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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Agriculture...

COMMITTEE NOTICES ...

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- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

Assembly

Record of Committee Proceedings

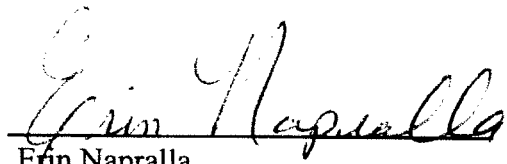
Committee on Agriculture

Clearinghouse Rule 03-119

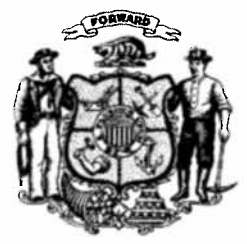
Relating to the agricultural chemical cleanup program.
Department of Agriculture, Trade and Consumer Protection

July 15, 2004 Referred to Committee on Agriculture.

August 16, 2004 No action taken.



Erin Napralla
Committee Clerk





State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

PUBLIC NOTICE

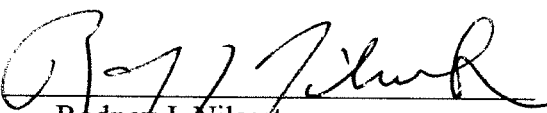
FINAL DRAFT RULE TO LEGISLATURE

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: 03-119
SUBJECT: Agricultural Chemical Cleanup Program
ADM. CODE REFERENCE: ATCP 35
DATCP DOCKET #: 02-R-14

Dated this 8 day of July, 2004.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By 
Rodney J. Nilsestuen
Secretary




State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: July 7, 2004

TO: The Honorable Alan J. Lasee
President, Wisconsin State Senate
Room 219 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable John Gard
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison 53708-8952

FROM: 
Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Agricultural Chemical Cleanup Program (Clearinghouse Rule #03-119)**

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Background

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently administers an agricultural chemical cleanup program under s. 94.73, Stats. This program is designed to clean up spills of agricultural chemicals and minimize environmental contamination. Under this program, DATCP may reimburse a portion of the eligible cleanup cost.

DATCP has adopted rules, under ch. ATCP 35, Wis. Adm. Code, to govern the agricultural chemical cleanup program. This rule modifies the current rules. Among other things, this rule implements statutory changes enacted in 2003 Wis. Act 33 (biennial budget act).

Rule Contents

Landspreading Soil from Cleanup Sites

In appropriate cases under current rules, a cleanup operation may include landspreading of soils contaminated with spilled fertilizers or pesticides. Landspreading may reduce the concentration of the fertilizer or pesticide, and may provide an economical and potentially useful disposal option.

This rule clarifies that a person who landspreads soil contaminated with a pesticide is, for purposes of pesticide applicator licensing and certification, engaged in the application of that pesticide. The person must be licensed and certified to spread the pesticide-contaminated soil, to the same extent as if the person were applying the pesticide.

Costs to Remove Existing Structures

In some cases, it may be necessary to remove existing structures in order to clean up a spill site. Current rules generally prohibit DATCP from reimbursing costs incurred for the removal of existing structures. But DATCP may reimburse costs to remove certain concrete or asphalt structures (containment structures, parking areas, roadways, curbs and sidewalks) if DATCP pre-approves the removal after finding that the removal is less expensive than other cleanup alternatives.

Under current rules, DATCP may also reimburse costs to remove and reinstall certain movable structures or equipment, or to replace certain fixtures (such as fences and utility lines) that were in good operating condition when removed for the cleanup.

This rule changes and clarifies the current rules. Under this rule, DATCP may reimburse all the following:

- Costs to remove *any* concrete or asphalt (not just the concrete or asphalt structures identified in the current rules) if DATCP pre-approves that removal after finding that it is less expensive than other cleanup alternatives. Under this rule, as under current rules, DATCP may reimburse the depreciated value of the concrete or asphalt, as well as the costs of removal and disposal. However, DATCP may not reimburse the cost of replacing the concrete or asphalt.
- Costs to install engineered barriers, to limit infiltration of existing contamination. The responsible person must agree to maintain the barrier at his or her expense.
- Temporary removal and reinstallation of a surface, structure, fixture or equipment item that is removed *intact*, and returned *intact* to its original use and approximate original location.

- The following corrective measures related to fixtures (such as fences and utility lines) that are in good condition and operating adequately when the corrective measure occurs:
 - * Temporary or permanent relocation.
 - * Removal and replacement with a new fixture of the same size and quality, including any upgrade required by law.
 - * Protection during a spill cleanup, through shoring or other methods.

Repeat Spills

This rule authorizes DATCP, in consultation with the agricultural chemical cleanup council, to reduce reimbursements for cleanups of repeat spills. Under this rule, DATCP may reduce the reimbursement for a spill cleanup if DATCP has received or paid a reimbursement claim related to a prior spill at the same site.

The presumptive amount of the reduction is 50%, unless DATCP finds that a larger or smaller reduction is appropriate. In determining the amount of the reduction, DATCP may consider all of the following in consultation with the agricultural chemical cleanup council:

- The type of agricultural chemical discharged.
- The nature, size and location of discharge.
- The similarity between the discharge and prior discharges.
- The number of prior discharges, and the number of prior discharges for which the department has reimbursed corrective action costs.
- The responsible person's apparent negligence, if any.
- Whether the discharge was caused by a law violation.

Alternative Sources of Drinking Water

In some cases, spills of agricultural chemicals may impair drinking water supplies. Current rules prohibit DATCP from reimbursing well replacement costs, except that DATCP may reimburse up to \$20,000 in well replacement costs if DATCP or the Department of Natural Resources (DNR) orders the well replacement.

This rule expands DATCP's authority to reimburse well replacement costs, consistent with legislative changes enacted in 2001 Wisconsin Act 16. Under this rule, DATCP may reimburse up to \$50,000 in costs incurred for any of the following actions ordered by DATCP or DNR:

- Replacement or restoration of private wells.
- Connection to alternative water sources, whether public or private.

Contractor to Disclose Identity of Landspreading Subcontractor

Current rules require contractors to disclose certain information in bids for cleanup services. This rule requires a contractor to disclose, in every bid that includes landspreading services, the name of the subcontractor (if any) who will provide those services.

Noncompetitive Bids

Under current rules, if DATCP finds that a bid for cleanup services is unreasonable, or that the cleanup service is unnecessary, DATCP may disapprove the bid, require additional bids or reimburse a lesser amount. This rule authorizes DATCP to take the same actions if DATCP finds that bids appear to be noncompetitive.

Payment Schedule

Under current rules, DATCP must pay cleanup reimbursement claims in installments if the cleanup fund balance is less than \$1 million. DATCP may pay an initial installment of up to \$50,000. DATCP may not make any additional payment to a claimant in any fiscal year until DATCP has paid initial installments to all eligible claimants in that year. This may delay full reimbursement to some claimants, even when adequate funds are available to pay all eligible claimants. DATCP must pay interest on any delayed payments.

This rule changes the current method of payment. Under this rule, DATCP may pay the full amount of reimbursement claims on a first-come, first-served basis (there is no \$50,000 installment limit). This will allow DATCP to pay claims more quickly, and limit interest costs to the agricultural chemical cleanup fund.

Reimbursement Rate

Under current rules, DATCP reimburses 80% of eligible cleanup costs. There is a minimum cleanup cost "deductible" of \$3,000 or \$7,500 (depending upon the type of business doing the cleanup), and DATCP does not reimburse costs to the extent that they exceed \$400,000. The maximum allowed payment per cleanup, including interest on delayed payments, is \$317,600 or \$314,000 (depending on the applicable "deductible").

This rule reduces the current reimbursement rate, consistent with legislation enacted in 2003 Wisconsin Act 33. Under this rule, DATCP will reimburse 75% of eligible cleanup costs incurred on or after January 1, 2004. There will still be a minimum cleanup cost "deductible" of \$3,000 or \$7,500 (depending upon the type of business doing the cleanup). DATCP will still not reimburse costs to the extent that they exceed \$400,000.

Repeal of Obsolete Provisions

This rule repeals obsolete retroactivity provisions contained related to reimbursement claims filed with the department prior to November 1, 2000.

Public Hearings

The department held a public hearing on this rule in Madison, Wisconsin on January 22, 2004. A total of 8 persons appeared or testified (see summary of hearing testimony attached as *Appendix A*). Hearing testimony generally supported the rule, but with some modifications.

Changes from Hearing Draft

DATCP made several technical changes in response to hearing testimony and comments from the Legislative Council Rules Clearinghouse. DATCP also modified payment caps so that DATCP will be able to pay 75% reimbursement on up to \$400,000 in eligible costs. This change is consistent with 2003 Wisconsin Act 33.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made several comments on the hearing draft rule. DATCP modified the final draft rule to address all of the comments, except the following:

- The Rules Clearinghouse asked whether, in the last sentence of s. ATCP 35.04(5)(a), the word “may” should be replaced by “shall.” DATCP believes that the word “may” is appropriate.

Business Impact

This rule will affect businesses, such as farm centers and agricultural supply cooperatives, that must clean up agricultural chemical spills. Some of these businesses are small businesses.

This rule will:

- Reduce, from 80% to 75%, the maximum rate at which the department may reimburse spill cleanup costs. The reduction in maximum reimbursement rates was mandated by 2003 Wisconsin Act 33.
- Facilitate reimbursement of certain cleanup costs, and speed reimbursement payments in some cases.
- Authorize the department to reduce cleanup reimbursement rates for repeat spills.

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The Honorable John Gard
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Cleanup payments are funded by license fees charged to agricultural chemical sellers (some of whom are small businesses), so reimbursement cost controls help to keep license fees within reasonable limits. The rule does not add any paperwork requirements for any parties. A small business analysis (initial regulatory flexibility analysis) is attached.

Environmental Assessment

This rule will not have a major impact on the environment. This rule will enhance environmental protection by helping regulated persons to understand and comply with current rules. It will help protect groundwater and surface water against fertilizer and pesticide spills, and will facilitate timely and effective cleanups. An environmental assessment is attached.

Fiscal Estimate

This rule will not have a significant fiscal impact on DATCP or local units of government. This rule implements law changes made by 2001 Wisconsin Act 16 and 2003 Wisconsin Act 33, which did have a fiscal impact; but this rule will not alter that impact. A complete fiscal estimate is attached.

Appendix A

ATCP 35 Public Hearing Summary

Name	Address	Testimony
Mark Tusler	BT ² , Inc. 2830 Dairy Drive Madison, WI 53718-6751	Provided written testimony supporting the maximum payment possible based upon the lowered reimbursement rate.
Betsy Ahner	WI Fertilizer & Chemical Assn. 2317 International Lane Suite 115 Madison, WI 53704-3154	Provided written testimony supporting the maximum payment possible based upon the lowered reimbursement rate and suggested that we modify the language to reduce the human variability on the recontamination issue.
Tim Clay	WI Federation of Cooperatives 131 West Wilson Street Suite 400 Madison, WI 53703	Provided written testimony supporting the maximum payment possible based upon the lowered reimbursement rate.
Dale Rezabeck	54 Park Place Suite 950 Appleton, WI 54914	In support of the maximum payment possible based upon the lowered reimbursement rate.
Mahlon Nordahl	W 13705 E Green Acres Road Hixton, WI 54635	In support of the maximum payment possible based upon the lowered reimbursement rate.
Amy Haak	111 E. 12 th St. Fond du Lac, WI 54935	In support of the maximum payment possible based upon the lowered reimbursement rate.
Jim Shelton	Landmark W 2931 Walnut St. Juda, WI 53550	In support of the maximum payment possible based upon the lowered reimbursement rate.
Jim Kazmierczak	W9646 Richards Road Lodi, WI 53555	Appeared at hearing – did not testify.



**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 adopts
2 the following order to repeal ATCP 35.04(6) and 35.06(5); to renumber 35.03(1)(a),
3 35.08(6), 35.16(7) and 35.22(4)(c) and (d); to amend ATCP 35.14(5), and
4 35.16(9)(intro.); to repeal and recreate ATCP 35.04(5), 35.14(13), 35.22(1) and (2) and
5 35.28; and to create ATCP 35.03(1)(b), 35.08(6), 35.16(7)(b) and 35.22(5) and (6);
6 relating to the agricultural chemical cleanup program.

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

Statutory Authority: ss. 93.07(1) and 94.73(11), Stats.
Statute Interpreted: s. 94.73, Stats.

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The presumptive reimbursement rate (reduced rate) is 50%, unless DATCP finds that a larger or smaller reduction is appropriate. In determining the amount of the reduction, DATCP may consider all of the following in consultation with the agricultural chemical cleanup council:

- The type of agricultural chemical discharged.
- The nature, size and location of discharge.
- The similarity between the discharge and prior discharges.
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Current rules require contractors to disclose certain information in bids for cleanup services. This rule requires a contractor to disclose, in every bid that includes landspreading services, the name of the subcontractor (if any) who will provide those services.

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This rule reduces the current reimbursement rate, consistent with legislation enacted in 2003 Wisconsin Act 33. Under this rule, DATCP will reimburse 75% of eligible cleanup costs incurred on or after January 1, 2004. There will still be a minimum cleanup cost "deductible" of \$3,000 or \$7,500 (depending upon the type of business doing the cleanup). DATCP will still not reimburse costs to the extent that they exceed \$400,000.

Repeal of Obsolete Provisions

This rule repeals obsolete retroactivity provisions related to reimbursement claims filed with the department prior to November 1, 2000.

Federal and Surrounding State Programs

Federal Programs

There are no comparable federal programs to reimburse agricultural chemical contamination cleanup costs.

Minnesota

The Minnesota Department of Agriculture administers a program to clean up agricultural chemical contamination sites. Agricultural chemical dealers pay fees to finance the fund. Minnesota reimburses up to 80 percent of eligible cleanup costs between \$1,000 and \$350,000 (60% if there is re-contamination). Minnesota pays reimbursements on a first-come first-served basis.

Minnesota does not require a competitive bidding process for contractors, and does not reimburse costs for alternative water supplies. Concrete removal costs are eligible for reimbursement. Minnesota authorizes landspreading of contaminated soil in appropriate cases. If the soil is contaminated with a restricted-use pesticide, the landspreader must be a certified applicator.

Illinois

The Illinois Department of Agriculture administers an agricultural chemical contamination cleanup fund. However, the fund may be used only for emergency cleanups, and has been used only once. Illinois has conducted several non-emergency clean ups, but does not reimburse cleanup costs incurred by private entities. Illinois created its fund by imposing a one-time assessment of \$1,500 on agricultural chemical dealers.

Michigan and Iowa

Michigan and Iowa do not have programs to reimburse agricultural chemical contamination cleanup costs.

Business Impact Analysis

This rule affects businesses that spill fertilizers or pesticides, or pay fees to the agricultural chemical cleanup fund. Most spills occur at farm centers, agricultural dealerships and agricultural cooperatives -- the primary entities paying fees to the fund.

Currently more than 360 entities are involved in cleanups that may qualify for reimbursement from the fund. Many of these businesses are “small businesses” as defined in s. 227.114(1)(a), Stats.

Reimbursement rules have a direct impact on the entities seeking reimbursement, and an indirect impact on entities whose fee payments finance the reimbursement fund. Regulation is designed to provide fair reimbursement, while maintaining the fiscal integrity of the fund. This rule makes a number of changes to current reimbursement rules, including the following:

- It reduces the reimbursement rate as provided by statute (2003 Wis. Act 33).
- It streamlines the reimbursement process.
- It increases reimbursement eligibility for certain cleanup costs.
- It reduces reimbursement rates for repeat contamination. Entities may participate in DATCP’s Environmental Partners Program to prevent repeat contamination (and thus reduce future cleanup costs).

This rule will not have a major impact on business. It will reduce spill cleanup reimbursement rates for some businesses, but only to the extent provided by the Legislature in 2003 Wis. Act 33. The reduction will help maintain the financial solvency of the cleanup fund, thereby minimizing fee charges to businesses that contribute to the fund. Businesses will not need additional professional services to comply with this rule.

1 **SECTION 1.** ATCP 35.03(1) is renumbered (1)(a)

2 **SECTION 2.** ATCP 35.03(1)(b) is created to read:

3 ATCP 35.03(1)(b) An individual who landspreads soil containing a pesticide is
4 deemed, for purposes of licensing and certification under ss. ATCP 29.25 to 29.27, to be
5 applying that pesticide.

6 **SECTION 3.** ATCP 35.04(5) is repealed and recreated to read:

7 ATCP 35.04(5) Costs for any of the following corrective measures that the
8 department specifically requires, or that the department specifically pre-approves in
9 writing after finding that the measures are less expensive than the available alternatives:

10 (a) Removal and disposal of concrete or asphalt. The department may not

1 reimburse costs for the removal or disposal of concrete or asphalt installed after January
2 1, 1998 unless the responsible person proves to the department, by credible laboratory
3 tests, that the construction site was free of agricultural chemical contamination when the
4 concrete or asphalt was installed. The cost to remove concrete or asphalt may include its
5 depreciated value calculated as the original construction cost less all depreciation claimed
6 to date by any person for tax purposes.

7 (b) Installation of an engineered barrier to limit infiltration of existing
8 contamination, provided that the responsible person agrees in writing to maintain the
9 barrier at his or her expense until the contamination is removed or fully degraded.

10 (c) Temporary removal and reinstallation of a structure, fixture or equipment item
11 that is removed intact, and returned intact to its original use and approximate original
12 location.

13 (d) The following corrective measures related to fixtures that are in good
14 condition and operating adequately when the corrective measure occurs:

- 15 1. Temporary or permanent relocation.
- 16 2. Removal and replacement with a new fixture of the same size and quality,
17 including any upgrade required by law.
- 18 3. Protection during a corrective action, through shoring or other methods.

19 **SECTION 4.** ATCP 35.04(6) and 35.06(5) are repealed.

20 **SECTION 5.** ATCP 35.08(6) is renumbered (7).

21 **SECTION 6.** ATCP 35.08(6) is created to read:

1 ATCP 35.08(6) RECONTAMINATION; REDUCED REIMBURSEMENT RATE. (a) The
2 department, after consulting with the agricultural chemical cleanup council, may reduce
3 the reimbursement rate for a corrective action related to a discharge discovered after
4 *[revisor inserts effective date of this subsection]* if the department has received or paid a
5 reimbursement claim related to a prior discharge at the same discharge site.

6 (b) The presumptive reimbursement rate under par. (a) is 50%, unless the
7 department finds that a different rate is appropriate. In determining the appropriate
8 reimbursement rate, the department may consider all of the following in consultation with
9 the agricultural chemical cleanup council:

- 10 1. The type of agricultural chemical discharged.
- 11 2. The nature, size and location of discharge.
- 12 3. ~~The~~ similarity between the discharge and prior discharges.
- 13 4. The number of prior discharges, and the number of prior discharges for which
14 the department has reimbursed corrective action costs.
- 15 5. The responsible person's apparent negligence, if any.
- 16 6. Whether the discharge was caused by a law violation.

17 **NOTE:** See s. ATCP 35.12(8), which prohibits the department from reimbursing
18 *any* costs for corrective actions made necessary by intentional or grossly
19 negligent violations of law.

20 **SECTION 7.** ATCP 35.14(5) is amended to read:

21 ATCP 35.14(5) Costs to construct, repair, replace, improve, relocate or demolish
22 any structure, equipment or fixture, except as provided under s. ATCP 35.04(5) ~~and (6)~~.

23 **SECTION 8.** ATCP 35.14(13) is repealed and recreated to read:

1 ATCP 35.14(13) The cost of providing alternative sources of drinking water or
2 point-of-use water purification devices, except that the department may reimburse a
3 responsible person up to \$50,000 for any of the following corrective actions if the
4 department or the department of natural resources orders that action in response to a
5 discharge:

6 (a) Replacement or restoration of private wells.

7 (b) Connection to alternative water sources, whether public or private.

8 **SECTION 9.** ATCP 35.16(7) is renumbered (7)(a).

9 **SECTION 10.** ATCP 35.16(7)(b) is created to read:

10 ATCP 35.16(7)(b) A contractor shall disclose, in every bid under sub. (2) that
11 includes landspreading services, the name of the subcontractor who will provide the
12 landspreading services.

13 **SECTION 11.** ATCP 35.16(9)(intro.) is amended to read:

14 ATCP 35.16(9)(intro.) If the department finds that a bid or cost estimate under
15 sub. (2) is unreasonable, that bids or cost estimates appear to be noncompetitive, or that
16 all or part of the contract service is unnecessary, the department may do any of the
17 following:

18 **SECTION 12.** ATCP 35.22(1) and (2) are repealed and recreated to read:

19 ATCP 35.22(1) **GENERAL REIMBURSEMENT FORMULA.** (a) Except as provided in
20 subs. (2) through (6), the department shall reimburse a responsible person for each
21 discharge site an amount equal to 75% of the eligible corrective action costs that are

1 greater than \$3,000 and less than \$400,000. To this amount, the department shall add
2 interest costs under s. ATCP 35.25.

3 (b) If no more than \$3,000 of the eligible corrective action costs under par. (a)
4 were incurred prior to January 1, 2004, the total amount paid under par. (a) may not
5 exceed \$297,750.

6 (c) If more than \$3,000 of the eligible corrective action costs under par. (a) were
7 incurred prior to January 1, 2004, the total amount paid under par. (a) may not exceed
8 \$317,600 or the sum of the following, whichever amount is less:

9 1. Eighty percent of the eligible corrective action costs incurred prior to January
10 1, 2004 that exceed \$3,000.

11 2. Seventy-five percent of the difference between \$400,000 and the eligible
12 corrective action costs incurred prior to January 1, 2004.

13 (2) DIFFERENT REIMBURSEMENT FORMULA FOR SOME PERSONS. (a) Except as
14 provided in subs. (3) through (6), the department shall reimburse a responsible person for
15 each discharge site an amount equal to 75% of the eligible corrective action costs that are
16 greater than \$7,500 and less than \$400,000 if any of the following apply at the time the
17 discharge occurs or is discovered:

18 1. The responsible person is required to be licensed under ss. 94.67 to 94.71,
19 Stats.

20 2. The responsible person employs more than 25 persons.

21 3. The responsible person has gross annual sales of more than \$2,500,000.

1 (b) To the amount under par. (a) the department shall add interest costs under s.
2 ATCP 35.25.

3 (c) If no more than \$7,500 of the eligible corrective action costs under par. (a)
4 were incurred prior to January 1, 2004, the total amount paid under pars. (a) and (b) may
5 not exceed \$294,375.

6 (d) If more than \$7,500 of the eligible corrective action costs under par. (a) were
7 incurred prior to January 1, 2004, the total amount paid under pars. (a) and (b) may not
8 exceed \$314,000 or the sum of the following, whichever amount is less:

9 1. Eighty percent of the eligible corrective action costs incurred prior to January
10 1, 2004 that exceed \$7,500.

11 2. Seventy-five percent of the difference between \$400,000 and the eligible
12 corrective action costs incurred prior to January 1, 2004.

13 **SECTION 13.** ATCP 35.22(4)(c) and (d) are renumbered (b) and (c).

14 **SECTION 14.** ATCP 35.22(5) and (6) are created to read:

15 ATCP 35.22(5) CORRECTIVE ACTION COSTS INCURRED PRIOR TO JANUARY 1, 2004.

16 For eligible corrective action costs incurred prior to January 1, 2004, the applicable
17 reimbursement rate under subs. (1) and (2) is 80%, rather than 75%.

18 (6) REDUCED REIMBURSEMENT RATE FOR REPEAT DISCHARGES. The department
19 may reduce the applicable reimbursement rate under this section, if a reduction is
20 appropriate under s. ATCP 35.08(6).

21 **SECTION 15.** ATCP 35.28 is repealed and recreated to read:

22 **ATCP 35.28 Reimbursement payments.** The department shall reimburse

1 responsible persons for approved corrective action costs, in the total amount approved for
2 each corrective action under s. ATCP 35.08 (4)(c), in the order in which the department
3 receives complete reimbursement applications from those responsible persons. The
4 department shall make payments under this section from the appropriations under ss.
5 20.115 (7)(e) and (wm), Stats. Notwithstanding any other provision of this chapter,
6 payment is subject to the availability of funds in those appropriations.

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

Dated this _____ day of _____, _____

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

By _____
Rodney J. Nilsestuen, Secretary

FISCAL ESTIMATE

DOA-2048 N(R10/98)

 ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

2001 Session

LRB No. and Bill/Adm. Rule No.

ATCP 35

Amendment No. If Applicable

Subject

Agricultural Chemical Cleanup Program

Fiscal Effect**State:** No State Fiscal Effect

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

 Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation
 Increase Costs - May be possible to Absorb Within Agency's Budget Yes No Decrease Costs**Local:** No Local Government Costs
1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

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

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts
Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S
Affected Ch. 20 Appropriations

20.115(7)(wm)

Assumptions Used In Arriving at Fiscal Estimate

Overall, the fiscal implications of the rule changes will result in an annual savings of \$175,000. This is based upon an annual savings of \$160,000 (\$3.2 million x .05) because of the cost-share rate being lowered from 80% to 75%. In addition, cost savings of approximately \$20,000 result from paying the reimbursement claims on a first-come, first-served basis instead of installments. These savings are the result of lowered interest costs that will be paid out on the reimbursement claims.

Additional cost savings of approximately \$50,000 annually could also result from reduced payments to facilities that have recontamination issues occurring at them. These savings will be offset by additional expenditures of approximately \$50,000 for annual reimbursement payments related to concrete structure removal costs and additional private well replacement costs.

Following the public hearing the draft rule was modified to increase the maximum amount of reimbursement eligibility based upon an interpretation of the statutory change to the reimbursement rate. The fiscal impact of this change will be minimal as it only applies to a few reimbursement claims that reach the reimbursement cap of \$400,000. The department anticipates receiving one of these types of claims annually, with the additional expenditures averaging about \$5,000.

Long-Range Fiscal Implications

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

Dept of Agriculture, Trade & Consumer Protection

Duane Klein 608/224-4519

Authorized Signature/Telephone No.

Barbara Knapp

Barbara Knapp (608) 224-4746

Date

3-16-04

Fiscal Estimate Worksheet — 2001 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ATCP 35

Subject
 Agricultural Chemical Cleanup Program

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	\$	\$ -
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S	55,000	- 230,000
State Revenues	Increased Revenue	Decreased Revenue
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	\$	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ -175,000	\$
Net Change in Revenues	\$	\$

Prepared By: Duane Klein	Telephone No. 608/224-4519	Agency DATCP
Authorized Signature <i>Barbara Kneff</i>	Telephone No. 224-4746	Date (mm/dd/ccyy) 3-16-04

**Wisconsin Department of Agriculture, Trade and Consumer
Protection**

Final Regulatory Flexibility Analysis

Rule Subject: Agricultural Chemical Cleanup Program
Adm. Code Reference: Chapter ATCP 35, Wis. Adm. Code
Rules Clearinghouse #: 03-119
DATCP Docket #: 02-R-14

Rule Description

The Agricultural Chemical Cleanup Program (ACCP) is designed to clean up spills of agricultural chemicals and fertilizers and minimize their environmental contamination. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) may reimburse a portion of the corrective action costs to clean up spills of agricultural chemicals and fertilizers. Corrective actions, reimbursement applications and reimbursement payments must comply with ch. ATCP 35, Wis. Adm. Code.

These proposed changes make the following changes to ch. ATCP 35, Wis. Adm. Code:

- They clarify landspreading requirements by stating who is allowed to perform the landspreading.
- They expand the types of costs for concrete or asphalt removal that may be reimbursed.
- They establish a process to reduce the reimbursement rate for sites that have been recontaminated.
- They modify the rule language related to cost eligibility for alternative sources of drinking water to coincide with a recent statutory change.
- They modify the payment process for the ACCP fund so payments occur on a first-come first-serve basis.
- They provide more detail in the bidding and cost estimate system for cleanups.

In addition, changes under 2003 Wisconsin Act 33 decreased the reimbursement rate for corrective action costs. The changes also incorporate that statutory change.

Small Businesses Affected by this Rule

This rule affects businesses that clean up spills of fertilizers and pesticides in Wisconsin. Currently more than 360 of these persons are involved in a fertilizer

or pesticide cleanup, with the majority of these cleanups occurring at farm centers, agricultural dealerships and agricultural cooperatives. Many of these businesses are "small businesses" as defined in s. 227.114(1)(a), Stats.

Effects on Small Business

The rule changes will not have a major impact on small business. The proposed changes incorporate a statutory change that will affect a number of small businesses that clean up spills, by increasing the cost share rate they are required to pay. The rule changes will provide the responsible persons their reimbursement payments in a more streamlined manner and increase reimbursement eligibility for certain cleanup costs. In addition, businesses that repeatedly cause contamination at the same facility may be subject to a lower reimbursement percentage for future cleanups at that site.

Steps to Assist Small Business

Agricultural dealerships and cooperatives can participate in the department's Environmental Partners program to lower their risk of repeated contamination at the same site. In doing so, they could eliminate the need for future clean up costs or minimize their potential for receiving a lowered reimbursement rate.

Conclusion

These rule changes will not have a major impact on small business. The primary impact will be negative in that the rule incorporates statutory language that lowers the reimbursement rate that can be paid to those small businesses that experience a fertilizer or pesticide spill. Small businesses will not need additional professional services to comply with this rule.

Dated this 16th day of March, 2004

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

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

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
FINAL ENVIRONMENTAL ASSESSMENT

Division Affected: Agricultural Resource Management

Rule Number: Chapter ATCP 35, Wis. Adm. Code.

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:

Section 94.73, Stats.

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

Section 94.73, Stats.

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

Chapter ATCP 35, Wis. Adm. Code, was originally promulgated as a rule in 1994. The rules were created to implement the Agricultural Chemical Cleanup Program. This program directs the cleanup of fertilizer and pesticide spills in Wisconsin, and reimburses some of the costs of those persons that conduct the cleanups. Rule revisions are needed to address statutory revisions to this program and other issues that have arisen as the program has developed.

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).

(1) Environmental Objectives(s)

Overall, the changes to ch. ATCP 35, Wis. Adm. Code, will likely improve environmental quality because of the financial disincentive to re-contaminate a property. In addition, other changes may also improve environmental quality by providing additional incentives

to cleanup contamination that would otherwise remain underneath concrete buildings. Some of the changes also codify interpretations we have been utilizing with regard to the certification requirements for individuals that landspread pesticide-contaminated soil. These changes should also improve the environmental quality.

The change codifying the statutory provision to lower the reimbursement rate from 80% to 75% will negatively impact those conducting cleanups and may encourage responsible parties to be reluctant on proceeding with their cleanup in a timely manner.

(2) Programmatic/Administrative Objectives(s):

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

Most of the relevant assumptions were made for the statutory changes implemented in this rule, rather than assumptions made during rulemaking.

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

The proposed rules will require that persons conducting landspreading be appropriately certified and licensed in order to landspread pesticide-contaminated soil.

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

None.

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:

The proposed changes expand eligibility of certain cleanup costs and reduce the overall reimbursement rate. These changes primarily affect the pesticide and fertilizer dealers, but other individuals conducting cleanups will also be impacted.

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

An advisory committee assisted in development of these rules. Membership of the committee is available from the department. Contact on issues related to the statutory changes from 2003 Wisconsin Act 33 have been extensive over the past couple of years.

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

Chapter ATCP 35, Wis. Adm. Code, is being revised by this action.

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

The proposed rule would affect the Department publication *Interpretations and Clarifications of ATCP 35, Wis. Adm. Code*. This publication contains the rule language and additional information explaining compliance options and is used to assist persons conducting cleanups.

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 and biological setting would be directly affected by the proposed rule.

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.**

The proposed rule is anticipated to have no direct impacts on the physical and biological environment. Indirectly, increased or lowered reimbursement payments for agricultural chemical cleanups may affect the speed at which pesticide and fertilizer cleanups are completed.

- 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.**

This rule revision will result in some costs becoming eligible for reimbursement (concrete and asphalt removal of building floors and structures) while others costs will become ineligible (cleanup of areas that are re-contaminated). In addition, the reimbursement rate will be lowered from 80% to 75% because of statutory changes.

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

The proposed rule is not anticipated to have any direct or indirect impacts on the social and cultural environments of the parties affected by the proposal.

- 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 is not expected to affect the overall availability or use of fuel in Wisconsin.

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

None.

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.

If the existing rule is not revised as proposed in these rule revisions, inefficiencies discovered in the rule would continue.

B. Legislative modifications of existing statutes to accomplish the objectives of the proposed rules:

No legislation is needed to achieve the objectives of these rules.

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):

The proposed rule is a revision of a current rule.

EVALUATION

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 in itself is not expected to generate other actions that could affect the natural and human environment.

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

This rule should not result in new physical, biological or socio-economic effects. The rule furthers the intended environmental effects of established programs.

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

This rule would not affect existing environmental features that are scarce.

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.)

No controversial reactions are anticipated on the proposed rules.

- F. Consistency with Plans: To what extent is the proposed rule consistent or inconsistent with local, state, or national long-range plans or policies.**

The rule is being proposed to be as consistent as possible with others standards that might exist.

- G. Exercise of Discretion: The law(s) which authorize or are interpreted by this rule will provide for varying degrees of discretion to be used by the department in formulating the policies and procedures contained in the rule. In some cases, the department is bound by 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.**

No state or federal regulation impedes the intended environmental protection provided by these rules.

- H. Regulatory Change:**

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

The proposed rule requires that all individuals landspreading pesticide contaminated soil be appropriately licensed and certified pesticide applicators.

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

The rule is not proposing reduced regulations, but clarifying and expediting existing regulations.

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

The proposed rules do not overlap or conflict with any other state, federal or local agencies.

- 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.**

There are no other anticipated effects from this rulemaking.

CONCLUSION

This final assessment finds that promulgation of the revisions to ch. ATCP 35, Wis. Adm. Code would have no significant adverse environmental impact and is not a major state

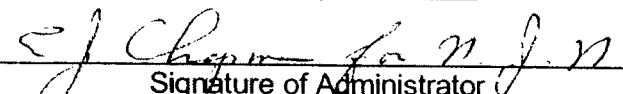
action significantly affecting the quality of the human environment. Alternatives to the proposed rule changes, discussed in this assessment, will not reach program goals as effectively as the proposed rule.

Signed this 16 day of March, 2004.

By 
Signature of Evaluator

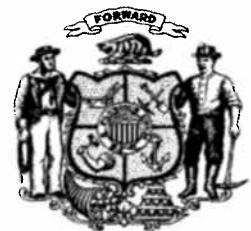
The decision indicating that this document is in compliance with s. 1.11, Stats., is not final until certified by the Administrator of the Agricultural Resource Management Division

Signed this 16th day of March, 2004.

By 
Signature of Administrator
Agricultural Resource Management Division



WISCONSIN STATE LEGISLATURE



Napralla, Erin

From: Rep.Ott
Sent: Thursday, July 15, 2004 9:44 AM
To: Rep.WilliamsM; Rep.Petrowski; Rep.Kestell; Rep.Suder; Rep.Hines; Rep.Loeffelholz; Rep.Towns; Rep.Gronemus; Rep.Plouff; Rep.Balow; Rep.Vruwink; Rep.Hebl; Rep.Molepske; Rep.Ainsworth
Cc: Patronsky, Mark; Keeton, William; Cross, William; Parrott, Douglas; Narveson, Linda; Scott, Katie; Mielke, Jon; Emerson, Anne; Langan, Casey; Anderson, John; Junck, Linda; Christopher, Marc; Hognlund, Lindsay; Waitrovich, Eric; Redell, Carol; Kulow, Chris; Moll, Keeley A DATCP
Subject: Clearinghouse Rule Referred to Committee on Agriculture

The following Clearinghouse Rule has been referred to the Assembly Committee on Agriculture for a 30 day review period:

Clearinghouse Rule 03-119: Relating to the agricultural chemical cleanup program.

A copy of the rule is attached. Please contact my office if you have any questions or would like to request action on the rule.

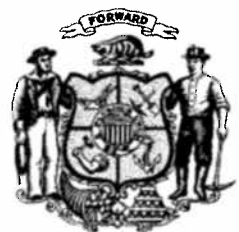
The deadline for committee review is Monday, August 16, 2004.



03-119.PDF



WISCONSIN STATE LEGISLATURE





Al Ott

State Representative • 3rd Assembly District

August 16, 2004

Rodney J. Nilsestuen
Secretary
Department of Agriculture, Trade & Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911

Dear Secretary Nilsestuen,

This letter is to inform you that the following clearinghouse rule has been reported out of the Assembly Committee on Agriculture:

Clearinghouse Rule #03-119

A public hearing was not held and no action was taken on the rule.

Please feel free to contact my office if you should have any questions.

Sincerely,

Al Ott
State Representative
Chair, Assembly Committee on Agriculture