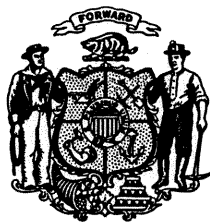


WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

Richard Sweet
Assistant Director
(608) 266-2982

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-005

AN ORDER to amend ATCP 29.11 (3) (intro.), 29.15 (4) (b), 29.20 (6) (b) and 29.25 (5) (a) 2.; and to create ATCP 40.015 and 40.06 (3), relating to agricultural chemical cleanup surcharge fees.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

01-15-99 RECEIVED BY LEGISLATIVE COUNCIL.

02-15-99 REPORT SENT TO AGENCY.

RS:DLL:kjf;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

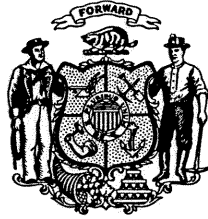
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 99-005

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

In general, s. 94.64 (4) (a) 1., Stats., provides that a person licensed to sell or distribute fertilizer in Wisconsin must pay a basic fee of \$.25 per ton for fertilizer sold or distributed before July 1, 1999 and \$.32 per ton for fertilizer sold or distributed after June 30, 1999. Section ATCP 40.06 (3) (a) 1. extends the \$.25 fee through June 30, 2001 and provides for a \$.31 fee after June 30, 2001. The rule provision does not appear to be statutorily authorized.

2. Form, Style and Placement in Administrative Code

- a. In s. ATCP 40.015 (2) (a), the notation "Wis." should be deleted.
- b. Section ATCP 40.06 (3) (a) should more clearly identify what persons are referred to by "a person who is required to be licensed." Note that s. 94.64 (4) (a), Stats., the statutory language on which this provision is modeled, uses a cross-reference to identify the persons to which that provision applies. Also, this provision refers to a tonnage report form. If this is a new or revised form, the department should ensure that the requirements of s. 227.14 (3), Stats., are met.

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

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

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

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

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

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

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

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

This rule incorporates, without change, current fertilizer license and tonnage fees established by statute, except that this rule extends for 2 years the current statutory moratoriums on fertilizer license and tonnage fee surcharges used to fund the agricultural chemical cleanup fund.

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

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

3 **SURCHARGE.** Beginning with the license year that begins on January 1, ~~2001~~ 2003, an

4 applicant for a license under s. ATCP 29.10 shall pay an agricultural chemical cleanup

5 surcharge for each nonhousehold pesticide product that the applicant sells or distributes.

6 Except as provided in sub. (6) or (7), the amount of the surcharge is as follows:

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

8 ATCP 29.15(4)(b) Beginning with the license year that begins on January 1, ~~2000~~

9 2003, an agricultural chemical cleanup surcharge of \$40.

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

11 ATCP 29.20(6)(b) Beginning with the license year that begins on January 1, ~~2000~~

12 2003, an agricultural chemical cleanup surcharge of \$55.

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

14 ATCP 29.25(5)(a)2. Beginning with the license year that begins on January 1,

15 ~~2000~~ 2003, an agricultural chemical cleanup surcharge of \$20.

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

17 ATCP 40.015 **LICENSE FEES AND SURCHARGES.** (1) A person applying for

18 a license to manufacture or distribute fertilizer shall pay the following annual license

19 fees:

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

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

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

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

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

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

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

20 1. A basic fee of 25 cents per ton for fertilizer sold or distributed on or before
21 June 30, 2001 and 31 cents per ton for fertilizer sold or distributed after June 30, 2001,
22 with a minimum fee of \$25 if any fertilizer was sold or distributed.

form
under what rule or stat?
- better identify (statutory mod in s. 94.64 (1) (c) include X-ref

wh
2001
Ok

2001
Ok

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

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

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

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

9 (b) EXEMPTIONS. Paragraph (a) does not apply to any of the following:

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

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

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

Dated this _____ day of _____, 19_____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF HEARING

RULES RELATING TO AGRICULTURAL CHEMICAL
CLEANUP SURCHARGE FEES

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rules (proposed chs. ATCP 29 and 40, Wis. Adm. Code) relating to agricultural chemical cleanup surcharge fees. The hearing will be held on February 11, 1999, in the Board Room of the department's office at 2811 Agriculture Drive, Madison, Wisconsin. The hearing will run from 1:00 - 4:00 p.m. and 6:00 - 8:00 p.m. The public is invited to attend the hearing and comment on the proposed rule. The department also invites comments on the regulatory flexibility analysis that accompanies the rule. Following the public hearing, the hearing record will remain open until February 19, 1999, for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, Box 8911, Madison, WI 53708-8911, or by calling 608/224-4523. Copies will also be available at the public hearing.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by February 6, 1999, either by writing to Karen Ayers, 2811 Agriculture Drive, Box 8911, Madison, WI 53708-8911, or by contacting the message relay system (TTY) at 608/224-5058. Handicap access is available at the hearing.

ANALYSIS BY THE DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

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

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

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

Under s. 94.73(15), Stats., the department must adjust license fee surcharges to maintain a cleanup fund balance (at the end of each fiscal year) of at least \$2,000,000 but not more than \$5,000,000. The cleanup fund balance currently exceeds the \$5,000,000 maximum

target level. In order to remedy the current surplus, the Legislature suspended surcharge collections for 2 years.

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

This rule incorporates, without change, current fertilizer license and tonnage fees established by statute, except that this rule extends for 2 years the current statutory moratoriums on fertilizer license and tonnage fee surcharges used to fund the agricultural chemical cleanup fund.

FISCAL ESTIMATE

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

Anticipated expenditures are based off and estimated \$7.3 million in unsubmitted reimbursement costs incurred prior to July, 1988, that must be submitted by October 14, 2000 to be eligible for reimbursement. Responsible persons are continuing to expend \$3.6 million per year. The department has assumed that the \$7.3 million in existing costs will be submitted uniformly over the next two years, and that ongoing costs will be submitted as incurred with these existing costs, as required by rule to maintain their eligibility.

Based on these assumptions, the department estimates that a two year extension on the surcharge fee "holiday" will drop the agricultural chemical cleanup fund balance to approximately \$4.6 million at the end of FY 01/02, after which the surcharge fee could be set based on continuing reimbursement program costs.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

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

Businesses Affected:

Currently all manufacturers and labelers of pesticides used in agricultural crop production must register those pesticides and pay certain fees for those pesticides, with the fees based on the value of Wisconsin sales. Likewise, manufacturers and labelers of fertilizers must be licensed and pay fees for each ton of fertilizer distributed in this state.

Agricultural coops and farm centers that blend fertilizer or sell or apply pesticides must be licensed to do these activities. A portion of these fees are used to clean up sites that have been contaminated by spills of pesticides and fertilizers. Most of these fees are passed to farmers through distributor imposed surcharges on the products.

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

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

Anticipated Impacts

The department estimates cost savings of \$3,265,000 per year for two years. Based on 30,000 farms, the department anticipates average per farm savings of about \$200 over the two years during which this rule extends the fee reduction, with the savings directly proportional to purchased fertilizer and pesticide inputs.

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

Dated this 6th day of Jan, 19 99.

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

AUG 11 REC'D

AUG 11 1999

Docket No. 98-R-11

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

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

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

Dated this 9 day of August, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary



State of Wisconsin
Tommy G. Thompson, Governor

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

DATE: August 3, 1999

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

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

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

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

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

Background

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

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

Honorable Fred Risser
Honorable Scott Jensen
August 3, 1999
Page 2

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

Funding Projections Under This Rule

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

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

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

Hearing Comments

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

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

Honorable Fred Risser
Honorable Scott Jensen
August 3, 1999
Page 3

Rule Modifications after Hearing

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

Response to Rules Clearinghouse Comments

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

Fiscal Estimate

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

Small Business Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this _____ day of _____, 19_____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

FISCAL ESTIMATE

DOA-2048 (R 10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

| |
|---|
| LRB or Bill No. / Adm. Rule No. ATCP 29, ATCP 40 |
| Amendment No. (If Applicable) |

Subject
Agricultural Chemical Cleanup Surcharge Fees

| | |
|--|--|
| <p>Fiscal Effect</p> <p>State: <input type="checkbox"/> No State Fiscal Effect</p> <p>Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation</p> <p> <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input checked="" type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation </p> | <p> <input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs </p> |
|--|--|

| | | |
|---|---|--|
| <p>Local: <input checked="" type="checkbox"/> No local government costs</p> <p>1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>5. Types of Local Governmental Unit Affected:</p> <p> <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts </p> |
|---|---|--|

| | |
|---|--|
| <p>Fund Source Affected</p> <p> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S </p> | <p>Affected Ch. 20 Appropriations 20.115(7)(wm)</p> |
|---|--|

Assumptions Used in Arriving at Fiscal Estimate

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

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

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

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

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|--|---|----------------------------------|
| <p>Agency/prepared by: (Name & Phone No.)</p> <p>DATCP Paul Morrison 608-224-4512</p> | <p>Authorized Signature/Telephone No.</p> <p><i>Barbara Knapp</i> Barbara Knapp (608) 224-4746</p> | <p>Date</p> <p>8/3/99</p> |
|--|---|----------------------------------|

FISCAL ESTIMATE WORKSHEET

1997 SESSION

Detailed Estimate of Annual Fiscal Effect DOA-2047 (R10/94) ORIGINAL UPDATED CORRECTED SUPPLEMENTAL

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

| | | |
|--|------------------------|---|
| Subject Agricultural Chemical Cleanup Surcharge Fees | | |
| I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): Two year reduction in Agricultural Chemical Cleanup Segregated Fund revenues of \$2,800,000 per year. | | |
| II. Annualized Cost: | | Annualized Fiscal Impact on State funds from: |
| A. State Costs by Category | Increased Costs | Decreased Costs |
| State Operations - Salaries and Fringes | \$ | \$ - |
| (FTE Position Changes) | (FTE) | (- FTE) |
| State Operations - Other Costs | | - |
| Local Assistance | | - |
| Aids to Individuals or Organizations | | - |
| TOTAL State Costs by Category | \$ | \$ - |
| B. State Costs by Source of Funds | Increased Costs | Decreased Costs |
| GPR | \$ | \$ - |
| FED | | - |
| PRO/PRS | | - |
| SEG/SEG-S | | - |
| III. State Revenues <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small> | Increased Rev. | Decreased Rev. |
| - | \$ | \$ - |
| GPR Taxes | | - |
| GPR Earned | | - |
| FED | | - |
| PRO/PRS | | - |
| SEG/SEG-S | | - |
| TOTAL State Revenues | \$ | \$ - |

NET ANNUALIZED FISCAL IMPACT

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

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

FINAL REGULATORY FLEXIBILITY ANALYSIS

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

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

Businesses Affected:

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

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

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

Anticipated Impacts

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

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

Dated this 2nd day of August, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

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