

WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

RULES CLEARINGHOUSE

JUN 17 REC'D

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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 99-087

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

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

05-14-99 RECEIVED BY LEGISLATIVE COUNCIL.

06-08-99 REPORT SENT TO AGENCY.

RS:DLL:jal;rv

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

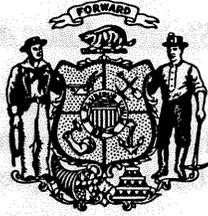
NO

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CLEARINGHOUSE RULE 99-087

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.]

2. Form, Style and Placement in Administrative Code

a. In s. ATCP 34.02 (6) and (9), the phrase "state of" is unnecessary and should be deleted.

b. Section ATCP 34.03 (3) is a list of prohibited uses of a grant. However, par. (h) includes substantive requirements. These requirements should be placed in a separate section relating to program requirements.

c. Similarly, s. ATCP 34.04 (3) is a list of required contents of grant applications, although several paragraphs in that subsection also create substantive requirements. The second and third sentences of par. (d) relate to the department review of grant applications and so should be placed with the material in s. ATCP 34.05. The substantive requirements of pars. (f) and (j) should be placed with other specific program requirements. The second and third sentences of par. (L) appear to relate more closely to the material in s. ATCP 34.03 (5).

d. Section ATCP 34.07 (1) should begin with the phrase "The county requires each very small quantity generator to pre-register."

e. Section ATCP 34.07 (4) should be numbered s. ATCP 34.07 (3). The cross-reference in s. ATCP 34.09 (1) (g) should be changed accordingly.

f. In s. ATCP 34.08 (2) (b) 1., the word "very" should precede the phrase "small quantity." Also, subds. 3. to 9. should be renumbered as subds. 2. to 8.

4. Adequacy of References to Related Statutes, Rules and Forms

Section 144.61, Stats., referred to in s. ATCP 34.02 (11), was renumbered s. 291.01, Stats., by 1995 Wisconsin Act 227. This cross-reference should be corrected. Also, the rule restores a cross-reference in s. ATCP 34.08 (1) to the pre-Act 227 numbering; this change should be omitted.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section 93.55, Stats., authorizes the Department of Agriculture, Trade and Consumer Protection (DATCP) to make grants to counties for chemical and container collection programs. It defines the term "chemical" as a chemical, including a pesticide, that is used for agricultural purposes. The statute requires that a county program, in cooperation with the DATCP ensure that a farmer who participates in the program is not liable for the chemicals or chemical containers collected under the program. The statute does not make any other distinctions in the classes of persons who may participate in the programs or limit the types of chemicals that they may dispose of.

The rule limits the programs to collecting waste chemicals from agricultural producers and agricultural pesticides and containers from very small quantity generators that are nonagricultural producers. Nonagricultural producers that are not very small quantity generators are excluded from the program entirely. Very small quantity generators who participate are required to preregister with the program and identify themselves in writing, a requirement that does not apply to agricultural producers. In addition, the rule limits the fees that may be imposed upon agricultural producers but does not limit fees imposed upon very small quantity generators. What is the department's rational basis for these very significant differences in the treatment of agricultural producers and nonagricultural producers that are very small quantity generators?

b. Section ATCP 34.03 (4) (a) provides in part that a division administrator may approve a higher percentage rate for reimbursement when special disposal problems warrant the higher rate. Presumably, the department will develop standards or guidelines to determine when a higher reimbursement rate is warranted. These standards or guidelines should be placed in the Wisconsin Administrative Code.

c. A period should be added at the end of the first sentence of s. ATCP 34.04 (2).

d. Section ATCP 34.04 (3) (m) should begin with the phrase "The names of the."

e. Section ATCP 34.05 lists criteria that the department shall follow in evaluating grant applications but says nothing about how the decision to approve or deny a grant application is made or how the funding level is to be set. Some more guidance in this area would appear appropriate.

f. In s. ATCP 34.08 (2) (b) 4., the use of the words “collecting” and “packing” in connection with the preposition “to” is grammatically incorrect.

g. Section ATCP 34.08 (2) (b) 7. refers to “banned and target chemicals.” These terms should be defined.

April 21, 1999

**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 an order to repeal ATCP 34.08(1)(note); to amend ATCP 34.08(1); to repeal and
3 recreate ATCP 34.02, 34.03, 34.04(2), (3) and (3)(note), 34.05, 34.06(2) and (3), 34.08(2)
4 and (note), and 34.09; and to create ATCP 34.04(2)(note) and 34.07; relating to the
5 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. 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 VSQG's who are not farmers.
- Meeting other requirements specified by the department in its announcement soliciting county grant applications. (Among other things, the department may

specify grant terms and conditions that are reasonably designed to advance the department's statewide "clean sweep" goals, and facilitate statewide administration of the "clean sweep" program.)

This rule does not require department approval of a hazardous waste contractor. Nor does it require a county to use the state's hazardous waste contractor. However, the department may require a county to submit proof that the hazardous waste contractor selected by the county meets applicable requirements under this rule. 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 rule. The state of Wisconsin'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.

-
- 1 **SECTION 1.** ATCP 34.02 is repealed and recreated to read:
 - 2 **ATCP 34.02 Definitions.** In this chapter:
 - 3 (1) "Agricultural producer" means a person who produces agricultural
 - 4 commodities on land which that person owns or controls.
 - 5 (2) "ARM division administrator" means the administrator of the department's
 - 6 agricultural resource management division.

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

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

5 (a) A single county.

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

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

10 (a) Waste chemicals from agricultural producers.

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

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

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

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

19 (9) "Permanent collection event" means a county project conducted for more than
20 7 days at a permanent hazardous waste collection facility regulated by the state of
21 Wisconsin department of natural resources.

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

Handwritten annotations: a circle containing the number 5, and another circle containing the number 2 with the signature "S. G. G. G." written next to it.

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

2 ~~144.61(9m), Stats. ~~289.01(17)~~ or 291.01(17)~~

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

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

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

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

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

14 (b) The department may not award a grant to any person or entity other than a
15 county, but a county may enter into an agreement with another person or entity to
16 administer a county project on behalf of the county.

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

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

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

23 (c) Direct costs for county staff to receive and pack waste chemicals at a
24 permanent collection event.
25

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

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

- 5 (a) Oil that is not contaminated with chemicals.
- 6 (b) Batteries.
- 7 (c) Contaminated soil or debris.
- 8 (d) Fluorescent tubes.
- 9 (e) Triple-rinsed plastic pesticide containers.
- 10 (f) Materials that may be readily handled under other waste disposal or recycling
11 programs.
- 12 (g) Chemicals collected from persons other than agricultural producers, except as
13 provided in sub. (4).
- 14 (h) Chemicals for which there are no federally-approved or state-approved

15 disposal methods. If a person presents any of these chemicals for collection, the county
16 or its agent shall do all the following:

- 17 1. Repackage the chemical securely, and return it to the person who delivered it.
- 18 2. Record the name and address of the person who delivered the chemical.
- 19 3. Inform the person delivering the chemical that the county or the department
20 will contact that person if and when an approved disposal method becomes available.

21 (4) COLLECTING WASTE AGRICULTURAL PESTICIDES FROM NONFARMERS. A grant
22 under sub. (1) may reimburse a percentage of a county's cost to collect and dispose of

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2 ✓*

1 agricultural pesticides and containers received from very small quantity generators who
2 are not agricultural producers if all the following apply:

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

} >
standard

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

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

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

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

- 17 1. The value of county staff services provided for the permanent collection event.
- 18 2. The rental value of county facilities or equipment provided for the permanent
19 collection event.

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

23 **SECTION 3.** ATCP 34.04(2) is repealed and recreated to read:
24

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

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

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

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

10 **NOTE:** See s. ATCP 34.03(4).

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

13 (e) Grant application deadlines and requirements.

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

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

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

19 **NOTE:** Among the other grant terms and conditions specified under sub. (2), the
20 department may specify grant terms and conditions that are reasonably
21 designed to advance the department's statewide chemical waste collection
22 goals, and facilitate statewide administration of the chemical waste
23 collection program.

24 **SECTION 5.** ATCP 34.04(3) and (note) are repealed and recreated to read:
25

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

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

8 (b) The proposed collection locations.

9 (c) The proposed dates and times of collection.

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

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

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

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

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

20 ✓

belongs elsewhere

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

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

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

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

13 (m) ^{includes the} The county lead agency and individual program coordinator for the project,
14 and any other county agencies involved in implementing the project. *(5) ✓*

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

17 **NOTE:** A county and its contract agents are responsible for managing waste
18 chemicals in compliance with all applicable laws, regulations and
19 standards. This chapter does not expand or limit the application of state or
20 federal hazardous waste laws administered by the Wisconsin department
21 of natural resources. This chapter does not authorize or require a county to
22 serve as an enforcement agency, nor does it require a county to indemnify
23 persons that violate state or federal law.
24

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

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

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

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

9 (3) The cost of the project.

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

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

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

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

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

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

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

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

22 (a) The amount of the grant award.

5
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1 (b) The purposes for which the grant award may be used. The contract may
2 identify these purposes by reference to this chapter, the department's announcement
3 under s. ATCP 34.04(2) or the county's grant application.

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

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

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

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

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

17 (h) Other contract terms specified by the department.

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

- 1 (a) Cancel one or more grants in the reverse order in which they were awarded.
- 2 (b) Reduce grant amounts with the approval of the affected counties.

3 **SECTION 8.** ATCP 34.07 is created to read:

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

(2) Singular case

7 (1) ^{County requires each} Each of the very small quantity generators pre-registers with the county or its
8 contract agent. Each registration shall include all the following:

(2) ✓

- 9 (a) The registrant's name and address.
- 10 (b) The registrant's license status, if the registrant is required to be licensed under
11 ch. ATCP 29.

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

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

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

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

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

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

(2) ✓

- 1 (a) The name and address of each registrant under sub. (1).
- 2 (b) The amounts and types of waste agricultural pesticides and containers actually
- 3 collected from each registrant.
- 4 (c) The total cost to collect and dispose of waste agricultural pesticides and
- 5 containers collected from registrants.
- 6 (d) The total of all payments received from registrants, if any.

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

8 ATCP 34.08(1) COUNTY RESPONSIBLE AS WASTE GENERATOR. Pursuant to s.

9 93.55(2m), Stats., a county receiving a grant under s. ATCP 34.03 shall assume

10 responsibility as hazardous waste generator, under the federal resource conservation and

11 recovery act, for hazardous wastes accepted by the county in connection with the county

12 project. As a hazardous waste generator, the county shall comply with applicable

13 requirements under s. 291.21 144.63, Stats., and the resource conservation and recovery

14 act. ~~The department shall assist the county in completing required hazardous waste~~

15 ~~reports and documents, and in complying with applicable requirements.~~

4 ✓

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

17 **SECTION 11.** ATCP 34.08(2) and (note) are repealed and recreated to read:

18 ATCP 34.08(2) HAZARDOUS WASTE CONTRACTOR. (a) A county receiving a

19 grant under s. ATCP 34.03 shall contract with a hazardous waste contractor to receive,

20 pack, transport and dispose of hazardous wastes collected during the county project. The

21 hazardous waste contractor shall attend training provided by the department, and shall

22 comply with applicable requirements under this chapter. The county shall select the

1 contractor by a date specified in the department's announcement under s. ATCP 34.04(2)
2 so the department can provide training to the selected contractor.

3 (b) A hazardous waste contractor under par. (a) shall be capable of all the
4 following:

5 1. Assisting counties and ^{very} small quantity generators to identify and segregate
6 hazardous and solid wastes.

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

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

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

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

16 6) Collecting and reporting information related to banned and target chemicals.

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

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

22 **NOTE:** The contractor who manages the state of Wisconsin's hazardous wastes
23 under the cooperative state purchasing agreement meets applicable
24 requirements under par. (b).

not defined - why not all generators? (5) ✓

what are these? (5) ✓

1
2 (c) The department may require a county to submit proof that the hazardous
3 waste contractor selected by the county meets applicable requirements under this section.
4 The department may disapprove a hazardous waste contractor selected by a county if the
5 department finds that the contractor does not meet applicable requirements under this
6 section.

7 **SECTION 12.** ATCP 34.09 is repealed and recreated to read:

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

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

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

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

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

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

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

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

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

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

(2)

1 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the
2 first day of the month following publication the Wisconsin administrative register, as
3 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

4

Initial 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

*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. It is estimated that up to ten contractors could seek contracts from counties.

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 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 Department of Administration's (DOA's) hazardous waste contractor selected under cooperative purchasing is available to counties not wishing to seek competitive bids.

The impact of this rule on hazardous waste contractors will generally be positive as they will have access to counties receiving both permanent collection facility and temporary or one-day event grants. Prior to this time, only counties with permanent facilities were allowed to select their own waste contractor. Normally the Ag Clean Sweep Program contracts with 12 to 18 temporary event counties. However, it must be noted that certain types of contractors may be unable to meet Ag Clean Sweep's high performance and service standards. These classes include local contractors with limited capabilities and hazardous waste "brokers". Staffing and contract administration issues will likely be major problems for these contractors and the counties they serve.

Contractor selection and coordination issues will improve at permanent collection facilities as a result of the proposed rule. Permanent facilities often enter into multi-year contracts with contractors. However, the impact of this rule on temporary events is more uncertain. In general, temporary event counties have limited experience with hazardous waste contracting and they may find it more difficult to meet program service and administrative requirements.

Dated this 22nd day of April, 1999

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE &
CONSUMER PROTECTION

By Nicholas J. Neher

Nicholas J Neher, Administrator,
Agricultural Resource Management Division

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
PRELIMINARY 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.

? why, they already opened!

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 all counties receiving ATCP 34 grants 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 continuity. The State of Wisconsin's hazardous waste contractor is available to counties not wishing to conduct their own bidding.

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. 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.

One potential negative impact on counties will be the extra time and resources required to conduct hazardous waste contractor bidding and the lack of technical knowledge to evaluate bids. There are many short and long-term liability concerns associated with the collection and disposal of hazardous wastes. For counties unfamiliar with these issues, poor or inappropriate decisions could be made. They may also be overwhelmed by vendors seeking local contracts.

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 public 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 serve as waste haulers for counties with ATCP 34 grants. The hazardous waste contractor selected through the State of Wisconsin's cooperative purchasing agreement will be available to counties not interested in competitive local bidding.

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 proposed 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):

Multi-county Contracting Eligibility and Arrangements

In various parts of Wisconsin, groups of counties, both formal and informal, are showing increasing interest in Ag Clean Sweep Program grants. This is a positive trend as these multi-county associations are often interested in

creating year-round disposal options for area farmers, businesses, and municipalities. For example, the Northwest Regional Planning Commission has been operating a 10-county hazardous waste collection program for three years. The Milwaukee County Metropolitan Sewage District has demonstrated interest in sponsoring a grant for the Greater Milwaukee area. Still yet, some permanent facilities are discussing the option of serving neighboring counties through creative arrangements.

By law, the department can only enter into agreements with counties for ATCP 34 grants, and these counties cannot subrogate their responsibility to another unit of government except under limited conditions. With counties creating a wide variety of creative approaches to areawide hazardous waste disposal needs, it is necessary for ATCP 34 to be responsive to the changing nature of clean sweep sponsorship.

There are several ways to solve the above problem. s. 66.30, Wisconsin Statutes allows units of government to exercise "joint powers authorities" to solve common problems. The Attorney General could be asked to issue an opinion on the extension of this authority for the above described needs. Alternatively, it is also possible to seek correction through legislative action.

Who sponsors Ag Clean Sweeps and the "friendliness" of ATCP 34 for multi-county arrangements are serious program issues. Solving this problem would clearly keep many counties interested in Ag Clean Sweep grants well into the next century and maintain higher levels of efficiency and participation.

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 be 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.)

The Northwest Regional Planning Commission and Milwaukee Metropolitan Sewage District have reacted negatively to the multi-county contracting issue identified in Question 12 (C). To summarize, this problem involves the implementation of statutory provisions requiring the department to contract with counties. In the case of multi-county associations, whether formal or informal, the law states that individual grants and contracts are required for each county, although

they are allowed to have joint administration in the proposed rule.

The above parties have pointed out that s. 66.30, Intergovernmental Cooperation allows counties and other recognized units of government to form whatever associations are needed to undertake areawide services such as clean sweeps. Further, they indicate that the requiring of individual grants and contracts by the department will, in effect, make it impossible for the multi-county association to undertake clean sweeps in timely and efficient ways. Evidence shows that political, administrative, and financial delays occur every time areawide issues come before county boards and committees. They believe that the net effect of this requirement would be the cessation of Ag Clean Sweep activities within member counties.

A second concern identified in the rule is the ability for counties to select waste contractors other than the state contractor. The existing rule requires department approval of the waste contractor and the contract itself, but the rule is silent on the approval process, such that the "norm" has been use of the already approved contractor for the state.

The proposed rule defines the criteria that a selected waste contractor must meet and says that the state's contractor meets these criteria. The department believes these criteria define existing policy, and as such should be defined within the rules. The state's current contractor is concerned that this language may ease the ability of counties to select alternate contractors, thereby devaluing the contract with the state.

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 preliminary 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 22 day of April 19 99

By Edward A. Meyer
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 22nd day of April 19 99

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

FISCAL ESTIMATE

LRB or Bill No. /Adm. Rule No.
Amendment No. (If Applicable)

DOA-2048 (R 10/94) ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
 ATCP 34 (Ag Clean Sweep Rule) Revision

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

<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: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input checked="" type="checkbox"/> Others Regional planning commissions _____ <input checked="" type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts</p>
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<p>Fund Source Affected <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) (V)</p>
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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

<p>Agency/prepared by: (Name & Phone No.) DATCP, Roger Springman 224-4545</p>	<p>Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746</p>	<p>Date 4/20/99</p>
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STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE, AND CONSUMER PROTECTION

NOTICE OF HEARING

RULES RELATED TO CHEMICAL AND CONTAINER COLLECTION PROGRAM
(COMMONLY CALLED AGRICULTURAL CLEAN SWEEP)

The state of Wisconsin Department of Agriculture, Trade, and Consumer Protection announces that it will hold public hearings on proposed rule amendments to chapter ATCP 34, Wis. Administrative Code, relating to the collection of unwanted agricultural chemicals and containers. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. The department also invites comments on the draft environmental impact statement which accompanies the rule. Following the public hearings, the hearing record will remain open until **July 2, 1999** for additional written comments.

A copy of the rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade, and Consumer Protection, Agricultural Resource Management Division, 2811 Agricultural Drive, Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4505. Copies will also be available at public meetings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **June 11, 1999** either by writing to Paula Noel, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708, (608) 224-4505 or by contacting the message relay system (TTY) at (608) 224-5058. Handicap access is available at the hearings.

Two hearings are scheduled:

June 23, 1999, Wednesday

Prairie Oak State Office Building (Wis. Dept. of Ag, Trade, & Consumer Protection)

2811 Agriculture Dr.

Madison, Wis. 53708

afternoon session: 1:00 - 5 p.m.

June 24, 1999, Thursday

Portage County Courthouse Annex

1462 Strongs Av.

Stevens Point, Wis. 54481

afternoon session: 1:00 - 5 p.m.

**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. 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 VSQG's who are not farmers.
- Meeting other requirements specified by the department in its announcement soliciting county grant applications. (Among other things, the department may specify grant terms and conditions that are reasonably designed to advance the department's statewide "clean sweep" goals, and facilitate statewide administration of the "clean sweep" program.)

This rule does not require department approval of a hazardous waste contractor. Nor does it require a county to use the state's hazardous waste contractor. However, the department may require a county to submit proof that the hazardous waste contractor selected by the county meets applicable requirements under this rule. 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 rule. The state of Wisconsin'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.

FISCAL ESTIMATE

The proposed rule makes permanent several hazardous waste disposal 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.

The proposed rule will make permanent the required county cost-share match to receive ATCP 34 grants. The cost-share will be set at \$3,000 per annual grant application. 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.

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, schools, 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.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

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. The new rule extends services to any business or municipal entity that uses or holds non-household pesticides for disposal . . . provided prospective customers self-certify as a Very Small Quantity Generator (VSQG) pursuant to the Department of Natural Resources (DNR) administrative rule, NR 610. This means that hardware stores, department stores,

marinas, parks, cemeteries, and construction companies along with schools and local units of government can legally use Agricultural Clean Sweep. This change is expected to at least quadruple the number of businesses eligible for clean sweep disposal services.

Eligible businesses can receive convenient, lower cost hazardous waste disposal services through Ag Clean Sweep participation. When available, on-site pickup services through private waste haulers are often very expensive. Businesses with unwanted agricultural pesticides can receive up to a 50% disposal subsidy from the department. All other chemicals can be accepted, but businesses must pay full disposal costs.

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. It is estimated that up to ten contractors could seek contracts from counties.

Operating Procedures Improved for Businesses

The proposed rule streamlines and simplifies procedures for business participation in a host of ways. Hazardous waste contractors and county clean sweep coordinators can provide upfront pre-registration packets which contain all necessary information for an accurate estimate of disposal costs. At the same time, this early communication with hazardous waste haulers allows businesses to work with professionals who can provide direct advice on hazardous waste rules and regulations. Poor knowledge of hazardous waste risks and federal/state regulations have been two obstacles preventing businesses from making good decisions on hazardous waste management.

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 (CERLA) cannot be waived by public program participation, businesses, with the exceptions of farms, remain responsible for their wastes and appropriate records must be prepared and maintained.

Hazardous Waste Contractors

The proposed rule allows counties who have been awarded ATCP 34 grants 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. The Department of Administration's (DOA's) hazardous waste contractor selected under cooperative purchasing is available to counties not wishing to seek competitive bids.

Hazardous waste contractor performance will likely improve at permanent collection facilities as a result of the proposed rule. Counties with permanent facilities often have

extensive experience with hazardous waste contracting. However, the impact on this rule on temporary or one-day collection events is more uncertain. In general, temporary event counties have limited experience with hazardous waste contracting and they may find it more difficult to meet program service and administrative requirements.

Dated this 14 day of May, 1999

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE, AND CONSUMER PROTECTION

By: Ben Brancel
Ben Brancel, Secretary