99-0876
APPENDIX A
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Summary of Oral Testimony and Written Comments
Proposed Amendments to ATCP 34
June-July, 1999

Introduction

The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) held public hearings in Madison on June 23rd and Stevens Point on June 24th to record oral testimony on proposed changes to Chapter 34, Wisconsin Administrative Code (the Chemical and Container Collection Program, also known as "Agricultural Clean Sweep"). Written testimony on ATCP 34 was accepted until July 2, 1999. DATCP is proposing changes to ATCP 34 to keep the rule consistent with current service offerings and to clarify and streamline rule provisions.

Each hearing began with an overview of rule history and provisions, with time being allotted for audience questions. Informational materials available at each session included copies of the draft rule and the draft environmental impact statement

A total of seven people attended the public hearings, of which four provided oral testimony and completed appearance cards. Two people filled out appearance cards, but did not provide oral testimony. One person was present for informational purposes only.

In addition to the oral testimony accepted at Madison and Stevens Point, written comments were received from thirteen (13) individuals.

Testimony Summary

Oral testimony centered on two provisions within the proposed rule: county grant authority under s 34.03 (1) (b) and hazardous waste contracting provisions in 34.08 (2). In brief, testifiers were concerned about the potential inability of county associations such as regional planning commissions to act on behalf of their member counties and apply for and receive clean sweep grants from the department. On the hazardous waste contracting provision, a wide range of concerns were presented. However, the following themes dominated discussion: the burdens the new rule could place on counties and county coordinators, the likelihood that counties would be required to bid because of local procurement procedures, and the potential impacts of increased county and state liability because of a multiple vendor environment.

Written testimony was more varied than oral testimony, but many of the themes noted above were found here too. Three non-county letters were received. One (Solid and Hazardous Waste Education Center-UWEX) supported the program although it wondered about the potential impacts of multiple vendors on program safety and liability. Two neighboring states, Minnesota and Michigan with active farm chemical collection programs, forwarded comments. These

letters made direct reference to the numerous problems surrounding the use of multiple vendors, including the impact on county staff, and overall program safety and liability. Both letters strongly supported the use of a single vendor to maximize program efficiency, safety, and liability protection.

Nine Wisconsin county, clean sweep coordinators and one county executive submitted written comments. Two coordinators made comments on the importance of a grant process that allows for easy, efficient multi-county (community) involvement, (e.g. allowing an association to receive grants funds for member counties). The remaining coordinators and county executive (all collection event or single-day counties) discussed the impacts of the proposed hazardous waste contracting language. Virtually every coordinator along with the county executive spoke to the extra potential work and demands created by the proposed language. This problem was attributed in large measure to county, not state, bidding requirements. County coordinators want clean sweep to operate in simple, "turn-key" fashion. One coordinator and the county executive indicated that it would be much harder to work with neighboring counties in multi-county or joint collections under the proposed language, (i.e. each could select a different vendor). Finally, two coordinators spoke to the financial impacts created by the proposed rule on rural counties. An example provided by the Richland County coordinator illustrated that disposal costs could increase several fold over current pricing because small counties will not attract competitive bids, (i.e. low volumes, high costs).

In sum, there was a perception that the impact of the proposed hazardous waste contracting language on counties could be negative. The proposed language allows county selection of a vendor as an alternative to using the state-approved vendor. Both oral and written testimony suggests that this could result in a county being required to solicit bids for one-day or temporary collections. This would mean an additional workload and counties didn't feel they had the expertise needed to assure that they were selecting a qualified vendor. This could result in some counties dropping out of clean sweep altogether.

County testimony also indicated the need for flexibility in allowing counties to jointly conduct clean sweep activities through associations such as the Northwest Regional Planning Commission (NWRPC) to maintain administrative and operational efficiencies. The current proposal provides this option for counties who have entered into agreements with another entity to administer the project on their behalf.

Oral Testimony

Madison-June 23, 1999

A total of six people attended the public hearing in Madison on proposed changes to ATCP 34. Of these six people:

*1 registered in support of proposed amendments and did not speak
*1 registered against amendment provisions and did not speak

*3 spoke against amendment provisions
*1 attended for informational purposes only and did not register

The following is a summary of oral testimony presented at the hearing:

1) Gail Frie, Vernon County Solid Waste/Recycling Department. Gail's comments focused on hazardous waste contractor selection. Gail began by expressing his satisfaction for current program operation, stating the importance of a "turn-key" approach, (i.e. he doesn't have to worry about technical aspects). He said the proposed rule may force counties to bid, as that is the only way to confirm that the state vendor has the lowest prices. But, he doesn't have the time or the skills to prepare bid documents, conduct audits, check compliance records, etc. Gail believes that disposal costs would go up if contracts were bid locally. His board (not him) would have the final say over vendor selection, and they tend to be very conservative. He made the suggestion that if "choice" was really that important to DATCP, then counties could demonstrate their need for choice and show they have qualified people making choice. All counties won't be forced to seek bids this way. He ended by saying that this could be the "beginning of the end" for one of DATCP's most user-friendly and successful programs. He said local attorneys and politicians will have a variety of opinions about "choice" which, in the end, will lead to more confusion and problems.

2) Eric Laut, Advanced Environmental Technical Services . Eric's comment were directed toward hazardous waste contractor selection. Eric began by saying that his company, as the state-selected vendor, has been serving the Ag Clean Sweep Program since 1990, performing collection services for counties with single-day events. Benefits enjoyed under the state contract include cooperative purchasing, low pricing, extended CERCLA protection through high insurance levels and indemnification, and state audit team protection. The proposed "opt out" language creates a hot of problems. Eric said the language will increase CERCLA exposure due to the elimination of the state audit function and will reduce DATCP's quality control as it will be difficult to enforce standards in a multiple vendor environment. Because the department and counties have little-to-no staff capability to monitor vendors, (i.e. audit sites, compliance reviews), CERCLA liability exposures and costs will likely increase. AETS has a "spotless safety record" with clean sweep; no releases or "OSHA reportables". AETS has received two state contract awards in their years with Ag Clean Sweep. In conclusion, Eric said the state's competitive bidding process assures very high levels of protection to the environment, counties, and the department at very favorable prices. NOTE: Eric Laut submitted a paper with his oral presentation and this paper has been attached to this report.

3) Dale Cardwell, Dane County/City of Madison Clean Sweep Program. Dale's comments centered around county contracting provisions. Dale began by saying his comments reflect the positions of the Northwest and City of Madison/|Dane County clean sweeps. The Northwest Clean Sweep links ten counties together through "joint powers" authorities (s. 66.30), and regional planning and solid waste authorities. He is concerned that the proposed rule would require each county in an association to make an application and receive grant funds. This creates excessive administrative and financial burdens on rural counties and may lead to counties dropping out. Dale noted a contradiction in intent vs. application in the proposed language, (i.e.

encourages county associations but then makes it hard for them to serve members effectively). He said it is "best to create maximum flexibility for counties to create the best organization for agricultural collections". Cooperative, multi-county approaches are required in rural areas. Dale made the suggestion that to be consistent with current statutory options for counties, the following language should be considered, "counties may apply as provided under Wisconsin statutes either singly or cooperatively".

Stevens Point-June 24, 1999

Two people attended the hearing in Stevens Point on proposed changes to ATCP 34. Of these people:

* 1 person attended for information purposes only (also attended Madison hearing)
* 1 person registered and spoke against amendment provisions

The following is a summary of oral testimony presented at the meeting.

Richard Schneider, Northwest Regional Planning Commission. Richard's comments were directed to county contracting concerns. Richard began by expressing his continued support of Ag Clean Sweep, saying that it had helped his region dispose of significant amounts of hazardous waste. He then gave a short history of the Northwest Clean Sweep, indicating that it had the full support of all ten counties from the beginning. These counties were interested because they didn't have staff or financial capabilities to run events on their own. Richard said that conversations with member counties confirm that numerous counties would drop out of clean sweep if they had to go on their own, (i.e. they need the cooperative environment of the Northwest Clean Sweep). He went on to say that he hopes the definition of "county" in the proposed rule will not cause problems for his region since it might "dissuade them from having any program in place at all". His ending comments were directed to liability issues. Northwest Clean Sweep protocol requires that individual counties remain RCRA responsible for wastes, (i.e. the state would not assume waste liaiblity). s 66.95 confirms the procedure for regional planning commission dissolution. NOTE: Richard submitted a paper with his oral presentation and a copy of it has been attached to this report.

Written Comments

Thirteen (13) people submitted written testimony on the proposed amendments to Chapter ATCP 34, Wis. Administrative Code. The written record was open until July 2, 1999. In general, there was widespread support for the clean sweep program, but specific problems were noted with two provisions: county grant authority under s 34.03 (1) (b) and hazardous waste contracting provisions under 34.08 (2). None of these individuals presented oral testimony. The following is a summary of their individual comments.

1) David S. Liebl, Waste Management Specialist, Solid and Hazardous Waste Education Center-UWEX. David praised the work of the Ag Clean Sweep Program. He went on to comment on the importance of clean sweep's efforts to work with local HHW collections, permanent facilities, and VSQG collections at the county and regional level. He feels counties should be able to successfully contract with the state vendor or any other vendor. However, to maintain statewide effectiveness, he felt it important for the department to develop "contract and performance guidelines" that can be used by counties when they select their own vendor. This information could be presented in the form of a booklet for Wisconsin counties.

2) Joseph Spitzmueller, Pesticide Program Collection Manager, Minnesota Dept. of Agriculture. Joe initially noted the broadly similar (and successful) backgrounds of the Wisconsin and Minnesota pesticide collection programs. He went on to make the case for the importance of a single-vendor in very active collection programs. Joe said the new rule could create a "patchwork of different collection systems" and will "certainly cause significant management difficulties and an administrative nightmare". He noted that Minnesota counties are not interested in getting involved in vendor audits and are comfortable giving this authority to the MDA. Marketplace changes and impacts were also of concern to him. Minnesota's recent RFP for $450,000 only attracted two bidders. His ending remarks focused on the importance of good liability protection which, in his opinion, will be compromised by the proposed language.

3) Chuck Cubbage, Science Advisor, Michigan Dept. of Agriculture. Chuck began by noting his role in monitoring nationwide pesticide collection programs. Wisconsin has one of the most active (and successful) programs and that is why he was concerned about the proposed rule. Much of his concern focused on the impact of multi-vendor contracting on state staff and the program itself, (e.g. extra materials, more training, less confidence in program outputs, poor record uniformity). Chuck was also concerned that counties would not see the rule in terms of "optional" because of mandatory county bidding requirements, and that some counties would have to take the lowest bidder. He questioned the effectiveness of the "disapproval clause" noting the hard feelings that could result. Finally, he wondered about the wisdom of putting the state in the awkward role of working with multiple county vendors, no matter how good or how bad, knowing that if something went wrong, it would be the "state's program" at that point.
4) Jim Pennau, Recycling Manager, Winnebago County Solid Waste Management Board. Jim's comments related to county contracting provisions. He began by saying that single-county contracting is very costly and inefficient when compared to the opportunity for multi-county collecting through permanent hazardous waste facilities such as the Western Wisconsin Recycling Association. Jim went on to say that Winnebago County would prefer language that gave groups of counties, regional planning commissions, sewage districts, etc. the ability to secure grant dollars through one or more members of their group.

5) Wes Damro, Household Hazardous Waste Coordinator, Brown County Port and Solid Waste Department. Wes's comments broadly related to county contracting provisions. He began by saying that it is important for groups and communities to work together to dispose unwanted chemicals. To achieve this end, the clean sweep process should make it easy for communities to cooperatively work together. This would make it easier to administer the program so as to control costs and minimize expenses, perhaps even sharing collection facilities. Wes ended by

saying that everything should be done to encourage cooperative efforts and that it would be appropriate to keep the process as simple as possible to achieve this goal.

6) Kathleen Haas, Community Resource Development Agent, UWEX-Columbia County. Kathleen's comments related to contractor selection provisions. She began by saying that her comments reflect her concerns as a county coordinator for ag clean sweep. Her first concern related to county liability. She is concerned that "opt out" leaves counties vulnerable to possible liability problems. Kathleen is not a risk management expert and depends on the state to take care of these issues for the county. The current state contract offers significant liability protection. Her next issue was local bidding requirements. She is concerned that either she or the procurement officer could be forced to seek a local bid, and they are not prepared for this outcome, (e.g. no staff, complex requirements, too many other projects). They don't want choice and would prefer to depend on the state-selected vendor. She was also concerned about the possibility of "politics" entering into the county decision. Her last issue was joint county activities. Kathleen is concerned that the rule would make it harder for Columbia County to work with neighboring counties since each could select a different vendor.

7) Greg Lamb, Community Development Educator, UWEX-Door County. Greg's comments related to contractor selection provisions. Greg began by saying his comments reflect his role as a coordinator for a recently completed, successful clean sweep. He said Door County is involved because they believe in the Program's objectives and because of its relative operational ease. He feels, however, that the proposed contracting language will make the program more complicated for local staff, will require more time, and will ultimately reduce the number of clean sweep days in Wisconsin. Letting counties choose a contractor will "mean that someone at the county level will have to choose which contractor to use". A "defensible process" will have to be built to support the selection, (e.g. gather information on vendors, specifications, proposal confirmation). He believes this language will greatly increase inefficiency since every county would have to repeat the bidding process. Greg ends by saying that some counties may choose not to participate because of the added workload.

8) Greg Lowe, County Conservationist, Juneau County Land Conservation Department. Greg's comments related to contractor selection. Greg began by saying that Juneau County has participated in the past and is planning on holding a clean sweep this year. He said the proposed language will place more time and expense burdens on the county to set up contracts with waste haulers. He is also concerned that the county corporation counsel would take a dim view of liability problems created by county contracting, "causing the Juneau County Board to disapprove future participation". Juneau County likes the program the way it is currently run and sees that changing it runs the risk of losing county participants.

9) Dennis Dornfeld, Ag Agent, UWEX-Waushara County. Dennis's comments concern contractor selection. He began by saying that Waushara County has held two clean sweeps and that he is very much opposed to the proposed language. It would put counties in a position where they would have to bid and that would create a host of problems. First, as he knows very little about hazardous waste contracting, it would greatly complicate clean sweep planning and

implementation. He would not participate if he had to select a waste contractor. Second, he is concerned about the increase in safety problems and hazardous brought about by the use of inexperienced vendors. Dennis expressed great confidence in the safety procedures of the current state vendor. Third, he feels that the state contractor provides excellent liability protection and that he would not feel as secure with a county-selected vendor. Fourth, he likes the simplicity of the current program and feels that excessive duplication would occur as a result of the proposed language. Dennis ends by saying that allowing county bidding will ensure that his county and numerous others will not support clean sweep any longer.

10) Allan K. Kehl, County Executive, Kenosha County. Allan's comments were directed towards contractor selection. He began by noting that Kenosha had just completed its first clean sweep with Racine County. They are quite concerned about the extra time, work, and money required by the proposed language. He indicated that because of the already large amount of work that went into clean sweep, any extra effort or work would make it likely that the county would reconsider participating in the future. They are also concerned about the liability issues surrounding the selection of a new vendor. Alan indicated that they had great comfort with the current state vendor, but aren't sure that such comfort would exist with a company only performing a limited amount of ag work every year. Kenosha County also believes that county choice would make it harder to create multi-county collection events as each could select their own vendor. He ends by saying that any changes that make it harder for counties to participate "will have negative effects on the program and lower county participation".

11) Jim Hebbe, County Conservationist, Green Lake County. Jim's comments were directed toward contractor selection. Jim began by saying that the current program has worked very successfully for Green Lake's two previous events. Clean sweep presently requires minimal time effort , but the proposed language could change that. They are not experts in the area of chemical waste and it would be hard to go through the contracting procedure. Jim was also concerned that small counties like his would not fare well going to the marketplace for bids. Bigger counties (with more waste) would have a clear advantage. He ended by saying that small counties like his simply don't have the staff resources to undertake bidding, and that it makes little sense to "change a successful program when we don't know the long-term outcome of this rule change".

12) Steve Kohstedt, Ag/Resource Agent, UWEX-Richland County. Steve's comments focused on contractor selection. Steve began by noting that Richland County has sponsored numerous clean sweeps over the years. His opening comments reviewed the merits of the state bidding procedure, (e.g. large volume, homogeneous package, detailed guidelines, one contract officer). He went on to say that should counties start seeking their own bids, costs would likely increase. In addition to all of the extra county resources required just to prepare a bid, disposal costs would increase too. Steve then gave a real example from Richland County. Comparing two collections in 1996 and 1998, he noted there was a $ .28 per pound increase. "Bidding these collections independently could cost counties three to four times as much in the future compared to the present program". He ended by saying that "the program has worked so well, why change it".

13) Dana L. Schoening, Community Resource Agent, Langlade County. Dana's comments centered on contractor selection. Dana began by citing the extra burdens the proposed rule places on rural counties, (e.g. limited staff capacity, no expertise). He noted that the present state contracting system minimizes the potential for liability problems, and that might not happen in a county-based selection system. Dana was concerned that the proposed rule "would be interpreted by counties as requiring a bid for hazardous waste collection services". He was also concerned with the impacts of county "low-bid requirements". The program may end up with vendors of questionable service delivery potential. Counties faced with more complex program demands because of bidding would simply drop out of clean sweep altogether. He ended by stating that the proposed rule "would reduce the quality of hazardous waste collection in the State of Wisconsin." The interests of Langlade County are well protected by the current system.

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
FINAL ENVIRONMENTAL ASSESSMENT

Division Affected: Agricultural Resource Management

Rule Number: ATCP 34

Clearinghouse Rule Number:

HISTORY AND BACKGROUND

1. **Rule number and title:**

   ☐ New Rule
   ☒ Modification of Existing Rules

2. **Statutory Authority**

   A. To adopt the proposed rule: Sections 93.07(1), 94.69

   B. Statutes(s) being interpreted by proposed rule:

   93.55,Sections (1) and (2).

3. **Summarize the history of the proposed rule and the reason the rule was developed:**

   Chapter ATCP 34 of the Wisconsin Administrative Code was initially promulgated as an emergency rule (ATCP 164), August 14, 1990. Wisconsin Act 335, 1989 appropriated $100,000 for the department to conduct a pilot study on the need for agricultural hazardous waste chemical and agricultural container collection. Both funding and statutory authority were to terminate on June 30, 1991. Because of the limited amount of time to complete a pilot study in the fall of 1990, ATCP 164 was adopted under emergency rule authority.

   Fall 1990 pilot studies in Door, Pierce, and Portage Counties were successful beyond all measure. Consequently the Legislature provided additional funding and authorization in Wisconsin Act 39 (Biennial Budget Act) 1991. The Department subsequently began development of ATCP 164 as a permanent rule.

   During the first half of 1992, the Department worked with the Department of Natural Resources (DNR) to resolve

operational and liability issues. Ultimately Memorandums of Understanding (MOUs) and "enforcement discretion" guidance documents were developed to address these concerns. ATCP 164 went to hearing in early 1992 and was made permanent on September 1, 1992. In April 1993, ATCP 164 was renumbered to ATCP 34 under s. 13.93 (2m)(b)1.

From the beginning, the primary purpose of what has become known as the Agricultural Clean Sweep Program was to collect banned, canceled, and otherwise unwanted pesticides and other hazardous wastes from Wisconsin farms. Pesticides and chemicals such as DDT, chlordane, lead paint, dinoseb, and lead arsenic had accumulated on active and abandoned farms for decades. State and federal laws severely restricted the disposal of pesticides and liquid chemicals in local landfills. Disposal through private waste hauling companies was hampered by high costs and limited access.

ATCP 34 was designed to make it easy for farmers to legally dispose of accumulated hazardous chemicals and containers at public collection sites. Grants allow counties to sponsor and promote clean sweeps at county highway shops, fairgrounds, or landfills. Costs to farmers are kept to an absolute minimum, and farmers face no long term environmental liability for having used public collection sites. By statute, counties remain "generators" for hazardous waste disposal purposes. Nearly all operational costs are eligible for reimbursement through Department grants.

These general operational features have anchored Ag Clean Sweep since 1990. However, owing to changes in state hazardous waste laws in 1996, the department added agricultural businesses as eligible participants and expanded services to counties with permanent collection facilities. Annual funding for Agricultural Clean Sweep grants has held constant at the 1992-1993 figure of $560,400.

4. Description of the Proposed Rule

A. Objective of the proposed rule (be specific and cite internal and external studies, reports, and other

information or rationale used in establishing the objectives of the proposed rule).

The primary purpose of ATCP 34 rule revision is to make it current with existing service offerings. For several years, the department has offered services which are not clearly defined within ATCP 34. These services, grants to permanent hazardous waste collection facilities and waste collection services for businesses and municipalities, remain popular and ATCP 34 needs to be amended to reflect these service additions.

A secondary purpose of the rule revision is to clarify and streamline various ATCP 34 provisions. With experience and time, the department has found it possible to reduce some requirements associated with the grant application process initially outlined in the 1990 emergency rule. Areas receiving significant clarification include reimbursable activities and services, prohibited uses of grant monies, grant contract elements, and hazardous waste contractor selection.

B. Summarize the key assumptions on which the proposed rule is based.

Ag Clean Sweep operates as a voluntary grant program for Wisconsin counties. Hence it is important for the department to offer hazardous waste services consistent with the needs of Wisconsin counties. One of these needs is to serve as many customer groups as possible at collection events. This need drove the department's desire to immediately begin serving businesses and municipalities in 1996 when the DNR modified NR 610. Similarly, because so many Wisconsin counties have opened permanent collection facilities for hazardous wastes, it was important for the department to offer grant opportunities for these counties.

State and federal hazardous waste rules undergo frequent revision in response to public disposal needs and technology changes. Consequently it remains important for the department to keep ATCP 34 current with the changing nature of hazardous waste disposal in America.

C. Provide a summary of procedures required by the proposed rule:

ATCP 34 requires that counties interested in grants for the collection of agricultural chemicals apply to the department for monies each year. The proposed ATCP 34 specifically delineates associations of counties as being eligible for Ag Clean Sweep grants.

Two types of grants are identified in the proposed rule: grants for temporary or one-day collection events and grants for permanent collection facilities (season-long collections). Grant monies can only be used for operational and promotional costs. Reimbursement is provided for the packing, transporting, and disposing of hazardous wastes; local promotion and marketing expenses; use of county staff for chemical handling at permanent facilities; and various collection day expenses. The minimum cost-share match to receive a grant is $3,000, and this sum can be pro-rated between counties working together in multi-county collections. Permanent facilities can meet the $3,000 requirement with an in-kind service match.

Counties can accept all agricultural hazardous wastes that can be accepted by the hazardous waste contractor. Recyclable materials like oil and anti-freeze cannot be taken as wastes unless they are contaminated. Triple-rinsed, plastic pesticide containers can be accepted for recycling in coordination with the Wisconsin Fertilizer Chemical Association's chipping program. Pesticides for which there are no approved disposal options must be secured and returned to the generator until such time that disposal becomes available.

Businesses and municipalities, including schools, that meet eligibility requirements can receive up to a 50% subsidy for the cost of agricultural pesticide disposal. To receive this assistance, they must complete an eligibility form at the time of pre-registration and certify their very small quantity generator (VSQG) status pursuant to NR 610.07. Counties receive full reimbursement for all department-approved pesticide disposal expenses.

At the time of application, counties must provide basic information on their intended waste collection, (e.g. type, location, date). Counties must also specify what tasks they and their agents will perform along with identifying those tasks for which reimbursement will be sought. Grant contracts must specify the award amount; commitment by a county to serve as hazardous waste generator; commitment to hire a licensed, hazardous waste contractor; and the county's commitment to provide a final report at the end of collection project. Reimbursements are made only after the final report is processed by the department.

The proposed rule allows counties conducting permanent collection events to select their own hazardous waste contractor. This contractor must, however, meet certain performance standards, be capable of assisting the department meet its statewide hazardous waste goals, and be selected by the annually established date. County hazardous waste contractor selection is particularly helpful for permanent collection facilities because it assures high efficiency and local service continuity. Counties conducting temporary collection events must use the State of Wisconsin's hazardous waste contractor to manage hazardous wastes collected during these events.

D. Identify and explain implicit or explicit exemptions to the proposed rule and explain why they are exempt (i.e., what similar activities or entities would not be affected);

Cities, villages and towns remain ineligible for ATCP 34 grants. ATCP 34 grants are only intended for counties and associations of counties working together for the purpose of collecting hazardous wastes. Cities, villages, and towns can, however, bring their unwanted pesticides to Ag Clean Sweep sites and receive a 50% subsidy for the disposal of agricultural pesticides. Counties can seek repeat grants.

Any agricultural pesticide holder fitting the description of "agricultural producer", (i.e. farmer) or very small quantity generator can receive collection service providing they follow prescribed pre-registration procedures. Local units of government, including schools, are included in

these categories too. The only persons not eligible for collection service are residents of villages or cities who would otherwise be considered eligible for household hazardous waste collection service (HHW). Small and large quantity hazardous waste generators as defined in NR 610 and NR 615 are not eligible for clean sweep service.

Pesticides for which there are no federally-approved disposal options cannot be accepted in the Agricultural Clean Sweep Program. They must be secured and returned to the generator and a record kept of their storage location. Holders will be notified when a disposal option becomes available.

Only hazardous waste contractors that meet program performance standards and other criteria can enter into contracts with ATCP 34 grant counties conducting permanent collection events. These standards and criteria make it likely that certain smaller hazardous waste contractors and hazardous waste brokers will not be able to serve Ag Clean Sweep counties.

5. **Specifically identify those governmental units, industries, organizations, and other parties that would be affected by the proposed rule. Explain how each would be affected:**

Counties benefit by the proposed modifications to ATCP 34 in numerous ways. The proposed changes will allow counties to extend collection services to a wide variety of local businesses and municipal entities, including schools. This increases the efficiency of county resource investments in hazardous waste collections and creates greater public satisfaction with county services. Also, because the county contribution to receive ATCP 34 grants will be established at a very low sum, (i.e. $3,000), Ag Clean Sweep becomes an excellent value for Wisconsin counties. One additional benefit is the ability of counties to split or pro-rate the required contribution when working in multi-county associations.

Associations of counties, either formal such as regional planning commissions or informal such as a group of

otherwise unrelated counties, also benefit by this rule. These associations can, upon agreement, have a common entity prepare and administer the grant on their behalf. This provision facilitates a spirit of cooperation and encourages efficient solutions to common areawide problems.

Streamlining procedures within ATCP 34 will generally lighten administrative requirements associated with grant application, evaluation, and awarding.

ATCP 34 allows counties with permanent collection facilities to apply for ATCP 34 grants. These grants allow counties to receive reimbursement for the agricultural work performed by local staff and select their own hazardous waste vendor. The contractor selection feature is particularly important as it allows counties to use one waste hauler for household, very small quantity generator, and agricultural collections, thereby increasing efficiency and effectiveness.

The proposed ATCP 34 will directly affect businesses and municipalities, including school districts. These entities will not only be able to use pubic collection sites for the disposal of unwanted chemicals, but they will be able to save a significant amount of money, (i.e. up to 50%) if they have agricultural pesticides for disposal. Without access to public disposal through Ag Clean Sweep, many businesses and municipalities would have to use more expensive private disposal or simply accumulate chemicals on-site, risking community and worker exposure. Private schools are also eligible for clean sweep services.

Hazardous waste contractors will be impacted by ATCP 34. Contractors that meet performance standards and other criteria will be eligible to seek contracts with counties conducting permanent collection events. They will, however, be precluded from contracting with counties conducting temporary collection events, as these counties will be required to contract with the State of Wisconsin's hazardous waste contractor.

One organization directly affected by the proposed ATCP 34 is the Wisconsin Fertilizer and Chemical Association (WFCA).

For the past six years, WFCA has collected triple rinsed, HDPE pesticide containers for chipping. This stewardship effort annually produces more than 150,000 pounds of chipped plastic from 50 or more dealer sites.

ATCP 34 allows the department to collect triple rinsed containers for recycling if no other outlets are available. Because Wisconsin is fortunate to have the WFCA sponsor comprehensive statewide container recycling, the department simply extended old language as a necessary backup.

6. **List agencies, groups, individuals contacted regarding the proposed rule.**

A seven-member advisory committee was appointed to assist in ATCP 34 updating. Interests represented on the advisory committee include experienced, clean sweep counties; a regional planning commission with a permanent collection facility; agricultural business associations; and the State of Wisconsin's hazardous waste contracting team. This committee met one time to review ATCP 34 language, offer guidance, and suggest changes.

7. **List the existing administrative code affected or replaced by the proposed rule.**

Chapter ATCP 34 is being revised by this action.

8. **List department directives and/or publications the proposed rule would affect.**

The department will modify or amend existing Ag Clean Sweep grant and guidance documents as necessary. If new educational or promotional materials are required, they will be prepared before the start of the next collection season.

9. **If a specific physical and biological setting would be directly affected by the proposed rule, briefly describe the type of the affected area.**

No specific physical or biological setting is affected by the proposed rule revision.

10. **Beneficial and adverse environmental impacts of the proposed rule:**

A. Identify and briefly describe anticipated direct and indirect impacts on the physical and biological environment.

Ag Clean Sweep reduces contamination threats to the environment, (e.g. ground and surface waters, wildlife) and health risks to farm families and the public by removing pesticides and other hazardous chemicals from farms, businesses, state and local government facilities, and schools. The vast majority of these chemicals are high temperature incinerated for complete and permanent destruction. Incineration ash is permanently stored in a double-lined, monitored hazardous waste landfill.

The removal and destruction of unwanted ag chemical stocks significantly reduces the chances of inadvertent contamination and exposure through spills and it also significantly reduces the chances of releases through fires and natural disasters.

B. Identify and briefly describe anticipated direct and indirect economic impacts. Attach a copy of the administrative rule, fiscal estimate, and fiscal estimate work sheet.

Removing unwanted agricultural chemicals from farms, businesses, local governments, and schools produces a host of positive economic impacts. Properties cannot only be safely used, but their value is protected since removal of unwanted chemicals eliminates a costly, long term environmental liability. Moreover, removal of chemicals through Ag Clean Sweep offers participants real economic savings as virtually all farmers use Ag Clean Sweep free-of-charge while businesses and municipalities can receive up to a 50% subsidy from the department for pesticide disposal. Competitive bidding through the State of Wisconsin's cooperative purchasing system keeps prices as low as reasonable practical for counties choosing the state contractor.

Removal of unwanted pesticides and agricultural chemicals also facilitates immediate property transfers by eliminating purchasing or lending disincentives and it also allows farmers to initiate or maintain "organic status".

Economic impacts on county budgets are negligible. The $3,000 cost-share requirement has not been shown to be an impediment as counties have continued to reapply for ATCP 34 grants over the years. Some counties have sponsored three and four clean sweeps. Counties, local governments, and schools can also use clean sweep services to remove unwanted chemicals at very favorable rates.

C. Identify and briefly describe anticipated direct and indirect impacts on the social and cultural environments (lifestyle) of the parties affected by the proposal.

Removing unwanted agricultural pesticides and chemicals eliminates a serious concern and potential health threat for farmers, businesses, local governments, and schools. It allows them to go about their daily activities with greater safety and confidence.

D. Identify and briefly describe anticipated direct and indirect impacts on the availability and use of energy (Section 1.12, Wisconsin Statutes).

The implementation of this rule will not affect the overall availability or use of fuel in Wisconsin for any participant or unit of government.

11. Identify which of the impacts are adverse impacts that cannot be avoided if the proposed rule is implemented.

There are no known significant adverse impacts.

12. Identify and briefly describe and discuss the environmental and administrative impacts of alternatives to the proposed rule, including the following:

A. No action or not implementing the proposed rule.

Failure to adopt or implement the proposed ATCP 34 will result in confusion between what is found in the old rule and services currently being offered by the department. For several years, the Department has offered expanded services and it would be exceedingly difficult to retract these offerings at this time. Counties expect the department to be responsive to their needs. It can be expected that 4 to 10 counties would choose not to participate in Ag Clean Sweep every year if the proposed changes were not adopted.

B. Legislative modifications of existing statutes to accomplish the objectives of the propose rule:

At present, ATCP 34 requires no new legislative actions to accomplish objectives.

C. Modify the proposed rule (describe major changes that could be made in the rule to satisfy known or obvious concerns of interested parties and the impacts that would result):

Use of Grants for Capital Improvements

Counties interested in establishing permanent hazardous waste facilities often seek state grant support for capital expenses, (e.g. construction, hazardous storage unit purchase). Numerous inquiries have been made on the use of ATCP 34 grants for capital expenses. To date, the department has maintained that s. 93.55 only allows the department to offer county grants for actual hazardous waste collection expenses. Use of grant monies for capital expenses would require legislative action and it would also deplete the pool of money available to counties for clean sweep collections. While the department and chemical holders would clearly benefit by additional permanent facilities around the state, strict limits would have to be placed on fund reserves and money use. This would likely require additional administrative oversight and staff time.

Department-sponsored Collections

Several dozen times each year, agricultural chemical holders in non-grant counties contact the department seeking disposal assistance. During the main collection season, it is often possible to find grant counties willing to accept these chemicals (sometimes participants are charged). However, when the main collection season is over or when the only active sites are tens of miles away, it may not be possible to provide assistance. Establishing a separate, department-sponsored collection for these unwanted chemicals would keep service levels high across the state and assure legal, safe disposal.

Related to the above, the department has no routine mechanism to conduct statewide collections for specific target chemicals, (e.g. mercury, chlorinated pesticides, organophosphorus insecticides). Any such collections would have to conducted under emergency authority, perhaps supported by separately authorized state or federal funds. ATCP 34 grants offer an awkward mechanism to conduct statewide collections. The department would need to seek permission from one or more counties and negotiate with them to alter their grant contracts. A wholly separate statewide collection mechanism is both cleaner and more practical.

If the department pursues a statewide collection mechanism under ATCP 34, the legislature would have to revisit s. 93.55 as current language states that all monies must be used for grants to counties. The issue of funding would also have to be resolved and a determination made as to the availability of authorized clean sweep funds.

A drawback of a statewide collection is its potential affect on monies available for county grants. However, in recent years, the costs of operating clean sweeps has been dropping and a modest fund set-aside could likely accommodate a quality statewide collection. Another concern is the affect of a statewide collection on county performance. If customers know they can wait until the end of the year for "curb service", they may not participate in county events. Specific legislative language would need to be developed to protect the integrity and operation of county collections, (e.g. only for holders in non-clean sweep counties,

emergency purposes only, specific chemical limitations).

13. **Evaluation: Discuss each category using additional sheets or pertinent information if necessary. Specifically identify those factors which may distinguish the proposed rule as a major action significantly affecting the quality of the human environment.**

A. Secondary Effects: To what extent would the proposed rule result in other actions which may significantly affect the environment? Identify the parties affected by secondary effects in item 5.

The proposed rule is not expected to produce any significant secondary effects on the environment. However, it is anticipated that the continuing availability of Ag Clean Sweeps will make farmers and businesses aware of the cost of disposal, thereby encouraging the better use of pesticides or, perhaps, even encouraging reduced pesticide use.

It is also expected that the continued availability of ATCP 34 grants will encourage urbanized counties to shift toward permanent collection facilities. Also, there is a chance that a greater number of counties will have combined household and agricultural waste collections since one contractor can be used for both programs.

In sum, because the proposed rule results in a more efficiently run program, it is expected that participation will increase, thereby increasing waste intake and reducing pesticide exposure risks.

B. New Environmental effects: To what extent would the proposed rule result in new physical, biological, or socio-economic impacts.

The proposed rule will result in cleaner, safer farms, businesses, local governments, and schools around the state, thereby offering long-term protection to citizens and the environment. Because all hazardous wastes collected by the program are quickly removed from Wisconsin, any additional impacts created by the rule occur in Illinois, Alabama, Texas, and other states. However, because the hazardous

waste industry is highly regulated and monitored, these impacts are expected to be insignificant.

C. Geographically Scarce Resources: To what extent would the proposed rule affect existing environmental features that are scarce, either locally or statewide.

The proposed rule would continue, and might even increase, the level of protection given to environmental resources and features by removing toxic chemicals that could otherwise endanger or threaten them.

D. Controversy: What reaction has been received or anticipated from the public or affected parties on the proposed rules or the objective of the proposed rule? Which of the parties identified in item 5 have been contacted? Summarize their comments. (Attach additional sheets if necessary.)

One concern relates to the ability for counties to select contractors other than the state hazardous waste contractor. Nine county clean sweep coordinators provided comments that temporary collection events should be limited to the State of Wisconsin's hazardous waste contractor. Reasons cited for this position included the extra work created by local bidding, low probability of significant monetary savings, concern over staff expertise, and concern over county liability protection. Some counties may object to this limitation. Some hazardous waste contractors may object to being excluded from consideration in contracting with counties holding temporary collection events.

F. Consistency with Plans: To what extent is the proposed rule consistent or inconsistent with local, state, or national long-range plans or policies. In some cases, the department is bound or limited to federal rules or regulations dealing with the same issues. To what extent is the proposed rule limited by Wisconsin or federal statutes or regulations.

The proposed rule is consistent with state and federal efforts to remove toxic chemicals so as to prevent

environmental and human exposures. In particular, the Environmental Protection Agency (EPA) and Department of Natural Resources (DNR) have been actively promoting efforts to remove unwanted pesticides and chemicals from the Great Lakes Basin. Ag Clean Sweep has been working with both of these agencies for several years.

The proposed rule is consistent with hazardous waste rules affecting the collection, movement, and disposal of agricultural hazardous waste. In 1995, the DNR adopted "interim guidance standards" for the operation of permanent hazardous waste collection facilities and the collection of wastes from very small quantity generators (VSQGs). The proposed rule acknowledges these standards. And, in accordance with federal hazardous waste regulations, VSQGs are not given indemnification for the disposal of wastes, (i.e. they remain RCRA responsible). Pursuant to s. 93.55, Wisconsin Statutes, indemnification is offered to farmers as counties must agree to serve as "generation sites".

H. **Regulatory Change:**

1. Identify and describe any new or expanded regulation contained in the proposed rule:

The proposed rule contains no new regulations.

2. Identify and describe deregulation or reduced regulation explicit or implied in the proposed rule:

The proposed rule contains no new regulations.

3. Identify requirements of other state, federal and local agencies that may be relevant to the proposed rule and explain the differences.

The federal Universal Waste rule (NR 690 in Wisconsin) holds promise of increasing the operating efficiencies and reducing the costs of agricultural pesticide collections. Specifically, it would allow Ag Clean Sweep and its waste haulers to reduce manifesting, labeling, reporting, and storage requirements. However, the DNR has yet to make clear its position on the

applicability of the rule to Ag Clean Sweep and agricultural pesticides.

I. Other: Identify and describe (or cross-reference) other relevant factors which relate to the effects of the proposed rule on the quality of the human environment (e.g., foreclose future options, socio-cultural impacts, cumulative impacts to affected entities, visual impacts, and irreversible commitments of resources):

These impacts were described in Questions 10 and 13.

CONCLUSION

This final assessment finds that promulgation of amendments to ch. ATCP 34 would have no significant adverse environmental impact and is not a major state action significantly affecting the quality of the human environment. Alternatives to these rules, discussed in this assessment, will not reach program goals as effectively as the proposed rule.

Signed this 7th day of Sept. 19 99

By Roger E. Springman
Signature of Evaluator

The decision indicating that this document is in compliance with S. 1.11, Stats., is not final until certified by the Administrator of the Agricultural Resource Management Division

Signed this 7th day of September 19 99

By Nicholas J. Neher
Nicholas J. Neher, Administrator
Agricultural Resource Management Division

APPENDIX C

1999 Session

FISCAL ESTIMATE

DOA-2048 (R 10/94)

X ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No. /Adm. Rule No.

Amendment No. (If Applicable)

Subject

ATCP 34 (Ag Clean Sweep Rule) Revision

Fiscal Effect

State: X 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

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

☐ Decrease Costs

Local : X 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
   X Counties X Others Regional planning commissions_____
   X School Districts ☐ WTCS Districts

Fund Source Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS X SEG ☐ SEG-S

Affected Ch. 20 Appropriations

20.115 (7) (V)

Assumptions Used in Arriving at Fiscal Estimate

1) The proposed rule makes permanent several hazardous waste collection services that were not legal prior to 1996. These service offerings will not result in significant cost increases . No increase in segregated fund appropriations are required.

2) The proposed rule will make permanent the required county cost-share match to receive ATCP 34 grants. Counties have not found the required cost-share to be a burden and have continually reapplied to the Department for ATCP 34 grants over the years.

3) The proposed rule will extend hazardous waste collection services to a wide range of businesses and municipalities, including school districts, It is expected that an extra 50 to 100 businesses and municipalities will use Ag Clean Sweep disposal services every year. However, as the current segregated fund appropriation has been found to be adequate for business services, there is no need to increase the appropriation at this time.

Long - Range Fiscal Implications

None expected

Agency/prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
DATCP, Roger Springman 224-4545	Barbara Knapp Barbara Knapp (608) 224-4746	4/20/99

Final Regulatory Flexibility Analysis
ATCP 34

Overview

The proposed rule updates ATCP 34, the Agricultural Clean Sweep Program rule. Ag Clean Sweep is an annual, competitive grants program for Wisconsin counties, allowing them to collect unwanted pesticides and chemical wastes from the agricultural community and dispose of them at public collection sites. Agricultural chemicals from active and abandoned farms have remained the primary program target over the years, and farmers use the program largely free-of-charge.

Beginning in 1996, the Department of Agriculture, Trade, and Consumer Protection began to offer collection services to businesses and municipalities that handle or use agricultural pesticides. This change came about because of changes in state rules for very small quantity generators (VSQGs) * of hazardous wastes. Participants received up to a 50% disposal subsidy from the department for the disposal of unwanted agricultural pesticides. These same rules allowed counties to create permanent or season-long collection facilities for the collection of hazardous wastes. Several counties have developed permanent facilities and have received grants from the department.

The proposed rule will have positive impacts upon businesses. It includes provisions which allow VSQGs access to public collection sites and allows national and regional hazardous waste disposal contractors to serve counties receiving Ag Clean Sweep Program grants.

Businesses Affected

The proposed rule will make it easier for a wide variety of businesses and public entities, including schools, to use the Agricultural Clean Sweep Program. During the past two years, only businesses that were agricultural in nature were encouraged to participate. These businesses included lawn care companies, structural and aerial applicators, golf courses, and chemical co-ops. The new rule extends services to any business or municipal entity that uses or holds non-household pesticides for disposal. . . providing VSQG self-certification requirements are met. This means that hardware stores, department stores, marinas, parks, cemeteries, and construction companies along with

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*Very small quantity generator (VSQG) is a term used within the federal Resource and Conservation Recovery Act (RCRA) to define a group of businesses or entities that generate no more than 220 pounds of hazardous wastes per month and who accumulate no more than 2,205 pounds per year.

schools and local units of government would qualify for service and could receive up to a 50% pesticide disposal subsidy from the department. This change could quadruple the number of businesses eligible for Agricultural Clean Sweep disposal services across the state.

Even though the proposed rule extends services to a range of new businesses, it must also be kept in mind that farmers, the program's main audience, will benefit too. Because counties with permanent or season-long collection facilities can receive ATCP 34 grants, farmers in these counties will be able to dispose of their unwanted chemicals throughout the year thereby reducing environmental and public health risks.

Also affected by the proposed rule are national and regional hazardous waste contractors who operate federally and state-approved disposal facilities. These companies could compete for contracts from counties who have been awarded Ag Clean Sweep Program grants by the department to conduct permanent collection events. It is estimated that up to ten contractors could seek permanent collection contracts from counties. These contractors would, however, be precluded from competing for grants from temporary collection events since counties with these events are required to use the State of Wisconsin's hazardous waste contractor.

Operating Procedures Improved for Businesses

The proposed rule streamlines and simplifies procedures for business participation. To receive service at clean sweep collection sites, holders of unwanted agricultural pesticides must: 1) pre-register with the collection site or its hazardous waste contractor, 2) self-certify their Very Small Quantity Generator (VSQG) status, and 3) complete a qualification form for the department's 50% pesticide subsidy if they want financial assistance. VSQG self-certification is a Department of Natural Resources requirement under NR 610.

Poor knowledge of hazardous waste risks and federal/state disposal regulations have been two obstacles preventing businesses from making good decisions on hazardous waste management. Recognizing these limitations, Ag Clean Sweep encourages interested persons to directly contact waste contractors on their disposal issues, (e.g. "Do I have hazardous wastes?", "Am I a VSQG?", "Is there a better or cheaper disposal option?"). Pre-registration begins the process, allowing waste haulers to initially see the chemical inventory. All correspondence is conducted via fax or phone. Once businesses agree to use Ag Clean Sweep, they are assigned a collection location and told to bring a check for the predetermined amount. Businesses can readily meet program disposal requirements with existing staff.

Federal and state hazardous waste reporting requirements have been incorporated into Ag Clean Sweep procedures. Because long term liability under the Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response

Compensation and Liability Act (CERCLA or "SuperFund") cannot be waived by public program participation, businesses, with the exception of farmers, remain responsible for their wastes and appropriate records must be prepared. This reporting begins with the initial chemical inventory and ends with waste disposal receipts provided by the waste hauler. While this proposed rule incorporates federal and state reporting requirements, it does not impose any new requirements.

To support business disposal services, the department established working relationships with nine agricultural associations several years ago, (e.g.. Wisconsin Federation of Co-ops, Wisconsin Fertilizer and Chemical Association). These associations advertise clean sweep services to members in newsletters and serve as references for program participation. The proposed rule will allow the department to create partnerships with a host of new organizations, (e.g. hardware, recreational, real estate).

Hazardous Waste Contractors

The proposed rule allows counties who have been awarded ATCP 34 grants for permanent collection events to select their own hazardous waste contractor, providing this contractor can meet Ag Clean Sweep performance standards, is selected by the annually established date, and is otherwise capable of meeting the department's statewide hazardous waste goals. It is expected that numerous local, regional, and national contractors will seek contracts from counties. The rule requires counties conducting temporary collection events to contract with the hazardous waste contractor selected under the Department of Administration's (DOA's) cooperative purchasing process.

The impact of this rule on hazardous waste contractors will generally remain unchanged for counties receiving grants for permanent collection events. It is expected that the proposed rule will facilitate better coordination and communication for contractors working with neighboring counties out of a regional, permanent collection facility. The rule will have a negative effect on hazardous waste contractors excluded from contracting with counties conducting temporary collection events who will be required to contract with the DOA's, hazardous waste contractor.

Dated this 7th day of September, 1999

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE &
CONSUMER PROTECTION

By Nicholas J. Neher
Nicholas J Neher, Administrator,
Agricultural Resource Management Division

Proposed Final Draft
September 14, 1999

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 an order to repeal ATCP 34.08(1)(note) and (2)(note); to amend ATCP 34.08(1); to repeal and recreate ATCP 34.02, 34.03, 34.04(2), (3) and (3)(note), 34.05, 34.06(2) and (3), 34.08(2) and 34.09; and to create ATCP 34.04(2)(note), 34.07 and 34.08(3), (4) and (4)(note); relating to the chemical and container collection program.

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

Statutory Authority: Section 93.55, Stats.
Statutes Interpreted: Section 93.55, Stats.

This rule modifies current rules related to the department's agricultural "clean sweep" program. The agricultural "clean sweep" program is designed to collect and safely dispose of unused agricultural chemicals and containers that might otherwise pose a threat to public health and the environment. Current agricultural "clean sweep" rules are contained in ch. ATCP 34, Wis. Adm. Code.

Under the agricultural "clean sweep" program, the department awards grants to counties that sponsor agricultural "clean sweep" events, including temporary and permanent events. Counties contract with licensed hazardous waste contractors to collect, pack, transport and dispose of collected materials.

Grant Recipients

This rule reiterates (per s. 93.55, Stats.) that the department may award "clean sweep" grants only to counties (or to an association of counties formed to conduct a "clean sweep" project). But under this rule, a county (or association of counties) may enter into an agreement with another person or entity to administer a "clean sweep" grant on behalf of the county (or association).

County Contribution

Under this rule, a county must contribute at least $3,000 to each county project for which a "clean sweep" grant is awarded. The department may require counties to contribute a larger amount specified in the department's announcement soliciting grant applications. Counties that jointly sponsor a "clean sweep" project may prorate the required contribution among them. A county's contribution for a "permanent collection event" may include county staff, building rent, facilities and equipment provided for waste chemical collection and handling at that event.

Temporary and Permanent Collection Events

This rule clarifies that the department may fund "temporary collection events" (not more than 7 days at a temporary collection site) or "permanent collection events" (more than 7 days at a permanent hazardous waste collection facility).

Grant Purposes

This rule reiterates that agricultural "clean sweep" projects are intended to collect waste agricultural chemicals from farmers. However, this rule authorizes the department to fund the collection of waste agricultural pesticides from "very small quantity generators" (VSQG's) who are not farmers. This might include, for example, hardware stores, farm supply stores, cooperatives, municipalities and commercial pesticide applicators who accumulate no more than 220 pounds of waste pesticides per month.

Use of Grant Funds

Under this rule, as under the current rules, a "clean sweep" grant may be used to reimburse a county's direct costs to collect and dispose of waste agricultural chemicals and containers, including the cost to hire a licensed hazardous waste contractor. This rule clarifies that grant funds may also be used to reimburse a county's direct costs for any of the following:

- Equipment rentals, supplies and services used to operate the collection site and handle collected chemicals.
- County staff to receive and pack waste chemicals at a permanent collection event.
- Local educational and promotional activities related to the "clean sweep" project.

This rule clarifies that an agricultural "clean sweep" grant may not fund the disposal of any of the following:

- Oil that is not contaminated with chemicals.

- Batteries.
- Contaminated soil or debris.
- Fluorescent tubes.
- Triple-rinsed plastic pesticide containers (since those containers may be recycled through the Wisconsin fertilizer and chemical association's recycling program).
- Materials that may be readily handled under other waste disposal or recycling programs.
- Chemicals from persons other than farmers (except agricultural pesticides received from VSQG's according to this rule).
- Chemicals for which there are no federally approved or state-approved disposal methods. (This rule, like the current rule, spells out procedures which the county and its contractor must follow when they encounter these materials.)

Collecting Waste Agricultural Pesticides from Nonfarmers

Under this rule, the department will pay no more than 50% of a county's cost to collect and dispose of waste agricultural pesticides from VSQG's who are not farmers. The department will specify the reimbursement rate in its announcement soliciting county grant applications. The department may authorize a higher reimbursement rate in certain special cases. A county may charge the remaining costs to participating VSQG's.

VSQG's who are not farmers must pre-register to participate in an agricultural "clean sweep" project. A county must report the amounts and kinds of waste agricultural pesticides collected from VSQG's, the county's costs to collect and dispose of those waste pesticides, and the payments received from participating VSQG's.

County May Not Charge Participating Farmers

This rule prohibits a county from charging a farmer for the first 200 pounds of agricultural chemicals collected from that farmer. A county may charge fees for amounts over 200 pounds if the department approves the fees. Fees may depend, in part, on the amount of "clean sweep" grant funds and county funds committed to the project.

Hazardous Waste Contractors

Under current rules, a county receiving an agricultural "clean sweep" grant must contract with a licensed hazardous waste contractor to receive, pack, transport and dispose of

hazardous wastes collected during the county project. Under the current rules, the department must approve the hazardous waste contractor and assist the county in preparing the contract. Under the current rules, a copy of the contract must also be incorporated as part of the department's grant contract with the county.

This rule modifies the current rules related to hazardous waste contractors. Under this rule:

- A county receiving an agricultural "clean sweep" grant must contract with a licensed hazardous waste contractor to receive, pack, transport and dispose of hazardous wastes collected during the county project.

- A county holding a temporary "clean sweep" event must use the State of Wisconsin's hazardous waste contractor.

- A county holding a permanent "clean sweep" event may use the state's hazardous waste contractor, or may contract with another hazardous waste contractor who meets the qualifications under this rule.

- The department's grant contract with the county must include a copy of the county's contract with the hazardous waste contractor. The contract must include a schedule of the contractor's charges to receive, transport and dispose of relevant categories of chemicals.

- The contractor must attend training provided by the department, and must comply with applicable requirements under this rule. The county must select the contractor by a specified date so the department can train the contractor before the "clean sweep" project begins. Under this rule, a hazardous waste contractor must be capable of all the following:

    * Assisting counties and "clean sweep" participants to identify and segregate hazardous and solid wastes.

    * Providing essential waste handling services including drum packing, testing for unknown chemicals, containing loose chemicals, and approving cylinders for disposal.

    * Collecting, packing, and transporting poison-solids, poison-liquids and poison-flammables to waste management sites licensed by federal and state governments.

* Providing waste collection and disposal services for mercury-bearing and dioxin-bearing chemicals, acids, bases, and low-pressure gas cylinders and canisters, unless there are no federally-approved or state approved disposal options available.

* Properly handling chemicals for which no federally approved or state approved disposal options are available.

* Collecting and reporting information related to banned and target chemicals.

* Administering registration, recordkeeping and reporting requirements related to VSQGs who are not farmers.

* Meeting other requirements specified by the department in its announcement soliciting county grant applications.

This rule does not require a county holding a permanent "clean sweep" event to select a hazardous waste contractor approved by the department. But the department may require the county to submit proof that the county's hazardous waste contractor complies with this rule. The department may disapprove a hazardous waste contractor who does not meet applicable requirements under this rule. The state's hazardous waste contractor is an approved contractor for purposes of this rule.

Grant Applications and Awards

This rule clarifies the standards and procedures which the department uses to invite county grant applications, establish grant conditions, evaluate grant applications, and award "clean sweep" grants to counties. Like the current rule, this rule requires the department to enter into a grant contract with each county receiving a "clean sweep" grant, and spells out the required contents of that contract.

Reports and Payments

Like the current rule, this rule requires a county to file a final report with the department before the department pays any grant funds to the county. The county must file the report within 90 days after the "clean sweep" project is completed, and must include relevant information about the project. This rule authorizes the department to make partial payments for "permanent collection events" while those events are ongoing. A county must file an interim report prior to each partial payment.

SECTION 1. ATCP 34.02 is repealed and recreated to read:

ATCP 34.02 Definitions. In this chapter:

(1) "Agricultural producer" means a person who produces agricultural commodities on land that that person owns or controls.

(2) "ARM division administrator" means the administrator of the department's agricultural resource management division.

(3) "Chemicals" means pesticides or other chemicals that are used for agricultural purposes. "Chemicals" includes chemical containers and contaminated chemicals that cannot be accepted by recycling or other disposal programs.

(4) "County" means any of the following:

(a) A single county.

(b) An association of counties formed to sponsor a county project under this chapter.

(5) "County project" means a county-sponsored project under s. 93.55, Stats., to collect any of the following for disposal:

(a) Waste chemicals from agricultural producers.

(b) Waste agricultural pesticides and pesticide containers from very small quantity generators, subject to s. ATCP 34.07.

(6) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

(7) "Hazardous waste" has the meaning given in s. NR 600.03(98).

(8) "Hazardous waste contractor" means a person who is licensed and permitted under applicable federal and state laws to collect, pack, transport and dispose of hazardous wastes.

(9) "Permanent collection event" means a county project conducted for more than 7 days at a permanent hazardous waste collection facility regulated by the Wisconsin department of natural resources.

(10) "Pesticide" has the meaning given in s. 94.67 (25), Stats.

(11) "Resource conservation and recovery act" has the meaning specified in s. 291.01, Stats.

(12) "Temporary collection event" means a county project conducted for not more than 7 days at a temporary collection site.

(13) "Very small quantity generator" has the meaning given in s. NR 610.07.

NOTE: Under s. NR 610.07, a "very small quantity generator" essentially means a person who generates no more than 220 pounds of hazardous waste per month, and who has an accumulation of no more than 2,205 pounds of hazardous waste at any given time.

SECTION 2. ATCP 34.03 is repealed and recreated to read:

ATCP 34.03 Grants to counties. (1) GENERAL. (a) The department may award a grant to a county to fund a county project, including a temporary or permanent collection event. A grant may fund all or part of a county project.

(b) The department may not award a grant to any person or entity other than a county, unless a county has entered into an agreement with that person or entity to administer a county project on behalf of the county.

(2) PERMITTED USES. A grant under sub. (1) may reimburse a county's direct costs for a county project, including any of the following:

(a) Direct costs to hire a hazardous waste contractor to receive, pack, transport and dispose of waste chemicals.

(b) Direct costs for equipment rentals, supplies and services used to operate the collection site and handle collected chemicals.

(c) Direct costs for county staff to receive and pack waste chemicals at a permanent collection event.

(d) Direct costs for local educational and promotional activities related to the county project.

(3) PROHIBITED USES. A grant under sub. (1) may not fund the collection or disposal of any of the following:

(a) Oil that is not contaminated with chemicals.

(b) Batteries.

(c) Contaminated soil or debris.

(d) Fluorescent tubes.

(e) Triple-rinsed plastic pesticide containers.

(f) Materials that may be readily handled under other waste disposal or recycling programs.

(g) Chemicals collected from persons other than agricultural producers, except as provided in sub. (4).

(h) Chemicals for which there are no federally approved or state-approved disposal methods. If a person presents any of these chemicals for collection, the county or its agent shall do all the following:

1. Repackage the chemical securely, and return it to the person who delivered it.

2. Record the name and address of the person who delivered the chemical.

3. Inform the person delivering the chemical that the county or the department will contact that person if and when an approved disposal method becomes available.

(4) COLLECTING WASTE AGRICULTURAL PESTICIDES FROM NONFARMERS. A grant under sub. (1) may reimburse a percentage of a county's cost to collect and dispose of agricultural pesticides and containers received from very small quantity generators who are not agricultural producers if all the following apply:

(a) The department, in its announcement under s. ATCP 34.04(2), specifies the percentage rate at which the department will reimburse those costs. The percentage rate may not exceed 50%. The ARM division administrator may approve a higher percentage rate for special disposal problems that warrant the higher rate.

(b) The county project complies with s. ATCP 34.07.

(5) COUNTY CONTRIBUTION. (a) A county shall fund a portion of each county project for which the department awards a grant under sub. (1). The department, in its announcement under s. ATCP 34.04(2), shall specify a minimum required county contribution of at least $3,000 per county project.

(b) If 2 or more counties form an association to sponsor a county project, the associated counties may prorate the county contribution under par. (a) among themselves.

(c) If a county project is a permanent collection event, the county contribution under par. (a) may include any of the following costs that are directly related to the collection and handling of waste chemicals:

1. The value of county staff services provided for the permanent collection event.

2. The rental value of county facilities or equipment provided for the permanent collection event.

NOTE: Participation in a county project does not relieve any person of the duty to comply with applicable laws, or indemnify the person for any liability to which the person is subject.

SECTION 3. ATCP 34.04(2) is repealed and recreated to read:

ATCP 34.04(2) ANNOUNCEMENT SOLICITING GRANT APPLICATIONS. The department shall issue a written announcement soliciting grant applications from counties. An announcement shall specify the general terms and conditions for grant awards, including all the following:

(a) The total amount of grant funds available for distribution to grant applicants.

(b) The purposes for which grant funds may be used.

(c) The percentage rate, if any, at which the department will reimburse a county's cost to collect and dispose of waste agricultural pesticides received from very small quantity generators who are not agricultural producers.

NOTE: See s. ATCP 34.03(4).

(d) The minimum conditions a county must meet, including the minimum county funding contribution required under s. ATCP 34.03(5).

(e) Grant application deadlines and requirements.

(f) The deadline by which a county receiving a grant award must select a hazardous waste contractor under s. ATCP 34.08(2).

(g) Other grant application terms and conditions which the department deems appropriate.

SECTION 4. ATCP 34.04(2)(note) is created to read:

NOTE: Among the other grant terms and conditions specified under sub. (2), the department may specify grant terms and conditions that are reasonably designed to advance the department's statewide chemical waste collection

goals, and facilitate statewide administration of the chemical waste collection program.

SECTION 5. ATCP 34.04(3) and (note) are repealed and recreated to read:

ATCP 34.04(3) APPLICATION CONTENTS. A grant application under sub. (1) shall describe all the following:

(a) The purpose and scope of the proposed county project, including the targeted area and agricultural population, the anticipated level of participation, and the types and amounts of waste chemicals that the county expects to collect. The department may assist county applicants, as necessary, in estimating participation and the potential types and amounts of waste chemicals to be collected.

(b) The proposed collection locations.

(c) The proposed dates and times of collection.

(d) The proposed collection facilities and procedures. The department may review and inspect collection facilities and procedures from the standpoint of safety, public access, environmental protection and inclement weather protection. The department may disapprove unsuitable facilities and procedures.

(e) Any relevant limitations which the county will impose on waste collections.

(f) A schedule of fees, if any, which the county proposes to charge to persons from whom it collects waste chemicals. A county may not charge an agricultural producer for the first 200 pounds of chemicals collected from that agricultural producer, but may charge fees for amounts over 200 pounds. The department shall approve all fees.

(g) The tasks the county and its contract agents will perform as part of the county project.

(h) The county's plans for the receipt, transportation and disposal of waste chemicals received in connection with the county project, subject to s. ATCP 34.08 (2).

(i) The county's plans for recycling or disposing of triple-rinsed pesticide containers and other collected materials that are not hazardous wastes.

(j) The public information program the county will undertake in connection with the county project. The public information program shall advertise the county project to the target population. The public information program shall provide the target population with information on the safe handling and disposal of chemicals, and the minimization of chemical wastes.

(k) The proposed budget for the county project, and the amount of funding requested from the department.

(L) The amount of funding or other resources the county will contribute to the project. County contributions shall comply with s. ATCP 34.03(5). The county shall identify and distinguish county-funded project costs from grant-funded project costs.

(m) The names of the county lead agency and individual program coordinator for the project, and any other county agencies involved in implementing the project.

(n) Other information which the department requires in its announcement under sub. (2).

NOTE: A county and its contract agents are responsible for managing waste chemicals in compliance with all applicable laws, regulations and standards. This chapter does not expand or limit the application of state or federal hazardous waste laws administered by the Wisconsin department of natural resources. This chapter does not authorize or require a county to serve as an enforcement agency, nor does it require a county to indemnify persons that violate state or federal law.

SECTION 6. ATCP 34.05 is repealed and recreated to read:

ATCP 34.05 Evaluating grant applications. The department shall evaluate grant applications which counties submit under s. ATCP 34.04 according to the following criteria:

(1) The potential benefits of the county project, including benefits for public health, safety and the environment.

(2) The scope of the project, including the size of the area and population covered, the types of agriculture affected, the types and amounts of chemicals to be collected, and the likely extent of participation.

(3) The cost of the project.

(4) County funding, staff and resource commitments to the project.

(5) The extent to which the county plan effectively coordinates the efforts of state and local government agencies and other interested parties.

(6) The scope and quality of the public information program related to the county project.

(7) The overall quality of the county's application.

(8) The level of preparation, expertise and commitment demonstrated by the application.

(9) Other criteria specified by the department in its announcement under sub. (2).

SECTION 7. ATCP 34.06(2) and (3) are repealed and recreated to read:

ATCP 34.06(2) REQUIRED CONTENTS. A contract under sub. (1) shall include all the following:

(a) The amount of the grant award.

(b) The purposes for which the grant award may be used. The contract may identify these purposes by reference to this chapter, the department's announcement under s. ATCP 34.04(2) or the county's grant application.

(c) The county's responsibilities under the contract. The contract may identify county responsibilities by reference to this chapter, the department's announcement under s. ATCP 34.04(2) or the county's grant application.

(d) The nature and amount of the county contribution under s. ATCP 34.03(5).

(e) A commitment by the county to assume responsibility as hazardous waste generator, under s. ATCP 34.08(1), for hazardous wastes received in connection with the county project.

(f) A copy of the county's contract with the hazardous waste contractor who will receive, transport or dispose of chemicals collected during the county project. The contract shall include a schedule of the contractor's charges to receive, transport and dispose of relevant categories of chemicals.

(g) A commitment, by the county, to comply with applicable requirements under this chapter.

(h) Other contract terms specified by the department.

(3) GRANTS CONTINGENT UPON FUNDING. Every grant award and grant contract under this chapter is contingent upon the availability of funding. If available funding is not adequate to fund all of the grants awarded, the department may do any of the following:

(a) Cancel one or more grants in the reverse order in which they were awarded.

(b) Reduce grant amounts with the approval of the affected counties.

SECTION 8. ATCP 34.07 is created to read:

ATCP 34.07 Waste agricultural pesticides from nonfarmers. A county project may collect waste agricultural pesticides and containers from very small quantity generators who are not agricultural producers, provided that all the following apply:

(1) Each of the very small quantity generators pre-registers with the county or its contract agent. Each registration shall include all the following:

(a) The registrant's name and address.

(b) The registrant's license status, if the registrant is required to be licensed under ch. ATCP 29.

(c) The registrant's certification that the registrant is a very small quantity generator under s. NR 610.07.

(d) A complete inventory of agricultural pesticides and containers which the registrant proposes to deliver to the county.

(2) The county or its contract agent gives each registrant under sub. (1) a receipt showing all the following:

(a) The amounts and kinds of waste agricultural pesticides and containers actually collected from the registrant.

(b) The amount paid by the registrant, if any.

(3) The county keeps a separate record of all the following, and includes that record in its final report under s. ATCP 34.09(1):

(a) The name and address of each registrant under sub. (1).

(b) The amounts and types of waste agricultural pesticides and containers actually collected from each registrant.

(c) The total cost to collect and dispose of waste agricultural pesticides and containers collected from registrants.

(d) The total of all payments received from registrants, if any.

SECTION 9. ATCP 34.08(1) is amended to read:

ATCP 34.08(1) COUNTY RESPONSIBLE AS WASTE GENERATOR. Pursuant to s. 93.55(2m), Stats., a county receiving a grant under s. ATCP 34.03 shall assume responsibility as hazardous waste generator, under the federal resource conservation and recovery act, for hazardous wastes accepted by the county in connection with the county project. As a hazardous waste generator, the county shall comply with applicable requirements under s. 291.21, Stats., and the resource conservation and recovery act. ~~The department shall assist the county in completing required hazardous waste reports and documents, and in complying with applicable requirements.~~

SECTION 10. ATCP 34.08(1)(note) is repealed.

SECTION 11. ATCP 34.08(2) is repealed and recreated to read:

ATCP 34.08(2) HAZARDOUS WASTE CONTRACTOR; GENERAL. A county receiving a grant under s. ATCP 34.03 shall contract with a hazardous waste contractor to receive, pack, transport and dispose of hazardous wastes collected during the county project. The hazardous waste contractor shall attend training provided by the department, and shall comply with applicable requirements under this chapter. The county shall select the contractor by a date specified in the department's announcement under s. ATCP 34.04(2) so the department can provide training to the selected contractor.

SECTION 12. ATCP 34.08(2)(note) is repealed.

SECTION 13. ATCP 34.08(3), (4) and (4)(note) are created to read:

ATCP 34.08(3) HAZARDOUS WASTE CONTRACTOR FOR TEMPORARY COLLECTION EVENT. For a temporary collection event, a county shall contract under sub. (2) with the hazardous waste contractor who manages the state of Wisconsin's hazardous wastes under the cooperative state purchasing agreement.

(4) HAZARDOUS WASTE CONTRACTOR FOR PERMANENT COLLECTION EVENT. (a) For a permanent collection event, a county shall contract under sub. (2) with a hazardous waste contractor who is capable of all the following:

1. Assisting counties and very small quantity generators to identify and segregate hazardous and solid wastes.

2. Providing essential waste handling services including drum packing, testing for unknown chemicals, containing loose chemicals, and approving cylinders for disposal.

3. Collecting, packing, and subsequently transporting poison-solids, poison-liquids and poison-flammables to waste management sites licensed by federal and state governments.

4. Providing waste collection and disposal services for mercury-bearing and dioxin-bearing chemicals, acids, bases, and low-pressure gas cylinders and canisters, unless there are no federally approved or state approved disposal options available.

5. Providing services under s. ATCP 34.03(3)(h) if there are no federally approved or state approved disposal options available.

6. Collecting and reporting information related to chemicals that banned or otherwise targeted by this state or the United States.

7. Administering requirements under s. ATCP 34.07 if a county project collects waste agricultural pesticides or pesticide containers from very small quantity generators who are not agricultural producers.

8. Meeting other requirements specified in the department's announcement under s. ATCP 34.04(2).

(b) The department may require a county to submit proof that the hazardous waste contractor selected by the county meets applicable requirements under par. (a). The department may disapprove a hazardous waste contractor selected by a county if the department finds that the contractor does not meet applicable requirements under this section.

NOTE: The contractor who manages the state of Wisconsin's hazardous wastes under the cooperative state purchasing agreement meets applicable requirements under sub. (4)(a).

SECTION 14. ATCP 34.09 is repealed and recreated to read:

ATCP 34.09 Reports and payments. (1) FINAL REPORT. A county shall provide the department with a final report on each county project within 90 days after the project is completed. The final report shall include all the following:

(a) The number of participants who delivered waste chemicals to the collection site.

(b) The types and amounts of waste chemicals received at the collection site.

(c) The total cost of the project, including invoices for the transportation and disposal of hazardous and solid wastes.

(d) An evaluation of the project, including an identification of problems and possible solutions.

(e) An evaluation of the public information program conducted in connection with the project.

(f) An estimate of the types and amounts of chemicals still to be collected, and suggestions for how those chemicals might be collected in the future.

(g) The information required under s. ATCP 34.07(3) if the county project collects agricultural pesticides or containers from persons other than agricultural producers.

(2) PAYMENT. Except as provided in sub. (3), the department may not distribute any grant funds to a county under this chapter until the county completes the county project and submits its final report to the department under sub. (1). The department shall pay the full grant award, less any amounts withheld because of the county's breach of the contract under s. ATCP 34.06, within 60 days after the department accepts the county's final report under sub. (1).

(3) PERMANENT COLLECTION EVENTS; PARTIAL PAYMENTS. A grant contract for a permanent collection event may provide for one or more partial payments during the permanent collection event. The grant contract may require the county to file an interim report prior to each partial payment. Each interim report shall contain interim information of the type required in sub. (1) and any other information which the department requires in the grant contract.

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

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By_____
Ben Brancel, Secretary

Docket No. 99-087

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 99-087 to the presiding officer of each house of the legislature for standing committee review. The proposed rule repeals portions of chapter ATCP 34; and creates portions of chapter ATCP 30 relating to the Chemical and Container Collection Program.

Dated this 15 day of October, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary

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State of Wisconsin
Tommy G. Thompson, Governor

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

DATE: October 15, 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
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Proposed Rule Relating to the Agricultural "Clean Sweep" Program. (Clearinghouse Rule No. 99-087)**

Pursuant to ss. 227.19 (2) and (3), Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) hereby transmits the above rule for legislative committee review. We are enclosing three copies of the final draft rule, together with the following report. Pursuant to s. 227.19 (2), Stats., we will submit a notice of this referral to the Revisor of Statutes for publication in the administrative register.

Background

DATCP currently administers an agricultural "clean sweep" program under s. 93.55, Stats. The program is designed to collect and safely dispose of unwanted agricultural chemicals and containers that might otherwise pose a threat to public health and the environment. The program is governed by rules contained in ch. ATCP 34, Wis. Adm. Code. This rule modifies and updates the current rules.

DATCP awards grants to counties that sponsor agricultural "clean sweep" events, including temporary and permanent events. Counties contract with licensed hazardous waste contractors to collect, pack, transport and dispose of collected materials. More than one million pounds of unused agricultural chemicals have been safely collected and disposed of under the program, thereby reducing a threat to public health and the environment.

Rule Contents

Grant Recipients

This rule reiterates (per s. 93.55, Stats.) that DATCP may award "clean sweep" grants only to counties (or to an association of counties formed to conduct a "clean sweep" project). But under this rule, a county (or association of counties) may enter into an agreement with another person or entity to administer a "clean sweep" grant on behalf of the county (or association).

County Contribution

Under this rule, a county must contribute at least $3,000 to each county project for which a "clean sweep" grant is awarded. Counties that jointly sponsor a "clean sweep" project may prorate the required contribution among them. A county's contribution for a "permanent collection event" may include county staff, building rent, facilities and equipment provided for waste chemical collection and handling at that event.

Grant Purposes

This rule reiterates that agricultural "clean sweep" projects are intended to collect waste agricultural chemicals from farmers. However, this rule authorizes the department to fund the collection of waste agricultural pesticides from "very small quantity generators" (VSQGs) who are not farmers. This might include, for example, hardware stores, farm supply stores, cooperatives, municipalities and commercial pesticide applicators who accumulate no more than 220 pounds of waste pesticides per month.

Use of Grant Funds

Under this rule, as under the current rules, a "clean sweep" grant may reimburse a county's direct costs to collect and dispose of waste agricultural chemicals and containers, including the county's cost to hire a licensed hazardous waste contractor. This rule clarifies that grant funds may also reimburse a county's direct costs for any of the following:

- Equipment rentals, supplies and services used to operate the collection site and handle collected chemicals.
- County staff to receive and pack waste chemicals at a permanent collection event.
- Local educational and promotional activities related to the "clean sweep" project.

This rule clarifies that an agricultural "clean sweep" grant may not fund the disposal of any of the following:

- Oil that is not contaminated with chemicals.
- Batteries.
- Contaminated soil or debris.
- Fluorescent tubes.
- Triple-rinsed plastic pesticide containers (since those containers may be recycled through the Wisconsin fertilizer and chemical association's recycling program).
- A material that may be readily handled under other waste disposal or recycling programs.
- Chemicals from persons other than farmers (except agricultural pesticides received from VSQGs according to this rule).
- Chemicals for which there are no federally approved or state-approved disposal methods. (This rule, like the current rule, spells out procedures that the county and its contractor must follow when they encounter these materials.)

Collecting Waste Agricultural Pesticides from Nonfarmers

Under this rule, DATCP will pay no more than 50% of a county's cost to collect and dispose of waste agricultural pesticides from VSQGs who are not farmers. A county may charge the remaining costs to participating VSQGs.

VSQGs who are not farmers must pre-register to participate in an agricultural "clean sweep" project. A county must report the amounts and kinds of waste agricultural pesticides collected from VSQG's, the county's costs to collect and dispose of those waste pesticides, and the payments received from participating VSQGs.

County May Not Charge Participating Farmers

This rule prohibits a county from charging a farmer for the first 200 pounds of agricultural chemicals collected from that farmer. A county may require persons delivering over 200 pounds to pay fees if the department approves those fees. Fees may depend, in part, on the amount of "clean sweep" grant funds and county funds committed to the project.

Hazardous Waste Contractors

This rule modifies the current rules related to hazardous waste contractors. Under this rule:

- A county receiving an agricultural "clean sweep" grant must contract with a licensed hazardous waste contractor to receive, pack, transport and dispose of hazardous wastes collected during the county project.

- A county holding a temporary "clean sweep" event must use the State of Wisconsin's hazardous waste contractor. DATCP added this new requirement in response to hearing testimony by county representatives. (Under current rules, counties normally use but are not required to use the state's contractor.) Counties testified that this requirement would simplify "clean sweep" operations, provide quality assurance, and avoid local problems related to contractor selection.

- A county holding a permanent "clean sweep" event may use the state's hazardous waste contractor, or may contract with another hazardous waste contractor who meets the qualifications under this rule.

- DATCP's grant contract with the county must include a copy of the county's contract with the hazardous waste contractor. The contract must include a schedule of the contractor's charges to receive, transport and dispose of relevant categories of chemicals.

- The contractor must attend DATCP training, and must comply with applicable requirements under this rule. The county must select the contractor by a specified date so DATCP can train the contractor before the "clean sweep" project begins. Under this rule, a hazardous waste contractor must be capable of all the following:

  * Assisting counties and "clean sweep" participants to identify and segregate hazardous and solid wastes.

  * Providing essential waste handling services including drum packing, testing for unknown chemicals, containing loose chemicals, and approving cylinders for disposal.

  * Collecting, packing, and transporting poison-solids, poison-liquids and poison-flammables to waste management sites licensed by federal and state governments.

  * Providing waste collection and disposal services for mercury-bearing and dioxin-bearing chemicals, acids, bases, and low-pressure gas cylinders and canisters, unless there are no federally-approved or state approved disposal options available.

* Properly handling chemicals for which no federally approved or state approved disposal options are available.

* Collecting and reporting information related to banned and target chemicals.

* Administering registration, recordkeeping and reporting requirements related to VSQGs who are not farmers.

* Meeting other requirements that DATCP specifies in its announcement soliciting county grant applications.

This rule does not require a county holding a permanent "clean sweep" event to select a hazardous waste contractor approved by DATCP. But DATCP may require the county to submit proof that the county's hazardous waste contractor complies with this rule. DATCP may disapprove a hazardous waste contractor who does not meet applicable requirements under this rule. The state's hazardous waste contractor is an approved contractor for purposes of this rule.

Grant Applications and Awards

This rule clarifies the standards and procedures that DATCP uses to invite county grant applications, establish grant conditions, evaluate grant applications, and award "clean sweep" grants to counties. Like the current rule, this rule requires DATCP to enter into a grant contract with each county receiving a "clean sweep" grant, and spells out the required contents of that contract.

Reports and Payments

Like the current rule, this rule requires a county to file a final report with DATCP before DATCP pays any grant funds to the county. The county must file the report within 90 days after the "clean sweep" project is completed, and must include relevant information about the project. This rule authorizes DATCP to make partial payments for "permanent collection events" while those events are ongoing. A county must file an interim report prior to each partial payment.

Rule Modifications after Public Hearing

DATCP held two public hearings on this rule. DATCP held the hearings in June, 1999, in Madison and Stevens Point. In response to hearing testimony from counties, DATCP changed the final draft rule to require counties holding temporary "clean sweep" events to use the State of Wisconsin's hazardous waste contractor. (Under current rules, counties normally use but are not required to use the state's contractor.)

Under the final draft rule, a county holding a permanent "clean sweep" event may use the state's hazardous waste contractor, or may contract with another hazardous waste contractor who meets the qualifications under this rule.

Hearing Testimony

APPENDIX A contains a summary of hearing testimony and a list of persons who attended, testified or submitted written comments for the hearing record.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made several comments on the hearing draft rule. DATCP has addressed the Rules Clearinghouse comments, except those discussed below, in the final draft rule.

Comments 2.b., 2.c. and 2.d: DATCP believes that these sections, as written, provide clear information needed by the reader.

Comment 5.a: Funding for the program is provided through fees assessed on agricultural pesticide products, which are normally passed on to the agricultural producer. DATCP believes that very small quantity generators are normally small commercial businesses who should be responsible for at least a portion of disposal costs as a business expense. Nonagricultural producers are using nonagricultural pesticides not subject to the fees that fund this program.

Comment 5.b: The administrator seldom exercises the discretionary authority under this section. The administrator exercises the authority on a case-by-case basis, based on the potential environmental risk and the participant's ability to pay.

Comment 5.e: DATCP has been able to provide funding for anticipated needs. With DATCP assistance, counties have been able to meet the conditions specified in the rule. No further rule guidance is necessary.

Environmental Assessment

This rule is not expected to have any adverse effect on the environment. This rule will have a positive effect on the environment, because it will facilitate the continued collection and safe disposal of waste agricultural chemicals that might otherwise threaten public health and the environment. No comments were received on the draft environmental assessment during the public comment period. A copy of the final environmental assessment is attached as *APPENDIX B*.

Fiscal Estimate

This rule will not have a significant fiscal effect on DATCP or local units of government. The rule provision requiring counties to contribute at least $3,000 toward each "clean sweep" project merely codifies current administrative practice, which has not been burdensome to participating counties. A final fiscal estimate is attached as *APPENDIX C*.

Regulatory Flexibility Analysis

This rule will not have an adverse impact on small business. This rule will help small business by facilitating the disposal of waste agricultural chemicals. No comments were received on the initial regulatory flexibility analysis during the public comment period. The final regulatory flexibility analysis is attached as *APPENDIX D*.

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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: October 28, 1999

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

Clearinghouse Rule 99-087
Relating to the chemical and container collection program
Submitted by the Department of Agriculture, Trade and Consumer Protection

ARO:ln
Attach.

Office: P.O. Box 8953 • Madison, WI 53708 • (608) 266-5831 • Toll-Free: (888) 534-0003 • Rep.Ott@legis.state.wi.us
Home: P.O. Box 112 • Forest Junction, WI 54123-0112 • (920) 989-1240