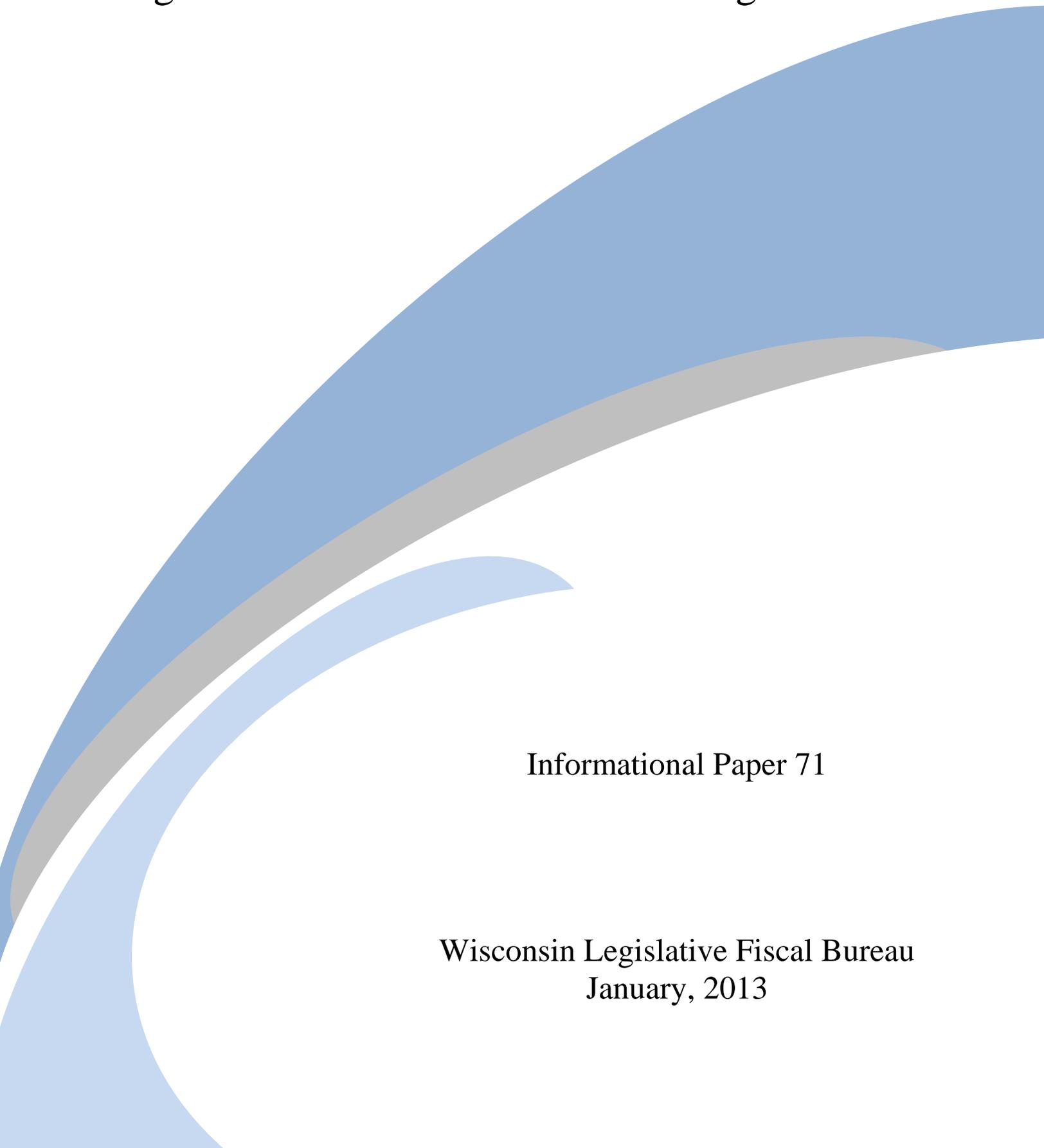


# Agricultural Chemical Fees and Programs



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# Agricultural Chemical Fees and Programs

## Introduction

The statutes provide the Department of Agriculture, Trade and Consumer Protection (DATCP) with regulatory responsibility over the composition, labeling, storage and use of materials and substances involved in agricultural production. These materials include animal feed, fertilizers, herbicides and pesticides. DATCP's regulatory activities include sampling and review of products and product labels, licensing or permitting of regulated products and entities, and inspection of most production, storage or distribution facilities. These activities are primarily funded by fees and surcharges on regulated entities.

In 1993 Wisconsin Act 16, an agricultural chemical cleanup program was created in DATCP. The act transferred responsibility for the investigation and remediation of agricultural chemical spills from the Department of Natural Resources (DNR) to DATCP. The act also established a reimbursement program to fund a portion of cleanup costs and increased current DATCP pesticide and fertilizer fees to partially fund the program. 1997 Wisconsin Act 27 split agrichemical revenues into base fees deposited to the segregated agrichemical management (ACM) fund and surcharges deposited to the segregated agricultural chemical cleanup program (ACCP) fund.

Under section 94.73 of the statutes, DATCP is authorized to order any of the following actions for the cleanup of an agricultural chemical: (a) the investigation of a site to determine the extent and severity of contamination; (b) containment, removal, treatment or monitoring of contaminated materials; and (c) transportation, storage, land application or disposal of contaminated materials.

DATCP actions must be in compliance with cleanup standards set in the statutes and DNR administrative rules. DATCP and DNR signed a memorandum of understanding beginning in August, 1994, to establish their respective responsibilities.

DNR is authorized to take corrective actions or issue orders related to agricultural chemical discharges if one of the following conditions apply: (a) if necessary, in an emergency to prevent or mitigate an imminent hazard to public health, safety or welfare or to the environment; (b) DATCP requests DNR take an action or issue an order; (c) the DNR Secretary approves the action or order in advance, after providing notice to DATCP; (d) DNR takes corrective action after a responsible party fails to comply with an order issued by DNR; or (e) the action or order is authorized under the DNR and DATCP memorandum of understanding.

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## Agricultural Chemical Management Fund

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The agrichemical management fund receives revenues from several feed, fertilizer and pesticide license and tonnage fees. In fiscal year 2011-12, ACM revenues totaled \$7.9 million from fees and interest. Expenditures were \$6.2 million. The funds are used for: (a) DATCP administration of the cleanup reimbursement program; (b) inspection and regulation of the individuals and businesses that manufacture, store or distribute feed, fertilizer and pesticide products in Wisconsin; (c) DATCP administration of environmental quality programs related to groundwater; (d) administration of the collection program for agricultural chemical containers and wastes, which is known

as clean sweep; and (e) various grant programs, which are described later in greater detail. DATCP is authorized 42.25 positions in 2012-13 from the ACM.

Agricultural chemical fee revenues deposited into the ACM fund are from the following sources: (a) \$30 annual license fees for fertilizer manufacturers and distributors; (b) fertilizer fees of 30¢ per ton; (c) \$25 non-agricultural fertilizer permits; (d) \$25 annual licenses for soil and plant additive manufacturers and distributors; (e) \$100 soil and plant additive permits; (f) soil and plant additive fees of 25¢ per ton; (g) annual lime license fees of \$10; (h) \$25 annual licenses for commercial feed manufacturers and distributors; (i) commercial feed tonnage fees of 23¢ per ton; (j) license fees of \$60 for a dealer or distributor of pesticides with uses restricted by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); (k) pesticide applicator licenses of \$40 for individuals and \$70 for businesses; (l) nonresident commercial applicator reciprocal certificate fees of \$75; (m) household, non-household and industrial pesticide registration fees ranging from \$141 to over \$3,000, depending on the quantity sold; and (n) \$250 for registrations of pesticides

for special local applications or emergencies. These fee levels are set in the statutes, except for the registration of an emergency or special local use, which is established in administrative rule. Fees deposited to the ACM fund also formerly included a \$25 biennial permit for veterinary clinics, renewed at the end of each odd-numbered year, but this was repealed under 2009 Act 139. Table 1 shows the ACM fund condition for 2010-11 through 2012-13, and the Appendix provides a display of all agricultural chemical fees.

### Fee Adjustments

Certain ACM fee levels have been adjusted under past budget acts. Under 1997 Act 27, fee reductions were instituted for: (a) fertilizer tonnage fees; (b) pesticide product registrations; (c) individual pesticide applicator licenses; and (d) commercial feed tonnages. 1999 Act 9 extended the reductions, and, in the case of the tonnage fees, further lowered the fee by 2¢ per ton. Revenue reductions as a result of these fee changes were about \$870,000 per fiscal year in 2000-01 and 2001-02. After the fee holiday expired, fees returned to their 1997-98 levels. Aside from these temporary fee reductions, no currently existing

**Table 1: ACM Fund Condition**

	Actual 2010-11	Actual 2011-12	Estimated 2012-13
Opening Balance	\$3,822,000	\$2,445,600	\$4,209,500
Fee Revenue	7,417,900	7,897,100	7,450,000
Interest and Misc. Income	<u>27,700</u>	<u>33,600</u>	<u>50,000</u>
Total Revenue	\$7,445,600	\$7,930,700	\$7,500,000
Total Available	\$11,267,600	\$10,376,300	\$11,709,500
Expenditures	-\$5,798,900	-\$6,166,800	-\$7,182,500
Transfer to General Fund	<u>-3,023,100*</u>	<u>0</u>	<u>0</u>
Cash Balance	\$2,445,600	\$4,209,500	\$4,527,000
Encumbrances	-\$573,900	-\$575,200	-\$575,200
Available Balance	\$1,871,700	\$3,634,300	\$3,951,800

\* Includes directed general fund transfer of \$1,000,000 under 2009 Act 28, as well as other discretionary transfers.

statutory ACM fee level has changed since 1999 Act 9.

## **Agrichemical Management**

Programs related to agricultural chemicals and their use are administered by the DATCP Bureau of Agrichemical Management. In addition to overseeing agricultural chemical cleanups and cleanup reimbursements, the Bureau administers programs related to: (a) household and commercial pesticides; (b) fertilizers; (c) soil and plant additives; (d) commercial animal feed; (e) water quality in areas in which applications of agricultural chemicals occur; and (f) administration of the clean sweep program.

**Pesticides.** Pesticide regulation in the Bureau includes multiple activities related to the marketing of pesticides as well as the effects of pesticide use on humans and the environment.

As noted above, the statutes require any producer of pesticides to be licensed in the state, as well as business and individuals who apply pesticides as part of a commercial business, and any dealer or distributor of a restricted-use product under FIFRA. License fees fund several program duties, which are briefly described below.

*Inspections and Enforcement.* DATCP conducts inspections of facilities such as pesticide manufacturers and sellers, farms and other businesses to ensure compliance with state and federal regulations. Inspections, which may occur on either a routine basis or as the result of a complaint, are intended to ensure compliance with national worker protection standards established by the U.S. Environmental Protection Agency (EPA), and laws for preventing pesticide misuse that could harm agricultural crops, the environment or public safety. Violations may result in special orders, as well as civil or criminal penalties.

*Landscape Registry.* DATCP administers a statewide registry for persons who wish to be notified of commercial landscape applications of pesticides near their residence. DATCP registers members of the general public and provides a list to commercial pesticide applicators operating in the state. These applicators are subsequently required to provide notification of pesticide applications to registered parties.

*Special and Experimental Uses.* DATCP issues permits for both experimental pesticide uses intended to gather scientific data and special uses in local areas for unique or emergency pest issues. As of October, 2012, special local needs or emergency authorizations with varying expirations were in effect for: (a) prevention of sandhill crane depredation of field corn; (b) various fungal or other infestations of potatoes, cherries, peaches, nectarines, strawberries, cranberries, and ginseng; and (c) a mite affecting bee colonies.

**Fertilizer and Other Additives.** The Bureau is responsible for enforcement of labeling and quality of fertilizer, agricultural lime and other soil or plant additives. Persons manufacturing, distributing or selling these compounds must be licensed by DATCP. Additionally, the statutes require permits for persons selling soil and plant additives and for persons distributing certain special-use or nonagricultural fertilizers. (The fees for these licenses and permits are noted above.) The statutes also specify required information that must appear on labels or invoices of these compounds. DATCP regulatory actions include reviewing product labels, as well as sampling compounds to ensure consistency between labeling and the marketed product.

**Containment.** In addition to the regulatory responsibilities noted above for pesticides, fertilizers and other additives, the agrichemical management program is also responsible for enforcement of requirements relating to secondary

containment structures for bulk fertilizer and pesticide storage. The statutes require DATCP to adopt standards for containment structures that capture spills or overflow of fertilizers and pesticides to prevent groundwater and soil contamination and allow for easier recovery and cleaning. Containment violations may be discovered through inspections or complaints, and DATCP may enforce standards through warnings or compliance orders. It should be noted that the EPA considers Wisconsin's containment regulations to be equivalent to federal requirements.

**Animal Feed.** Similar to program activities for fertilizer and other additives, the Bureau's responsibilities relating to animal feed are intended to ensure that feed ingredients are properly disclosed to purchasers and that marketed feed is unadulterated and consistent with its labeling. For example, DATCP inspects feed mills and samples feed to ensure the facility has practices to ensure medicines or other substances do not mix among feed batches; some substances beneficial to certain animals may be poisonous in feed for other animals. The Department also assists the U.S. Food and Drug Administration on federal implementation of rules intended to prevent bovine spongiform encephalopathy (BSE), commonly known as mad cow disease. These rules govern the amounts and types of rendered bovine products that can be used in animal feed.

**Environmental Programs.** Agrichemical management environmental programs include efforts to minimize pesticide impacts and limit groundwater contamination by agricultural chemicals. These are described below.

*Groundwater.* The Bureau conducts groundwater monitoring throughout the state for possible infiltration of agricultural chemicals to groundwater. The Bureau typically collects samples for laboratory analysis and further investigates sites whose samples had excessive levels of pesticides or other substances such as nitrates or ammonium. Investigations attempt to explain

how chemicals were introduced to the groundwater, with possible regulatory actions to follow including enforcement of illegal applications or special orders and rules prohibiting applications in certain geographic areas. The Department's most notable regulatory action of this sort is the 101 areas in which the herbicide atrazine is prohibited. These areas cover 1.2 million acres in the state and exist in parts of 36 counties.

*Manure Management Advisory System.* DATCP established an online manure management advisory system during the 2007-09 biennium with \$115,000 from the segregated (SEG) ACM fund. 2007 Act 20 provided: (a) \$75,000 in 2007-08 as one-time funding for the system's startup; and (b) \$40,000 annually beginning in 2008-09, for maintenance costs and printing of materials for those unable to access information electronically. The manure management advisory system contains information that assists farmers and manure applicators in determining fields and times that are most suitable for manure spreading.

**Clean Sweep.** 2003 Act 33 transferred funding of agricultural chemical and pesticide collection grants, or the agricultural "clean sweep" program, from the ACM fund to the recycling fund beginning with the 2003-04 fiscal year. (The recycling fund, which primarily receives revenue from a state tipping fee on certain solid waste disposed in Wisconsin landfills, was folded into the environmental fund under 2011 Act 32.) Beginning with 2009 Act 28, \$77,200 ACM SEG annually with a 0.75 position was budgeted primarily for clean sweep administration. However, DATCP estimates staffing resources dedicated to clean sweep administration have been between 0.3 and 0.4 FTE during the 2010-11 and 2011-12 fiscal years, with corresponding administrative funding equal to about \$30,000 to \$37,000. The Department reports lower costs are due mostly to: (a) changes in application and reporting processes that have reduced the staffing needed for contract awarding and oversight; and (b) a vacancy

in the assigned clean sweep position, which required other staff persons to fill in on an as-needed basis. However, revisions being made to administrative rule ATCP 34, which governs the clean sweep program, are expected to increase staffing dedicated to the program for 2012-13. Additional information on the clean sweep program can be found in the Legislative Fiscal Bureau informational paper "Solid Waste Recycling and Waste Reduction Programs."

### **Grants and Other Programs**

Besides DATCP regulatory and administrative functions related to agricultural chemicals, the ACM funds several other programs and organizations.

*Agriculture in the Classroom.* DATCP awards grants for the agriculture in the classroom program, which is a national program coordinated by the U.S. Department of Agriculture (USDA) for educating students about agriculture. ACM funding is disbursed to the Wisconsin Farm Bureau Federation, which administers the Wisconsin program. 2001 Act 16 first authorized grants for the program. The 2011-13 budget appropriates \$93,900 each year.

*Wisconsin Grazing Lands Conservation Initiative.* The Wisconsin Grazing Lands Conservation Initiative (WGLCI) is provided \$375,500 annually in the 2011-13 biennium from the ACM fund for technical research and outreach. WGLCI, a collaborative program funded in partnership with the USDA Natural Resources Conservation Service, seeks to expand use of rotational grazing and other conservation practices to promote better land and herd management. The program provides grants on a competitive basis for technical assistance for managed grazing operations, grazing research and outreach efforts.

*Inactive Grants.* As a part of 2005 Act 25 (the 2005-07 biennial budget act), \$1,000,000 ACM SEG was provided to make grants under DA-

TCP's bio-industry opportunity (BIO) and agricultural development and diversification (ADD) grant programs. This funding was provided on a one-time basis in 2005-06 under a new biennial appropriation, and all of the \$1 million in funding from this appropriation was to be awarded for: (a) research and development of technologies that use agricultural products or waste, including digesters, as energy sources; (b) encouraging the use of agricultural products or waste as energy sources; (c) reducing the generation of agricultural wastes or increasing their beneficial uses; and (d) encouraging the development of biochemicals from agricultural products. No additional funding has been provided for this appropriation. Actual grant payments totaling \$935,700 were made from 2005-06 through 2009-10. A total of \$64,300 was unexpended and lapsed to the ACM fund balance on June 30, 2011.

Also, a one-time appropriation from the ACM fund provided the International Crane Foundation (ICF) \$71,000 in each year of the 2007-09 biennium for administration of a project studying non-toxic methods of keeping sandhill cranes from feeding on agricultural crops. 2007 Act 20 required the ICF to match at least 70% of the state grants. The appropriation was repealed June 30, 2009.

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### **Agricultural Chemical Cleanup Program Fund**

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The agricultural chemical cleanup program (ACCP) fund supports the cleanup of fertilizers and non-household pesticides, including spills occurring at commercial fertilizer blending facilities, commercial pesticide application businesses and farm sites. DATCP reports cleanup cases are most commonly begun following: (a) a reported spill; (b) sampling during inspection of a property being sold; or (c) DATCP-initiated sampling at a site, including sampling that shows discharges were insufficiently removed following an initial

cleanup project. DATCP reports sampling initiated by the Department historically has accounted for the largest portion of cases. Cleanup costs are eligible for reimbursement if a party applies within three years of incurring the costs. Further, reimbursements may be provided for first and subsequent spills at the same site, although an applicant may submit only one application per year for one site, and presumptive reimbursement rates decrease for subsequent cleanups.

The ACCP requires a one-time deductible of \$3,000 for farms and small businesses and \$7,500 for larger commercial businesses or licensed pesticide handlers. For costs incurred between 1998 and 2003, the ACCP fund reimbursed owners for up to 80% of agricultural chemical spill cleanup costs, with a maximum \$400,000 per cleanup site lifetime limit for all discharges. The reimbursement rate reverted in 2003 Act 33 to 75%, which was the rate prior to 1998, for costs between the deductible and the \$400,000 limit. Both the statutes and DATCP administrative code establish cleanup costs eligible for reimbursement. Table 2 shows the maximum ACCP reimbursement amounts for which the two types of facilities are eligible at various cleanup cost levels.

**Table 2: ACCP Maximum Reimbursements**

Costs Incurred	Percent Reimbursed	Maximum State Reimbursement
<b>Licensed Commercial Facilities</b>		
Up to \$7,500	0%	\$0
\$7,500 to \$100,000	75	69,375
\$100,000 to \$400,000*	75	294,375
Over \$400,000	--	294,375
<b>Non-Licensed Facilities</b>		
Up to \$3,000	0%	\$0
\$3,000 to \$100,000	75	72,750
\$100,000 to \$400,000*	75	297,750
Over \$400,000	--	297,750

\*Provided that DATCP orders groundwater remediation or approves a soil contamination reimbursement amount prior to incurring costs over \$100,000.

Revenues deposited to the ACCP were approximately \$2.4 million in 2011-12, including fee revenues and interest on the fund balance. Fee revenues consist of the following fertilizer and pesticide license and tonnage surcharges: (a) a fertilizer tonnage surcharge of 44¢ per ton; (b) a pesticide registration surcharge of \$3.50 per product for non-household pesticides with Wisconsin sales of less than \$25,000, \$120 per product for non-household pesticides with Wisconsin sales from \$25,000 to \$74,999, or 0.75% of sales per product for non-household pesticides with Wisconsin sales greater than \$75,000; (c) a \$14 annual license surcharge for fertilizer manufacturers and distributors; (d) a \$28 annual surcharge for dealers of pesticides whose use is restricted by FIFRA; (e) a \$38 annual surcharge for commercial application businesses; and (f) a \$14 annual surcharge for individual commercial applicators.

The 2007-09 budget act reduced each of the surcharges on pesticides and fertilizers deposited to the ACCP fund by approximately 30%. It also maintained the statutory maximum amounts for the surcharges, which are shown in Table 3 with current fees. DATCP may establish different surcharge amounts in administrative rule, up to the statutory maximums listed in Table 3, as necessary to maintain a balance of not more than \$2.5 million.

**Table 3: ACCP Fund Statutory Maximum License and Tonnage Fees with Current Levels**

	Maximum Fee	Current Fee
Fertilizer License	\$20	\$14
Fertilizer Tonnage	63¢/ton	44¢/ton
Non-Household Pesticides (Based on annual sales)		
Under \$25,000	\$5	\$3.50
\$25,000 - \$74,999	\$170	\$120
\$75,000 and Over	1.1 %	0.75%
Pesticide Dealer - Restricted Use	\$40	\$28
Pesticide Application - Business	\$55	\$38
Pesticide Application - Individual	\$20	\$14

**Table 4: Agricultural Chemical Cleanup Reimbursements by Site**

Year	<u>Commercial Sites Reimbursements</u>			<u>Non-Commercial Sites Reimbursements</u>		
	New	Follow-Up*	Expenditures	New	Follow-Up*	Expenditures
1994-95	18	0	\$764,100	2	0	\$11,700
1995-96	24	8	904,700	4	0	86,000
1996-97	27	16	1,265,100	1	0	69,400
1997-98	19	25	1,333,500	7	1	130,900
1998-99	24	24	2,805,000	4	1	70,100
1999-00	22	18	2,072,300	3	1	71,800
2000-01	36	27	3,913,700	2	1	50,300
2001-02	34	62	3,467,300	3	1	91,300
2002-03	27	42	3,760,800	0	1	103,400
2003-04	16	69	2,564,300	1	1	35,800
2004-05	16	64	2,493,000	0	1	29,600
2005-06	12	62	2,085,000	2	1	29,100
2006-07	22	71	2,085,800	0	1	400
2007-08	23	60	2,162,600	3	1	24,500
2008-09	15	69	2,398,600	0	1	10,100
2009-10	8	50	1,347,700	4	0	209,500
2010-11	6	54	2,125,500	3	1	5,800
2011-12	<u>8</u>	<u>36</u>	<u>1,005,500</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	357	757	\$38,554,500	39	13	\$1,029,700

\*Follow-up reimbursements are those monies given for further reimbursements to sites previously receiving funding.

Table 4 provides an historical overview of agricultural chemical cleanup reimbursements from the ACCP fund, which have decreased from a high of over \$3.9 million in 2000-01 to approximately \$1.0 million in 2011-12. Table 5 shows the condition of the ACCP fund. DATCP attributes recent reductions in reimbursements, particularly in 2009-10 (\$1.6 million) and 2011-12 (\$1.0 million) in part to vacancies in both field enforcement staff that identify cases for cleanup and staff that oversee site-specific cleanup activities. Officials report these vacancies tend to result in fewer cases being identified for cleanup, and those identified tend to take longer to plan and complete.

DATCP also projects reimbursements in future years will routinely be, on average, perhaps \$1.5 million or lower as sites requiring cleanup will decline. The Department indicates most sites in Wisconsin needing remediation of long-term agricultural chemical contamination have been

identified and resolved over the cleanup program's history. DATCP contends this particularly pertains to cleanup sites that once actively handled agricultural chemicals, but have discontinued use of such substances and are no longer significant risks for contamination. Although such sites may continue to seek reimbursements if they have not reached their statutory payment cap and if cleanup needs are identified, DATCP believes ACCP reimbursements in the future will be pri-

**Table 5: ACCP Fund Condition**

	Actual 2010-11	Actual 2011-12	Estimated 2012-13
Opening Balance	\$1,477,900	\$5,800	\$938,900
Total Revenue	1,962,200	2,371,400	2,200,000
Cleanup			
Expenditures	-2,131,300	-1,005,500	-1,300,000
Other Programs	-618,900	-432,800	-600,100
Transfers	<u>-684,100*</u>	<u>0</u>	<u>0</u>
Closing Balance	\$5,800	\$938,900	\$1,238,800

\* Amount transferred to the general fund under 2009 Act 28.

marily limited to active chemical mixing and loading sites throughout the state that have accidental spills.

### **Agricultural Chemical Pollution Prevention**

Under a provision in 2007 Act 20, businesses are eligible for capital-improvement grants that will limit the likelihood of agricultural chemical spills. This pollution prevention program allocates up to \$250,000 annually from the ACCP fund. Grantees may receive up to \$500,000 for pollution prevention and agricultural chemical cleanup, meaning a licensed commercial facility receiving a maximum cleanup reimbursement of \$294,375 could receive up to \$205,625 in pollution prevention funds. A non-licensed facility receiving \$297,750 in cleanup funds could receive \$202,250 in pollution prevention grants. Act 20 also specified that pollution prevention grants could not exceed 50% of a project's costs. DATCP is required under Act 20 to create administrative rules defining eligible recipients, projects and costs. The Department in 2008 had begun working with an industry advisory council to develop rules to implement the program. However, DATCP officials report staffing resources since that time have been insufficient to complete the rule-making process, and currently available staffing would also be insufficient to fully administer the program. No draft administrative rule has been advanced and no grants have been awarded to date.

### **Other Programs**

The ACCP fund supports several programs and initiatives in addition to agricultural chemical cleanup reimbursements.

*Animal Health Inspections.* DATCP is provided \$351,700 ACCP SEG in 2012-13 with 4.0 inspector positions under DATCP's animal health program. This funding was created under 2009 Act 28. DATCP's animal health program is responsible for enforcing state laws for inter- and

intrastate movements of animals. The program is charged with preventing disease outbreaks in Wisconsin animal herds that could be detrimental to human and animal health and livestock productivity. In addition to ACCP-supported positions, DATCP is budgeted the following for field staff and expenditures in 2012-13 for animal health inspection and enforcement activities: (a) \$1,281,600 with 12.0 positions from the state's general fund; and (b) \$340,800 in program revenue (PR) with 4.0 positions from various fees charged to the rearing and moving of livestock and other animals.

*Discovery Farms.* Since 2007-08, the ACCP fund has supported a portion of the University of Wisconsin–Extension Discovery Farms. In 2011-13, \$248,400 annually is appropriated to further the farms' research and public outreach activities. The Discovery Farms program consists of several operational commercial farms raising varying types of crops and livestock. The farms evaluate both nutrient management strategies and non-point source runoff reduction practices for wider implementation across Wisconsin. Discovery Farms are a part of the Wisconsin Agricultural Stewardship Initiative (WASI), which pursues environmentally and economically sustainable farms through research and collaboration by university, governmental and non-governmental groups. The funding also supports 1.2 WASI positions that were shifted from federal funding to ACCP SEG.

*One-Time Transfers.* Under 2009 Act 28, \$20,000 each year of the 2009-11 biennium was appropriated from the ACCP fund for aids to county and district fairs, which are disbursed to local fairs to use as prizes in agricultural shows. One-time ACCP funding was intended to offset most of a reduction of \$20,500 from the \$400,000 appropriated for fair aids in the 2007-09 biennium from the state's general fund.

Further, 2007 Act 20 transferred the following amounts from the ACCP fund: (a) \$250,000 in

2007-08 and \$100,000 in 2008-09 to the DATCP food regulation PR appropriation, otherwise funded by fees assessed on various food producers, food processors and food warehouses for inspection activities in these establishments; and (b) \$125,000 in each year of the 2007-09 biennium to DATCP's animal health inspection, testing and enforcement program revenue appropriation, otherwise funded by registration and licensing fees animal markets, animal dealers, animal transporters, deer farms and aquaculture farms to support Wisconsin's program for preventing the outbreak and spread of animal diseases in Wisconsin animal agriculture industries. The transfers were intended to prevent shortfalls in the PR appropriations, which have since stabilized.

### ACCP Revenues and Balances

Due to a large balance in the fund, the 1997-99 biennial budget act temporarily suspended all ACCP surcharges, although the effective dates of the suspensions were different for fertilizer and pesticide surcharges. DATCP extended the original fee holiday by administrative rule, but reinstated fees for all license years beginning in 2002. The suspension of ACCP surcharges reduced revenues to the fund by about \$2.5 million in 2000-01 and about \$1 million in 2001-02.

Fertilizer tonnage fees fluctuated during the mid-2000s, beginning with the 2003-05 biennial budget act. 2003 Act 33 increased the maximum fertilizer tonnage surcharge from 38¢ to 86¢. The higher fee applied to fertilizer sold through June 30, 2005, for which fees were collected in the 2005-06 fiscal year. Fertilizer tonnage revenues that year reached a high of almost \$1.3 million. 2005 Act 25 reduced the maximum fertilizer tonnage surcharge deposited to the ACCP from 86¢ to 63¢ with fertilizer sold beginning July 1, 2005. These surcharges were remitted to DATCP in August, 2006, during the 2006-07 fiscal year. Based on \$394,800 in lower fertilizer tonnage revenues, overall ACCP revenues decreased by approximately \$310,000 in 2006-07.

Each surcharge deposited to the ACCP fund decreased by approximately 30% under 2007 Act 20. These fee levels have remained in effect since. Table 6 displays changes in fertilizer and pesticide surcharge amounts since 2003. ACCP revenues decreased from a high of \$3.8 million in 2005-06 to \$1.8 million in 2009-10. This includes decreases over that time of: (a) approximately \$740,000 in fertilizer tonnage fees; and (b) approximately \$1.1 million in non-household pesticide registration fees. DATCP reports that these revenue reductions have been attributable to both lower fee levels and lower sales volumes in recent years due to economic conditions, though fee revenues have shown modest increases in 2010-11 and 2011-12. Interest earnings also have declined from levels above \$190,000 in both 2005-06 and 2006-07 to negligible amounts since 2010-11.

**Table 6: Changes in ACCP Surcharges**

	2003-05	2005-07	2007-13
Fertilizer License	\$20	\$20	\$14
Fertilizer Tonnage	38¢/86¢ <sup>a</sup>	63¢	44¢ <sup>b</sup>
Pesticide Applicator - Business	\$55	\$55	\$38
Pesticide Applicator - Individual	\$20	\$20	\$14
Pesticide Dealer - Restricted Use	\$40	\$40	\$28
Pesticide Registration - Non-Household Product			
Under \$25,000	\$5	\$5	\$3.50 <sup>c</sup>
\$25,000 - \$74,999	\$170	\$170	\$120 <sup>c</sup>
\$75,000 and Over	1.1%	1.1%	0.75% <sup>c</sup>

<sup>a</sup> 38¢ for fertilizer sold in 2003-04, and 86¢ for fertilizer sold in 2004-05.

<sup>b</sup> Effective beginning with products sold on July 1, 2007.

<sup>c</sup> Effective beginning with products sold on October 1, 2007.

### ACCP Balance Requirements

The 1997-99 budget act required DATCP to modify ACCP surcharges by administrative rule to maintain a fund balance between \$2 million and \$5 million, although 2003 Act 33 changed this requirement to specify that DATCP maintain an ACCP fund balance of not more than \$2.5 million. Since 2003, DATCP has been required to adjust surcharge amounts as necessary in the

ACCP fund in order to end each fiscal year with a balance of not more than \$2.5 million. However, the Department may not exceed the statutory maximum fees shown in Table 3. As shown in Table 5, the ACCP fund had a June 30, 2012, balance of \$938,900 and is expected to have a June 30, 2013, balance of about \$1.2 million.

If the fund balance exceeds, or is expected to exceed, \$2.5 million at the end of a fiscal year, DATCP can either promulgate a revised administrative rule reducing fees, or reduce fees by emergency rule until a permanent rule is promulgated. Under s. 227.24 of the statutes, an agency may promulgate an emergency rule without full administrative rule notice, hearing, and publication requirements if the rule is necessary to preserve public peace, health, safety or welfare. However, any DATCP proposal to adjust agrichemical surcharges via emergency rule procedures in order to maintain an ACCP balance of not more than \$2.5 million must first be submitted to the Joint Committee on Finance under a 14-day passive review process. If the Committee does not object to the proposed emergency rule within 14 working days, DATCP may begin the emergency rule procedures. If, within 14 working days, the co-chairs of the Committee notify the Secretary that a meeting is being scheduled to review the proposed rule, DATCP may not begin emergency rule procedures until the Committee approves the rule.

DATCP officials indicate a significant ACCP fund balance is desirable to avoid potential cash flow problems during a fiscal year. This is because cleanup reimbursements are paid quarterly, which is generally in September, December, March, and June of each fiscal year. However, while fertilizer fees are received in August, the greatest share of ACCP revenues come from surcharges on pesticide product registrations, and these are not received until January. Therefore, if the opening fund balance is too low, revenues may be inadequate to meet the December reimbursements payment. In this case, some payments

could be delayed. Substantial delays could result in the fund incurring additional interest charges, as DATCP administrative rules require claims to accrue interest between the time an application is received and paid.

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### Transfers to the General Fund

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Higher revenues and lower-than-expected reimbursement activity resulted in large fund balances in the mid- to late-1990s. As described earlier, ACM and ACCP fee levels were temporarily reduced by both multiple budget acts and DATCP through administrative rules following accumulation of considerable fund balances.

Balances of the two funds have also been transferred to the state's general fund since the 1990s. In more recent years, periodic transfers have typically been made to meet transfer requirements from biennial budget and budget adjustment acts. Table 7 lists transfers since 1997-98 from the ACM and ACCP funds to the state general fund.

**Table 7: Transfers to General Fund from ACM and ACCP Funds**

Fiscal Year	Transfer Amount	Fund
1997-98	\$506,900	ACCP
1998-99	479,300	ACCP
1999-00	1,500,000	ACCP
	1,000,000	ACM
2000-01	500,000	ACCP
2002-03	200	ACM
2003-04	116,200	ACM
2004-05	1,900	ACM
2006-07	1,537,800	ACM
2007-08	266,000	ACCP
	82,000	ACM
2008-09	640,000	ACM
	1,525,000	ACCP
2009-10	1,555,300	ACM
	1,143,500	ACCP
2010-11	3,023,100	ACM
	<u>684,100</u>	ACCP
Total	\$14,561,300	

A total of \$14.6 million, consisting of \$7,956,500 from the ACM fund and \$6,604,800 from the ACCP fund, has been transferred to the state's general fund in the period shown in Table 7. No transfers are expected in the 2011-13 biennium. It should also be noted that the general fund provided \$4.1 million from 1994-95 through 1998-99 for agricultural chemical cleanup reimbursements.

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### Other Deposits of Agricultural Chemical Fees

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As shown in Table 8 and the Appendix, agricultural chemical fee revenues are deposited into five places aside from the ACM and ACCP funds. These include: (a) the environmental management account (EMA) of the environmental fund; (b) DATCP's fertilizer research appropriation account; (c) the University of Wisconsin-Extension nutrient and pest management outreach appropriation account; (d) DATCP's weights and measures inspection appropriation account; and (e) DATCP's liming material research appropriation account.

**Table 8: Agricultural Chemical Fee Revenue**

Fund/Purpose	2011-12 Revenue
ACM	\$7,897,100
ACCP	2,372,700
EMA	1,541,700
Fertilizer Research	186,400
UW-Extension	164,000
Weights and Measures	125,400
Liming Research	<u>15,600</u>
Total	\$12,302,900

*Environmental Management Account.* The EMA, along with the nonpoint account, constitute the segregated environmental fund. These two accounts are tracked separately, but are statutorily maintained as one fund. The environmental management account primarily receives revenues

from state solid waste tonnage fees, but also from a variety of other sources including petroleum inspection fees and hazardous spills reimbursements from responsible parties, in addition to the agricultural chemical fees shown in Table 8 and the Appendix. These fees are used primarily for: (a) recycling grants to local governments; (b) grants under DNR and other agencies for various programs related to solid waste management and contaminated land remediation; (c) debt service on general obligation bonds issued for state-funded cleanups of contaminated lands and abatement of water pollution; and (d) DNR administrative activities related to recycling and environmental response/repair programs. Additional information on this account can be found in the Legislative Fiscal Bureau informational paper entitled, "Contaminated Land and Brownfields Cleanup Programs." As shown in Table 9, agricultural chemical related revenues to the environmental fund totaled more than \$1.5 million in 2011-12.

**Table 9: 2011-12 Environmental Management Account Agricultural Chemical-Related Revenues**

License/Fee	Fee Amount	2011-12 Revenue
Fertilizer Tonnage	10¢	\$163,900
Soil and Plant Additive Tonnage	10¢	22,500
Primary Producer Fee	\$150	22,800
Household Pesticide Registrations	\$124	681,600
Industrial Pesticide Registrations	\$94	98,000
Non-Household Pesticide Registrations	\$94	459,800
Wood Preservative Surcharge	*	<u>93,100</u>
Total		\$1,541,700

\*For pesticide products with annual sales of less than \$25,000, the annual fee is \$5. For pesticide products with annual sales between \$25,000 and \$74,999, the annual fee is \$170. For pesticide products with annual sales of \$75,000 or more, the annual fee is 1.1% of sales.

*Fertilizer Research.* DATCP's fertilizer research appropriation account collects revenue from fertilizer and soil additive tonnage fees, both of which are 10¢ per ton. Revenues from this account are forwarded to the University of

Wisconsin System to be used for research on soil management, soil fertility and plant nutrition problems as well as for research on surface water and groundwater problems, which may be related to fertilizer usage. In addition, the funding may be used to disseminate the results of the research and other activities that promote the correct usage of fertilizer materials. Although the statutes do not limit which UW System institutions may receive funding, funding in recent years has gone primarily to researchers at UW-Madison. The DATCP Fertilizer Research Council may recommend other nonprofit research institutions to receive funds if the University of Wisconsin System is unable to carry out the projected research.

Revenues in this category totaled \$186,400 in 2011-12. However, the statutes allow DATCP to retain 3.5% of all revenues to assist with the administrative costs of collecting these fees. The Department retained \$6,500 in 2011-12 under this provision, forwarding \$179,900 to the UW System for research. Additionally, for the 2012-13 fiscal year, 2011 Act 32 provides an additional 7¢ per ton for fertilizer is to be transferred as one-time funding from the ACM fund to the fertilizer research PR account. The transfer is budgeted under Act 32 at \$98,000, based on an estimate of 1.4 million tons of fertilizer sold. This amount will be finalized prior to June 30, 2013, as fertilizer tonnage sales reports are made or adjusted.

DATCP's Fertilizer Research Council recommends projects to be financed by this appropriation. The Council, created by Chapter 57, Laws of 1981, consists of seven voting members, three of whom are fertilizer industry representatives and three of whom are crop producers. They are appointed jointly by DATCP's Secretary and the Dean of the University of Wisconsin-Madison's College of Agricultural and Life Sciences. A seventh member is appointed by the DNR Secretary, and is to be knowledgeable about water quality issues. Members serve three-year terms, but no member may serve more than two consecutive terms.

*UW-Extension Outreach.* DATCP collects 10¢ per ton of fertilizer sold and deposits the revenues into the University of Wisconsin-Extension's Outreach appropriation account. This revenue supports UW-Extension's nutrient and pest management program, which provides education and outreach to farmers and other businesses on the efficient use of fertilizers. Revenue from this surcharge was \$164,000 in 2011-12.

*Weights and Measures Inspection.* In addition to the fertilizer and commercial feed tonnage fees found in the Appendix, both of which are 2¢ per ton, DATCP's weights and measures inspection appropriation account also receives revenue from the following sources: (a) contracts with municipalities for the testing of weights and measures machines; (b) weights and measures tests performed by the Department at its metrology laboratory; (c) license fees from operators of vehicle scales, vehicle tank meters and liquefied petroleum gas meters; (d) licenses for people who install, test or calibrate weights and measures equipment; (e) inspection fees from retail food establishments; and (f) reinspections of noncompliant weights and measures. This account funds the Department's weights and measures inspection, testing and enforcement responsibilities under Chapter 98 of the statutes. Revenues from fertilizer and feed tonnage fees were \$125,400 in 2011-12.

*Liming Material Research.* DATCP's liming material research appropriation supports: (a) research by the University of Wisconsin-Madison College of Agricultural and Life Sciences related to liming materials or crop response to liming materials; and (b) the dissemination of results of such research, and dissemination of other activities that promote the correct use of liming materials. Funding may be allocated to other entities if UW is unable to carry out research. The 1.25¢ tonnage fee on all liming materials sold in the state is the only revenue deposited into this account. Revenues totaled \$15,600 in 2011-12.

## APPENDIX

### Agricultural Chemical Fees and Revenues

License/Fee	ACM	ACCP	EMA*	Other	Total Fees/ Surcharges	2011-12 Total Revenue
Commercial Feed License	\$25				\$25	\$34,900
Commercial Feed Tonnage	23¢			2¢ <sup>a</sup>	25¢	1,156,300
Fertilizer License	\$30	\$14			\$44	30,100
Fertilizer Permit Applications	\$25				\$25	16,200
Fertilizer Tonnage	30¢	44¢	10¢	22¢ <sup>b</sup>	\$1.06	1,740,400
Lime License	\$10				\$10	1,100
Lime Tonnage				1.25¢ <sup>c</sup>	1.25¢	15,600
Pesticide Application Business	\$70	\$38			\$108	227,400
Pesticide Dealer - Restricted Use	\$60	\$28			\$88	31,800
Pesticide Individual Applicator	\$40	\$14			\$54	399,300
Pesticide Reciprocal Certification	\$75				\$75	25,400
Soil and Plant Additive License and Permit	\$125				\$125	21,800
Soil and Plant Additive Tonnage	25¢		10¢	10¢ <sup>d</sup>	45¢	102,600
Primary Producer Fee			\$150		\$150	22,800
Special Local Needs Permit	\$250					300
Pesticide Registration - Household						
\$0-\$24,999	\$141		\$124		\$265	1,364,800
\$25,000-\$74,999	\$626		\$124		\$750	326,600
\$75,000 or more	\$1,376		\$124		\$1,500	687,300
Pesticide Registration - Industrial						
\$0-\$24,999	\$221		\$94		\$315	307,000
\$25,000-\$74,999	\$766		\$94		\$860	84,200
\$75,000 or more	\$2,966		\$94		\$3,060	314,000
Pesticide Registration - Non-Household						
\$0-\$24,999	\$226	\$3.50	\$94		\$323.50	1,507,400
\$25,000-\$74,999	\$796	\$120	\$94		\$1,010	368,000
\$75,000 or more	\$2,966**	0.75%	\$94		\$3,060 + 0.95%	3,424,500
Wood Pesticide Surcharge						
\$0 - 24,999			\$5		\$5	500
\$25,000 - \$74,999			\$170		\$170	0
\$75,000 or more			1.1%		1.1%	<u>92,600</u>
Total						\$12,302,900

<sup>a</sup> Deposited to DATCP's weights and measures inspection appropriation for weights and measures testing.

<sup>b</sup> Includes 10¢ to fund UW-Extension outreach, 10¢ for UW soil and fertilizer research and 2¢ for weights and measures testing.

<sup>c</sup> Deposited to DATCP's liming research appropriation to fund UW lime material research.

<sup>d</sup> Deposited to DATCP's fertilizer research appropriation to fund UW soil and fertilizer research.

\* Environmental management account of the environmental fund.

\*\*Also requires payment of 0.2% of gross annual sales.