agency for reimbursement of costs related to the investigation or repair of environmental contamination at the same discharge site.
- The applicant's social security number or federal employer identification number. (Reimbursement payments are reportable as income for tax purposes.)
- A summary of bids received for contract services.

An applicant may not submit more than one reimbursement application for the same discharge site in any 12-month period. No person may make, or conspire with another person to make, any false, deceptive or misleading representation in connection with a reimbursement application.

#### Department Action on Reimbursement Application

Under this rule, the department may advise an applicant in the preparation of a reimbursement application, and may issue a nonbinding preliminary opinion on whether an applicant is eligible for reimbursement. Within 10 days after the department receives an application, the department must acknowledge receipt of the application. The department may require an applicant to file additional information which may be relevant to the department's review of the application.

Within 90 days after the department receives a complete application, including any additional information required by the department, the department must issue a written decision approving or disapproving the application. The department may approve an application in part, or subject to specified conditions. In its decision, the department must specify all of the following:

- The amount of eligible costs, if any, on which reimbursement will be paid.
- The applicable rate of reimbursement specified under this rule.
- The total reimbursement amount that is approved for payment.
- If the department rejects any part of a reimbursement claim, the reasons for that rejection.

The department must reject any reimbursement claim that is not eligible for reimbursement under this rule, and must deduct any ineligible costs. If, after consulting with the agricultural cleanup council created under s. 15.137(4), Stats., the department finds that an applicant knew or should have known that any portion of a claim was ineligible, the department must deduct twice the amount of that ineligible claim from the applicant's claim.

If, after consulting with the agricultural cleanup council, the department determines that a cost is clearly unreasonable in relation to current market costs, the department may deny reimbursement of the excessive cost, and may reimburse a lesser cost which the department considers reasonable.

#### Responsible Person; Eligibility for Reimbursement

A responsible person is not eligible for reimbursement under this rule unless all of the following requirements are met:

- The responsible person files a reimbursement application that complies with this rule.
- The responsible person complies with every corrective action order issued by the department under this rule, or by DNR under s. 144.76(7)(c), Stats. ("spills" law).
- The responsible person, upon discovering the discharge, promptly reports the discharge to the department or DNR.
- If the responsible person is a commercial pesticide application business, the responsible person complies with current licensing requirements under s. 94.703, Stats. To obtain a license, a commercial application business must currently identify and pay a fee of \$125 for each business location, including each location at which the commercial application business mixes or loads pesticides.
- The corrective action complies with a workplan approved by the department, if an approved workplan is required under this rule.

- The corrective action complies with this rule, chs. 144 and 147, Stats., and chs. NR 700, 708 and 712 to 726.
- The corrective action is performed by, or under the direct supervision of a person who has adequate training and experience to perform the corrective action.
- The reimbursement application incorporates the claims of all other responsible persons, known to the applicant, who have a reimbursement claim related to the same discharge site.

Corrective Actions Not Eligible for Reimbursement

This rule prohibits the department from reimbursing a responsible person for a corrective action that is any of the following:

- Taken in response to a discharge that is an intentional use of an agricultural chemical for an agricultural purpose, unless the corrective action is ordered by the department under this rule or by DNR under s. 144.76(7)(c), Stats. ("spills" law).
- Taken by DNR under s. 144.442(4), (6) or (8), Stats. (hazardous waste law).
- Taken by DNR under s. 144.76(7)(a), Stats. ("spills" law) because the applicant failed or refused to comply with a cleanup order issued by DNR.
- Taken by a pesticide manufacturer or labeler in response to a discharge by that manufacturer or labeler.
- Taken in response to a discharge that occurs while the agricultural chemical is being held or transported by a common carrier.
- Taken in response to a discharge from a landfill or disposal facility that is subject to DNR licensing authority.
- Taken in violation of federal, state or local law.
- Taken in response to a discharge that is caused by the applicant's intentional or grossly negligent violation of law.
- Taken without a reasonable technical or scientific basis.
- Taken without a reasonable prospect of success, or a reasonable prospect of environmental benefit.
- Taken at a discharge site located outside this state.

### Costs Not Eligible for Reimbursement

This rule prohibits the department from reimbursing a responsible person for any of the following:

- A contractor's "indirect costs" (e.g., the cost of purchasing new equipment that is also used on other projects) unless those costs are allocated to the contract according to a reasonable cost allocation formula. "Indirect costs" include any general costs of business that cannot be directly and exclusively attributed to a corrective action.
- The responsible person's "indirect costs," except for the following:
  - Costs for equipment, supplies or services devoted exclusively to the corrective action. Reimbursed costs may not exceed reasonable rental costs.
  - Normal employe wages, salaries, expenses or fringe benefits for employe time actually spent on a corrective action.
- The cost of time which the responsible person, or any officer of the responsible person, spends on a corrective action. This does not prohibit the reimbursement of normal employe wages, salaries, expenses or fringe benefits for time spent by other employes.
- Costs to construct, repair, replace, improve, relocate or demolish any building or fixture, except costs to remove a spill containment structure that was installed to comply with department rules.
- Loss or impairment of property values and other assets, except for the depreciated value of a spill containment structure that was installed to comply with department rules.
- The loss or impairment of revenue or income.
- Attorneys fees or other legal costs.
- Costs of relocating residents or business operations.
- Costs of aesthetic or other improvements that are not essential to a corrective action, except costs for restorative grading and filling of a site that is excavated as part of a corrective action.

- Costs that are reimbursed from another source.
- The cost of replacing discharged agricultural chemicals.
- The cost of providing alternative sources of drinking water or point-of-use water purification devices, except that the department may pay up to \$20,000 for well replacement if ordered by the department or DNR in response to a discharge.
- Liability claims or judgments.
- Costs incurred by any government agency, except emergency cleanup costs incurred by DNR and charged to the responsible person.
- Costs for a contractor's services that exceed the contractor's bid price for those services.
- Costs that the responsible person has not yet paid, or on which the responsible person may receive a subsequent discount or rebate.
- Costs not supported by a canceled check or other conclusive proof of payment by the responsible person.
- Costs to investigate or repair environmental contamination involving substances that are not agricultural chemicals. If a cleanup of agricultural chemicals is combined with a cleanup of other substances, the department may reimburse a portion of the combined project costs based on a reasonable cost allocation formula approved by the department.
- Costs to analyze environmental samples for substances that are not agricultural chemicals, except where analysis of environmental parameters is necessary to plan or implement a corrective action related to agricultural chemicals.
- Costs to analyze environmental samples for agricultural chemicals that are not reasonably suspected of having been discharged at the discharge site.
- Costs for environmental audits, evaluations or appraisals, other than those needed for the effective planning and implementation of a corrective action.
- Costs incurred by a responsible person because of a contractor's breach of contract.
- Costs to prepare an application for reimbursement, or to consult with the department on the application.
- Air travel expenses.

- Expense charges for meals, lodging, travel or other personal expenses that exceed actual, necessary or reasonable expenses.
- Supplementary charges for expedited laboratory analysis, expedited mail or parcel delivery, or other services performed on an expedited basis, unless the expedited service charges are approved in advance by the department.
- Contractor charges that are not based on services provided by the contractor, or that are not documented according to this rule.
- Interest expenses or other financing costs, except those calculated by the department under this rule.
- Costs to rent or use land for the application of soil or water contaminated with agricultural chemicals.

#### Contract Services; General

With certain exceptions, this rule prohibits the department from reimbursing a responsible person for "contract services" unless those services are contracted according to this rule. "Contract services" include services provided by a consultant, general contractor or subcontractor. The department may require a responsible person to document that contracts comply with this rule.

#### Competitive Bids for Contract Services

Under this rule, contract services must be contracted on the basis of competitive bids from at least 3 competing contractors (or subcontractors). Each bid must include all of the following:

- A clear description and itemization of the services to be provided.
- A total price for the contract services, and a subtotal price for each itemized component service. If any contract service is priced on an hourly or per unit basis, the bid must include all of the following:
  - The price per hour (or per unit).
  - A reasonable good faith estimate of the number of hours (units) of service to be provided. The contractor may not exceed this estimate without additional authorization from the responsible person.
  - The total estimated price.

- The estimated date by which the contractor will complete each contract service.

Under this rule, the following services must be bid on an hourly or per unit basis:

- "Generic services" (excavation, trucking, landspreading, disposal, drilling, backfilling and grading services).
- Laboratory services.
- Professional consulting or personal services, including engineering, hydrogeologic, field technician and general contracting services. (All of these services must be bid on an hourly, rather than a per unit, basis.)
- Other services customarily billed on an hourly or per unit basis.

In the case of "generic services," the department will reimburse hourly or per unit costs only at the low bid rate, regardless of which bidder is chosen to provide the services. This limitation does not apply to other contract services, but the department may require a responsible person to explain that person's choice of contractors.

#### Separate Contractors

Under this rule, a contractor who provides "generic services" may not provide any other contract services related to the same corrective action. A contractor who provides laboratory services, except for immuno-assay services or on-site testing services using hand-held devices, may not provide any other contract services related to the same corrective action.

#### Certification by Contractor

Under this rule, every bid for contract services must certify both of the following:

- That the contract services will comply with applicable requirements under this chapter, chs. ATCP 29 to 33, and chs. NR 700, 708 and 712 to 726.
- That the contractor will make available to the department upon request, for inspection and copying, all of the contractor's documents and records related to the contract services.

Under this rule, if a contractor provides drilling, engineering, hydrogeologic, field technician or general contractor services, the contractor's bid must certify that the contractor has and



will maintain insurance coverage for errors and omissions, including pollution impairment liability coverage. Coverage must be not less than \$1,000,000 per claim, and not less than \$1,000,000 in annual aggregate claims, with a deductible of not more than \$100,000 per claim.

Under this rule, if a contractor provides laboratory services only, that contractor must carry errors and omissions insurance in the amount specified above, but coverage need not include pollution impairment liability coverage.

#### Exemptions from Contract Requirements

There are certain exceptions to the contract requirements under this rule. The department may reimburse reasonable and necessary costs for contract services, even though the services were not contracted according to this rule, if the contracts were made prior to the effective date of this chapter or if the responsible person demonstrates, to the department's satisfaction, that it was not reasonably possible to comply with contract requirements under this rule. The department may also reimburse contract service costs totalling less than \$500 for each contractor, whether or not the services were contracted according to this rule.

#### Approved Workplan

Under this rule, the department may not reimburse a responsible person on corrective action costs exceeding \$20,000 unless the responsible person submits to the department in writing, and the department approves, a workplan for the corrective action before the corrective action is taken. This requirement does not apply to emergency corrective action, or to corrective action taken before August 12, 1993.

A responsible person is not required to obtain department approval for a workplan if the responsible person submits the workplan to the department at least 30 days before taking the corrective action, and the department fails to approve or disapprove that workplan within 30 days after the department receives it.

The department may, as part of a workplan or order, require a responsible person to perform additional investigation, or take additional corrective action, as a condition to the reimbursement of any corrective action cost.

#### Multiple Claimants

Under this rule, if more than one responsible person is eligible for reimbursement related to the same discharge site, the combined amount paid to those persons may not exceed the maximum

amount specified under this rule for a single responsible person. (See s. 94.73(6)(am), Stats.)

Under this rule, before a responsible person files a reimbursement application, the responsible person must make a reasonable effort to notify other potentially responsible persons, known to the applicant, who may have a reimbursement claim related to the same discharge site. The application must identify all potentially responsible persons whom the applicant has notified or attempted to notify. The application must include the full claim of each responsible person who was successfully notified, unless that person waives any claim related to discharges to date at that site. Failure by a notified person to submit a claim is considered a waiver.

#### Initial Claim; Reimbursement Rate

Under this rule, unless the department has already reimbursed a responsible person for a separate corrective action related to the same discharge site, the department will reimburse a responsible person for a corrective action as follows:

- The department will reimburse 75% of eligible costs that exceed \$7,500 for a seller of agricultural chemicals or a commercial applicator of pesticides, or that exceed \$3,000 for any other person, but that do not exceed \$100,000 (\$50,000 for transportation spills).
- In addition, if corrective action includes active groundwater remediation ordered by the department or DNR, the department will reimburse 80% of eligible costs that exceed \$100,000 but that do not exceed \$300,000. (This reimbursement does not apply to transportation spills.)

#### Subsequent Claim; Reimbursement Rate

Under this rule, if the department has previously reimbursed a responsible person for a separate corrective action at the same discharge site, the department will reimburse a responsible person for a new corrective action as follows:

- The department will reimburse 50% of eligible costs that exceed \$15,000 but that do not exceed \$100,000 (\$50,000 for transportation spills).
- If the corrective action includes active groundwater remediation ordered by the department or DNR, the department will reimburse 50% of eligible costs that exceed \$15,000 but that do not exceed \$300,000 (\$50,000 for transportation spills).

### Interest on Approved Reimbursement Amounts

Under this rule, the department will pay interest on approved reimbursement amounts at the prime interest rate. Interest will be paid for the period that begins on the January 31, May 31 or September 30 which first follows the department's receipt of a completed reimbursement application, and that ends when the department pays the approved reimbursement amount. Interest costs do not increase the maximum payment that a responsible person is eligible to receive.

### Reimbursement for Partially Completed Corrective Action

Upon completing any of the following stages of a corrective action described in an approved workplan, a responsible person may apply for and receive reimbursement of eligible costs incurred through that stage of the corrective action:

- Upon completing an emergency response, if any.
- Upon completing a soils investigation deemed adequate by the department and, if active soil remediation is necessary, upon obtaining department approval of a plan for active soil remediation.
- Upon completing active soil remediation.
- Upon completing a groundwater investigation deemed adequate by the department and, if active groundwater remediation is necessary, upon obtaining department approval of a plan for active groundwater remediation.
- Upon completing the design, installation and start-up of an active groundwater remediation system.
- Upon completing the first or any subsequent 12 months of passive bio-remediation, long-term monitoring of soil or groundwater, or operation of an active groundwater remediation system.
- Upon completing the corrective action or reaching the limit of reimbursement for that corrective action.

### Initial Reimbursement Installment

Under this rule, the department will pay approved reimbursement amounts in one or more installments. Payment is contingent on the availability of funds. To each eligible recipient, the department will pay an initial installment of \$50,000, or the total amount payable to that person, whichever is less. Initial installments will be paid according to the following schedule:

- Between October 15-21 of each year, based on funds then available, the department will pay initial installments on approved applications received by May 31 of that year.
- Between February 15-21 of each year, based on funds then available, the department will pay initial installments on approved applications received by the preceding September 30.
- On June 30 of each year (the last day of the fiscal year), based on funds then available, the department will pay initial installments on approved applications received by January 31 of that year.

This rule specifies the formula by which the department will determine the amount of funds available for distribution during each payment period. If, on any specified payment date, available funds are insufficient to pay a full initial installment to every person then eligible for an initial installment, the department will pay full initial installments in the following order until available funds are spent:

- The department will first pay full initial installments for discharge sites at which pesticides have been detected in drinking wells at or above enforcement standards. Within this category, priority is based on date of application.
- The department will next pay full initial installments for other discharge sites at which pesticides have been detected in groundwater at or above enforcement standards. Within this category, priority is based on date of application.
- The department will next pay full initial installments for other discharge sites at which pesticides have been detected in groundwater. Within this category, priority is based on date of application.
- The department will next pay full initial installments for other eligible discharge sites. Within this category, priority is based on date of application. The department will not pay any installments in this category during the October 15-21 pay period.

#### Subsequent Installments; Same Corrective Action

Under this rule, if the department's initial installment does not cover the full reimbursement amount approved for a corrective action, the department will pay one or more subsequent installments until the full amount is paid. Subsequent installments to eligible persons are payable on June 30 of each fiscal year (fiscal year-end).

No subsequent installment may exceed \$100,000, nor may the department pay more than one subsequent installment per fiscal year to any person. This does not prohibit the department from paying any person a subsequent installment in the same fiscal year that the department pays that person an initial installment.

The department may not pay any subsequent installments to any recipients in any fiscal year until all initial installments payable in that fiscal year have been paid. If, on June 30, there are insufficient funds to pay the maximum subsequent installment to each person then eligible, the department will pay a pro rated amount to each eligible recipient, except that maximum installments of less than \$500 may be paid in full. If available funds limit a possible payment to less than \$100, that payment may be deferred until a later year.

#### New Corrective Action at Same Discharge Site

Under this rule, if the department has previously reimbursed a responsible person for a corrective action at a discharge site, the department will not pay more than \$50,000 in any fiscal year for new corrective actions at that same discharge site, nor will the department pay any installments for such "repeat" discharge sites until it has paid all installments for other sites that are payable in that fiscal year.

Reimbursement installments for "repeat" discharge sites are payable on June 30 of each fiscal year (fiscal year-end). If, on June 30, there are insufficient funds to pay the maximum authorized installment for each "repeat" discharge site, the department will pay a prorated amount to each eligible recipient, except that maximum installments of \$500 or less may be paid in full.

#### Contested Insurance Claim; Duplicate Reimbursement; Repayment

If, after being reimbursed by the department for any corrective action cost, a responsible person recovers on a contested insurance claim related to the same corrective action, the responsible person must apply the proceeds of the recovery as follows:

- The responsible person may first apply the proceeds to pay reasonable legal fees, reasonable expert witness fees and other reasonable legal costs necessarily incurred by the responsible person to obtain the recovery.
- The responsible person may next apply the proceeds against that portion of the responsible person's eligible corrective action costs that exceeds the maximum amount on which the department may pay reimbursement.

- The responsible person must pay the department a percentage of any remaining proceeds which equals the percentage reimbursement rate applied by the department under this rule, except that the total repayment need not exceed the total amount of reimbursement received from the department.

### Hearing on Denial of Reimbursement Application

A person adversely affected by the department's disapproval of a reimbursement application may request a hearing on that disapproval. A hearing request must be made in writing within 30 days and must specify the grounds for the request. Within 10 days after the department receives a hearing request, the department must hold an informal hearing unless the requester agrees to a later date for informal hearing. If the matter is not resolved at the informal hearing, the requester is entitled to a full contested case hearing, which will be conducted as a class 3 proceeding under ch. 227, Stats.

### Rule Review

This rule requires the department to review the effectiveness of the rule, and submit a report to the Board of Agriculture, Trade and Consumer Protection, within 2 years after the effective date of the rule.

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1           **SECTION 1.** ATCP 1.03(1)(a)10 is created to read:

2           ATCP 1.03(1)(a)10. A corrective action order under s.  
3 94.73(2), Stats.

4           **SECTION 2.** ATCP 29.01(5) is repealed.

5           **SECTION 3.** ATCP 29.10(3) is created to read:

6           ATCP 29.10(3) **REPORTING.** Not later than October 30 of each  
7 year, every distributor and retail dealer of restricted-use  
8 pesticides shall report to the department both of the following,  
9 on report forms provided by the department:

10           (a) The name and address of each person from whom the  
11 distributor or retail dealer received any pesticide during the  
12 preceding 12-month period ending September 30.

13           (b) The amount of each pesticide which that dealer or

1 distributor distributed to end users for use in Wisconsin during  
2 the preceding 12-month period ending September 30.

3 NOTE: Forms may be obtained from the Department of  
4 Agriculture, Trade & Consumer Protection, Agricultural  
5 Resource Management Division, P.O. Box 8911, Madison,  
6 WI 53708.  
7

8 **SECTION 4.** ATCP 29.11(1) is repealed and recreated to read:

9 ATCP 29.11(1) COMMERCIAL APPLICATION BUSINESS; LICENSE.

10 (a) No commercial application business may operate in this state  
11 without a license issued by the department under s. 94.703,  
12 Stats. A commercial application business shall pay a basic  
13 annual license fee of \$125. If a commercial application business  
14 operates from more than one business location, as defined under  
15 par. (b), that commercial application business shall identify  
16 each additional business location on its license application and  
17 shall pay a supplementary license fee of \$125 for each additional  
18 business location, including each new business location added  
19 during the license year. The department shall grant or deny a  
20 license application within 30 business days after the department  
21 receives a complete license application.

22 (b) A business location under par. (a) includes any of the  
23 following sites, regardless of whether the commercial application  
24 business owns that site:

25 1. A site from which a commercial application business  
26 operates on a regular basis as a commercial applicator for hire,  
27 including any site at which a commercial application business  
28 regularly takes orders for pesticide applications. A business  
29 location under par. (a) does not include a motorized vehicle from

1 which a commercial application business takes orders by means of  
2 a mobile telephone.

3 2. A site at which a commercial application business mixes  
4 or loads at least 1,500 lbs. of pesticide active ingredient  
5 during a license year, excluding an active ingredient that is  
6 applied at or immediately adjacent to the mixing or loading site.  
7 If a commercial application business mixes or loads a combined  
8 total of at least 1,500 lbs. of pesticide active ingredient at 2  
9 or more sites that are within 0.5 mile of each other, those sites  
10 shall constitute a single business location.

11 NOTE: See ss. 94.67(3m) and 94.703, Stats. A natural  
12 person who operates a commercial application business  
13 as a sole proprietor, and who is also an individual  
14 commercial applicator, must be licensed both under this  
15 subsection and under sub. (2). If 2 or more commercial  
16 application businesses operate from the same business  
17 location (e.g., if 2 or more aerial application  
18 businesses mix and load pesticides at the same  
19 airfield), each of those commercial application  
20 businesses must identify and pay a license fee for that  
21 business location.

22  
23 SECTION 5. Chapter ATCP 35 is created to read:

24 CHAPTER ATCP 35  
25 AGRICULTURAL CHEMICAL CLEANUP PROGRAM

26 NOTE: This chapter codifies the agricultural chemical  
27 cleanup program created under s. 94.73, Stats. Persons  
28 seeking information about the program, or wishing to  
29 file a claim for reimbursement of cleanup costs, may  
30 contact the agricultural cleanup program in the  
31 division of agricultural resource management, Wisconsin  
32 department of agriculture, trade and consumer  
33 protection, P.O. Box No. 8911, Madison, Wisconsin,  
34 53708-8911.

- 35
- 36 ATCP 35.01 Definitions
- 37 ATCP 35.02 Corrective action order
- 38 ATCP 35.04 Costs eligible for reimbursement
- 39 ATCP 35.06 Application for reimbursement



1 ATCP 35.08 Department action on reimbursement application  
2 ATCP 35.10 Responsible person; eligibility for reimbursement  
3 ATCP 35.12 Corrective actions not eligible for reimbursement  
4 ATCP 35.14 Costs not eligible for reimbursement  
5 ATCP 35.16 Contract services  
6 ATCP 35.18 Workplan for corrective action  
7 ATCP 35.20 Multiple claimants  
8 ATCP 35.22 Initial corrective action; reimbursement rate  
9 ATCP 35.24 Subsequent corrective action; reimbursement rate  
10 ATCP 35.25 Interest on approved reimbursement amounts  
11 ATCP 35.26 Reimbursement for partially completed corrective  
12 action  
13 ATCP 35.28 Reimbursement payments  
14 ATCP 35.30 Contested insurance claim; duplicate reimbursement  
15 ATCP 35.32 Hearing on denial of reimbursement application  
16 ATCP 35.34 Rule review  
17

18 **ATCP 35.01 DEFINITIONS.** In this chapter:

19 (1) "Active groundwater remediation" means active physical,  
20 biological or chemical manipulation of groundwater, or of the  
21 rock or soil media in which groundwater is situated, for the  
22 purpose of maintaining or improving groundwater quality. "Active  
23 groundwater remediation" includes treatment by means of aeration,  
24 bio-augmentation, planned nutrient loading or pump-and-treat  
25 methods.

26 (2) "Active soil remediation" means active physical,  
27 biological or chemical manipulation of soil for the purpose of  
28 reducing the amount of agricultural chemical contamination in  
29 soil. "Active soil remediation" includes treatment by means of  
30 excavation and landspreading, aeration, bio-augmentation or  
31 planned nutrient loading.

32 (3) "Agricultural chemical" means a substance that is a  
33 fertilizer or a nonhousehold pesticide, and that is a hazardous  
34 substance as defined in s. 144.01(4m), Stats.

1 (4) "Agricultural chemical cleanup council" means the  
2 council created under s. 15.137(4), Stats.

3 (5) "Approved corrective action costs" means eligible  
4 corrective action costs which the department has approved for  
5 reimbursement under s. ATCP 35.08(4).

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

8 (7) "Commercial application business" has the meaning given  
9 under s. 94.67(5), Stats.

10 (8) "Contractor" means a person who contracts to perform  
11 all or part of a corrective action. "Contractor" includes a  
12 consultant, general contractor or subcontractor who contracts to  
13 perform all or part of a corrective action, but does not include  
14 a responsible person or an employee of a responsible person.

15 (9) "Contract services" means services provided by a  
16 contractor as part of a corrective action. "Contract services"  
17 includes generic services, laboratory services, professional  
18 consulting services, general contractor services and other  
19 services provided by contractors.

20 (10) "Corrective action" means an action, consisting of one  
21 or more corrective measures under sub. (12), that is taken or  
22 ordered in response to a discharge in this state, and that is  
23 necessary to restore the environment to the extent practicable  
24 and to minimize the harmful effects of the discharge to the air,  
25 lands or waters of this state. "Corrective action" includes an  
26 action taken or ordered by the department of natural resources

1 under s. 144.76, Stats., in response to a discharge, but does not  
2 include an action ordered by the department of natural resources  
3 under s. 144.73(1) or 144.735(2). "Corrective action" does not  
4 include any action taken, or ordered to be completed, before  
5 January 1, 1989.

6 (11) "Corrective action costs" means reasonable costs that  
7 a responsible person has actually incurred for a necessary  
8 corrective action.

9 (12) "Corrective measures" means any of the following:

10 (a) Investigation to determine the extent and severity of  
11 environmental contamination caused by a discharge, including  
12 sampling and analysis of soils, groundwater or other media.

13 (b) Containment, removal, treatment or monitoring of  
14 environmental contamination caused by a discharge.

15 (c) Transportation, storage, land application or disposal  
16 of materials contaminated by a discharge.

17 (d) Other corrective measures approved or ordered by the  
18 department.

19 (13) "Department" means the state of Wisconsin department  
20 of agriculture, trade and consumer protection.

21 (14) "Discharge" means the discharge, as defined in s.  
22 144.76(1)(a), Stats., of an agricultural chemical.

23 Note: Under s. 144.76(1)(a), Stats., "discharge" includes,  
24 but is not limited to, spilling, leaking, pumping,  
25 pouring, emptying, emitting or dumping.

26 (15) "Discharge site" means the area affected by one or  
27 more discharges that are the subject of a corrective action. If  
28

1 a discharge occurs at a site which a commercial application  
2 business or a distributor of agricultural chemicals operates to  
3 store, mix or load agricultural chemicals, "discharge site"  
4 includes all contiguous land that is owned, leased or controlled  
5 by that commercial application business or distributor of  
6 agricultural chemicals at the time the discharge occurs, plus any  
7 other area affected by the discharge.

8 (16) "Eligible corrective action costs" means costs on  
9 which the department is authorized to pay reimbursement under  
10 this chapter.

11 (17) "Fiscal year" means the state fiscal year ending June  
12 30.

13 (18) "General contractor" means a consultant or other  
14 contractor who, on behalf of a responsible person, secures or  
15 directs the services of other contractors related to a corrective  
16 action. "General contractor" includes a person who solicits or  
17 receives contract bids, prepares contracts, directs corrective  
18 measures performed by others, or enters into contracts with  
19 subcontractors to perform corrective measures.

20 (19) "Generic services" means any of the following contract  
21 services, including activities that are incidental to the  
22 provision of those services:

- 23 (a) Excavating.
- 24 (b) Trucking.
- 25 (c) Landspreading and disposal services.
- 26 (d) Drilling, including at-depth soil sampling and well

1 installation.

2 (e) Backfilling and grading, including provision of  
3 backfill material.

4 (20) "Indirect cost" means any general cost of business  
5 that cannot be directly and exclusively attributed to a  
6 corrective action. "Indirect cost" includes costs for equipment,  
7 supplies, services, real estate, structures and improvements,  
8 overhead, managerial and staff support, taxes, insurance,  
9 financing and other items which are not directly and exclusively  
10 attributable to a corrective action or whose use is not limited  
11 to the corrective action.

12 (21) "Installment" means a payment by the department, under  
13 s. ATCP 35.28, of all or part of a reimbursement amount which the  
14 department has approved for payment under s. ATCP 35.08(4)(c).

15 (22) "Laboratory services" means laboratory analysis and  
16 activities that are incidental to laboratory analysis.

17 (23) "Responsible person" means any of the following  
18 persons, or that person's successor in interest:

19 (a) A person who owns or controls an agricultural chemical  
20 that is discharged.

21 (b) A person who causes a discharge.

22 (c) A person on whose property an agricultural chemical is  
23 discharged.

24 **ATCP 35.02 CORRECTIVE ACTION ORDER.** (1) GENERAL. The  
25 department may issue an order requiring a responsible person to  
26 take a corrective action. An order under this subsection shall

1 include all of the following:

2 (a) The name and address of the responsible person.

3 (b) A description of the property on which the responsible  
4 person is required to take corrective action.

5 (c) A description of the corrective action which the  
6 responsible person is required to take.

7 (d) A date by which the responsible person is required to  
8 complete the corrective action.

9 (e) Notice that the corrective action is required to comply  
10 with the following:

11 1. Applicable department rules under chs. ATCP 29 to 33.

12 2. Applicable rules of the department of natural resources  
13 under chs. NR 700, 708 and 712 to 726.

14 NOTE: For corrective actions under this chapter, the  
15 department is authorized to review compliance with chs.  
16 NR 700, 708, and 712 to 726, and to grant required  
17 approvals and variances under those chapters on behalf  
18 of the department of natural resources.

19 (2) SUMMARY ORDER. (a) The department may issue an order  
20 under sub. (1) on a summary basis, without prior notice or  
21 hearing, if the department determines that a summary order is  
22 necessary to prevent imminent harm to public health or safety or  
23 to the environment.

24 (b) If the recipient of a summary order under par. (a)  
25 requests a hearing on that order, the department shall hold an  
26 informal hearing within 10 days after the department receives the  
27 hearing request unless the order recipient consents to a later  
28 date for the informal hearing. If a contested matter is not  
29

1 resolved at the informal hearing, the order recipient is entitled  
2 to a class 2 contested case hearing under ch. 227, Stats., and  
3 ch. ATCP 1.

4 (c) The department is not required to stay a summary order  
5 issued under par. (a) pending the outcome of a hearing under par.  
6 (b). If, after a hearing under par. (b), the department  
7 determines that a summary order under par. (a) was not justified,  
8 the department shall reimburse the order recipient for reasonable  
9 corrective action costs necessarily incurred by the order  
10 recipient to comply with the unjustified order.

11 NOTE: See ch. ATCP 1 for procedure related to  
12 administrative orders and contested cases. Under s.  
13 94.73(13), Stats., a person who violates a corrective  
14 action order issued by the department under this  
15 section is subject to a civil forfeiture of not less  
16 than \$10 nor more than \$5,000 for each violation. Each  
17 day of continued violation is a separate offense.  
18

19 **ATCP 35.04 COSTS ELIGIBLE FOR REIMBURSEMENT.** Subject to  
20 the provisions of this chapter, the department shall reimburse a  
21 responsible person for the following corrective action costs, and  
22 no others:

23 (1) The cost of qualified professional services needed for  
24 the effective planning and implementation of a corrective action,  
25 including engineering, hydrogeologic, field technician, hazardous  
26 waste disposal or general contractor services.

27 (2) Costs to sample and analyze soils, groundwater or other  
28 media. This may include costs for soil boring, installation of  
29 monitoring wells, sample collection, sample analysis and related  
30 activities.

1 (3) Costs to excavate contaminated soils and other  
2 contaminated materials, including backfilling and grading to  
3 restore the contours or drainage characteristics of land altered  
4 by the corrective action. This paragraph does not authorize the  
5 reimbursement of costs incurred for the removal of buildings or  
6 other fixtures, except paving materials that are necessarily  
7 removed in the course of excavation.

8 (4) Costs to collect, handle, transport, treat and dispose  
9 of contaminated soils, groundwater and other contaminated  
10 materials.

11 (5) Costs to remove a spill containment structure that was  
12 installed to comply with s. ATCP 29.151, 30.26, 32.03, 32.04,  
13 33.03 or 33.04 if the department agrees that removal is necessary  
14 to complete, in the most cost-effective way, a corrective action  
15 ordered by the department or the department of natural resources.  
16 The cost to remove a containment structure under this paragraph  
17 may include its depreciated value, calculated as construction  
18 cost less depreciation claimed to date for tax purposes.

19 NOTE: Subject to the provisions of this chapter, the  
20 department may reimburse a responsible person for  
21 eligible corrective action costs under this section,  
22 regardless of whether the corrective action was taken  
23 on the responsible person's own initiative or was  
24 ordered or directed by the department or the department  
25 of natural resources.

26  
27 (6) Interest on approved reimbursement amounts as  
28 calculated by the department under s. ATCP 35.25.

29 **ATCP 35.06 APPLICATION FOR REIMBURSEMENT.** (1)  
30 **REQUIREMENT.** A responsible person who seeks reimbursement of



1 corrective action costs shall submit an application to the  
2 department. The application shall be made on a form provided by  
3 the department. The application shall include all of the  
4 following information, and any additional information required by  
5 the department:

6 (a) The applicant's name and address, and a statement  
7 indicating how the applicant qualifies as a responsible person  
8 under s. ATCP 35.01(23).

9 (b) A statement indicating whether the applicant is any of  
10 the following, or was any of the following when the discharge  
11 occurred:

- 12 1. A pesticide manufacturer or labeler.
- 13 2. A distributor of agricultural chemicals.
- 14 3. A commercial application business.
- 15 4. A producer of agricultural products.
- 16 5. A common carrier.

17 (c) A certification that the responsible person has made a  
18 reasonable effort to notify other responsible persons as required  
19 under s. ATCP 35.20(2). The application shall include the name  
20 and address of every other responsible person whom the applicant  
21 has notified or attempted to notify under s. ATCP 35.20(2).

22 (d) The address or location of the discharge site.

23 (e) The nature of the discharges, the types of agricultural  
24 chemicals discharged or suspected of being discharged, and the  
25 dates or time period when the discharges occurred if known.

26 (f) A description of the corrective measures taken to date

1 at the discharge site, and a description of any future corrective  
2 measures contemplated by the responsible person at that discharge  
3 site.

4 (g) A copy of any order issued to the responsible person by  
5 the department, or by the department of natural resources,  
6 ordering a corrective action at the discharge site.

7 (h) An approved workplan for the corrective action, if  
8 required under s. ATCP 35.18(1).

9 (i) The name and address of the person directing the  
10 corrective action on behalf of the responsible person, if other  
11 than the responsible person.

12 (j) A statement indicating whether, to the applicant's  
13 knowledge, the department has previously reimbursed any  
14 corrective action costs related to the same discharge site.

15 (k) A specific description of the corrective action for  
16 which the responsible person seeks reimbursement of costs. The  
17 description shall specify the corrective measures taken, the  
18 dates when the corrective measures were taken, and the identity  
19 of the persons taking the corrective measures if other than the  
20 responsible person. The description may incorporate, by  
21 reference, contractors' invoices and other documents that  
22 describe the corrective measures.

23 (l) The eligible corrective action costs for which the  
24 applicant seeks reimbursement from the department. The statement  
25 of eligible corrective action costs shall include contractors'  
26 invoices or other documents that clearly document the cost

1 claims. The statement shall also include canceled checks or  
2 other documents that clearly prove payment by the applicant.

3 NOTE: Under s. ATCP 35.08(5)(b), if any person applies for  
4 reimbursement of an ineligible cost, the department may  
5 deduct twice the amount of that cost from that person's  
6 reimbursement claim. If a responsible person is not  
7 certain whether a corrective action cost is eligible  
8 for reimbursement under this chapter, the responsible  
9 person may contact the department for a preliminary  
10 opinion under s. ATCP 35.08(1).  
11

12 (m) A statement indicating whether any portion of the  
13 corrective action costs for which the applicant seeks  
14 reimbursement may arguably be covered by insurance. If any  
15 portion of the corrective action costs may arguably be covered by  
16 insurance, the application shall include documentation showing  
17 that the applicant has filed an insurance claim for those costs,  
18 and that the insurer has denied the claim.

19 (n) A statement indicating whether the applicant has  
20 applied or will apply to any other governmental agency for  
21 reimbursement of costs related to the investigation or repair of  
22 environmental contamination at the same discharge site.

23 (o) The applicant's social security number or federal  
24 employer identification number.

25 NOTE: Reimbursement paid to a responsible person under this  
26 chapter may be reportable, for tax purposes, as income  
27 received by that person.  
28

29 (p) Information required under s. ATCP 35.16(7).

30 (q) Any other information required by the department.

31 NOTE: Applicable forms may be obtained from the Department  
32 of Agriculture, Trade & Consumer Protection,  
33 Agricultural Resource Management Division, P.O. Box  
34 8911, Madison, WI 53708  
35

1 (2) APPLICATION FREQUENCY. A responsible person may not  
2 submit more than one application under sub. (1) within any 12-  
3 month period for the same discharge site.

4 (3) FALSE, DECEPTIVE OR MISLEADING REPRESENTATIONS. (a)  
5 No person may make, or conspire with another person to make, any  
6 false, deceptive or misleading representation in connection with  
7 any reimbursement application under this section.

8 (b) Any person who makes, or conspires with another person  
9 to make any false, deceptive or misleading representation in  
10 connection with a reimbursement application under this section is  
11 ineligible for any reimbursement for that corrective action, and  
12 is also ineligible for reimbursement for any other corrective  
13 action taken or ordered at any discharge site within 5 years  
14 after the date of that application.

15 NOTE: Persons filing fraudulent claims may also be subject  
16 to criminal prosecution.

17  
18 (c) If any person has reason to believe that he or she has  
19 received any reimbursement for which he or she is ineligible  
20 under this subsection, that person shall immediately notify the  
21 department and shall refund with the notification the full amount  
22 of any reimbursement for which the responsible person is  
23 ineligible.

24 (4) FIRST DATE OF APPLICATION. The department shall not  
25 accept any reimbursement application under this section prior to  
26 the effective date of this chapter [revisor inserts date].

27 **ATCP 35.08 DEPARTMENT ACTION ON REIMBURSEMENT APPLICATION.**

28 (1) PRELIMINARY OPINION. Before or after the department

1 receives an application under s. ATCP 35.06, the department may  
2 issue a preliminary opinion on whether an applicant is eligible  
3 for reimbursement of corrective action costs. The preliminary  
4 opinion is not binding on the department.

5 (2) NOTICE ACKNOWLEDGING APPLICATION. Within 10 days after  
6 the department receives an application under s. ATCP 35.06, the  
7 department shall issue a notice to the applicant acknowledging  
8 the department's receipt of the application.

9 (3) REQUEST FOR ADDITIONAL INFORMATION. Following receipt  
10 of an application under s. ATCP 35.06, the department may require  
11 an applicant to submit any additional information which may be  
12 relevant to the department's review of the application.

13 (4) DECISION. Within 90 days after the department receives  
14 a complete application under s. ATCP 35.06, including any  
15 additional information required by the department under sub. (3),  
16 the department shall issue a written decision approving or  
17 disapproving the application. The department may approve an  
18 application in part, or approve an application subject to  
19 conditions specified by the department. In its decision, the  
20 department shall specify all of the following:

21 (a) The amount of eligible costs, if any, on which  
22 reimbursement may be paid.

23 (b) The applicable rate of reimbursement under s. ATCP  
24 35.22 or 35.24, if any.

25 (c) The total reimbursement amount, if any, that is  
26 approved for payment under s. ATCP 35.28. The decision shall

1 specify that payment is subject to the terms and conditions  
2 specified under s. ATCP 35.28.

3 (d) If the department disapproves all or part of an  
4 application, the reasons for that disapproval. The department  
5 shall also explain any amounts deducted from the reimbursement  
6 application under sub. (5).

7 (5) INELIGIBLE CLAIMS REJECTED. (a) The department shall  
8 disapprove any portion of a reimbursement claim which the  
9 department finds to be ineligible for reimbursement under this  
10 chapter, and shall deduct any costs which the department finds to  
11 be ineligible for reimbursement.

12 (b) If, after consulting with the agricultural cleanup  
13 council, the department finds that any portion of an applicant's  
14 reimbursement claim is ineligible, and that the applicant knew or  
15 should have known that it was ineligible, the department shall  
16 deduct twice the amount of the ineligible claim from the  
17 applicant's total claim. Deductions under this paragraph may not  
18 exceed the total amount of the applicant's claim.

19 NOTE: The department will invoke sub. (5) in cases where a  
20 claim is clearly ineligible, either because it is  
21 clearly prohibited under s. ATCP 35.14 or because there  
22 is no plausible basis for claiming reimbursement under  
23 this chapter. Applicants may discuss questionable  
24 items with the department before submitting a claim.

25 (c) If, after consulting with the agricultural cleanup  
26 council, the department determines that the cost claimed for any  
27 goods or services is clearly unreasonable in relation to current  
28 market cost for those goods or services, the department may deny  
29 reimbursement of the excessive cost, and may reimburse a lesser

1 cost which the department considers reasonable. In determining  
2 whether a cost is unreasonable, the department may consider the  
3 nature of the goods or services, the geographic location of the  
4 discharge site, the need for the goods or services, the  
5 availability of alternative goods or services, and other factors  
6 that may reasonably affect the cost of the goods or services.

7 **ATCP 35.10 RESPONSIBLE PERSON; ELIGIBILITY FOR**  
8 **REIMBURSEMENT**. A responsible person is not eligible for  
9 reimbursement of corrective action costs unless all of the  
10 following requirements are met:

11 (1) The responsible person files with the department a  
12 reimbursement application that complies with s. ATCP 35.06.

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

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

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

23 (5) If an approved workplan is required under s. ATCP  
24 35.18(1), the corrective action complies with the approved  
25 workplan for that corrective action.

26 (6) The corrective action complies with applicable

1 requirements under chs. 144 and 147, Stats., this chapter, chs.  
2 ATCP 29 to 33, and chs. NR 700, 708 and 712 to 726.

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

9 (7) The corrective action is performed by or under the  
10 direct supervision of a person who meets applicable qualification  
11 requirements under ch. NR 712, and who has adequate training and  
12 experience to perform the corrective action.

13 (8) The responsible person's application for reimbursement  
14 includes a claim or waiver, under s. ATCP 35.20(3), from each of  
15 the responsible persons identified under ATCP 35.20(2).

16 **ATCP 35.12 CORRECTIVE ACTIONS NOT ELIGIBLE FOR**  
17 **REIMBURSEMENT.** The department may not reimburse a responsible  
18 person for a corrective action that is any of the following:

19 (1) Taken in response to a discharge that is an intentional  
20 use of an agricultural chemical for an agricultural purpose,  
21 unless the corrective action is ordered by the department under  
22 s. ATCP 35.02 or by the department of natural resources under s.  
23 144.76(7)(c), Stats. An intentional use of an agricultural  
24 chemical includes an application of that chemical, but does not  
25 include handling, mixing, loading or disposal that is incidental  
26 to an application.

27 (2) Taken by the department of natural resources under s.  
28 144.442(4), (6) or (8), Stats.

29 (3) Taken by the department of natural resources under s.



1 144.76(7) (a), Stats., because the applicant failed or refused to  
2 respond adequately to a discharge.

3 (4) Taken by a pesticide manufacturer or labeler who is  
4 required to be licensed under s. 94.68(1), Stats., or who is  
5 exempt from licensing under s. 94.68(1) (b), Stats., in response  
6 to a discharge by that pesticide manufacturer or labeler.

7 (5) Taken in response to a discharge that occurs while the  
8 agricultural chemical is being held or transported by a common  
9 carrier.

10 (6) Taken in response to a discharge from a landfill or  
11 other facility that is any of the following:

12 (a) A facility required to be licensed under s. 144.44(4),  
13 Stats.

14 (b) A facility that would be required to be licensed under  
15 s. 144.44(4), Stats., except that the department of natural  
16 resources has issued a specific exemption under s. 144.44(7) or  
17 rules promulgated under s. 144.435(1) or (2), Stats.

18 (c) A closed or abandoned solid or hazardous waste disposal  
19 facility that, if operating today, would require a license under  
20 s. 144.44(4), Stats., or a specific license exemption under s.  
21 144.435(1) or (2), Stats.

22 (7) Taken in violation of federal, state or local law.

23 (8) Taken in response to a discharge caused by that  
24 responsible person's intentional or grossly negligent violation  
25 of law, including ss. 94.645, 94.67 to 94.71 or 144.76, Stats.,  
26 or any rule or order adopted under those sections.

1 (9) Taken without a reasonable technical or scientific  
2 basis.

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

5 (11) Taken at a discharge site located outside this state.

6 **ATCP 35.14 COSTS NOT ELIGIBLE FOR REIMBURSEMENT.** The  
7 department may not reimburse a responsible person for any of the  
8 following:

9 (1) Costs that are not eligible for reimbursement under s.  
10 ATCP 35.04.

11 (2) Indirect costs charged by a contractor unless those  
12 costs are allocated to the contract according to a reasonable  
13 cost allocation formula that the contractor uses for other,  
14 similar contracts.

15 (3) A responsible person's indirect costs, including  
16 indirect costs for equipment, supplies or services. This does  
17 not prohibit the department from reimbursing any of the  
18 following:

19 (a) Actual costs for equipment, supplies or services that  
20 are used exclusively for the corrective action. If a responsible  
21 person purchases equipment that is used exclusively for the  
22 corrective action, the department may pay reimbursement on the  
23 difference between the purchase cost and the reasonable salvage  
24 value of that equipment, provided that the difference does not  
25 exceed the reasonable rental cost for equivalent equipment.

26 (b) Normal employee wages, salaries, expenses or fringe

1 benefit allocations for time which the responsible person's  
2 employees actually spend on a corrective action.

3 (4) The cost of time which the responsible person, or any  
4 officer of the responsible person, spends on a corrective action.  
5 This does not prohibit the department from reimbursing normal  
6 employee wages, salaries, expenses or fringe benefit allocations  
7 for time which employees, other than officers, actually spend on  
8 a corrective action.

9 (5) Costs to construct, repair, replace, improve, relocate  
10 or demolish any building or fixture, except as provided under s.  
11 ATCP 35.04(5).

12 (6) Loss or impairment of property values or other assets,  
13 except as provided under s. ATCP 35.04(5).

14 (7) Loss or impairment of revenue or income.

15 (8) Attorney fees or other legal costs.

16 (9) Costs of relocating residents or business operations.

17 (10) Costs of aesthetic or other improvements that are not  
18 essential to a corrective action, except for restorative grading  
19 and filling costs authorized under s. ATCP 35.04(3).

20 (11) A cost that is reimbursed from another source. If,  
21 after being reimbursed by the department for any cost, a  
22 responsible person is reimbursed for the same cost from another  
23 source, the responsible person shall promptly notify the  
24 department and repay any duplicate reimbursement.

25 NOTE: See s. ATCP 35.30 related to duplicate reimbursement  
26 recovered as a result of a contested insurance claim.

27 (12) The cost of replacing discharged agricultural  
28

1 chemicals.

2 (13) The cost of providing alternative sources of drinking  
3 water or point-of-use water purification devices, except that the  
4 department may reimburse a responsible person a total of not more  
5 than \$20,000 for the replacement of private wells if the  
6 department or the department of natural resources orders that  
7 well replacement in response to a discharge.

8 (14) Liability claims or judgments.

9 (15) Costs incurred by any federal, state or local  
10 government entity. The department may reimburse a responsible  
11 person for corrective action costs incurred by the department of  
12 natural resources under s. 144.76(7)(a), Stats., and charged to  
13 the responsible person, provided that the responsible person did  
14 not fail or refuse to take corrective action in response to an  
15 order or directive from the department or the department of  
16 natural resources.

17 (16) Costs for a contractor's services that exceed the  
18 contractor's bid price for those services under s. ATCP 35.16(2).  
19 This subsection does not prohibit reimbursement of contract  
20 service costs incurred, at the specified contract rate, for  
21 additional hours or units of service authorized under s. ATCP  
22 35.16(2)(b)2.

23 (17) Costs that the responsible person has not yet paid, or  
24 on which the responsible person may later receive a discount or  
25 rebate.

26 (18) Costs not supported by a canceled check or other

1 conclusive proof of payment by the responsible person who is  
2 applying for reimbursement of those costs.

3 (19) Costs to investigate or repair environmental  
4 contamination involving substances that are not agricultural  
5 chemicals. If a corrective action under this chapter is combined  
6 with the investigation or repair of environmental contamination  
7 involving substances that are not agricultural chemicals, the  
8 department may reimburse a portion of the combined project costs  
9 based on a reasonable cost allocation formula approved by the  
10 department. If, for any combination project, a responsible  
11 person also submits a reimbursement claim to another governmental  
12 agency, the cost allocation formula shall be approved by the  
13 department and that other agency.

14 (20) Costs to analyze environmental samples for substances  
15 that are not agricultural chemicals, except that the department  
16 may reimburse costs for the analysis of environmental parameters  
17 if that analysis is needed for the design or implementation of a  
18 corrective action.

19 (21) Costs to analyze environmental samples for  
20 agricultural chemicals that are not reasonably suspected of  
21 having been discharged at the discharge site.

22 (22) Costs for environmental audits, evaluations or  
23 appraisals, other than those needed for the effective planning  
24 and implementation of a corrective action.

25 (23) Costs incurred by a responsible person because of a  
26 contractor's breach of contract.

1 (24) Costs to prepare an application under s. ATCP 35.06,  
2 or to consult with the department on the application.

3 (25) Air travel expenses.

4 (26) Expense charges for meals, lodging, travel or other  
5 personal expenses that exceed actual, necessary or reasonable  
6 expenses.

7 (27) Supplementary charges for expedited laboratory  
8 analysis, expedited mail or parcel delivery, or other services  
9 performed on an expedited basis, unless the expedited service  
10 charges are approved in advance by the department.

11 (28) Contractor charges that are not based on services  
12 provided by the contractor and documented under s. ATCP  
13 35.06(1)(k) and (l).

14 (29) Interest expenses or other financing costs, except as  
15 calculated by the department under s. ATCP 35.25.

16 (30) Costs for the rental or use of land used for the  
17 application of soil or water under s. 94.73(2)(d), Stats, unless  
18 the department's permit under s. 94.73(2)(d), Stats., prohibits  
19 the harvesting of crops from that land.

20 **ATCP 35.16 CONTRACT SERVICES. (1) GENERAL REQUIREMENT.**

21 If a responsible person hires a contractor to provide a contract  
22 service, the department may not reimburse the responsible person  
23 for the cost of that contract service unless that service is  
24 contracted according to this section and the responsible person  
25 provides the department with the documentation required under  
26 sub. (7).

1           (2) COMPETITIVE BIDS REQUIRED. Contract services,  
2 including those provided by a subcontractor, shall be contracted  
3 on the basis of competitive bids submitted by at least 3  
4 competing contractors or subcontractors. Every bid shall include  
5 all of the following:

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

10           (b) A total bid price for all of the contract services  
11 included in the bid, and a subtotal price for each of the  
12 component services itemized in the bid. If any service is priced  
13 on an hourly or per unit basis, the bid shall specify all of the  
14 following:

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

16           2. A reasonable, good faith estimate of the number of hours  
17 or units of service to be provided. A contractor may not exceed  
18 this estimate without additional authorization from the  
19 responsible person.

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

22           (c) The estimated date by which the contractor will perform  
23 each contract service.

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

26           (3) SERVICES PRICED ON HOURLY OR PER UNIT BASIS. (a) Bids

1 for the following services shall be priced on an hourly or  
2 customary per unit basis, and bid according to sub. (2) (b):

- 3 1. Generic services.
- 4 2. Laboratory services.
- 5 3. Services that are customarily billed on an hourly or per  
6 unit basis.

7 (b) Bids for professional or personal services, including  
8 engineering, hydrogeologic, field technician and general  
9 contracting services, shall be priced on an hourly basis and bid  
10 according to sub. (2) (b). Bids for professional services shall  
11 include a statement of the bidder's professional qualifications.

12 (4) RESPONSIBLE PERSON; CHOICE OF CONTRACTORS. The  
13 department may require a responsible person to explain the  
14 responsible person's choice of contractors. If a responsible  
15 person contracts, either directly or through a general  
16 contractor, with any provider of generic services, the  
17 responsible person may not claim reimbursement of any costs for  
18 those services that exceed the low bid cost.

19 NOTE: Under s. ATCP 35.01(19), "generic services" include  
20 excavation, trucking, landspreading, disposal,  
21 drilling, backfilling and grading services.  
22 Responsible persons selecting contractors for  
23 professional services should consider costs, but may  
24 base their decisions on other factors including  
25 professional qualifications and special project needs.  
26

27 (5) SEPARATE CONTRACTORS. (a) Except as provided under  
28 par. (b):

- 29 1. A contractor who provides generic services related to a  
30 corrective action may not provide any other contract services



1 related to that corrective action.

2 2. A contractor who provides laboratory services related to  
3 a corrective action, other than immuno-assay services or field  
4 testing services using hand-held devices, may not provide any  
5 other contract services related to the same corrective action.

6 (b) Paragraph (a) does not prohibit a general contractor  
7 from providing a combination of subcontracted generic services,  
8 subcontracted laboratory services and other subcontracted  
9 services as a general contractor, provided those services are  
10 obtained from independent subcontractors who comply with par.

11 (a).

12 NOTE: Under s. ATCP 35.01(19), "generic services" include  
13 excavation, trucking, landspreading, disposal,  
14 drilling, backfilling and grading services.  
15

16 (6) CERTIFICATION BY CONTRACTOR. (a) In every bid under  
17 sub. (2), the bidding contractor shall certify both of the  
18 following:

19 1. That the contract services will comply with applicable  
20 requirements under this chapter, chs. ATCP 29 to 33, and chs. NR  
21 700, 708 and 712 to 726.

22 NOTE: For corrective actions under this chapter, the  
23 department is authorized to review compliance with chs.  
24 NR 700, 708, and 712 to 726, and to grant required  
25 approvals and variances under those chapters on behalf  
26 of the department of natural resources.  
27

28 2. That the contractor will make available to the  
29 department upon request, for inspection and copying, all of the  
30 contractor's documents and records related to the contract  
31 services.

1 (b) If a contractor bids under sub. (2) to provide  
2 drilling, engineering, hydrogeologic, field technician or general  
3 contractor services, the contractor's bid shall certify that the  
4 contractor has and will maintain insurance coverage for errors  
5 and omissions, including pollution impairment liability coverage  
6 of not less than \$1,000,000 per claim, for not less than  
7 \$1,000,000 in annual aggregate claims, with a deductible of not  
8 more than \$100,000 per claim.

9 (c) If a contractor bids under sub. (2) to provide  
10 laboratory services, the contractor's bid shall certify that the  
11 contractor has and will maintain insurance coverage for errors  
12 and omissions (professional liability) of not less than  
13 \$1,000,000 per claim, for not less than \$1,000,000 in annual  
14 aggregate claims, with a deductible of not more than \$100,000 per  
15 claim.

16 (7) DOCUMENTATION REQUIRED. A responsible person applying  
17 for reimbursement of contract service costs shall submit both of  
18 the following with that person's application under s. ATCP 35.06:

19 (a) Invoices or other documents itemizing the services  
20 provided, specifying the dates when the services were provided,  
21 and indicating the amount charged by the contractor for each of  
22 the itemized services.

23 (b) A summary of the accepted and rejected bids for each  
24 contract service, including the name of each bidder and the price  
25 bid for that contract service by that bidder.

26 (8) EXEMPTIONS. (a) The department may reimburse

1 reasonable costs incurred for necessary contract services,  
2 regardless of compliance with subs. (2) to (6), if either of the  
3 following apply:

4 1. The contract service costs were incurred by the  
5 responsible party pursuant to contracts made prior to the  
6 effective date of this chapter [revisor inserts date].

7 2. The responsible person demonstrates, to the department's  
8 satisfaction, that compliance with subs. (2) to (6) is not  
9 reasonably possible.

10 (b) The department may reimburse contract service costs  
11 totalling not more than \$500 for each contractor, regardless of  
12 compliance with subs. (2) to (6).

13 NOTE: This section does not prevent a general contractor  
14 from obtaining, in a single subcontract with any  
15 subcontractor, contract services related to 2 or more  
16 general contracts, provided that the subcontract is bid  
17 according to this subsection.  
18

19 **ATCP 35.18 WORKPLAN FOR CORRECTIVE ACTION.** (1) WORKPLAN  
20 REQUIRED. (a) Except as provided under par. (b) or (c), the  
21 department may not pay reimbursement to a responsible person on  
22 eligible corrective action costs exceeding \$20,000 unless the  
23 responsible person submits to the department in writing, and the  
24 department approves, a workplan for the corrective action before  
25 the corrective action is taken.  
26

27 NOTE: Except as otherwise agreed in a memorandum of  
28 understanding between the department and the department  
29 of natural resources (DNR), the department must  
30 promptly furnish DNR with a copy of each workplan  
31 submitted to the department under sub. (1). If the DNR  
32 comments on the workplan within 14 days, or within a  
33 different time period specified in a memorandum of  
34 understanding between the agencies, the department must

1 either incorporate those comments into the workplan or  
2 give DNR a written explanation why the comments were  
3 not incorporated. (See s. 94.73(4)(b), Stats.)  
4

5 (b) Paragraph (a) does not apply to either of the  
6 following:

7 1. A reasonable and necessary corrective action taken on an  
8 emergency basis.

9 2. A corrective action taken before August 12, 1993.

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

16 (2) **ADDITIONAL SITE INVESTIGATION OR CORRECTIVE ACTION.**

17 The department may, in a workplan under sub. (1) or by order  
18 under s. ATCP 35.02, require a responsible person to perform  
19 additional investigation, or take additional corrective action,  
20 as a precondition to the reimbursement of any corrective action  
21 cost under this chapter.

22 **ATCP 35.20 MULTIPLE CLAIMANTS. (1) REIMBURSEMENT LIMIT.**

23 If more than one responsible person is eligible for reimbursement  
24 under this chapter for corrective action taken in response to one  
25 or more discharges at the same discharge site, the combined  
26 amount paid to those responsible persons may not exceed the  
27 maximum amount specified under this chapter for a single  
28 responsible person.

1           NOTE: See s. 94.73(6)(am), Stats.

2           (2) NOTICE TO OTHER RESPONSIBLE PERSONS. (a) Before any  
3 responsible person files a reimbursement application under s.  
4 ATCP 35.06, that responsible person shall make a reasonable  
5 effort to notify every other person, known to the applicant, who  
6 may be a responsible person and who has incurred or may  
7 foreseeable incur corrective action costs related to the same  
8 discharge site. The reimbursement application shall identify  
9 every potentially responsible person whom the applicant has  
10 notified or attempted to notify under this paragraph.

11           (b) The department may require an applicant to notify other  
12 responsible persons, known to the department, who have incurred  
13 or may foreseeable incur corrective action costs related to the  
14 same discharge site.

15           NOTE: A responsible person who fails to give notice under  
16 sub. (2) may be liable to those not notified if,  
17 because of that failure, those persons are disqualified  
18 from all or part of the reimbursement to which they  
19 would otherwise be entitled.  
20

21           (3) JOINT APPLICATION. The department shall deny a  
22 reimbursement application unless every responsible person  
23 successfully notified under sub. (2) includes his or her full  
24 claim for reimbursement as part of the same joint application, or  
25 waives any claim for reimbursement related to discharges to date  
26 at that discharge site. If a notified person fails to submit a  
27 claim within 30 days after receiving notice, or fails to provide  
28 documentation under s. ATCP 35.06(1) within 60 days after  
29 receiving notice, that failure constitutes a waiver of that

1 person's claim with respect to that application.

2 **ATCP 35.22 INITIAL CORRECTIVE ACTION; REIMBURSEMENT RATE.**

3 (1) Except as provided under sub. (2) or s. ATCP 35.24, the  
4 department may reimburse a responsible person for a corrective  
5 action as follows:

6 (a) The department may reimburse 75% of eligible corrective  
7 action costs that exceed \$7,500 for a person required to be  
8 licensed under s. 94.64 to 94.71, Stats., or that exceed \$3,000  
9 for any other person, but that do not exceed \$100,000. To this  
10 amount the department shall add interest costs under s. ATCP  
11 35.25, but in no case shall the total reimbursement amount under  
12 this paragraph exceed \$69,375 for a person required to be  
13 licensed under s. 94.64 to 94.71, Stats., or \$72,500 for any  
14 other person.

15 (b) If the corrective action includes active groundwater  
16 remediation ordered or directed by the department, or by the  
17 department of natural resources under s. 144.76(7)(c), Stats.,  
18 the department may reimburse 80% of eligible corrective action  
19 costs that exceed \$100,000, but that do not exceed \$300,000. To  
20 this amount the department shall add interest costs under s. ATCP  
21 35.25, but in no case shall the total reimbursement amount under  
22 this paragraph exceed \$160,000.

23 (2) Except as provided under s. ATCP 35.24(3), if a  
24 corrective action is related to a discharge that occurred during  
25 the transportation of an agricultural chemical, including  
26 transportation in the course of application, the department may

1 reimburse a responsible person for 75% of that person's eligible  
2 costs for that corrective action that exceed \$7,500 for a person  
3 required to be licensed under s. 94.64 to 94.71, or that exceed  
4 \$3,000 for any other person, but that do not exceed \$50,000. To  
5 this amount the department shall add interest costs under s. ATCP  
6 35.25, but in no case shall the total reimbursement amount under  
7 this subsection exceed \$31,875 for a person required to be  
8 licensed under s. 94.64 to 94.71, Stats., or \$35,250 for any  
9 other person.

10 **ATCP 35.24 SUBSEQUENT CORRECTIVE ACTION; REIMBURSEMENT**  
11 **RATE**. If the department has previously reimbursed a responsible  
12 person for a separate corrective action at the same discharge  
13 site, the department may reimburse a responsible person for a  
14 corrective action as follows:

15 (1) Except as provided under sub. (2) or (3), the  
16 department may reimburse 50% of eligible corrective action costs  
17 that exceed \$15,000 but that do not exceed \$100,000. To this  
18 amount the department shall add interest costs under s. ATCP  
19 35.25, but in no case shall the total reimbursement amount under  
20 this subsection exceed \$42,500.

21 (2) Except as provided under sub. (3), if the corrective  
22 action includes active groundwater remediation ordered or  
23 directed by the department, or by the department of natural  
24 resources under s. 144.76(7)(c), the department may reimburse 50%  
25 of eligible corrective action costs that exceed \$15,000 but that  
26 do not exceed \$300,000. To this amount the department shall add

1 interest costs under s. ATCP 35.25, but in no case shall the  
2 total reimbursement amount under this subsection exceed \$142,500.

3 (3) If the corrective action is related to a discharge that  
4 occurred during the transportation of an agricultural chemical,  
5 including transportation in the course of application, the  
6 department may reimburse 50% of eligible corrective action costs  
7 that exceed \$15,000 but that do not exceed \$50,000. To this  
8 amount the department shall add interest costs under s. ATCP  
9 35.25, but in no case shall the total reimbursement amount under  
10 this subsection exceed \$17,500.

11 **ATCP 35.25 INTEREST ON APPROVED REIMBURSEMENT AMOUNTS.** The  
12 department shall add interest to a reimbursement amount  
13 calculated under ss. ATCP 35.22 or 35.24, at a rate equal to the  
14 prime interest rate on the January 31, May 31 or September 30  
15 date that first follows the department's receipt of a complete  
16 reimbursement application. Interest shall be calculated on a  
17 compounded rate from the same January 31, May 31 or September 30  
18 date, for the unpaid balance approved under ss. ATCP 35.22 or  
19 ATCP 35.24. Amounts, including interest, not paid by June 30 of  
20 any year shall be calculated and a new interest rate equal to the  
21 prime rate on June 30 of that year shall be applied to the unpaid  
22 balance.

23 **ATCP 35.26 REIMBURSEMENT FOR PARTIALLY COMPLETED CORRECTIVE**  
24 **ACTION.** (1) At any of the following stages of a corrective  
25 action, a responsible person may apply for and receive  
26 reimbursement of eligible corrective action costs thus far



1 incurred, provided that the remainder of the corrective action is  
2 described in an approved workplan:

3 (a) Upon completing an emergency response, if any.

4 (b) Upon completing a soils investigation deemed adequate  
5 by the department and, if active soil remediation is necessary,  
6 upon obtaining department approval of a plan for active soil  
7 remediation.

8 (c) Upon completing active soil remediation.

9 (d) Upon completing a groundwater investigation deemed  
10 adequate by the department and, if active groundwater remediation  
11 is necessary, upon obtaining department approval of a plan for  
12 active groundwater remediation.

13 (e) Upon completing the design, installation and start-up  
14 of an active groundwater remediation system.

15 (f) Upon completing the first or any subsequent 12 months  
16 of passive bio-remediation, long-term monitoring of soil or  
17 groundwater, or operation of an active soil or groundwater  
18 remediation system.

19 (g) Upon completing the entire corrective action described  
20 in the approved workplan, or upon reaching the applicable limit  
21 of reimbursement.

22 (2) Reimbursement under sub. (1) for any part of a  
23 corrective action does not affect the reimbursement rate that  
24 applies under s. ATCP 35.22 or 35.24 to any other part of that  
25 same corrective action.

26 (3) As a condition to paying reimbursement at any stage of

1 a corrective action under sub. (1), the department may require  
2 the responsible person to complete the remainder of the  
3 corrective action as described in the approved workplan. If,  
4 after receiving any partial reimbursement under sub. (1), a  
5 responsible person fails to complete a corrective action as  
6 required under this subsection, the department may demand return  
7 of the partial reimbursement by a specified date. If the  
8 department demands return of a partial reimbursement, the  
9 responsible person shall return that partial reimbursement in  
10 compliance with the department's demand.

11 (4) If a responsible person applies for reimbursement under  
12 sub. (1) at 2 or more stages of the same corrective action, that  
13 person's eligibility for an initial installment under s. ATCP  
14 35.28(2) applies only to costs included in that person's first  
15 application.

16 **ATCP 35.28 REIMBURSEMENT PAYMENTS.** (1) GENERAL. (a) The  
17 department shall reimburse approved corrective action costs in  
18 installments under this section, up to the total amount approved  
19 for each corrective action under s. ATCP 35.08(4)(c). Payment in  
20 2 or more installments under this section does not affect the  
21 reimbursement rate that applies to a corrective action under s.  
22 ATCP 35.22 or 35.24.

23 (b) The department shall pay installments under this  
24 section from the appropriations under ss. 20.115(7)(e) and (w),  
25 Stats. Notwithstanding any other provision of this chapter,  
26 payment is subject to the availability of funds in those

1 appropriations.

2 (2) INITIAL INSTALLMENT. The department shall pay a  
3 responsible person an initial installment of \$50,000 for each  
4 corrective action, or the total reimbursement amount approved for  
5 that corrective action under s. ATCP 35.08(4)(c), whichever is  
6 less. If, on any payment date specified under sub. (5),  
7 available funds are insufficient to pay a full initial  
8 installment to every person then eligible for an initial  
9 installment, the department shall pay full initial installments  
10 in the following order:

11 (a) The department shall first pay a full initial  
12 installment for each discharge site at which a pesticide,  
13 associated with a discharge at that site, has been detected in a  
14 drinking water well at or above the enforcement standard  
15 specified for that pesticide under ch. NR 140.

16 (b) After the department has paid full initial installments  
17 for discharge sites identified under par. (a), the department  
18 shall next pay a full initial installment for every other  
19 discharge site at which a pesticide, associated with a discharge  
20 at that site, has been detected in groundwater at or above the  
21 enforcement standard specified for that pesticide under ch. NR  
22 140.

23 (c) After the department has paid full initial installments  
24 for discharge sites identified under par. (b), the department  
25 shall next pay a full initial installment for every other  
26 discharge site at which a pesticide, associated with a discharge

1 at that site, has been detected in groundwater.

2 (d) After the department has paid full initial installments  
3 for discharge sites identified under par. (c), the department  
4 shall next pay a full initial installment for other discharge  
5 sites that are eligible for initial installments, except that the  
6 department shall pay initial installments under this paragraph  
7 only at the times specified under sub. (5)(b) or (c).

8 (e) If, on any payment date specified under sub. (5),  
9 available funds are insufficient to pay a full initial  
10 installment to every person then eligible for an initial  
11 installment under pars. (a) through (d), the department shall pay  
12 full initial installments under each paragraph by establishing a  
13 list of priority payments within each paragraph based on the  
14 order in which the reimbursement applications were received by  
15 the department.

16 (3) SUBSEQUENT INSTALLMENTS FOR SAME CORRECTIVE ACTION.

17 (a) If an initial installment under sub. (2) is less than the  
18 full reimbursement amount approved for a corrective action under  
19 s. ATCP 35.08(4)(c), the department shall pay one or more  
20 subsequent installments to that responsible person or that  
21 person's designee until the department has paid the full approved  
22 amount. No installment under this paragraph may exceed \$100,000  
23 in any fiscal year.

24 (b) Installments under par. (a), if any, shall be paid on  
25 June 30 of each fiscal year. The department may not pay any  
26 installment under par. (a) in any fiscal year until the

1 department has paid all initial installments under sub. (2) that  
2 are payable in that fiscal year. If, on June 30 of any fiscal  
3 year, available funds are insufficient to pay the maximum  
4 authorized installment under par. (a) to every person then  
5 eligible for an installment, the department shall pay prorated  
6 installments under par. (a) to all persons then eligible, except  
7 that the department may pay the maximum authorized installment  
8 under par. (a) to any person whose maximum authorized installment  
9 is \$500 or less. If the prorated amount for any person is less  
10 than \$100, the department may defer payment to that person until  
11 a later year.

12 (d) The department may not, in any fiscal year, pay more  
13 than one installment under par. (a) to the same responsible  
14 person. This paragraph does not prohibit the department from  
15 paying an installment under par. (a) to a responsible person in  
16 the same fiscal year that the department pays an initial  
17 installment to that responsible person under sub. (2).

18 (4) NEW CORRECTIVE ACTION AT SAME DISCHARGE SITE. (a)  
19 Notwithstanding subs. (2) and (3), if the department has  
20 previously reimbursed a responsible person for a separate  
21 corrective action at the same discharge site, the department  
22 shall not do either of the following:

23 1. Pay installments under sub. (2) or (3) that total more  
24 than \$50,000 in any fiscal year for that discharge site.

25 2. Pay any installment under sub. (2) or (3) for that  
26 discharge site until the department has paid all other

1 installments under subs. (2) and (3) that are payable in that  
2 fiscal year for other discharge sites.

3 (b) Installments related to discharge sites under par. (a),  
4 if any, shall be paid on June 30 of each fiscal year. If, on  
5 June 30 of any year, available funds are insufficient to pay the  
6 maximum authorized installment for every discharge site under  
7 par. (a) which is then eligible for an installment, the  
8 department shall pay prorated installments for those discharge  
9 sites except that the department may pay the maximum authorized  
10 installment under par. (a) to any person whose maximum authorized  
11 installment is \$500 or less. If the prorated amount for any  
12 person is less than \$100, the department may defer payment to  
13 that person until a later year.

14 (5) INSTALLMENT PERIODS; AVAILABLE FUNDS. (a) By October  
15 15 of each calendar year, the department shall specify the  
16 recipients and the amounts of the initial installments under sub.  
17 (2) that the department will pay on approved reimbursement  
18 applications received under s. ATCP 35.06 by May 31 of that  
19 calendar year. The department shall pay those initial  
20 installments between October 15 and October 21 of that calendar  
21 year. The total amount paid for all initial installments under  
22 this paragraph in any fiscal year shall not exceed the total  
23 amount of unspent funds from prior fiscal years under s.  
24 20.115(7)(e) and (w), Stats., plus one half of the appropriation  
25 for the current fiscal year under s. 20.115(7)(e), Stats., plus  
26 \$0.40 per ton on fertilizer tonnage distributed during the prior

1 fiscal year as estimated by the department based on fertilizer  
2 tonnage reports received under s. 94.64(4)(b), Stats.

3 (b) By February 15 of each fiscal year, the department  
4 shall specify the recipients and amounts of the initial  
5 installments under sub. (2) that the department will pay on  
6 approved reimbursement applications received under s. ATCP 35.06  
7 by September 30 of that fiscal year. The department shall pay  
8 those initial installments between February 15 and February 21 of  
9 that fiscal year. The total amount paid for all initial  
10 installments under this paragraph in any fiscal year shall not  
11 exceed the total of any unspent funds under par. (a), plus one  
12 half of the appropriation for the current fiscal year under s.  
13 20.115(7)(e), Stats., plus 75 percent of the department's  
14 estimate of the amount collected during that fiscal year from the  
15 1.3% surcharge on gross pesticide sales under s. 94.68(3)(br)3,  
16 Stats.

17 (c) By June 30 of each fiscal year, the department shall  
18 specify the recipients and amounts of the initial installments  
19 under sub. (2) that the department will pay on approved  
20 reimbursement applications received under s. ATCP 35.06 by  
21 January 31 of that fiscal year, and shall also specify the  
22 recipients and amounts of any installments that the department  
23 will pay under subs. (3) and (4). The department shall pay the  
24 installments that it specifies under this paragraph on June 30 of  
25 that fiscal year. The total amount paid for all installments  
26 under this paragraph in any fiscal year shall not exceed the

1 total amount of unspent funds in the appropriations under ss.  
2 20.115(7)(e) and (w), Stats.

3 **ATCP 35.30 CONTESTED INSURANCE CLAIM; DUPLICATE**  
4 **REIMBURSEMENT; REPAYMENT.** If, after being reimbursed by the  
5 department for any corrective action cost, a responsible person  
6 recovers on a contested insurance claim related to the same  
7 corrective action, the responsible person shall apply the  
8 proceeds of that recovery as follows:

9 (1) The responsible person may first apply the proceeds to  
10 pay reasonable legal fees, reasonable expert witness fees and  
11 other reasonable legal costs necessarily incurred by the  
12 responsible person to obtain the recovery.

13 (2) The responsible person may next apply the proceeds  
14 against that portion of the responsible person's eligible  
15 corrective action costs which exceeds the maximum amount on which  
16 the department may pay reimbursement under s. ATCP 35.22 or  
17 35.24.

18 (3) The responsible person shall pay to the department a  
19 percentage of any remaining proceeds which equals the applicable  
20 reimbursement rate specified under s. ATCP 35.22 or 35.24, except  
21 that the total amount repaid under this subsection need not  
22 exceed the total amount of reimbursement which the department  
23 paid to the responsible person for the same corrective action.

24 **ATCP 35.32 HEARING ON DENIAL OF REIMBURSEMENT APPLICATION.**

25 (1) REQUEST FOR HEARING. A person adversely affected by the  
26 department's disapproval of a reimbursement application under s.



1 ATCP 35.08 may, within 30 days after receiving notice of that  
2 disapproval, request a hearing before the department to contest  
3 that disapproval. A request for hearing shall be made in writing  
4 and shall specify the grounds for the request.

5 (2) INFORMAL HEARING. (a) Within 10 business days after  
6 the department receives a request for hearing under sub. (1), the  
7 department shall hold an informal hearing in response to the  
8 request unless the requester agrees to a later date for the  
9 informal hearing. The informal hearing shall be held before a  
10 department employee or official who is authorized to reverse or  
11 modify the department's decision as necessary. The informal  
12 hearing shall be held by telephone or at a location determined by  
13 the department.

14 (b) Within 10 business days after the conclusion of the  
15 informal hearing under par. (a), the presiding officer shall  
16 issue a brief written memorandum which summarizes the informal  
17 hearing, and any decision or action resulting from the informal  
18 hearing. A copy of the memorandum shall be provided to the  
19 person who requested the hearing. The memorandum shall include a  
20 notice of the person's right to request a formal contested case  
21 hearing under sub. (3).

22 (3) FORMAL HEARING. If a contest related to the  
23 disapproval of a reimbursement application is not resolved after  
24 an informal hearing under sub. (2), a person adversely affected  
25 by the department's disapproval of the application may request a  
26 full contested case hearing on the disapproval. A request for a

1 full contested case hearing shall be filed with the department,  
2 in writing, within 30 days after the date of the informal hearing  
3 under sub. (2). The contested case proceeding shall be conducted  
4 as a class 3 proceeding under ch. 227, Stats., and ch. ATCP 1.

5 **ATCP 35.34 RULE REVIEW.** Within 2 years after the effective  
6 date of this chapter [revisor inserts date], the department shall  
7 review the effectiveness of this chapter and shall submit a  
8 report to the board of agriculture, trade and consumer  
9 protection.

10 **SECTION 6.** The rules contained in this order shall take  
11 effect on the first day of the month following publication in the  
12 Wisconsin administrative register, as provided under s.  
13 227.22(2)(intro.), Stats.

14  
15 Dated this 30<sup>th</sup> day of June, 19 94.

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STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

*Elizabeth Kohl*  
By Deputy Secretary  
Alan T. Tracy, Secretary

