



State of Wisconsin
Governor Scott Walker

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

DATE: March 4, 2015

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FROM: Ben Brancel, Secretary
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SUBJECT: Clean Sweep Program, ch. ATCP 34; Final Draft Rule (Clearinghouse Rule #14-007)

Introduction

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats. This rule makes revisions to Wis. Admin. Code ch. ATCP 34 that are necessary to resolve conflicts between statute and rule, adds standards to the rule for the “unwanted prescription drug” component of the clean sweep program, and updates rule provisions related to grants and other matters relating to hazardous waste collection.

Background

This rule modifies Wis. Admin. Code ch. ATCP 34, related to Wisconsin’s “clean sweep” program. The clean sweep program is designed to distribute grant funds to counties and municipalities to pay for costs associated with collecting and safely disposing of agricultural pesticides, farm chemical waste and household hazardous waste that might otherwise pose a threat to public health or the environment. Program funds are also used to collect unwanted prescription drugs and veterinary drugs from individuals. This rule does not alter the level of available funding for the clean sweep program.

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This rule:

- Updates provisions related to grant applications, grant evaluation and approval, grant contracts, reporting requirements, reimbursement procedures, selection of hazardous waste handlers, and other matters to keep up with developments relating to the collection of hazardous wastes.
- Adds standards to the rule for the statutory “unwanted prescription drugs” component of the clean sweep program.
- Amends the rule to resolve existing conflicts between the statute and rule concerning funding amounts for the grants and to consider the overall needs of grant recipients.
- Reduces paperwork by permitting electronic applications for grants and make changes to improve the administrative and operational efficiency of the “clean sweep” program.

Rule Content

This rule amends Wis. Admin. Code ch. ATCP 34 relating to the clean sweep program. The following is a summary of the rule changes by section topic:

“Purpose” Section

The establishment of procedures for making unwanted prescription drug grants to local governments are added to the “Purpose” section of the rule.

“Definitions” Section of the Rule

- The term “unwanted prescription drug” is created and includes Schedule II through V controlled substances and nonprescription drug products. It also includes prescribed and over-the-counter veterinary drugs. The definition specifically excludes chemotherapy drugs, trace chemotherapy waste, infectious waste, and products that contain elemental mercury, such as thermometers. The definition emphasizes unwanted prescription drugs must come from households.
- The rule removes the term “event” and references a project as a “collection.” When local governments first decided to collect pesticide and household wastes, they often held one- or two-day collection “events.” Since then, many local governments have expanded to multiple collections or have established permanent collection sites that offer convenience for local residents.
- A “temporary collection” means a clean sweep project that collects hazardous waste five days or less in a calendar year. A “continuous collection” means a clean sweep project that collects chemicals on six or more days in a calendar year. A “permanent collection” means a clean sweep project that operates at least six months out of the year and includes permanent infrastructure for waste collection. Comments

received during our listening sessions showed a desire to broaden the gap between temporary and continuous collections. However, comments received during the public hearings explained there was no benefit to be gained by the proposed change in definitions. In fact, some collection projects would be unable to stay at a continuous collection level which would limit their ability to serve their communities because temporary collections must request lesser funding levels. Local governments holding temporary collections are still required to use the state hazardous waste contractor as their waste hauler.

Section on Grants to Counties and Municipalities

- **Drug Drop Boxes.** Currently, clean sweep grant funds cannot be used to purchase permanent equipment. However, a large expense associated with the collection of unwanted prescription drugs is a drug drop box. These drop boxes are a secure place for residents to dispose of their unwanted prescription and veterinary drugs. The boxes typically are located within law enforcement agencies and are designed in such a way that drugs cannot be removed except by authorized personnel. The rule would allow a local government to request funds for the direct costs associated with the purchase and installation of a drug drop box.
- **Disposal of Dual-Hazardous Waste.** This rule will allow counties and municipalities to request reimbursement for the disposal of delivery devices that contain medication such as epinephrine auto-injectors (an example is an EpiPen®) or prefilled syringes. Disposal costs for sharps such as needles or lancets would remain ineligible for reimbursement.
- **Eligible Costs.** Direct costs related to the collection and disposal of unwanted prescription drugs were specified within the hearing draft. In the final draft, some modifications were made to specify eligibility of the collection and disposal of mercury-containing devices under a household hazardous waste collection.
- **Prohibited Uses.** Prohibited uses of grant funds is expanded to include infectious waste, hypodermic needles and lancets, personal care products, and oxygen-containing devices.

Section on Grant Applications

- **Grant Solicitation Announcements.** This rule expands the methods of soliciting applications for clean sweep grant funds beyond just written announcements.
- **Grant Fund Amounts.** Wis. Admin. Code ch. ATCP 34 states that the department shall offer no less than \$400,000 for farm chemical waste collection and not less than \$200,000 for household hazardous waste collection. In recent years, the demand for the collection and disposal of household hazardous waste has outpaced agricultural pesticides and farm chemical waste. Also, with the 2008 statutory addition of grants for unwanted prescription drug collections, a different allocation of funds among the collection grants is now required. The new statutory language requires the department to offer a minimum of two-thirds of the available funds for household hazardous waste under Wis. Stat. § 93.57. This rule reflects the change in statutory requirements and eliminates the conflict between rule and statute. This change is

also supported by the data collected from clean sweeps in recent years. The demand for household hazardous waste disposal is increasing while the demand for agricultural waste disposal is declining. Household waste disposal demand is outpacing agricultural demand by about a 16:1 margin, based on 2013 collection data.

- **Grant Applications.** The current rule requires that grant applications be submitted on a form provided by the department. To keep up with changing and available technology such as electronic or web-based applications, the rule specifies that future applications will be submitted in a manner designated by DATCP.
- **Required Information in Applications.** Because of the gap between grant submittal and acceptance and the possibility that a grant may not be funded, this rule specifies that applicants no longer have to provide specific dates, locations and facilities for collections. The department will gather that information after grants are awarded. The rule also removes the requirement that an applicant describe its plans for collecting, handling and disposing of chemical waste. Clean sweep collections are not new and local governments and waste haulers have developed much experience since 1990. Finally, because multi-government collections are quite common as a way to reach more residents and gain efficiencies with collections, applicants no longer need to describe the role of each government participant under this rule.

Section on Evaluating Grant Applications

Evaluation of Eligible Applications. Under this rule, the department will modify the criteria used to assess clean sweep grant applications. Early in the program's history, applicants were encouraged to collect farm and household waste and determine what chemicals were of concern in their areas. Now the majority of applicants are experienced project coordinators familiar with local needs and available resources. For some, it is impractical to collect more than one waste type because there is no need. Because of the experience of the local government coordinators and their staff, evaluating an application based on its safety and suitability is no longer necessary. Coordination across multiple governments is encouraged and points are awarded for these types of collections, but it is no longer necessary to place a priority on such coordination.

Section on Grant Awards

Farm Waste and Household Waste. This proposed section reflects the changes in the statute for grant awards and removes the discrepancy between statute and rule. The current rule states that the department will annually award grants totaling at least \$400,000 for farm chemical waste, while the statute directs that the department to offer a minimum of two-thirds of the available funds for household hazardous waste. This rule corrects the discrepancy by taking into consideration the current appropriation under Wis. Stat. § 20.115 (7) (va).

Section on Grant Contracts

- **Hazardous Waste Contract.** This rule removes the requirement that the written contract between the department and the clean sweep grant recipient include the recipient's contract with its hazardous waste

contractor. The department has found that the information provided in the grant applications is sufficient to make awards.

- **Limited Funding.** Should the amount of grant funds available be insufficient to cover the awarded grants, the department has the ability to cancel one or more of the grants at its discretion.

Section on Collecting Waste Pesticides from Very Small Quantity Generators (VSQGs)

Generally, a “VSQG” is an individual or business who generates limited quantities of waste pesticides and can include certain hardware stores, farm supply stores, cooperatives, municipalities, or commercial pesticide applicators. This proposed section removes the requirement that a county must collect the license status of a VSQG licensed under Wis. Admin. Code ch. ATCP 29. As long as the VSQG’s name and address is captured, the department can verify licensure, if necessary.

Section on Hazardous Waste

Hazardous Waste Contractor. This proposed section incorporates unwanted prescription drug collection into the rule. It also removes the requirement that hazardous waste contractors selected by grant recipients attend a training session provided by the department. This was a necessary requirement in the early days of the program but is no longer needed since the program participants, including waste contractors, have gained experience and familiarity with the clean sweep program rules.

Section on Reports and Payments

Final Report. This proposed section allows for a 45-day extension on the final report deadline. Other required elements of the final report are consolidated within the rule. This proposed section removes the requirements to estimate future collection needs, the timing of collection and suggestions on how to collect chemical waste, which are considered no longer necessary with a mature program.

Summary of Factual Data and Analytical Methodologies

To develop the draft rule, four listening sessions were held throughout Wisconsin in place of an advisory committee. Participants included representatives from local government entities that are current and past grant recipients, many of whom manage county or municipal solid waste programs. Comments were also received from law enforcement agencies that administer unwanted prescription drug collections.

Analysis and Supporting Documents Used to Determine Effects on Small Business

No supporting documents were used. DATCP relied on information obtained through the listening sessions (*see Summary of Data and Analytical Methodologies, above*), as well as any comments received through the economic impact analysis comment period.

Fiscal Impact

There will be no fiscal impact from this rule revision. The amount of available grant funds will not change under this rule revision nor have eligibility requirements changed.

Effects on Specific Businesses and Business Sectors

This rule revision will have no effect on small business. By statute, the department may only award grants under the clean sweep program to *local government entities* for expenses related to the collection of and disposal of unused agricultural pesticides, household waste, and unwanted prescription drugs. No changes have been made to the current rule that would impact small businesses. The rule will continue to benefit certain small businesses such as farmers, farm supply stores, and cooperatives that generate small quantities of waste pesticides per month, since clean sweep collections provide a no- or low-cost method of disposing of agricultural pesticides and other farm chemical waste.

Environmental Assessment

The majority of the rule changes are administrative in nature and will not affect the environment. An environmental assessment was not needed for the rule proposal.

Existing or Proposed Federal Statutes and Regulations

The United States Environmental Protection Agency (EPA) administers the Resource Conservation and Recovery Act (RCRA), which includes regulations affecting the collection, movement, and disposal of hazardous agricultural and household waste. EPA has also adopted universal waste management rules under 40 CFR 273. Wisconsin's "clean sweep" grantees and vendors must comply with all applicable RCRA and universal waste provisions.

Prescription drugs that are controlled substances are regulated under the federal Controlled Substance Act (21 USC 801) and the Controlled Substances Import and Export Act (21 USC 951). On September 9, 2014, the federal drug enforcement administration published its final regulations on prescription drug disposal under the Secure and Responsible Drug Disposal Act of 2010, which took effect on October 9, 2014. Wisconsin's prescription drug "clean sweep" program must comply with all these federal laws and regulations.

Comparison with Rules in Adjacent States

The surrounding states of Illinois, Iowa, Michigan and Minnesota also collect unwanted pesticides, household hazardous waste or unwanted prescription drugs. The agencies involved, their funding sources, and distribution of funds vary greatly. Wisconsin is the only state that has one agency overseeing these various types of grants.

Illinois

Illinois offers a grant for agricultural and structural pesticide collections through the Illinois department of agriculture. The Illinois environmental protection agency also offers four one-day collections for household hazardous waste and unwanted drugs, in addition to some county hosted events. Illinois's Prescription Pill and Drug Disposal Fund provides reimbursement to law enforcement agencies for collection, transport and incineration of medicines collected from residential sources.

Iowa

Iowa no longer holds household hazardous waste collection days and eliminated the award of grants to fund those one-day collections. Instead, the Iowa department of natural resources offers Regional Collection Centers (RCCs) that are open year-round. These RCCs take household waste but can also accept agricultural waste at their discretion. In addition to main RCCs, there are satellite RCC sites and mobile collections that contract with an RCC and travel within a county for collections. Iowa offers two kinds of funds: (1) reimbursement funds to cover operating expenses/disposal costs, and (2) establishment funds to help a county set up a permanent site. Unlike Wisconsin's clean sweep program, Iowa allows its funds to be used to build permanent facilities.

Iowa also offers a pharmaceutical disposal program called TakeAway, in which patients or caregivers can bring unwanted or expired medicines into participating TakeAway pharmacies. The pharmacist will dispose of the returned medications (prescription drugs or over-the-counter products) into a waste bin specially designed to safely store discarded pharmaceutical products, along with their packaging. Once filled, the TakeAway system is sealed and shipped to a medication disposal facility where the system and its contents are incinerated at a waste-to-energy facility. Some participating pharmacies also sell TakeAway envelopes, pre-addressed, postage pre-paid large envelopes that can be taken into the home, filled with unused and expired medicine, and mailed through the United States postal service to the disposal facility. Controlled substances must go to law enforcement or one of the United State drug enforcement administration collections.

Michigan

Michigan offers a clean sweep program for agricultural pesticides through its department of agriculture & rural development (MDARD). The Michigan department of environmental quality covers household collections, supported by an EPA grant. No grants are given. MDARD will cover the cost of transportation and disposal costs of pesticides collected at household events.

Minnesota

Minnesota enters into cooperative agreements with counties to collect non-agricultural and agricultural waste pesticides. For those counties without a cooperative agreement, the Minnesota department of agriculture (MDA) holds collections. Agricultural pesticides are collected every other year and household hazardous wastes are collected each year. MDA pays supplies, transportation and disposal costs and \$0.25/lb. for "reasonable

overhead costs.” The Minnesota pollution control agency (MPCA) provides stipends to counties for household hazardous waste collections. Stipends cover about 10 percent of costs and are determined by different formulas. Minnesota does not offer drug grants. Collections, transportation and disposal are overseen by county law enforcement and the counties pay all associated costs.

Public Hearings

DATCP held three public hearing on the original rule proposal as listed below:

- February 17, 2014, Jefferson
- February 18, 2014, Eau Claire
- February 19, 2014, Appleton

DATCP accepted written comments until March 5, 2014. A total of seven people attended and registered at the public hearings, and one person submitted written comments. Four others commented on the rule when the economic impact analysis was posted. The department received both general comments related to the rule as a whole and specific comments related to certain provisions within the rule. The general comments were largely supportive of the rule revision. Specific comments ranged from requests for modification of rule provisions to opposition to a proposed change or the alternative rule language was proposed.

DATCP’s Rule Changes in Response to Public Hearings and Rules Clearinghouse Comments

DATCP made changes to the rule draft in response to comments received through the public hearings, Legislative Council Rules Clearinghouse (Clearinghouse) and consultation with the Wisconsin Department of Natural Resources (DNR). All of the Clearinghouse comments were addressed. The key changes are listed in the order in which they appear in the rule.

“Continuous collection.” The rule draft modified the definition of continuous collection, increasing it from four days or more to six days or more. We were trying to create a greater difference between continuous and temporary collections. Public hearing comments stated the change would not create any benefit. In fact, some clean sweep projects would be unable to stay at a continuous collection level. This would limit their ability to serve their communities because temporary collections must request lesser funding levels. The Note was also added after the hearings to emphasize that collections must adhere to DNR hazardous waste rules.

“In-kind costs.” The Clearinghouse commented that the meaning of the phrase “in-kind costs” should be clarified. The current rule states that a clean sweep grant may reimburse a grant recipient’s direct costs for a project but the rule was silent regarding reimbursement for in-kind costs. In response, the department created a definition for in-kind costs.

“Permanent collection.” Since the clean sweep program began nearly 25 years ago, many municipalities have established permanent collection sites. This definition was created to acknowledge those efforts. The definition

in the rule draft included the phrase, "...includes permanent infrastructure dedicated to the program use." Public hearing comments indicated a concern that 'dedicated to program use' could exclude some permanent collections because the municipality collected hazardous waste but other items as well. This phrase was removed. The Note was also added after the hearings to emphasize that collections must adhere to DNR hazardous waste rules.

"Temporary collection." The rule draft modified the definition of temporary collection, increasing it to five days or less rather than three days or less. Comments received during the public hearings explained there was no benefit to be gained by the proposed change in definition. Collections that met the current requirement of four days or more for a continuous collection would then be dropped to a temporary collection that would reduce their funding levels and further limit service to their communities. The Note was also added after the hearings to emphasize that collections must adhere to DNR hazardous waste rules.

"Unwanted prescription drug." In the draft rule, the term "unwanted prescription drugs" was added to the definition of household hazardous waste. Public hearing comments pointed out that appending "unwanted prescription drugs" to household hazardous waste created confusion and did not accurately reflect current state regulations. The terms have been separated and the "unwanted prescription drug" definition has been refined. The DNR also provided guidance on the definition. The final draft also adds language to emphasize that "unwanted prescription drugs" are to come from households so there are no conflicts with medical waste disposal requirements overseen by the DNR.

"Very small quantity generator." Comments received from the DNR pointed out that our NR code reference for VSQG had changed. This was corrected in Wis. Admin. Code s. ATCP 34.02 (18).

Prohibited uses of funds. The initial rule draft contained a generalized description of items that were not eligible for disposal under the grant. The rule draft was revised to be more specific about ineligible items.

Grant solicitation. The term 'request for proposal' was used in the original rule draft. Upon further reflection, this is not an accurate term for the clean sweep grant program so this term has been changed to "grant solicitation."

Grant awards. Based on comments received at the public hearings, the term "unwanted prescription drugs" was separated from the household hazardous waste definition. Because of the separation of the two terms, Wis. Admin. Code s. ATCP 34.10 (3m) was added to address the allocation of funds for unwanted prescription drug collections according to statute. In addition, Wis. Admin. Code s. ATCP 34.10 (4) was then modified to specifically address the allocation of funds for agricultural waste grants.

Reference to new law requiring Department of Justice authorization of drug disposal programs. A reference to the new law in Wis. Stat. ch. 165 was inserted into Wis. Admin. Code s. ATCP 34.10 (3m) to remind grant recipients of the new legal requirements relating to drug disposal programs.

Hazardous waste contractor for permanent and continuous collections. The responsibilities of hazardous waste contractors are addressed in Wis. Admin. Code s. ATCP 34.16 (4) 9. if controlled substances are part of an unwanted prescription drug collection.