



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: August 3, 1999

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Rm. 202 South, State Capitol
Madison, WI 53702

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Rm. 211 West, State Capitol
Madison, WI 53702

FROM: Ben Brancel, Secretary *Ben Brancel*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Agricultural Chemical Cleanup Surcharge Fee Moratorium; Final
Draft Rule (Clearinghouse Rule #99-005)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby transmits the above rule for legislative committee review, pursuant to ss. 227.19(2) and (3), Stats. We are enclosing 3 copies of the final draft rule, together with the following report. We will publish a notice of this referral in the Wisconsin Administrative Register, pursuant to s. 227.19(2), Stats.

Background

This rule modifies agricultural chemical license fees used to finance Wisconsin's agricultural chemical cleanup program. This rule extends a current statutory "fee holiday" for 2 more years, to remedy a surplus in DATCP's agricultural chemical cleanup fund. The rule affects license fee surcharges for pesticides and tonnage surcharges for fertilizers.

DATCP is responsible, under s. 94.73, Stats., for administering the agricultural chemical cleanup program. Under this program, DATCP may reimburse part of the cost to clean up spilled or leaked agricultural chemicals that pose a threat to the environment. The program is currently funded by a combination of GPR appropriations and agricultural chemical license fee surcharges. There is currently a surplus in the agricultural cleanup fund.

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1997 Wisconsin Act 27 instituted a license surcharge "fee holiday" for FY 1998-99 and FY 1999-2000. The Legislature enacted this 2-year "fee holiday" at DATCP's request, to reduce the surplus in the agricultural chemical cleanup fund. The Legislature also directed DATCP to continue modifying license fees by rule, as necessary, to maintain a fund balance of at least \$2 million but not more than \$5 million at the end of each fiscal year. This rule is designed to comply with that statutory requirement, assuming no change in current statutory appropriations.

Funding Projections Under This Rule

If current law remains unchanged, the agricultural chemical cleanup fund will have an estimated balance of \$8.3 million on June 30, 2000 – the date on which the current statutory "fee holiday" is scheduled to expire. Based on this funding projection, and assuming no change in current statutory appropriations for the cleanup program, this rule extends the "fee holiday" for 2 more years.

Businesses paying fees under the agricultural chemical cleanup program pass those fee costs on to farmers, in the form of higher prices. This rule would halt collection of \$2.8 million in license surcharges in each year of the 2-year "fee holiday." Assuming that fee-paying businesses pass these savings on to farmers, the rule would save 30,000 Wisconsin farms an average of nearly \$100 per farm per year.

DATCP must extend the "fee holiday" at this time to comply with s. 94.73(15), Stats. Under s. 94.73(15), Stats., DATCP is required to adjust agricultural chemical license fees to maintain a fund balance of not more than \$5 million but not less than \$2 million at the end of each fiscal year. Current law also specifies the maximum surcharge that DATCP may impose.

Hearing Comments

DATCP developed this rule in consultation with an ad hoc advisory council that was familiar with program history and funding. At public hearing, the following organizations spoke or submitted written comments in support of the rule (no one opposed the rule):

- Wisconsin Federation of Cooperatives
- Wisconsin Fertilizer & Chemical Association
- Wisconsin Agricultural Aviation Association
- Wisconsin Farm Bureau Federation

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Rule Modifications after Hearing

DATCP modified the final draft rule to correct an error in fee dates, and to address Legislative Council Rules Clearinghouse comments. There were no other changes.

Response to Rules Clearinghouse Comments

The final draft rule addresses all of the Rules Clearinghouse comments.

Fiscal Estimate

A complete fiscal estimate is attached. This rule decreases the surplus in the agricultural chemical cleanup fund by suspending surcharge fee collections for 2 more years beyond the scheduled expiration of the current statutory fee "holiday." The actual fiscal effect may depend on the biennial budget bill finally enacted by the Legislature. A complete fiscal estimate is attached.

Small Business Analysis

This rule will have no negative effects on small businesses. This rule will help farmers and other small businesses by extending the current license surcharge "fee holiday" for 2 years. Funding for small businesses cleaning up agricultural chemical spills would remain adequate for that 2-year period, assuming no change in current statutory appropriations. Pending biennial budget legislation may affect current appropriations. A small business analysis ("final regulatory flexibility analysis") is attached.

Proposed Final Draft
8/1/99

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

The state of Wisconsin department of agriculture, trade and consumer protection proposes the following order to amend ATCP 29.11(3)(intro.), 29.15(4)(b), 29.20(6)(b), 29.25(5)(a)2. and to create ATCP 40.015 and 40.06(3); relating to agricultural chemical cleanup surcharge fees.

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

Statutory authority: ss, 93.07(1) and 94.73(15), Stats.

Statutes interpreted: ss. 94.64, 94.681, 94.685, 94.703, 94.704 and 94.73, Stats.

This rule extends, for 2 more years, a moratorium on agricultural chemical license fee surcharges used to fund the department's agricultural chemical cleanup program. The cleanup fund is currently running a substantial surplus. The moratorium applies to license fee surcharges paid by pesticide manufacturers, pesticide dealers and pesticide commercial applicators. It also applies to license and tonnage fee surcharges paid by fertilizer manufacturers.

Under s. 94.73(15), Stats., the department must adjust license fee surcharges to maintain a cleanup fund balance (at the end of each fiscal year) of at least \$2, 000,000 but not more than \$5,000,000. The cleanup fund balance currently exceeds the \$5,000,000 maximum target level. In order to remedy the current surplus, the legislature suspended surcharge collections for 2 years.

The department projects that the cleanup fund balance will remain above the \$5,000,000 maximum target level even after the legislatively-imposed surcharge moratorium expires. Based on projections of a continuing surplus, this rule extends the surcharge moratorium for an additional 2 years. When the moratorium expires, surcharges will again take effect at previously established levels. Moratorium expiration dates vary, depending on current fee collection effective dates and annual licensing cycles.

This rule incorporates, without change, current fertilizer license and tonnage fees established by statute, except that this rule extends for 2 years the current statutory

moratoriums on fertilizer license and tonnage fee surcharges used to fund the agricultural chemical cleanup fund.

1 **SECTION 1.** ATCP 29.11(3)(intro.) is amended to read:

2 ATCP 29.11(3)(intro.) **NONHOUSEHOLD PESTICIDES; CLEANUP SURCHARGE.**

3 Beginning with the license year that begins on January 1, ~~2001~~ 2003, an applicant for a
4 license under s. ATCP 29.10 shall pay an agricultural chemical cleanup surcharge for
5 each nonhousehold pesticide product that the applicant sells or distributes. Except as
6 provided in sub. (6) or (7), the amount of the surcharge is as follows:

7 **SECTION 2.** ATCP 29.15(4)(b) is amended to read:

8 ATCP 29.15(4)(b) Beginning with the license year that begins on January 1, ~~2000~~
9 2003, an agricultural chemical cleanup surcharge of \$40.

10 **SECTION 3.** ATCP 29.20 (6)(b) is amended to read:

11 ATCP 29.20(6)(b) Beginning with the license year that begins on January 1, ~~2000~~
12 2003, an agricultural chemical cleanup surcharge of \$55.

13 **SECTION 4.** ATCP 29.25(5)(a)1. and 2. are amended to read:

14 ATCP 29.25(5)(a)1. A license fee of \$40, except that the license fee is \$30 for
15 each of the license years beginning January 1, ~~1998~~ 1999 and January 1, ~~1999~~ 2000.

16 2. Beginning with the license year that begins on January 1, ~~2000~~ 2003, an
17 agricultural chemical cleanup surcharge of \$20.

18 **SECTION 5.** ATCP 40.015 is created to read:

19 ATCP 40.015 **License fees and surcharges.** (1) A person applying for a license
20 to manufacture or distribute fertilizer shall pay the following annual license fees:

1 (a) \$30 for each business location and each mobile unit that the applicant uses to
2 manufacture fertilizer in this state.

3 (b) \$30 for an applicant that distributes but does not manufacture fertilizer in this
4 state.

5 (2) Beginning with the license year that begins on August 15, 2002, a person
6 applying for a license to manufacture or distribute fertilizer shall pay the following
7 agricultural chemical cleanup surcharges:

8 (a) \$20 for each business location and each mobile unit that the applicant uses to
9 manufacture fertilizer in this state, other than a business location or mobile unit that is
10 also licensed under s. 94.685 or 94.703, Stats.

11 (b) \$20 for an applicant that distributes but does not manufacture fertilizer in this
12 state.

13 **SECTION 6.** ATCP 40.06(3) is created to read:

14 *ATCP 40.06(3)(a) Tonnage fees and surcharges.* All persons licensed to
15 manufacture or distribute fertilizer shall submit a tonnage report on a form provided by
16 the department. Except as provided in par. (b), a person who is required to be licensed to
17 manufacture or distribute fertilizer and who sells or distributes fertilizer in this state shall
18 pay to the department the following fees and surcharges on all fertilizer that the person
19 sells or distributes in this state:

20 1. A basic fee of 25 cents per ton for fertilizer sold or distributed on or before June
21 30, 1999 and 32 cents per ton for fertilizer sold or distributed after June 30, 1999, with a
22 minimum fee of \$25 if any fertilizer was sold or distributed.

1 2. A research fee of 10 cents per ton, with a minimum fee of \$1 if any fertilizer
2 was sold.

3 3. An additional research fee of 10 cents per ton, with a minimum fee of \$1 if any
4 fertilizer was sold.

5 4. A groundwater fee of 10 cents per ton, with a minimum fee of \$1 if any
6 fertilizer was sold.

7 5. An agricultural chemical cleanup surcharge of 38 cents per ton on all fertilizer
8 that the person sells or distributes after June 30, 2001.

9 **NOTE:** A copy of the tonnage reporting form is mailed to each licensee with their
10 annual license renewal. Copies may also be obtained from the agricultural
11 resource management division of the department at 2811 Agriculture Drive, PO
12 Box 8911 Madison, WI 53708.

13
14 (b) *Exemptions.* Paragraph (a) does not apply to any of the following:

15 1. Fertilizer sold or distributed to a manufacturer for use in the further
16 manufacture or processing of fertilizer.

17 2. Fertilizer sold or distributed to a person licensed to manufacture or distribute
18 fertilizer, for resale by that person.

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

Dated this _____ day of _____, 19_____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

FISCAL ESTIMATE

DOA-2048 (R 10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.
ATCP 29, ATCP 40

Amendment No. (If Applicable)

Subject
Agricultural Chemical Cleanup Surcharge Fees

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Source Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations
20.115(7)(wm)

Assumptions Used in Arriving at Fiscal Estimate

This fee rule adjusts revenues to the agricultural chemical cleanup fund as needed to maintain a balance in the fund that is between \$2,000,000 and \$5,000,000, as required by s. 94.73(15), Stats. The fund is currently well above the \$5,000,000 cap and anticipated reimbursements are not expected to bring the balance below \$5 million before the surcharge fees are set to resume in FY 99/00. A continued surcharge fee "holiday" is required under current law to bring the fund into balance.

Anticipated expenditures are based off an estimated \$7.3 million in unsubmitted reimbursement costs incurred prior to July, 1998, that must be submitted by October 14, 2000 to be eligible for reimbursement. Responsible persons are continuing to expend \$3.6 million dollars per year. The \$7.3 million in pre-July, 1998 costs are expected to be submitted uniformly through October, 2000. Ongoing costs will be submitted as incurred, along with the pre-July 1998 costs, as required by rule to maintain their eligibility.

Based on these assumptions, the department estimates that a two year extension on the surcharge fee "holiday", as proposed in this rule, will drop the agricultural chemical cleanup fund balance to approximately \$4.6 million at the end of FY 2001/2002. Future surcharge fees would then be set based on continuing reimbursement program costs. The actual fiscal effect will depend upon legislative actions proposed through the budget process and may significantly modify this estimate.

Long - Range Fiscal Implications

The department anticipates this action will bring the agricultural chemical cleanup fund into balance with long term program costs.

Agency/prepared by: (Name & Phone No.)

DATCP
Paul Morrison 608-224-4512

Authorized Signature/Telephone No.

Barbara Knapp
Barbara Knapp (608) 224-4746

Date

8/3/99

FISCAL ESTIMATE WORKSHEET

1997 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm.Rule No. Amendment No.
ATCP 29, ATCP 40

Subject
Agricultural Chemical Cleanup Surcharge Fees

I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
Two year reduction in Agricultural Chemical Cleanup Segregated Fund revenues of \$2,800,000 per year.

II. Annualized Cost:		Annualized Fiscal Impact on State funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations - Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations - Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
TOTAL State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
III. State Revenues		Increased Rev.	Decreased Rev.
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>			
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$	\$ -

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$	\$
NET CHANGE IN REVENUES	\$	\$

Agency Prepared by: (Name & Phone No.) DATCP Paul Morrison 608/224-4512	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 8/3/99
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FINAL REGULATORY FLEXIBILITY ANALYSIS

for revisions to Ch. ATCP 29 and ATCP 40, Wis. Adm. Code

The proposed changes to ATCP 29 and ATCP 40, Wis. Adm. Code will have minor but positive effects on small businesses that sell or use fertilizers or pesticides in Wisconsin.

Businesses Affected:

Currently all manufacturers and labelers of pesticides used in agricultural crop production must register those pesticides and pay certain fees for those pesticides, with the fees based on the value of Wisconsin sales. Likewise, manufacturers and labelers of fertilizers must be licensed and pay fees for each ton of fertilizer distributed in this state. Agricultural coops and farm centers that blend fertilizer or sell or apply pesticides must be licensed to do these activities. A portion of these fees are used to clean up sites that have been contaminated by spills of pesticides and fertilizers. Most of these fees are passed to farmers through distributor imposed surcharges on the products.

Starting with the state fiscal year 1998/1999, and continuing for two years, the product and license fees have been reduced because the balance of funds currently available exceeds the anticipated costs of cleaning up contaminated sites. The fees are set to resume during state fiscal year 2000/2001. This proposed rule will delay resumption of these surcharge fees for agricultural chemical cleanups for two additional years.

Most manufacturers of pesticides and many manufacturers of fertilizers, as well as many agricultural coops and farm centers are not small businesses. Some smaller coops and farm centers are small business. Since most of these fees are passed on to farmers, the greatest savings should be at the farm level, most of which are small businesses.

Anticipated Impacts

The department estimates cost savings of \$2,800,000 per year for two years. Based on 30,000 farms, the department anticipates average per farm savings of about \$200 over the two years during which this rule extends the fee reduction, with the savings directly proportional to purchased fertilizer and pesticide inputs.

There are no anticipated changes in recordkeeping, reporting, or other practices as a result of this rule.

Dated this 2nd day of August, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By E. Chapman for N. Neher
Nicholas J. Neher, Administrator
Agricultural Resource Management Division

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF SUBMISSION OF PROPOSED RULES TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the state of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 99-005 to the presiding officer of each house of the legislature for standing committee review. The propose rule amends Chapter ATCP 29 and 40, relating to agricultural chemical cleanup surcharge fees.

Dated this 9 day of August, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary

Chairman:
Agriculture Committee



Member:
Consumer Affairs
Government Operations
Natural Resources

Al Ott

State Representative • 3rd Assembly District

Assembly Agriculture Committee

MEMO

TO: Members of the Assembly Agriculture Committee

FROM: Representative Al Ott, Chair

DATE: August 19, 1999

The following clearinghouse rule has been referred to the Assembly Agriculture Committee:

Clearinghouse Rule 99-005

Relating to agricultural chemical cleanup surcharge fees. Submitted by the Department of Agriculture, Trade and Consumer Protection.

ARO:ln
Attach.