

Clearinghouse Rule 98-014

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF AGRICULTURE,)
TRADE & CONSUMER PROTECTION)

Clearinghouse Rule
No. 98-014
Docket No. 96-R-6

CERTIFICATION:

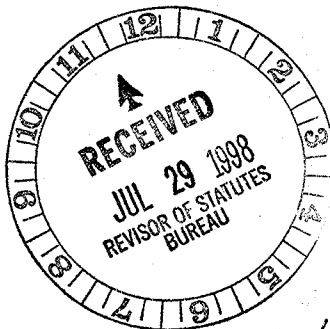
I, Ben Brancel, Secretary of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to agricultural chemical storage was signed and adopted by the department on July 29, 1998.

I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 29th day of July, 1998.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary



10-1-98

1
2
3 **ORDER OF THE STATE OF WISCONSIN**
4 **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**
5 **ADOPTING, AMENDING AND REPEALING RULES**
6

7 The state of Wisconsin department of agriculture, trade and consumer protection adopts the
8 following order to repeal ATCP 32.01(10), (12) and (13), 32.11, 33.01(10), (11), (14) and
9 (15), 33.12, 35.16(5)(note), 35.16(7) and (note), 35.24, 35.28(4) and (5) and 35.34; to
10 renumber ATCP 32.01(2m), (3) to (5), (7) to (9) and (11), 33.01(2m), (4), (5), (7) to (9), (12)
11 and (13), 35.04(note) and (7), and 35.28(3)(d); to renumber and amend ATCP 32.01(6) and
12 (14), and 33.01(3), (6) and (16); to amend ch. ATCP 32(note), ATCP 32.04(3), (5), (6)(title),
13 (6)(a), and (6)(b)(intro.) and 8., 32.10, 33.02(5)(b)(intro.), 33.11, 35.01(1), (3), (6), (10),
14 (14), (14)(note) and (15), 35.02(1)(e)1. and 2., and (2)(b) and (c), 35.04(5), 35.08(1), (5)(b)
15 and (5)(b)(note), 35.10(1) to (4), (6) and (6)(note), 35.12(1) to (3), (6)(a) to (c), (8) and (10),
16 35.14(3)(intro.), (4), (15), (16), (24), (27), (28) and (30), 35.16(1), (6)(a)(intro.) and 1., and
17 (8)(b), 35.18(2), 35.20(title) and (1), 35.25, 35.28(3)(a), 35.30(2) and (3) and 35.32(1) and
18 (3); to repeal and recreate ATCP 32.02(1), (3), (5) to (9), 32.03, 32.04(1), (2), (4)(a) and (c),
19 (7) and (9), 32.05 to 32.08, ch. ATCP 33(note), 33.02(1), 33.02(5)(b)3., 33.02(6) to (9),
20 33.03, 33.04, 33.06, 33.07, 33.09, 33.09(note), 33.10, 33.10(note), 35.01(9) and (19),
21 35.06(1) and (4), 35.16(2), (3), (4), (4)(note) and (5), 35.18(title) and (1), 35.22, 35.26, and
22 35.28(1) and (2); and to create ATCP 32.01(11) to (14), (16) and (17), 32.04(2)(note) and
23 (4)(d)4., 33.01(11) to (14), (17) and (18), 33.06(note), 35.01(7m), (20m), (22m) and (22r),
24 35.03, 35.04(6), 35.14(2)(note), (3)(c), (31) and (32), and 35.16(2m); relating to fertilizer
25 bulk storage, pesticide bulk storage and the agricultural chemical cleanup program.

1
2 Analysis by the Department of Agriculture,
3 Trade and Consumer Protection

4
5 Statutory authority: ss. 93.07(1), 94.645(3), 94.69 and 94.73(11), Stats.

6
7 Statutes interpreted: ss. 94.645, 94.69 and 94.73, Stats.

8
9 This rule updates and amends the department's current rules related to fertilizer bulk storage,
10 pesticide bulk storage, and the agricultural chemical cleanup program.

11
12 **FERTILIZER BULK STORAGE**

13
14 The department currently regulates fertilizer bulk storage under ch. ATCP 32, Wis. Adm.
15 Code. The current rules are designed to prevent and contain fertilizer spills that could
16 contaminate groundwater or surface water. This rule clarifies the current rules, and makes
17 nonsubstantive drafting changes. This rule also makes the following substantive changes:

18
19 Definitions

20
21 This rule modifies current definitions to clarify coverage, and to clarify the responsibilities of
22 storage facility operators. Under this rule:

- 23
24 • A "storage facility" means a place where bulk fertilizer is held in storage. "Storage
25 facility" does not include a mobile container temporarily parked at a field or other site
26 while being unloaded if all of the following apply:
- 27
28 * None of the persons who owns or controls the parking site is a fertilizer
29 manufacturer or distributor.
 - 30
31 * The fertilizer is unloaded at the parking site with the consent of a person who
32 owns or controls the parking site.
 - 33
34 * The fertilizer is unloaded at the parking site for no more than 3 persons.
 - 35
36 * The mobile container, if unloaded for any person other than the owner of the
37 parking site, has a capacity of no more than 500 gallons.
 - 38
39 * The fertilizer, if unloaded for any person other than the owner of the parking
40 site, is unloaded only into fertilizer application equipment.
- 41

1 • An "operator" includes both of the following:

2
3 * A person who owns or controls a storage facility. (This does not include
4 a farmer who stores fertilizer solely for his or her own use).

5
6 * A fertilizer manufacturer or distributor who contracts with another
7 person (e.g., a farmer) to store bulk fertilizer for the manufacturer or
8 distributor.

9
10 Storage Container Security

11
12 Under current rules, the operator of a fertilizer storage facility must take security measures to
13 prevent unauthorized access to storage containers. This rule clarifies current security
14 requirements. Under this rule, an operator must secure a storage container by doing at least
15 one of the following whenever the storage facility is unattended:

- 16
17 • Keeping it in a locked building.
- 18
19 • Keeping it in a locked outdoor enclosure. The enclosure must be at least 5 feet tall,
20 and must be free of gaps that would allow unauthorized persons to enter.
- 21
22 • Locking all valves on the storage container.

23
24 Sight Gauge Valves

25
26 Currently, many fertilizer bulk storage containers have external site gauges that are used to
27 measure the level of liquid fertilizer in the containers. If the sight gauge breaks, liquid
28 fertilizer may spill from the storage container through the broken sight gauge. Under this
29 rule, a storage container with an external site gauge must be equipped with a valve that can
30 stop the flow of liquid to the sight gauge. The operator must close and secure the valve when
31 the sight gauge is not in use.

32
33 Measuring Liquid Fertilizer Levels

34
35 Under current rules, an operator must measure the amount of liquid fertilizer in a storage
36 container at least weekly, except that the operator may make monthly measurements in April
37 and May if the operator is "regularly" loading or unloading fertilizer from the storage
38 container during those months. Under this rule, the operator must measure liquid fertilizer
39 levels at least once a week, except that:

- 40
41 • An operator is only required to measure liquid fertilizer levels once a month between
42 April 1, and July 31 if the operator is loading or unloading fertilizer from the storage
43 container at least once a week during that period.

1 • An operator is not required to measure liquid fertilizer levels in a storage container if
2 all of the following apply:

3
4 * The storage container is located indoors, within a secondary containment
5 facility that has a concrete or prefabricated liner.

6
7 * The operator visually inspects the storage container for leakage at least
8 once a week.

9
10 Under this rule, as under the current rule, an operator must inspect valves and other
11 appurtenances for leaks at least weekly. The operator must also maintain facilities to minimize
12 the risk of spills, and keep a written record of every inspection, measurement and maintenance
13 operation.

14 15 Fertilizer Mixing and Loading: Spill Containment Surface

16
17 Under current rules, an operator must mix and load liquid bulk fertilizer over a spill
18 containment surface that is adequate to catch and contain fertilizer spills. Under this rule,
19 beginning on January 1, 2000, an operator must also mix and load nonliquid bulk fertilizer
20 over a spill containment surface. This rule clarifies, but does not substantially alter, current
21 requirements for spill containment surfaces.

22
23 Under this rule, an operator must recover fertilizer spilled onto a spill containment surface to
24 maintain the effective capacity of that surface. Containers used to hold recovered spills must
25 be kept within a secondary containment structure. Recovered fertilizer spills may not be kept
26 underground.

27 28 Secondary Containment Structures

29
30 Under current rules, fertilizer bulk storage containers must be enclosed in a secondary
31 containment structure that will effectively contain spills from the storage containers. The
32 current rules establish design and construction standards for secondary containment structures.
33 This rule clarifies, but does not substantially alter, the current standards.

34
35 Under this rule, if a secondary containment structure includes a soil or bentonite clay liner, the
36 operator must recompact or reconstruct the liner at least once every 15 years. An operator is
37 not required to remove a storage container having a capacity of 50,000 gallons or more before
38 recompact or reconstructing the secondary containment structure that encloses that
39 container.

40
41 The current rules exempt certain storage containers from secondary containment requirements.
42 This rule modifies the current exemptions. Under this rule, secondary containment is not
43 required for the following storage containers:

- 1 • A mobile storage container held for less than 15 days at a storage facility that has a spill
2 containment surface complying with this rule.
- 3
- 4 • An empty and cleaned container.
- 5
- 6 • An empty rail car.
- 7

8 Underground Storage Prohibited

9

10 Current rules prohibit an operator from storing liquid bulk fertilizer underground, except in
11 stainless steel or other approved containers. This rule prohibits all underground storage,
12 regardless of the type of container used. This rule does not prohibit an operator from
13 temporarily collecting fertilizer spills or rinsate in an underground catch basin that forms part
14 of a spill containment surface required under this rule.

15 Inventory Reconciliation

16

17
18 Under current rules, a storage facility operator must perform semi-annual inventory
19 reconciliations to discover unexplained inventory losses that may indicate spills. This rule
20 requires annual, rather than semi-annual, inventory reconciliations. By August 15 of each
21 year, an operator must complete an inventory reconciliation for the preceding one year period
22 beginning July 1 and ending June 30.

23 Waivers

24

25
26 Under current rules, the department may waive compliance with a rule provision if compliance
27 is not technically feasible and the operator takes alternative measures that provide substantially
28 similar protection for the waters of the state. Under this rule, the department may waive
29 compliance with a rule provision if an operator takes alternative measures that provide
30 substantially similar protection, regardless of whether it is technically feasible for the operator
31 to comply with the rule provision.

32 33 34 35 PESTICIDE BULK STORAGE

36
37 The department currently regulates pesticide bulk storage facilities under ch. ATCP 33, Wis.
38 Adm. Code. The current rules are designed to prevent and contain pesticide spills that could
39 contaminate groundwater or surface water. This rule clarifies the current rules, and makes
40 nonsubstantive drafting changes. This rule also makes the following substantive changes:

1 Definitions

2
3 This rule modifies current definitions to clarify coverage, and to clarify the responsibilities of
4 storage facility operators. Under this rule:

- 5
6 • A "storage facility" means a place at which bulk pesticide is held in storage. "Storage
7 facility" does not include a field or other site at which a mobile container is temporarily
8 parked while its pesticide contents are unloaded for the person who owns or controls
9 that parking site, provided that the person is not a pesticide manufacturer or distributor.
10
11 • An "operator" includes both of the following:
12
13 * A person who owns or controls a storage facility. (This does not include
14 a farmer who stores pesticide solely for his or her own use).
15
16 * A pesticide manufacturer or distributor who contracts with another
17 person (e.g., a farmer) to store bulk pesticide for the manufacturer or
18 distributor.
19

20 Storage Container Security

21
22 Under current rules, the operator of a pesticide storage facility must take security measures to
23 prevent unauthorized access to storage containers. This rule clarifies current security
24 requirements. Under this rule, an operator must do all of the following whenever a storage
25 facility is unattended:

- 26
27 • Keep storage containers (other than locked mobile containers) in a locked building or
28 locked outdoor enclosure. The enclosure must be at least 5 feet tall, and must be free
29 of gaps that would allow unauthorized persons to enter.
30
31 • Keep valves on outdoor storage containers locked.
32
33
34
35

36 Storing Recovered Pesticide Spills

37
38 Under current rules, an operator must mix and load bulk pesticides over a spill containment
39 surface that is adequate to contain pesticide spills. This rule clarifies, but does not change, the
40 current standards for spill containment facilities. Under this rule, an operator must recover
41 pesticides spilled onto a spill containment surface. Containers used to hold recovered pesticide
42 spills must be kept within a secondary containment structure. Recovered pesticide spills may
43 not be kept underground.
44

1 Secondary Containment Structures

2
3 Under current rules, pesticide bulk storage containers must be enclosed in a secondary
4 containment structure that will effectively contain spills from the storage containers. The
5 current rules establish design and construction standards for secondary containment structures.
6 This rule does not substantially alter the current standards, except that it no longer allows
7 earthen secondary containment structures for bulk pesticides.

8
9 The current rules exempt certain storage containers from secondary containment requirements.
10 This rule modifies the current exemptions. Under this rule, secondary containment is not
11 required for the following storage containers:

- 12
13 • A mobile storage container held for less than 15 days at a storage facility that has a
14 spill containment surface that complies with this rule.
15
16 • A triple-rinsed mini-bulk container.
17
18 • An empty rail car.

19
20 Inventory Reconciliation

21
22 Under current rules, an operator must perform a monthly inventory reconciliations to discover
23 unexplained inventory losses that may indicate pesticide spills. This rule requires annual,
24 rather than monthly, inventory reconciliations. By October 30 of each year, an operator must
25 complete an inventory reconciliation for the preceding one year period beginning October 1
26 and ending September 30.

27
28 Waivers

29
30 Under current rules, the department may waive compliance with a rule provision if compliance
31 is not technically feasible and the operator takes alternative measures that provide substantially
32 similar protection for the waters of the state. Under this rule, the department may waive
33 compliance with a rule provision if an operator takes alternative measures that provide
34 substantially similar protection, regardless of whether it is technically feasible for the operator
35 to comply with the rule provision.

36
37 **AGRICULTURAL CHEMICAL CLEANUP PROGRAM**

38
39 The department currently administers an agricultural chemical cleanup program under s.
40 94.73, Stats. Under the current program, the department may order a "responsible person" to
41 take corrective action to clean up environmental contamination resulting from the discharge of
42 an agricultural chemical. The department may also reimburse a "responsible person" for
43 certain corrective action costs. A "responsible person" includes a person who owns or

1 controls a discharged agricultural chemical, a person who causes a discharge, or a person on
2 whose property a discharge occurs.

3
4 The department has adopted rules under ch. ATCP 35, Wis. Adm. Code, to govern the
5 agricultural chemical cleanup program. This rule modifies current rules as follows:

- 6
- 7 • It incorporates program changes made by 1997 Wis. Act 27 (biennial budget act).
- 8
- 9 • It changes cost reimbursement standards and procedures.
- 10
- 11 • It streamlines program operations, based on experience to date.
- 12
- 13 • It corrects cross-references to renumbered statutes and rules.
- 14
- 15 • It makes nonsubstantive organizational and drafting changes.
- 16

17 Definitions

18
19 This rule clarifies definitions under the current rules, and makes them consistent with 1997
20 Wis. Act 27.

21 22 Discharge Site

23
24 Current rules limit the amount of cleanup cost reimbursement which the department can pay
25 per "discharge." 1997 Wis. Act 27 changed this reimbursement cap, and reformulated it as a
26 limit per "discharge site." This rule modifies the current definition of "discharge site." Under
27 this rule, a "discharge site" includes all contiguous land owned by the responsible person,
28 regardless of who that person is. A reimbursement application must include an accurate
29 description of the "discharge site" so the department can keep track of the total reimbursement
30 paid for that site.

31 32 Landspreading Agricultural Chemicals Recovered from a Discharge Site

33
34 Currently, under s. 94.73(2)(d), Stats., the department may authorize a responsible person to
35 "landspread" soil or water, removed from a discharge site, that contains agricultural
36 chemicals. Landspreading is a method of destroying or recycling many discharged fertilizers
37 and pesticides.

38
39 Under this rule, a responsible person wishing to "landspread" soil or water containing spilled
40 agricultural chemicals must obtain a permit from the department. (The responsible person
41 must also obtain a pollution discharge elimination system permit from the department of

1 natural resources, if required under ch. 283, Stats.) The application must include all of the
2 following:

- 3
- 4 • The name of the applicant.
- 5
- 6 • The source and quantity of soil or water that will be spread on land.
- 7
- 8 • The kinds and amounts of agricultural chemicals present in the soil or water.
- 9
- 10 • The proposed application rate for each agricultural chemical.
- 11
- 12 • The locations where the soil or water will be spread on land.
- 13
- 14 • Other relevant information which the department may require.
- 15

16 Under this rule, the department may approve landspreading which applies agricultural
17 chemicals at rates that are comparable to those used in normal agronomic practice. The
18 department must grant or deny a permit within 30 days after the department receives a
19 complete permit application. The department may specify permit conditions, including any
20 requirements under chs. 94, 281 to 285, and 289 to 299, Stats.

21

22 Within 30 days after a permit holder landspreads soil or water under a department permit, the
23 permit holder must provide the department with documentation showing that:

- 24
- 25 • The landspreading was authorized by the owner of the land on which the landspreading
26 occurred.
- 27
- 28 • The landowner was informed of the kinds and amounts of agricultural chemicals
29 applied, and agreed to take account of those applications when considering the need for
30 and amount of future applications of agricultural chemicals to the same land.
- 31

32 Reimbursement Application Forms

33

34 Under current rules, a responsible person seeking reimbursement of cleanup costs must submit
35 a reimbursement application to the department. The person must apply on standard forms
36 provided by the department. This rule consolidates application requirements, and clarifies the
37 information that must be included.

38

39 Reimbursement Application: When Made

40

41 Under this rule, a responsible person may apply for reimbursement of eligible cleanup costs
42 which that person has paid. If an applicant fails to include eligible costs paid to date, the
43 applicant may not include those costs in a subsequent application. A responsible person must

1 file a reimbursement application by October 14, 2000, or within 3 years after that person
2 incurs the cleanup costs, whichever is later.

3
4 Reimbursement Application; Identifying the Discharge Site

5
6 Under current rules, a reimbursement application must include the "address or location" of the
7 discharge site. Under this rule, the application must include a map showing the discharge site.
8 It must also include an accurate legal description of the land parcel on which the discharge
9 occurred. The legal description must correspond to the legal description last filed with the
10 register of deeds in the county where the parcel is located. Among other things, this will
11 allow the department to track the amount of reimbursement paid per discharge site over time.
12 (1997 Wis. Act 27 specifies a maximum amount payable per discharge site.)

13
14 Reimbursement Application; Documenting Cleanup Costs

15
16 Under this rule, a responsible person must include all of the following in a reimbursement
17 application (the department will provide forms and examples):

- 18
- 19 • A summary statement identifying and explaining each cleanup cost. Costs must be
20 allocated to the following categories:
 - 21
 - 22 * Soil investigation.
 - 23 * Soil remediation.
 - 24 * Laboratory and other analysis.
 - 25 * Groundwater investigation.
 - 26 * Groundwater remediation.
 - 27 * Miscellaneous.
 - 28
 - 29 • Invoices or other information documenting the cleanup costs.
 - 30
 - 31 • Canceled checks or other information documenting that the applicant has paid the
32 cleanup costs.
 - 33
 - 34 • A summary of every contractor's bid or estimate required by this rule (see below).
 - 35
 - 36 • A spreadsheet that matches each cost item with the documentation supporting that item.
 - 37
 - 38 • A substitute W-9 tax form.
 - 39
 - 40 • Other relevant information required by the department.
 - 41

1 Reimbursing Equipment Costs

2
3 Under current rules, the department may not reimburse a responsible person for the cost of
4 using that person's own equipment as part of a cleanup action (unless the responsible person
5 buys and uses the equipment solely for the cleanup action). Under this rule, the department
6 may reimburse a responsible person for the cost of using that person's own equipment if all of
7 the following apply:

- 8
- 9 • The responsible person uses the equipment for excavating, trucking or landspreading
10 purposes.
 - 11 • The equipment is reasonably sized and designed for use in the cleanup.
 - 12 • The hours (or units) of equipment use are reasonable and necessary for the task
13 performed.
 - 14 • The use costs are based on a reasonable cost allocation formula.
 - 15 • The use costs do not exceed lease costs (including operator costs) for equivalent
16 equipment.
 - 17 • The use costs do not exceed lease costs (including operator costs) for equivalent
18 equipment.
 - 19 • The use costs do not exceed lease costs (including operator costs) for equivalent
20 equipment.
- 21

22 Contract Services Defined

23
24 Responsible persons often contract with others to perform cleanup operations. This rule
25 defines "contract services" to include all of the following:

- 26
- 27 • Excavating.
 - 28 • Trucking.
 - 29 • Landspreading.
 - 30 • Waste disposal services.
 - 31 • Drilling, including at-depth soil sampling and well installation.
 - 32 • Laboratory services.
 - 33 • Professional consulting services.
 - 34 • General contractor services.
 - 35 • Other services provided by contractors.
- 36

37 Contract Services: Competitive Bids

38
39 Under current rules, a responsible person must obtain 3 competitive bids for contract services
40 that cost more than \$500. This rule requires 3 competitive bids for contract services that cost
41 more than \$3,000. The department may require a responsible person to obtain additional bids
42 if the department finds that existing bids are unreasonable. The department may also require a
43 responsible person to explain that person's choice of contractors.

1 A responsible person is not required to contract with the lowest bidder. However, the
2 department will not reimburse costs exceeding low bid costs for any of the following services:

- 3
- 4 • Excavating.
- 5 • Trucking.
- 6 • Landspreading and waste disposal services.
- 7 • Drilling, including at-depth soil sampling and well installation.
- 8

9 Costs Exceeding Bids

10
11 This rule clarifies that the department may not reimburse contract service costs that exceed the
12 contractor's bid for those services. However, the department may reimburse a responsible
13 person for contract services that were not included in the contractor's initial bid, or for
14 additional hours or units of service beyond those included in the initial bid, if all of the
15 following apply:

- 16
- 17 • The responsible person obtained at least 3 bids before initially choosing the contractor.
- 18
- 19 • The contractor bills for the additional services at the same per-unit price at which the
20 contractor agreed to provide equivalent services, if any, in the contractor's initial bid.
- 21
- 22 • The contractor provides the responsible person with a cost estimate for the additional
23 services before performing those services.
- 24
- 25 • The responsible person provides the department with the cost estimate for the
26 additional services if the total cost of the additional services exceeds \$1,500. The
27 department may require the responsible person to obtain competitive bids for the
28 additional services if the department finds that the cost estimate is unreasonable.
- 29
- 30 • The responsible person, after receiving the contractor's cost estimate for the additional
31 services, authorizes the contractor to proceed with those services.
- 32
- 33 • The cost of the additional services does not exceed the contractor's cost estimate for
34 those services.
- 35
- 36 • The additional services do not involve the selection, design or installation of active
37 groundwater remediation.
- 38

39 Separate Contractors

40
41 This rule clarifies current rules prohibiting "tie-ins" of contract services. Under this rule, no
42 contractor who provides any of the following contract services for an agricultural chemical

1 cleanup may provide any services other than the following:

- 2
- 3 • Excavating.
- 4 • Trucking.
- 5 • Landspreading and other waste treatment or disposal services.
- 6 • Drilling, including at-depth soil sampling and well installation.
- 7

8 Under this rule, no contractor who provides laboratory services for a cleanup, other than
9 immuno assay services or field testing services using hand-held devices, may provide other
10 contract services related to that cleanup.

11 Workplan Required

12
13
14 Under current rules, the department may not reimburse cleanup costs over \$20,000 (for non-
15 emergency cleanups initiated on or after August 12, 1993) unless the department approves a
16 workplan before the responsible person starts the cleanup. Under this rule, the department
17 may not reimburse any of the following costs unless the department approves a cleanup
18 workplan:

- 19
- 20 • Costs over \$7,500 for non-emergency cleanups performed after October 13, 1997.
- 21
- 22 • Costs over \$20,000 for non-emergency cleanups performed on or after August 12,
23 1993 but on or before October 13, 1997.
- 24

25 Partial Corrective Action: Reimbursement

26
27 Under current rules, a responsible person may seek reimbursement at any of several stages in
28 a cleanup operation. This rule modifies the current rules. Under this rule, a responsible
29 person may apply for reimbursement upon completing any of the following portions of a
30 corrective action:

- 31
- 32 • An emergency response, if any.
- 33
- 34 • A soil investigation approved by the department. If the soil investigation concludes
35 that active soil remediation is necessary, the department must approve an active soil
36 remediation plan before reimbursing the responsible person for the soil investigation.
- 37

38 The department may not reimburse any cleanup costs unless the responsible person
39 demonstrates, to the department's satisfaction, that the responsible person is proceeding in a
40 timely manner with the remainder of the cleanup. If the responsible person fails to complete
41 the cleanup, the department may order the responsible person to return any reimbursement
42 paid. The department may withhold reimbursement pending department approval of a
43 workplan for the remainder of the cleanup.

1 Reimbursement Per Discharge Site

2
3 This rule modifies cleanup reimbursement rates to conform with 1997 Wisconsin Act 27.
4 Under this rule the department will reimburse a responsible person, for each discharge site, an
5 amount equal to 80 percent of eligible cleanup costs that are greater than \$3,000 but less than
6 \$400,000. The maximum reimbursement per discharge site, including added interest costs, is
7 \$317,600.

8
9 A different reimbursement formula applies in some cases. The department will reimburse a
10 responsible person, for each discharge site, an amount equal to 80 percent of the eligible
11 cleanup costs that are greater than \$7,500 and less than \$400,000 (up to a maximum of
12 \$314,000 including reimbursed interest costs) if any of the following applies at the time the
13 discharge occurs or is discovered:

- 14
- 15 • The responsible person is required to be licensed under ss. 94.67 to 94.71, Stats.
 - 16
 - 17 • The responsible person employs more than 25 persons.
 - 18
 - 19 • The responsible person has gross annual sales of more than \$2,500,000.
 - 20

21 Transportation Discharges

22
23 For reimbursement purposes under this rule, whenever an agricultural chemical is discharged
24 while being transported from a site owned or controlled by the same person who owns or
25 controls the agricultural chemical, the discharge is deemed to occur at that site.

26
27 Maximum Reimbursement Per Discharge

28
29 Current rules prohibit the department from reimbursing more than \$100,000 per discharge
30 unless the department or the department of natural resources orders active groundwater
31 remediation. Under this rule, the department may reimburse more than \$100,000 per
32 discharge if the department does both of the following:

- 33
- 34 • Determines that the additional costs are reasonable and necessary based on the nature,
35 size and complexity of the corrective action.
 - 36
 - 37
 - 38 • Approves the additional costs before the responsible person incurs them. The
39 department may specify conditions and limitations on its approval. Prior approval is
40 not required for reasonable and necessary corrective action costs incurred before
41 October 14, 1997.
 - 42

43 A "discharge," for purposes of this formula, includes all discharges that occur at a discharge
44 site before the responsible person initiates corrective action in response to any of those

1 discharges. A subsequent "discharge" is considered a separate discharge, subject to a separate
2 \$100,000 limit.

3
4 Reimbursement Priorities and Payments

5
6 Current rules require the department to withhold reimbursement of most cleanup costs until the
7 last day of the state fiscal year. This rule allows the department to make payments throughout
8 the year on a first-in, first-out basis, unless the agricultural chemical cleanup fund balance
9 drops below \$1,000,000. If the balance drops below \$1,000,000, the department may
10 continue to make initial payments of up to \$50,000 per discharge site on a first-in, first-out
11 basis, but may not make any further payments until the last day of each state fiscal year.

12
13

1 **SECTION 1.** Ch. ATCP 32(note) is amended to read:

2
3 NOTE: See ch. ATCP 33 for rules on pesticide bulk storage. Under ch. ATCP 35,
4 the department may reimburse certain agricultural chemical contamination cleanup
5 costs. This may include partial reimbursement for the cost of a containment structure,
6 required by s. ATCP 32.03 or 32.04, which must be removed in order to clean up
7 contamination beneath the structure. A person may not claim reimbursement for a
8 structure built after January 1, 1998 unless the soil beneath the structure was tested for
9 contamination before the structure was built. See ss. ATCP 35.04(5) and (6) for more
10 information.
11

12 **SECTION 2.** ATCP 32.01(10), (12) and (13) are repealed.

13 **SECTION 3.** ATCP 32.01(2m) and (3) to (5), (7) to (9) and (11) are renumbered (3)
14 to (6), (8) to (10) and (15).

15 **SECTION 4.** ATCP 32.01(6) and (14) are renumbered (7) and (18) and amended to
16 read:

17 ATCP 32.01(7) "Groundwater" means any of the waters of the state, ~~as defined in s.~~
18 ~~144.01(19), Stats.,~~ occurring in a saturated subsurface geological formation of rock or soil.

19 (18) "Waters of the state" has the meaning ~~specified under s. 144.01(19)~~ given in s.
20 281.01(18), Stats.

21 **SECTION 5.** ATCP 32.01(11) to (14), (16) and (17) are created to read:

22 ATCP 32.01(11) "Mini-bulk container" means either of the following:

23 (a) A storage container, designed for ready handling and transport, that holds more
24 than 55 gallons (208 liters) but not more than 300 gallons (1,135 liters) of liquid fertilizer.

25 (b) A container that holds at least 100 pounds (45 kilograms) but not more than 2500
26 pounds (1136 kilograms) of dry fertilizer.

27 (12) "Mobile container" means any storage container, anchored to a vehicle, trailer or
28 axles, that an operator uses to store liquid bulk fertilizer. "Mobile container" includes rail
29 cars, application equipment and nurse tanks.

1 (13) "Operator" means all of the following persons, and includes their employees and
2 agents:

3 (a) A person who owns or controls a storage facility, unless both of the following
4 apply:

5 1. The person is not a fertilizer manufacturer or distributor.

6 2. The person is storing fertilizer only for his or her own use.

7 NOTE: A farmer who stores fertilizer solely for the farmer's own use is not an
8 "operator" under par. (a).

9
10 (b) A fertilizer manufacturer or distributor who contracts with another person to store
11 bulk fertilizer for the manufacturer or distributor.

12 NOTE: If a fertilizer manufacturer or distributor contracts with a farmer for on-farm
13 storage of a bulk fertilizer owned by the manufacturer or distributor, the
14 manufacturer or distributor is responsible as an "operator" of that storage
15 facility under par. (b).

16
17 (14) "Person" means an individual, corporation, partnership, cooperative association,
18 limited liability company, trust, or other organization or entity.

19 (16) "Storage container" means a container used to store liquid bulk fertilizer at a
20 storage facility.

21 (17) "Storage facility" means a place where bulk fertilizer is held in storage. "Storage
22 facility" does not include a field or other site at which a mobile container is temporarily
23 parked while being unloaded if all of the following apply:

24 (a) None of the persons who own or control the parking site are fertilizer
25 manufacturers or distributors.

26 (b) The fertilizer is unloaded at the parking site with the consent of a person who owns
27 or controls the parking site.

28 (c) The fertilizer is unloaded at the parking site for no more than 3 persons.

1 (d) The mobile container, if unloaded for any person other than the person who owns
2 or controls the parking site, has a capacity of no more than 500 gallons.

3 **SECTION 6.** ATCP 32.02(1), (3), and (5) to (9) are repealed and recreated to read:

4 ATCP 32.02(1) GENERAL REQUIREMENTS. (a) Storage containers and
5 appurtenances shall be constructed, installed and maintained to prevent the discharge of liquid
6 bulk fertilizer.

7 (b) Storage containers and appurtenances shall be constructed of materials that resist
8 corrosion, puncture and cracking.

9 (c) Materials used to construct or repair a storage container or appurtenance may not
10 react chemically or electrolytically with stored bulk fertilizer in a way that may weaken the
11 storage container or appurtenance, or create a risk of discharge.

12 (d) Metals used for storage container valves, fittings or repairs shall be compatible
13 with other metals in the storage container, so that the combination of metals does not cause or
14 increase corrosion or electrolytic reactions that may weaken the storage container or its
15 appurtenances, or create a risk of discharge.

16 (e) Storage containers and appurtenances shall be designed to handle foreseeable
17 mechanical stresses, including static head and pressure buildup from pumps and compressors.

18 (3) LIQUID LEVEL GAUGING DEVICE. (a) Every storage container shall be
19 equipped with a gauging device that an operator can use to determine, safely and reliably, the
20 level of liquid in the storage container. A gauging device is not required if the operator has
21 other means to determine, safely and reliably, the level of liquid in the storage container.

22 (b) If a storage container has an external sight gauge, the storage container shall also
23 have a valve that can stop the flow of liquid from the storage container to the sight gauge.

24 The operator shall close and secure the valve when the operator is not using the sight gauge.

1 (5) ANCHORING STORAGE CONTAINERS. An operator shall anchor a storage
2 container, as necessary, to prevent flotation or instability that could occur as a result of liquid
3 accumulations within a secondary containment structure under s. ATCP 32.04.

4 (6) SECURITY. (a) Except as provided under par. (b), an operator shall secure a
5 storage container and its appurtenances by doing at least one of the following:

6 1. Keeping them in a locked building.

7 2. Keeping them in a locked outdoor enclosure. The enclosure shall consist of a
8 secure wall or fence that is at least 5 feet tall at every point, and free of gaps that would allow
9 unauthorized persons to enter.

10 3. Locking all valves on the storage container and its appurtenances.

11 (b) Paragraph (a) does not apply if either of the following applies:

12 1. The operator is present at the storage facility.

13 2. The storage container and its appurtenances are empty.

14 (7) FILLING STORAGE CONTAINERS. An operator may not fill a storage
15 container beyond the capacity for which it is designed, taking into account the density and
16 potential thermal expansion of the fertilizer stored in the container.

17 (8) INSPECTION AND MAINTENANCE. (a) An operator shall routinely inspect
18 and maintain storage facilities, storage containers and appurtenances to minimize the risk of a
19 discharge. An operator shall inspect storage container valves and appurtenances for leakage at
20 least weekly except when no bulk fertilizer is stored in the containers.

21 (b) Except as provided in par. (c) or (d), an operator shall measure the liquid fertilizer
22 level in each storage container at least once a week.

23 (c) Except as provided in par. (d), An operator shall measure the fertilizer level in a
24 storage container at least monthly from April 1 to July 31 if the operator is transferring liquid
25 fertilizer into or out of the storage container at least weekly.

1 (d) Paragraphs (b) and (c) do not apply to a storage container if all of the following
2 apply:

3 1. The storage container is located within a fully enclosed building.

4 2. The storage container is located within a secondary containment structure that
5 complies with s. ATCP 32.04 and has a concrete liner or is a prefabricated structure.

6 3. The operator visually inspects the storage container for leakage at least weekly.

7 (e) On the same day that an operator inspects, measures or performs maintenance
8 under this section, the operator shall make a written record of the inspection, measurement or
9 maintenance. The operator shall keep the record at the storage facility or at the nearest local
10 office from which the operator administers the storage facility.

11 (9) LABELING STORAGE CONTAINERS. An operator shall clearly and
12 conspicuously label every storage container with the name or grade of fertilizer which it
13 contains.

14 SECTION 7. ATCP 32.03 is repealed and recreated to read:

15 **ATCP 32.03 LOADING AREAS.** (1) SPILL CONTAINMENT REQUIRED. An
16 operator who mixes or loads liquid bulk fertilizer, or who mixes or loads nonliquid bulk
17 fertilizer after January 1, 2000, shall mix or load that fertilizer over a spill containment
18 surface that complies with this section.

19 (2) SPILL CONTAINMENT SURFACE; GENERAL. A spill containment surface
20 under sub. (1) shall comply with all of the following:

21 (a) It shall be designed to catch and contain all reasonably foreseeable spills of
22 fertilizers mixed or loaded over that spill containment surface.

23 (b) It shall be made of asphalt, concrete or other nonabsorbent materials approved by
24 the department, and shall be durable enough to withstand all foreseeable loading conditions.

25 NOTE: The department will maintain a list of approved paving and lining
26 materials for various fertilizer compounds, and will provide the current list to
27 interested persons upon request. The department may add approved materials
28 to this list if the person requesting approval provides the department with

1 information demonstrating the adequacy of the materials under intended
2 conditions of use. Persons seeking approval should provide information related
3 to chemical compatibility, permeability, physical characteristics and durability.
4 A tarpaulin may be used as a spill containment surface for nonliquid fertilizers
5 if it complies with this section.
6

7 (c) It shall extend beneath any conveyor used to load or unload fertilizer unless the
8 conveyor is fully enclosed within a housing that is adequate to contain all spillage from the
9 conveyor.

10 (3) SPILL CONTAINMENT SURFACE; LIQUID FERTILIZERS. (a) A spill
11 containment surface under sub. (1) shall comply with all of the following if any liquid bulk
12 fertilizer is mixed or loaded over that surface:

13 1. It shall be curbed or sloped to contain spillage, and to prevent liquids from adjacent
14 surfaces from flowing onto it.

15 2. It shall drain into or form a liquid-tight catch basin that meets the capacity
16 requirements under sub. (4).

17 (b) A tarpaulin may not be used as a spill containment surface for liquid bulk
18 fertilizers.

19 (4) CATCH BASIN. (a) Except as provided under par. (b), the catch basin under
20 sub. (3)(a)2. shall have an available capacity of at least 1,500 gallons (5,680 liters). To attain
21 this required capacity, the catch basin may include a sump equipped with an automatically
22 activated pump that transfers liquids to an above-ground container that complies with s. ATCP
23 32.02(1) and is located within a secondary containment structure that complies with s. ATCP
24 32.04.

25 (b) If an operator does not load or unload any storage container having a capacity of
26 more than 1,000 gallons, the available capacity of the catch basin under sub. (3)(a)2. shall be
27 at least 125 percent of the capacity of the largest storage container which the operator loads or
28 unloads at the storage facility.

1 (5) RECOVERING DISCHARGES. An operator shall promptly recover fertilizer
2 discharged onto a spill containment surface if that discharge reduces the effective capacity of
3 that surface or the catch basin to which the surface drains.

4 (6) STORING SPILLS AND RINSATE. A container used to hold liquid fertilizer
5 spills or rinsate shall be located within a secondary containment structure that complies with s.
6 ATCP 32.04. No spilled fertilizers or spilled materials containing fertilizers may be stored
7 below ground level.

8 (7) PREVENTING DAMAGE BY MOVING VEHICLES. An operator shall protect
9 storage containers and appurtenances, including pipes, against reasonably foreseeable risks of
10 damage by trucks and other moving vehicles engaged in loading or unloading bulk fertilizer.

11 **SECTION 8.** ATCP 32.04(1) and (2) are repealed and recreated to read:

12 ATCP 32.04(1) GENERAL REQUIREMENTS. Except as provided in sub. (9),
13 storage containers shall be enclosed in a secondary containment structure that is adequate, in
14 the event of a discharge, to prevent the movement of liquid fertilizer to groundwater or other
15 waters of the state. A secondary containment structure shall consist of at least one of the
16 following:

- 17 (a) A wall and liner that comply with subs. (3) and (4).
18 (b) A prefabricated structure that complies with sub. (5).
19 (c) A drainage and basin structure that complies with sub. (6).

20 (2) CAPACITY. The capacity of a secondary containment structure shall equal or
21 exceed the sum of all the following:

22 (a) The greatest volume of liquid that could be discharged from the largest storage
23 container located within the secondary containment structure.

24 (b) Twenty-five percent of the capacity of the largest storage container located within
25 the secondary containment structure if the structure is not fully covered by a roof, or 10% of

1 the capacity of the largest storage container located within the secondary containment structure
2 if the structure is fully covered by a roof.

3 (c) The total volume of discharged liquid that would be displaced by the submerged
4 portions of all storage containers, fixtures and materials located within the secondary
5 containment structure if the structure were filled to capacity with discharged liquid.

6 **SECTION 9.** ATCP 32.04(2)(note) is created to read:

7 NOTE: A secondary containment structure for liquid pesticides may be located
8 within or may share a wall with a secondary containment structure for liquid
9 fertilizer, so that the capacity of the fertilizer secondary containment structure
10 includes the capacity of the pesticide secondary containment structure.
11

12 **SECTION 10.** ATCP 32.04(3) is amended to read:

13 ATCP 32.04(3) WALLS. The walls of a secondary containment facility structure
14 shall be constructed of earth, steel, concrete or solid masonry, and shall be designed to
15 withstand a full hydrostatic head of any discharged liquid. Cracks and seams shall be sealed to
16 prevent leakage. Walls constructed of earth or other permeable materials shall be lined as
17 provided under sub. (4). Earthen walls shall have a horizontal-to-vertical slope of at least 3 to
18 one, unless a steeper slope is consistent with good engineering practice, and shall be protected
19 from erosion. Walls may not ~~exceed~~ extend more than 6 feet (1.8 meters) ~~in height~~ above
20 interior grade unless ~~provisions are made~~ the operator provides for normal access and
21 necessary emergency access to tanks, valves and other equipment, and for safe exit from the
22 secondary containment facility structure.

23 **SECTION 11.** ATCP 32.04(4)(a) and (c) are repealed and recreated to read:

24 ATCP 32.04(4)(a) General requirement. The base of a secondary containment
25 structure, and any earthen walls of the structure shall be lined with one of the following:

- 26 1. An asphalt or concrete liner that complies with par. (b).
- 27 2. A synthetic liner that complies with par. (c) and does not use bentonite or clay as a
28 hydraulic barrier.

1 3. A soil liner that complies with par. (d).

2 (c) Synthetic liners. Synthetic liners shall be approved by the department. The
3 department may approve a synthetic liner if all of the following apply:

4 1. The liner is at least 30 mils (0.8 millimeters) thick.

5 2. The liner manufacturer certifies that the liner is chemically compatible with all
6 fertilizers that may be stored within the secondary containment structure.

7 3. The liner manufacturer provides a written estimate of the liner's effective life. An
8 operator may not use a synthetic liner beyond that effective life, except with the department's
9 written approval.

10 4. The liner is protected by a 6 inch (15 centimeter) protection layer below the liner,
11 and a 12 inch (30 centimeter) protection layer above the liner. Both protection layers shall be
12 composed of soil, sand, or smooth gravel less than 1/2 inch in diameter. The protection layers
13 shall be free of large rocks, angular stones, sticks or other materials that may puncture the
14 liner.

15 5. A qualified representative of the liner manufacturer is present when the liner is
16 installed, and supervises the installation.

17 6. Liner seams constructed at the installation site are tested, and repaired if necessary,
18 according to the manufacturer's recommendations.

19 **SECTION 12.** ATCP 32.04(4)(d)4. is created to read:

20 ATCP 32.04(4)(d)4. An operator shall reconstruct or recompact every soil liner and
21 every bentonite treated liner at least once every 15 years. Before an operator reconstructs or
22 recompacts a liner, the operator shall analyze the liner material for compliance with subds. 2.
23 and 3., and for nutrients stored within the secondary containment structure during the past 15
24 years. An operator is not required to remove a storage container having a capacity of 50,000
25 gallons or more before reconstructing or recompacting the liner of a secondary containment
26 structure enclosing that container.

1 SECTION 13. ATCP 32.04(5), (6)(title), (6)(a), and (6)(b)(intro.) and 8 are
2 amended to read:

3 ATCP 32.04(5)(title) PREFABRICATED STRUCTURES. A prefabricated facility
4 ~~shall be composed of secondary containment structure shall consist of a rigid prefabricated~~
5 basin having both a base and walls constructed of steel or synthetic materials ~~which are~~
6 ~~resistant to~~ that resist corrosion, puncture ~~or~~ and cracking. Materials used in the facility
7 structure shall be chemically compatible with ~~the products being~~ all fertilizers that may be
8 stored within the ~~secondary containment facility structure~~. A An operator shall obtain a
9 written confirmation of compatibility from the basin manufacturer shall be kept, and shall keep
10 that confirmation on file at the storage facility or at the nearest local office from which the
11 operator administers the storage facility is administered. The prefabricated facility structure
12 and the foundation on which it is placed shall be designed and installed to withstand all
13 foreseeable loading conditions, including the tank load and a full hydrostatic head of any
14 discharged liquid. If multiple basins are connected to provide the capacity required under sub.
15 (2), the basins shall be connected in a manner ~~which assures~~ that ensures an unrestricted
16 transfer of discharge liquid between basins.

17 (6)(title) DRAINAGE AND BASIN STRUCTURE.

18 (6)(a) A drainage and basin ~~facility consists~~ structure shall consist of a curbed and
19 lined base which diverts upslope runoff and drains completely into a lined holding basin
20 having the capacity specified in sub. (2). The base and the drainage path shall be lined in
21 compliance with sub. (4). The holding basin shall be lined in compliance with sub. (4)(c) or
22 (4)(d), except that if a soil liner is used, the soil liner shall be at least 12 inches (30
23 centimeters) thick and shall be constructed in lifts ~~not to exceed~~ of not more than 6 inches (15
24 centimeters) ~~in thickness~~ each.

25 (6)(b)(intro.) ~~A drainage and basin facility may be used for secondary containment~~
26 ~~purposes upon written approval by the department~~ An operator may use a drainage and basin

1 structure as a secondary containment structure if the department reviews and approves that
2 structure for that use. ~~Proposed drainage and basin facilities shall be individually reviewed by~~
3 ~~the department, and may be approved if the department~~ The department may approve the use
4 of a drainage and basin structure for secondary containment if the department finds that the
5 ~~proposed facility structure,~~ when compared to other possible methods of secondary
6 containment, provides substantially similar protection for the waters of the state. Persons
7 seeking department approval for a proposed drainage and basin facility under this paragraph
8 shall submit a written proposal to the department. The proposal shall include all of the
9 following:

10 (6)(b)8. Any other information which the department may require, if the information
11 has a reasonable bearing on the request for approval of the drainage and basin ~~facility~~
12 structure.

13 **SECTION 14.** ATCP 32.04(7) and (9) are repealed and recreated to read:

14 ATCP 32.04(7) INSPECTION AND MAINTENANCE. (a) General. An operator
15 shall inspect every secondary containment structure at least once every 12 months, and shall
16 maintain the structure to comply with this section. The operator shall make a written record
17 of every inspection and maintenance action on the day of the inspection or maintenance. The
18 operator shall keep the record at the storage facility or at the nearest local office from which
19 the operator administers the storage facility.

20 (b) Accumulated precipitation. An operator may not allow precipitation to accumulate
21 in a secondary containment structure to the point where the accumulation may tend to do any
22 of the following:

- 23 1. Impair the adequacy of the structure for discharge containment purposes.
- 24 2. Cause or increase the corrosion of storage containers or appurtenances.
- 25 3. Impair the stability of storage containers.

1 (9) EXEMPTIONS. (a) Exemptions from secondary containment requirements. The
2 secondary containment requirements under this section do not apply to any of the following:

3 1. A mobile container stored for less than 15 days at a storage facility that has a spill
4 containment surface and catch basin that comply with s. ATCP 32.03(2) to (4).

5 2. An empty and cleaned storage container. For mini-bulk containers that cannot be
6 opened, the operator shall clean the outside of the container before storing it outside a
7 secondary containment structure.

8 3. An empty railcar.

9 4. An abandoned storage container for which the operator has taken the actions
10 required under s. ATCP 32.06.

11 (b) Large storage containers; exemption from liner requirements. An operator is not
12 required to install a liner beneath a storage container having a capacity of 100,000 gallons
13 (378,000 liters) or more if all of the following apply:

14 1. The storage container was constructed on site and put into use before July 1, 1985.

15 2. The storage container has a second bottom constructed of steel or another material
16 approved by the department. The department may approve a second bottom constructed of a
17 material other than steel if, considering the substances held in the storage container, that
18 second bottom protects the waters of the state to the same degree as a liner under sub. (4). A
19 person requesting department approval shall provide the department with a plan, certified by a
20 licensed professional engineer, which shows that the second bottom provides the required
21 protection.

22 3. The operator installs the second bottom over the original bottom, with a minimum
23 6 inch (15 centimeter) layer of coarse sand or fine smooth gravel separating the original
24 bottom from the second bottom. The operator shall maintain a system for detecting leaks from
25 the second bottom to the sand or gravel layer.

1 4. The operator tests the original bottom of the storage container for leaks before
2 installing the sand or gravel layer and second bottom. The operator shall keep the test record
3 on file at the storage facility, or at the nearest local office from which the operator administers
4 the facility.

5 5. The operator tests the second bottom for leaks before storing any liquid fertilizer on
6 it. The operator shall keep the test record on file at the storage facility, or at the nearest local
7 office from which the operator administers the facility.

8 6. The operator tests the second bottom for leaks at least once every 2 years, using an
9 effective leak detection method. The operator shall keep the test records at the storage facility,
10 or at the nearest local office from which the operator administers the facility.

11 **SECTION 15.** ATCP 32.05 to 32.08 are repealed and recreated to read:

12 **ATCP 32.05 UNDERGROUND LIQUID STORAGE PROHIBITED.** No person
13 may store liquid bulk fertilizer below ground level. This section does not prohibit a person
14 from temporarily collecting spills or rinsate in a watertight catch basin, pursuant to s. ATCP
15 32.03.

16 **ATCP 32.06 ABANDONED CONTAINERS.** (1) **GENERAL.** A storage container
17 or loading area catch basin is abandoned, for purposes of this section, if it is out of service for
18 more than 6 months because of a weakness or leak, or is out of service for more than 2 years
19 for any reason.

20 (2) **UNDERGROUND CONTAINERS.** (a) An operator shall do one of the following
21 to every abandoned underground storage container or catch basin that the operator owns or
22 controls:

- 23 1. Thoroughly clean it and remove it from the ground.
- 24 2. Thoroughly clean it, sever and seal all its connections and vents, and fill it with an
25 inert solid.

1 (b) The operator shall keep a permanent record of every abandoned underground
2 storage container and catch basin that the operator owns or controls. The record shall include
3 all of the following:

4 1. The size and location of the container or catch basin.

5 2. The actions which the operator has taken under par. (a).

6 (3) ABOVE-GROUND CONTAINERS. An operator shall thoroughly clean every
7 abandoned above-ground container which the operator owns or controls, and shall sever and
8 seal all of its valves and connections. The operator shall leave open all hatches on the
9 container, but shall screen the hatches to prevent access by wildlife or unauthorized persons.

10 NOTE: Hatches must be left open for venting and to maintain container integrity.

11 **ATCP 32.07 PREPARING TO CONTROL AND RECOVER DISCHARGES.**

12 (1) DISCHARGE RESPONSE PLAN. The operator of a storage facility shall prepare a
13 written discharge response plan for that storage facility. The operator shall:

14 (a) Keep the plan current at all times.

15 (b) Keep a copy of the plan readily available at the storage facility and at the nearest
16 local office from which the operator administers the storage facility.

17 (c) Make the plan available to the department for inspection and copying upon request.

18 (d) Notify the local fire department, police department and emergency planning
19 committee of the plan, and any revisions to the plan, and provide them with copies upon
20 request.

21 NOTE: Federal law under 42 USC 11002 and 11003 also requires response plans for
22 certain chemicals. A single response plan may satisfy requirements under sub
23 (1) and federal law.
24

25 (2) PLAN CONTENTS. A discharge response plan under sub. (1) shall include all of
26 the following:

27 (a) The identity and telephone number of each person or agency to be contacted in the
28 event of a discharge, including the person responsible for the stored fertilizer.

1 (b) The types of fertilizer stored at the facility.

2 (c) The location of every storage container, and the type of liquid bulk fertilizer stored
3 in that container. A plan need not refer to mini-bulk containers individually, provided that it
4 discloses the collective location and contents of the mini-bulk containers.

5 (d) Procedures for controlling, recovering and responding to a discharge of liquid bulk
6 fertilizer at the storage facility.

7 (e) Procedures for using or disposing of a recovered discharge.

8 NOTE: The department can help an operator identify options for using,
9 treating or disposing of recovered liquid fertilizer.

10
11 (3) EQUIPMENT AND SUPPLIES. (a) An operator shall have all of the following
12 readily available for any emergency action which may be needed in response to a fertilizer
13 discharge:

14 1. Pumps, recovery containers, and personal protective equipment and clothing.

15 2. Persons capable of deploying and operating the equipment under par. (a).

16 (b) An operator may arrange with a local fire department or other persons to provide
17 the equipment and personnel required under par. (a) if the operator makes those arrangements
18 in advance as part of the operator's discharge response plan.

19 (c) The operator of a storage facility shall keep available, at that storage facility,
20 absorbent materials that may be used to control and clean up small discharges of liquid bulk
21 fertilizer.

22 (d) An operator shall promptly decontaminate equipment and supplies used to control
23 and recover liquid fertilizer discharges, before using them again.

24 (4) TRAINING. Persons employed at a storage facility shall be trained in discharge
25 response procedures, pursuant to the discharge response plan.

1 (5) REPORTING. The operator of a storage facility shall immediately notify the state
2 of Wisconsin department of natural resources whenever a reportable amount of a hazardous
3 material under ch. NR 706 is discharged at that storage facility.

4 NOTE: See s. 292.11(2)(a), Stats. An operator should also report fertilizer discharges
5 to the department of agriculture, trade and consumer protection at (608) 224-
6 4518.
7

8 **ATCP 32.08 RECORDKEEPING; LIQUID FERTILIZER STORAGE.** (1)

9 RECORDS REQUIRED. An operator storing liquid bulk fertilizer shall make and keep all of
10 the following records:

11 (a) A record of every discharge from the storage facility, including the date and time
12 of discharge, the type of liquid bulk fertilizer discharged, the cause of the discharge, any
13 action taken to control or recover the discharge, and the method used to dispose of any
14 recovered discharge. On the day that the operator discovers the discharge, the operator shall
15 record all of the required information that is available to the operator. Whenever the operator
16 acquires additional information or takes action to control, recover, use or dispose of the
17 discharge, the operator shall immediately update that record to include that additional
18 information or action.

19 (b) Inspection and maintenance records required under ss. ATCP 32.02(8) and
20 32.04(7).

21 (c) Records of liquid fertilizer levels in storage containers, as required under s. ATCP
22 32.02(8).

23 (d) An annual inventory reconciliation, prepared by August 15 of each year, which
24 does all of the following:

25 1. Compares the amount of liquid fertilizer in inventory on June 30 of that calendar
26 year to the amount in inventory on July 1 of the preceding calendar year.

1 2. Accounts for all liquid fertilizer added to or removed from inventory during the
2 intervening one year period, based on the operator's purchase, sales and production records.

3 3. Identifies any unexplained loss of inventory.

4 (e) Manufacturers' compatibility statements required under s. ATCP 32.04(4)(c) and
5 (5).

6 (f) Records of abandoned underground storage containers, catch basins and secondary
7 containment structures, as required under s. ATCP 32.06(2)(b).

8 (2) RECORD RETENTION. An operator shall keep the records required under sub.
9 (1) for at least 3 years, except that:

10 (a) An operator shall keep records under sub. (1)(a) for at least 5 years.

11 (b) An operator shall keep permanent records under sub. (1)(e) and (f).

12 (3) RECORD LOCATION; INSPECTION AND COPYING. An operator shall keep
13 the records required under sub. (1) at the storage facility, or at the nearest local office from
14 which the operator administers that facility. The operator shall make the records available to
15 the department for inspection and copying upon request.

16 **SECTION 16.** ATCP 32.10 is amended to read:

17 **ATCP 32.10 EXEMPTIONS.** The department may exempt any person from a
18 requirement under this chapter ~~if compliance is not technically feasible, but only if the~~
19 department finds that alternative measures provide substantially similar protection for the
20 waters of the state. A person requesting an exemption shall provide the department with
21 adequate information to show that alternative measures provide substantially similar protection
22 for the waters of the state.

23 **SECTION 17.** ATCP 32.11 is repealed.

24 **SECTION 18.** Chapter ATCP 33(note) is repealed and recreated to read:

25
26 NOTE: See also the following:
27

- 1 • Section ATCP 29.40 contains general rules on pesticide storage, including
2 bulk storage.
- 3
- 4 • Under ch. ATCP 35, the department may reimburse certain agricultural
5 chemical contamination cleanup costs. This may include partial
6 reimbursement for the cost of a containment structure, required by s. ATCP
7 33.03 or 33.04, which must be removed in order to clean up contamination
8 beneath the structure. A person may not claim reimbursement for a
9 structure built after January 1, 1998 unless the ground beneath the structure
10 was tested for contamination before the structure was built. See ss. ATCP
11 35.04(5) and (6) for more information.
- 12
- 13 • Under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC 136
14 et. seq.), pesticide sellers who repackage pesticides by delivering them from
15 bulk storage to customers must do the following things, among others:
- 16
- 17 * Register the seller's facility as a pesticide producing
18 establishment.
- 19 * File annual pesticide production reports.
- 20 * Maintain books and records.
- 21 * Provide labeling to purchasers of bulk pesticides.
- 22 * Deliver pesticides from bulk storage only to customers.
- 23 * Maintain a formal repackaging agreement with the pesticide
24 product registrant.
- 25
- 26 • Chapter ATCP 32 contains rules for fertilizer bulk storage.
- 27
- 28 • Chapter ILHR 10 contains rules related to the storage of flammable bulk
29 pesticides.
- 30

31 **SECTION 19.** ATCP 33.01(10), (11), (14) and (15) are repealed.

32 **SECTION 20.** ATCP 33.01(2m), (4), (5), (7) to (9), (12) and (13) are renumbered
33 (3), (5), (6), (8) to (10), (15) and (16).

34 **SECTION 21.** ATCP 33.01(3), (6) and (16) are renumbered (4), (7) and (19) and
35 amended to read:

36 ATCP 33.01(4) "Discharge" means a spill, leak, accidental or intentional release, or
37 other emission of bulk pesticide from a storage container, container or appurtenance, and

1 includes a discharge into secondary containment. It "Discharge" does not include a fully
2 contained transfer of bulk pesticide which is made pursuant to storage, sale or distribution.

3 (7) "Groundwater" means any waters of the state, ~~as defined in s. 144.01(19), Stats.,~~
4 occurring in a saturated subsurface geological formation of rock or soil.

5 (19) "Waters of the state" has the meaning ~~specified under s. 144.01(19)~~ given in s.
6 281.01(18), Stats.

7 **SECTION 22.** ATCP 33.01(11) to (14), (17) and (18) are created to read:

8 (11) "Mini-bulk container" means either of the following:

9 (a) A storage container, designed for ready handling and transport, that holds more
10 than 55 gallons (208 liters) but not more than 300 gallons (1,135 liters) of liquid pesticide.

11 (b) A container that holds more than 100 pounds (45 kilograms) but not more than
12 1,000 pounds (454 kilograms) of dry pesticide.

13 (12) "Mobile container" means any storage container, anchored to a vehicle, trailer or
14 axles, that an operator uses to store liquid bulk pesticide. "Mobile container" includes rail
15 cars, application equipment and nurse tanks.

16 (13) "Operator" means all of the following persons, and includes their employees and
17 agents:

18 (a) A person who owns or controls a storage facility, unless both of the following
19 apply:

20 1. The person is not a pesticide manufacturer or distributor.

21 2. The person is storing pesticide only for his or her own use.

22 NOTE: A farmer who stores pesticide solely for the farmer's own use is not an
23 "operator" under par. (a).
24

25 (b) A pesticide manufacturer or distributor who contracts with another person to store
26 bulk pesticide for the manufacturer or distributor.

27 NOTE: If a pesticide manufacturer or distributor contracts with a farmer for on-farm
28 storage of a bulk pesticide owned by the manufacturer or distributor, the

1 manufacturer or distributor is responsible as an "operator" of that storage
2 facility under par. (b).
3

4 (14) "Person" means an individual, corporation, partnership, cooperative association,
5 limited liability company, trust, or other organization or entity.

6 (17) "Storage container" means a container used to store liquid bulk pesticide at a
7 storage facility.

8 (18) "Storage facility" means a place where bulk pesticide is held in storage. "Storage
9 facility" does not include a field or other site at which a mobile container is temporarily
10 parked while its pesticide contents are unloaded for a person, other than a pesticide
11 manufacturer or distributor, who owns or controls that site.

12 **SECTION 23.** ATCP 33.02(1) is repealed and recreated to read:

13 (1) **GENERAL REQUIREMENTS.** (a) Storage containers and appurtenances shall be
14 constructed, installed and maintained to prevent the discharge of liquid bulk pesticide. (b)
15 Storage containers and appurtenances shall be constructed of materials that resist corrosion,
16 puncture and cracking.

17 (c) Materials used to construct or repair storage containers and appurtenances may not
18 react chemically or electrolytically with stored bulk pesticide in a way that may weaken the
19 storage container or appurtenance, create a risk of discharge, or adulterate the pesticide.

20 (d) Metals used for storage container valves, fittings or repairs shall be compatible
21 with other metals in the storage container, so that the combination of metals does not cause or
22 increase corrosion that may weaken the storage container or its appurtenances, or create a risk
23 of discharge.

24 (e) Storage containers and appurtenances shall be designed to handle foreseeable
25 mechanical stresses, including static head and pressure buildup from pumps and compressors.

26 **SECTION 24.** ATCP 33.02(5)(b)(intro.) is amended to read:

1 ATCP 33.02(5)(b)(intro.) A storage container may not be made of ferrous metals,
2 unless ~~any of the following occur~~ one of the following applies:

3 **SECTION 25.** ATCP 33.02(5)(b)3. is repealed and recreated to read:

4 ATCP 33.02(5)(b)3. The department approves the use of ferrous metals based on
5 documentation showing that the storage container is used only to store noncorrosive pesticide
6 labeled for wood preservation.

7 **SECTION 26.** ATCP 33.02(6) to (9) are repealed and recreated to read:

8 ATCP 33.02(6) ANCHORING STORAGE CONTAINERS. An operator shall anchor
9 a storage container, as necessary, to prevent flotation or instability that could occur as a result
10 of liquid accumulations within a secondary containment structure.

11 (7) SECURITY. (a) An operator shall keep a storage container and its appurtenances
12 in a locked building, or a locked outdoor enclosure under par. (c), unless one of the following
13 applies:

- 14 1. The operator is present at the storage facility.
- 15 2. The storage container and its appurtenances are empty and have been triple-rinsed.
- 16 3. The storage container is a mobile container whose exterior surfaces are free of
17 visible pesticide residues, and whose valves are secured according to par. (b).

18 (b) An operator shall lock all valves on an outdoor storage container and its
19 appurtenances unless one of the following applies:

- 20 1. The operator is present at the storage facility.
- 21 2. The storage container and its appurtenances are empty and have been triple-rinsed.

22 (c) An outdoor enclosure under par. (a) shall be surrounded by a secure wall or fence.
23 The wall or fence shall be at least 5 feet tall at every point, and shall be free of gaps that
24 would allow unauthorized persons to enter the enclosure.

25 (8) FILLING STORAGE CONTAINERS. An operator may not fill a storage
26 container to more than 95% of capacity unless one of the following applies:

1 (a) The storage container is constructed or located to ensure constant temperature
2 control.

3 (b) The storage container is a mini-bulk container and is not filled beyond the designed
4 maximum capacity indicated by the uppermost calibration on the container.

5 (9) INSPECTION AND MAINTENANCE. (a) An operator shall routinely inspect
6 and maintain storage facilities, storage containers and appurtenances to minimize the risk of a
7 discharge. An operator shall inspect valves and other appurtenances for leakage at least
8 weekly, and shall inspect vents for proper operation at least monthly.

9 (b) Except as provided in par. (c), an operator shall measure and record the liquid
10 pesticide level in every storage container at least weekly.

11 (c) Paragraph (b) does not apply to a storage container if all of the following apply:

- 12 1. The storage container is located within a fully enclosed building.
- 13 2. The storage container is located within a secondary containment structure that
14 complies with s. ATCP 33.04 and has a concrete liner or is a prefabricated structure.
- 15 3. The operator visually inspects the storage container for leakage at least weekly.

16 (d) On the same day that an operator inspects, measures or performs maintenance
17 under this section, the operator shall make a written record of the inspection, measurement or
18 maintenance. The operator shall keep the record at the storage facility, or at the nearest local
19 office from which the operator administers the storage facility.

20 **SECTION 27.** ATCP 33.03, 33.04 and 33.06 are repealed and recreated to read:

21 **ATCP 33.03 LOADING AREAS.** (1) **SPELL CONTAINMENT REQUIRED.** No
22 person may mix or load a bulk pesticide except over a spill containment surface that complies
23 with this section.

24 (2) **SPELL CONTAINMENT SURFACE; GENERAL.** A spill containment surface
25 under sub. (1) shall comply with all of the following:

1 (a) It shall be designed to catch and contain all reasonably foreseeable spills of
2 pesticides mixed or loaded over that spill containment surface.

3 (b) It shall be made of asphalt, concrete or other nonabsorbent materials approved by
4 the department, and shall be durable enough to withstand all foreseeable loading conditions.

5 NOTE: The department will maintain a list of approved paving and lining
6 materials for various pesticide compounds, and will provide the current list to
7 interested persons upon request. The department may add approved materials
8 to this list if the person requesting approval provides the department with
9 information demonstrating the adequacy of the materials under intended
10 conditions of use. Persons seeking approval should provide information related
11 to chemical compatibility, permeability, physical characteristics and durability.
12 A tarpaulin may be used as a spill containment surface for nonliquid pesticides
13 if it complies with this section.
14

15 (c) It shall extend beneath any conveyor used to load or unload pesticides, unless the
16 conveyor is fully enclosed within a housing that is adequate to contain all spillage from the
17 conveyor.

18 (3) SPILL CONTAINMENT SURFACE; LIQUID PESTICIDES. (a) A spill
19 containment surface under sub. (1) shall comply with all of the following if any liquid bulk
20 pesticide is mixed or loaded over that surface:

21 1. It shall be curbed or sloped to contain spillage, and to prevent liquids from adjacent
22 surfaces from flowing onto it.

23 2. It shall drain into or form a liquid-tight catch basin that complies with sub. (4).

24 (b) A tarpaulin may not be used as a spill containment surface for liquid bulk
25 pesticides.

26 (c) A pesticide mixed with a liquid carrier is considered a liquid pesticide under this
27 subsection. The impregnation of a nonliquid fertilizer with a liquid pesticide does not
28 constitute the mixing or loading of a liquid pesticide under this subsection.

29 (4) CATCH BASIN. (a) Except as provided under par. (b), the catch basin under
30 sub. (3)(a)2. shall have an available capacity of at least 1,500 gallons (5,680 liters). To attain

1 this required capacity, the catch basin may include a sump equipped with an automatically
2 activated pump that transfers liquids to an above-ground container that complies with s. ATCP
3 33.02(1) and is located within a secondary containment structure that complies with s. ATCP
4 33.04.

5 (b) If an operator does not load or unload any storage container having a capacity of
6 more than 1,000 gallons, the available capacity of the catch basin under sub. (3)(a)2. shall be
7 at least 125 percent of the capacity of the largest storage container loaded or unloaded at the
8 storage facility.

9 (5) RECOVERING DISCHARGES. An operator shall promptly recover a pesticide
10 discharged onto a spill containment surface.

11 (6) STORING SPILLS AND RINSATE. A container used to hold liquid pesticide
12 spills or rinsate shall be located within a secondary containment structure that complies with s.
13 ATCP 33.04. No spilled pesticides or spilled materials containing pesticides may be stored
14 below ground level.

15 (7) PREVENTING DAMAGE BY MOVING VEHICLES. Storage containers and
16 appurtenances, including pipes, shall be protected against reasonably foreseeable risks of
17 damage by trucks and other moving vehicles engaged in loading or unloading bulk pesticides.

18 **ATCP 33.04 SECONDARY CONTAINMENT; LIQUID PESTICIDE.** (1)

19 GENERAL REQUIREMENTS. Except as provided in sub. (9), storage containers shall be
20 enclosed in a secondary containment structure that is adequate, in the event of a discharge, to
21 prevent the movement of liquid pesticide to groundwater or to other waters of the state. A
22 secondary containment structure shall consist of a wall and liner that comply with subs. (4)
23 and (5), or a prefabricated structure that complies with sub. (6).

24 (2) CAPACITY. The capacity of a secondary containment structure shall equal or
25 exceed the sum of all the following:

1 (a) The greatest volume of liquid that could be discharged from the largest storage
2 container within the secondary containment structure.

3 (b) Twenty-five percent of the capacity of the largest storage container located within
4 the secondary containment structure if that structure is not fully covered by a roof, or 10% of
5 the capacity of the largest storage container located within the secondary containment structure
6 if that structure is fully covered by a roof.

7 (c) The total volume of discharged liquid that would be displaced by the submerged
8 portions of all other storage containers, fixtures and materials located within the secondary
9 containment structure if the structure were filled to capacity with discharged liquid.

10 (3) STORAGE WITH OTHER COMMODITIES. No commodity, other than liquid
11 pesticide, pesticide diluent, empty pesticide containers, or pesticide discharges recovered
12 under sub. (8) and s. ATCP 33.03(3), may be stored within a liquid pesticide secondary
13 containment structure.

14 NOTE: A liquid pesticide secondary containment structure may be located
15 within or may share a wall with a liquid fertilizer secondary containment
16 structure constructed under s. ATCP 32.04, provided that the capacity of the
17 pesticide secondary containment structure is adequate to contain the full amount
18 of any bulk liquid pesticide discharge.
19

20 (4) WALLS. The walls of a secondary containment structure shall be constructed of
21 steel or concrete, except that solid masonry block may be used for secondary containment of
22 minibulk containers inside a building. Walls shall be designed to withstand a full hydrostatic
23 head of any discharged liquid. Cracks and seams shall be sealed to prevent leakage. Walls
24 may not extend more than 6 feet (1.8 meters) above interior grade.

25 (5) LINER. (a) General requirement. The base of a secondary containment structure
26 shall be lined with one of the following:

27 1. An asphalt or concrete liner that complies with par. (b).

1 2. A synthetic liner that complies with par. (c) and does not use bentonite or other clay
2 material as a hydraulic barrier.

3 (b) Asphalt and concrete liners. Asphalt and concrete liners shall be designed
4 according to good engineering practices to withstand any foreseeable loading conditions,
5 including a full hydrostatic head of discharged liquid. Cracks and seams shall be sealed to
6 prevent leakage. Asphalt liners shall be sealed and well maintained to prevent deterioration.

7 (c) Synthetic liners. Synthetic liners shall be approved by the department. The
8 department may approve a synthetic liner if all of the following apply:

- 9 1. The liner is at least 30 mils (0.8 millimeters) thick.
- 10 2. The liner manufacturer certifies that the liner is chemically compatible with all
11 pesticides that may be stored within the secondary containment structure.
- 12 3. The liner manufacturer provides a written estimate of the liner's effective life. The
13 operator may not use the liner beyond that estimated life except with the department's written
14 approval.
- 15 4. The liner is protected by a 6 inch (15 centimeter) protection layer below the liner,
16 and a 12 inch (30 centimeter) protection layer above the liner. Both protection layers shall be
17 composed of soil, sand, or smooth gravel less than 1/2 inch in diameter. The protection layers
18 shall be free of large rocks, angular stones, sticks or other materials that may puncture the
19 liner.
- 20 5. A qualified representative of the liner manufacturer is present when the liner is
21 installed, and supervises the installation.
- 22 6. Liner seams constructed at the installation site are tested, and repaired as necessary,
23 according to the manufacturer's recommendations.

24 (6) PREFABRICATED STRUCTURES. A prefabricated secondary containment
25 structure shall be composed of a rigid prefabricated basin having a base and walls constructed
26 of steel or synthetic materials that resist corrosion, puncture and cracking. Materials used in

1 the structure shall be chemically compatible with all of the pesticides that may be stored within
2 the structure. An operator shall obtain a written confirmation of compatibility from the basin
3 manufacturer, and shall keep that confirmation on file at the storage facility or at the nearest
4 local office from which the operator administers the storage facility. The prefabricated
5 structure and the foundation on which it is placed shall be designed and installed to withstand
6 all foreseeable loading conditions, including the tank load and a full hydrostatic head of any
7 discharged liquid. If multiple basins are connected to provide the capacity required under sub.
8 (2), the basins shall be connected in a manner that ensures an unrestricted transfer of
9 discharged liquid between basins.

10 (7) INSPECTION AND MAINTENANCE. (a) General. An operator shall inspect
11 every secondary containment structure at least once every 12 months, and shall maintain the
12 structure to comply with this section. The operator shall make a written record of every
13 inspection and maintenance action on the day of the inspection or maintenance. The operator
14 shall keep the record at the storage facility or at the nearest local office from which the
15 operator administers the storage facility.

16 (b) Accumulated precipitation. An operator may not allow precipitation to accumulate
17 in a secondary containment structure to the point where the accumulation may tend to do any
18 of the following:

- 19 1. Impair the adequacy of the structure for discharge containment purposes.
- 20 2. Cause or increase the corrosion of storage containers or appurtenances.
- 21 3. Impair the stability of storage containers.

22 (8) DISCHARGE RECOVERY. An operator shall, to the maximum extent feasible,
23 recover all discharges that occur at a storage facility. An operator shall keep pumps and
24 recovery containers readily available to recover discharges, as provided in s. ATCP 33.09(3).

25 (9) EXEMPTIONS. The secondary containment requirements under this section do
26 not apply to any of the following:

1 (a) A mobile container stored for less than 15 days at a storage facility that has a spill
2 containment surface and catch basin that comply with s. ATCP 33.03(2) to (4).

3 (b) An empty and cleaned storage container. For mini-bulk containers that cannot be
4 opened, the operator shall clean the outside of the container before storing it outside a
5 secondary containment structure.

6 (c) An empty railcar.

7 (d) An abandoned storage container for which the operator has taken the actions
8 required under s. ATCP 33.06.

9 **ATCP 33.06 ABANDONED CONTAINERS.** (1) GENERAL. A storage container
10 or loading area catch basin is abandoned, for purposes of this section, if it is out of service for
11 more than 6 months because of a weakness or leak, or is out of service for more than 2 years
12 for any reason.

13 (2) UNDERGROUND CONTAINERS. (a) An operator shall do one of the following
14 to every abandoned underground storage container or catch basin that the operator owns or
15 controls:

- 16 1. Thoroughly clean it and remove it from the ground.
- 17 2. Thoroughly clean it, sever and seal all its connections, and fill it with an inert solid.

18 (b) An operator shall keep a permanent record of every abandoned underground
19 storage container and catch basin that the operator owns or controls. The record shall include
20 all of the following:

- 21 1. The size and location of container or catch basin.
- 22 2. The actions which the operator has taken under par. (a).

23 (3) ABOVE-GROUND CONTAINERS. An operator shall thoroughly clean every
24 abandoned above-ground storage container, catch basin or secondary containment structure
25 that the operator owns or controls, and shall sever and seal all of its valves and connections.

1 The operator shall leave open all hatches on the container, basin or structure, but shall screen
2 the hatches to prevent access by wildlife or unauthorized persons.

3 **SECTION 28.** ATCP 33.06(note) is created to read:

4 NOTE: Hatches must be left open for venting and to maintain container integrity.

5 **SECTION 29.** ATCP 33.07, 33.09, 33.09(note), 33.10 and 33.10(note) are repealed
6 and recreated to read:

7 **ATCP 33.07 RECORDKEEPING; LIQUID PESTICIDE STORAGE.** (1)

8 **RECORDS REQUIRED.** An operator storing liquid bulk pesticide shall make and keep all of
9 the following records:

10 (a) A record of every discharge from the storage facility, including the date and time
11 of discharge, the type of liquid bulk pesticide discharged, the cause of the discharge, any
12 action taken to control or recover the discharge, and the method used to dispose of any
13 recovered discharge. On the day that the operator discovers the discharge, the operator shall
14 record all of the required information that is available to the operator. Whenever the operator
15 acquires additional information or takes action to control, recover, use or dispose of the
16 discharge, the operator shall immediately update the record to include that additional
17 information or action.

18 (b) Inspection and maintenance records required under s. ATCP 33.02(9)(a) and
19 33.04(7)(a).

20 (c) Records of liquid pesticide levels in storage containers, as required under s. ATCP
21 33.02(9)(b).

22 (d) An annual inventory reconciliation, prepared by October 30 of each year, which
23 does all of the following:

24 1. Compares the amount of liquid pesticide in inventory on September 30 of that
25 calendar year to the amount in inventory on October 1 of the preceding calendar year.

1 2. Accounts for all liquid pesticide added to or removed from inventory during the
2 intervening one year period, based on the operator's purchase, sales and production records.

3 3. Identifies any unexplained loss of inventory.

4 (e) Manufacturers' compatibility statements required under ss. ATCP 33.04(5)(c) and
5 (6).

6 (f) Records of abandoned underground storage containers, catch basins and secondary
7 containment facilities, as required under s. ATCP 33.06(2)(b).

8 (2) RECORD RETENTION. An operator shall keep the records required under sub.
9 (1) for at least 3 years, except that:

10 (a) An operator shall keep records under sub. (1)(a) for at least 5 years.

11 (b) An operator shall keep permanent records under sub. (1)(e) and (f).

12 (3) RECORD LOCATION; INSPECTION AND COPYING. An operator shall keep
13 the records required under sub. (1) at the storage facility, or at the nearest local office from
14 which the operator administers that facility. The operator shall make the records available to
15 the department for inspection and copying upon request.

16 **ATCP 33.09 PREPARING TO CONTROL AND RECOVER DISCHARGES.**

17 (1) DISCHARGE RESPONSE PLAN. The operator of a storage facility shall prepare a
18 written discharge response plan for that storage facility. The operator shall:

19 (a) Keep the plan current at all times.

20 (b) Keep a copy of the plan readily available at the storage facility and at the nearest
21 local office from which the operator administers the storage facility.

22 (c) Make the plan available to the department for inspection and copying upon request.

23 (d) Notify the local fire department, police department and emergency planning
24 committee of the plan, and any revisions to the plan, and provide them with copies upon
25 request.

1 NOTE: Federal law under 42 USC 11002 and 11003 also requires response plans for
2 certain chemicals. A single response plan may satisfy requirements under sub.
3 (1) and federal law.
4

5 (2) PLAN CONTENTS. A discharge response plan under sub. (1) shall include all of
6 the following:

7 (a) The identity and telephone number of each person or agency to be contacted in the
8 event of a discharge, including the person responsible for the stored pesticide.

9 (b) For each pesticide stored at the facility, the pesticide labeling required under s.
10 94.70, Stats.

11 (c) The location of every storage container at the facility, and the product name of the
12 bulk pesticide stored in that container. A plan need not refer to mini-bulk containers
13 individually, provided that it discloses the collective location and contents of mini-bulk
14 containers.

15 (d) Procedures for controlling, recovering and responding to a discharge of bulk
16 pesticide at the facility.

17 (e) Procedures for using or disposing of a recovered discharge.

18 NOTE: The department can help an operator identify options for using,
19 treating or disposing of recovered pesticides.
20

21 (3) EQUIPMENT AND SUPPLIES. (a) An operator shall have all of the following
22 readily available for any emergency action which may be needed in response to a pesticide
23 discharge:

24 1. Pumps, recovery containers, and personal protective equipment and clothing.

25 2. Persons capable of deploying and operating the equipment under par. (a).

26 (b) An operator may arrange with a local fire department or other persons to provide
27 the equipment and personnel required under par. (a) if the operator makes those arrangements
28 in advance as part of the operator's discharge response plan.

1 (c) The operator of a storage facility shall keep available, at that storage facility,
2 absorbent materials that may be used to control and clean up small discharges of liquid
3 pesticides.

4 (d) An operator shall promptly decontaminate equipment and supplies used to control
5 and recover pesticide discharges, before using them again.

6 (4) TRAINING. Persons employed at a storage facility shall be trained in discharge
7 response procedures, pursuant to the discharge response plan.

8 (5) REPORTING. The operator of a storage facility shall immediately notify the state
9 of Wisconsin department of natural resources whenever a reportable amount of a hazardous
10 material under ch. NR 706 is discharged at that storage facility.

11 NOTE: See s. 292.11(2)(a), Stats. An operator should also report pesticide discharges
12 to the department of agriculture, trade and consumer protection at (608) 224-
13 4518.
14

15 **ATCP 33.10 LABELING STORAGE CONTAINERS.** (1) LABEL REQUIRED.

16 Every storage container shall bear a legible label that complies with the federal insecticide,
17 fungicide and rodenticide act as amended (7 USC 136 et seq.) and regulations issued under
18 that act. The label shall include the identification number of the pesticide producing
19 establishment from which the pesticide in that storage container originated. Pesticides sold in
20 bulk shall be accompanied by labeling showing the net contents of the bulk sale container.

21 NOTE: A facility at which an operator repackages a pesticide from a storage
22 container to mini-bulk or other containers is considered a "pesticide producing
23 establishment" under the federal act. The operator of that facility must obtain a
24 pesticide producing establishment number from the federal environmental
25 protection agency, and must include that establishment number on every mini-
26 bulk or other container filled at that facility.
27

28 (2) LABEL PLACEMENT. The label under sub. (1) shall be visible from outside the
29 secondary containment structure in which the storage container is located. The operator shall

1 keep a copy of the label, and any other labeling provided by the pesticide product registrant,
2 with each copy of the discharge response plan required under s. ATCP 33.09(1).

3 NOTE: With each sale from a bulk pesticide storage container, the operator
4 must supply the customer with the pesticide labeling required under ss. 94.676
5 and 94.70, Stats.
6

7 **SECTION 30.** ATCP 33.11 is amended to read:
8

9 **ATCP 33.11 EXEMPTIONS.** The department may exempt any person from a
10 requirement under this chapter ~~if compliance is not technically feasible, but only~~ if the
11 department finds that alternative measures provide substantially similar protection for the
12 waters of the state. A person requesting an exemption shall provide the department with
13 adequate information to show that alternative measures provide substantially similar protection
14 for the waters of the state.

15 **SECTION 31.** ATCP 33.12 is repealed.

16 **SECTION 32.** ATCP 35.01(1), (3) and (6) are amended to read:

17 ATCP 35.01(1) "Active groundwater remediation" means active physical, biological
18 or chemical manipulation of groundwater, or of the rock or soil media in which groundwater is
19 situated, for the purpose of ~~maintaining or improving groundwater quality~~ reducing the amount
20 of agricultural chemical contamination or minimizing the spread of contamination. "Active
21 groundwater remediation" includes treatment by means of aeration, bio-augmentation, planned
22 nutrient loading or pump-and-treat methods.

23 (3) "Agricultural chemical" means a substance that is a fertilizer or a nonhousehold
24 pesticide, and that is a hazardous substance as defined in s. ~~144.01 (4m)~~ 292.01(5), Stats.

25 (6) "Approved workplan" means a workplan for corrective action that is approved by
26 the department under s. ATCP ~~35.18~~ 35.18(1)(a).

27 **SECTION 33.** ATCP 35.01(7m) is created to read:

1 ATCP 35.01(7m) "Contiguous land" means land included in the same parcel or an
2 adjacent parcel. "Contiguous land" includes parcels that are separated only by a road,
3 railway, or utility right-of-way, or by a government-owned land corridor or waterway not
4 wider than 66 feet.

5 **SECTION 34.** ATCP 35.01(9) is repealed and recreated to read:

6 ATCP 35.01(9) "Contract services" means services provided by a contractor as part of
7 a corrective action. "Contract services" includes all of the following services:

- 8 (a) Excavating.
- 9 (b) Trucking.
- 10 (c) Landspreading.
- 11 (d) Waste disposal services.
- 12 (e) Drilling, including at-depth soil sampling and well installation.
- 13 (f) Laboratory services.
- 14 (g) Professional consulting services.
- 15 (h) General contractor services.
- 16 (i) Other services provided by contractors.

17 **SECTION 35.** ATCP 35.01(10), (14), (14)(note) and (15) are amended to read:

18 ATCP 35.01(10) "Corrective action" means an action, consisting of one or more
19 corrective measures under sub. (12), that is taken or ordered in response to a discharge in this
20 state, and that is necessary to restore the environment to the extent practicable and to minimize
21 the harmful effects of the discharge to the air, lands or waters of this state. "Corrective action"
22 includes an action taken or ordered by the department of natural resources under s. ~~144.76~~
23 292.11(7), Stats., in response to a discharge, but does not include an action ordered by the
24 department of natural resources under s. ~~144.73 (1) or 144.735 (2)~~ 291.37(2) or 291.95, Stats.
25 "Corrective action" does not include any action taken, or ordered required to be completed,
26 taken before January 1, 1989.

1 (14) "Discharge" means the discharge, as defined in s. 144.76 (1) (a) 292.01(3),
2 Stats., of an agricultural chemical.

3 NOTE: Under s. 144.76 (1) (a) 292.01(3), Stats., "discharge" includes, but is
4 not limited to, spilling, leaking, pumping, pouring, emptying, emitting or
5 dumping.
6

7 (15) "Discharge site" means the area affected by one or more discharges ~~that are the~~
8 ~~subject of a corrective action. If a discharge occurs at a site which a commercial application~~
9 ~~business or a distributor of agricultural chemicals operates to store, mix or load agricultural~~
10 ~~chemicals,~~ "Discharge site" includes all contiguous land that is owned, leased or
11 controlled by ~~that commercial application business or distributor of agricultural chemicals~~ the
12 responsible person at the time the discharge occurs, plus any other area affected by the
13 discharge.

14 **SECTION 36.** ATCP 35.01(19) is repealed and recreated to read:

15 ATCP 35.01(19) "Household pesticide" means a pesticide that is any of the following:

16 (a) A sanitizer.

17 (b) A disinfectant.

18 (c) A germicide.

19 (d) An insect repellent that is applied to the human body or to clothing.

20 (e) A pesticide that is used exclusively for the treatment of household pets.

21 (f) A pesticide product that is labeled exclusively for household, lawn or garden use if
22 the product either is sold in ready-to-use form or is sold exclusively in container sizes of less
23 than one gallon.

24 (g) A solid or liquid pesticide product that is used exclusively for the treatment of
25 swimming pools, spas or hot tubs.

26 **SECTION 37.** ATCP 35.01(20) is amended to read:

27 ATCP 35.01(20) "Indirect cost" means any general cost of doing business that cannot
28 be directly and exclusively attributed to a corrective action. "Indirect cost" includes costs for

1 equipment, supplies, services, real estate, structures and improvements, overhead, managerial
2 and staff support, staff training, taxes, insurance, financing and other items which are not
3 directly and exclusively attributable to a corrective action or whose use is not limited to the
4 corrective action.

5 **SECTION 38.** ATCP 35.01(20m), (22m) and (22r) are created to read:

6 ATCP 35.01(20m) "Industrial pesticide" means any of the following pesticides that is
7 not a household pesticide:

8 (a) A pesticide that is solely labeled for use on wood and contains pentachlorophenol,
9 coal tar creosote or inorganic arsenical wood preservatives.

10 (b) A pesticide that is labeled for use in controlling algae, fungi, bacteria, other
11 microscopic organisms or mollusks in or on one or more of the following, and is labeled for
12 no other use except a use described in sub. (19)(f) or (g):

13 1. Textiles, paper, leather, plastic, vinyl or other synthetic materials, metal or rubber.

14 2. Paints, varnishes, other coating products, lubricants or fuels.

15 3. Commercial, construction, manufacturing or industrial fluids, including adhesives,
16 additives and pigments.

17 4. Commercial, construction, manufacturing or industrial processes, equipment,
18 devices or containers, other than those used in the production or storage of human food or
19 animal feed.

20 5. Air washing, cooling or heat transfer systems.

21 6. Medical equipment.

22 7. Drinking water or wastewater systems.

23 (22m) "Landspread" means to spread or deposit on land, other than in a landfill
24 approved by the department of natural resources under s. 289.31, Stats., soil or water
25 removed from a discharge site.

1 (22r) "Nonhousehold pesticide" means a pesticide that is not a household pesticide or
2 industrial pesticide.

3 **SECTION 39.** ATCP 35.02(1)(e)1. and 2. are amended to read:

4 ATCP 35.02(1)(e)1. Applicable department rules under chs. ATCP 29 to 33 and this
5 chapter.

6 (e)2. Applicable rules of the department of natural resources under chs. NR 700, 706,
7 708 and 712 to 726.

8 **SECTION 40.** ATCP 35.02(2)(b) and (c) are amended to read:

9 ATCP 35.02(2)(b) If the recipient of a summary order under par. (a) requests a
10 hearing on that order, the department shall hold an informal hearing within 10 days after the
11 department receives the hearing request unless the ~~order~~ recipient of the order consents to a
12 later date for the informal hearing. If a contested matter is not resolved at the informal
13 hearing, the ~~order~~ recipient of the order is entitled to a class 2 contested case hearing under
14 ch. 227, Stats., and ch. ATCP 1.

15 (c) The department is not required to stay a summary order issued under par. (a)
16 pending the outcome of a hearing under par. (b). If, after a hearing under par. (b), the
17 department determines that a summary order under par. (a) was not justified, the department
18 shall reimburse the ~~order~~ recipient of the order for reasonable corrective action costs
19 necessarily incurred by the ~~order~~ recipient to comply with the unjustified order.

20 **SECTION 41.** ATCP 35.03 is created to read:

21 **ATCP 35.03 LANDSPREADING.** (1) SOIL. No person may landspread soil that is
22 removed from a discharge site, and contains an agricultural chemical, unless the department
23 issues to that person a permit authorizing that landspreading. Landspreading shall comply
24 with conditions that the department specifies in the permit.

25 NOTE: Landspreading is a potential method for destroying or recycling
26 agricultural chemicals removed from a discharge site as part of a corrective
27 action. The department may approve landspreading which applies agricultural
28 chemicals at rates that are comparable to normal agronomic practice.

1

2 (2) WATER. No person may landspread water that is removed from a discharge site,
3 and is contaminated with an agricultural chemical, unless all of the following apply:

4 (a) The department issues to that person a permit authorizing that landspreading.

5 (b) The department of natural resources issues to that person a pollution discharge
6 elimination system permit, if required under ch. 283, Stats., which authorizes that
7 landspreading.

8 (c) The landspreading complies with conditions specified by the department and the
9 department of natural resources under pars. (a) and (b).

10 (3) PERMIT APPLICATION. A person applying for a landspreading permit under
11 sub. (1) or (2)(a) shall apply on a form prescribed by the department. The application shall
12 include all of the following:

13 (a) The name of the applicant and any other persons involved in the landspreading.

14 (b) The source and quantity of soil or water that will be spread on land.

15 (c) The kinds and amounts of agricultural chemical contaminants present in the soil or
16 water under par. (b).

17 (d) The proposed application rate for each agricultural chemical under par. (c).

18 (e) The locations at which the soil or water will be spread on land.

19 (f) Other relevant information which the department may require.

20 (4) ACTION ON PERMIT APPLICATION. The department may approve
21 landspreading which applies agricultural chemicals at rates that are comparable to those used
22 in normal agronomic practice. The department shall grant or deny a permit application under
23 sub. (3) within 30 days after the department receives a complete application.

24 (5) PERMIT CONDITIONS. The department may specify conditions which apply to a
25 permit issued under sub. (1) or (2)(a), including any applicable requirements under chs. 94,

1 281 to 285 and 289 to 299, Stats. The department shall specify the conditions in writing, as
2 part of the permit.

3 (6) REPORT. Within 30 days after a permit holder landspreads soil or water pursuant
4 to a department permit under sub. (1) or (2)(a), the permit holder shall provide the department
5 with documentation showing all of the following:

6 (a) That the owner of land on which the soil or water was landspread authorized the
7 landspreading.

8 (b) That the landowner under par. (a), and any other person planning to grow crops on
9 the land within 9 months after the landspreading occurs, were informed of the kinds and
10 amounts of agricultural chemicals applied as a result of the landspreading, and agreed to take
11 account of those applications when considering the need for and amount of future applications
12 of agricultural chemicals to that land.

13 **SECTION 42.** ATCP 35.04(5) is amended to read:

14 ATCP 35.04(5) Costs to remove a spill containment structure that was ~~installed~~
15 constructed before January 1, 1998, to comply with s. ~~ATCP 29.151, 30.26 29.45, 30.36,~~
16 32.03, 32.04, 33.03 or 33.04 if the department agrees that removal is was necessary to
17 complete, in the most cost-effective way, a corrective action ordered by the department or the
18 department of natural resources. The cost to remove a containment structure under this
19 paragraph may include its depreciated value, calculated as construction cost less depreciation
20 claimed to date for tax purposes.

21 **SECTION 43.** ATCP 35.04(5)(note) and (6) are renumbered ATCP 35.04(note) and
22 (7).

23 **SECTION 44.** ATCP 35.04(6) is created to read:

24 ATCP 35.04(6) Costs to remove a spill containment structure, including its
25 construction cost less depreciation claimed to date for tax purposes, if all the following apply:

1 (a) The structure was constructed after January 1, 1998, to comply with ATCP 29.45,
2 30.36, 32.03, 32.04, 33.03 or 33.04.

3 (b) Before the structure was constructed, the department determined on the basis of
4 credible laboratory tests that the construction site was free of agricultural chemical
5 contamination.

6 (c) The department subsequently required the responsible person to remove the
7 structure as part of a corrective action ordered by the department or the department of natural
8 resources.

9 **SECTION 45.** ATCP 35.06(1) is repealed and recreated to read:

10 ATCP 35.06(1) APPLICATION REQUIRED. A responsible person who seeks
11 reimbursement of corrective action costs shall complete and submit to the department all of the
12 following:

13 (a) An "application cover sheet" containing all of the following:

14 1. The responsible person's name and address.

15 2. The name and address of the person directing the corrective action on behalf of the
16 responsible person, if other than the responsible person.

17 3. A statement indicating whether the responsible person has applied or will apply to
18 another government agency for reimbursement of corrective action costs incurred for the same
19 discharge site.

20 4. Other relevant information requested by the department.

21 (b) A "multiple responsible persons form" containing all of the following:

22 1. A certification that the responsible person has made a reasonable effort to notify
23 other responsible persons as required under s. ATCP 35.20(2).

24 2. Other relevant information requested by the department.

25 (c) A "total reimbursement costs form" containing all of the following:

1 1. The total eligible corrective action costs for which the responsible person seeks
2 reimbursement from the department.

3 2. Other relevant information requested by the department.

4 (d) An "insurance information form" containing all of the following:

5 1. A statement indicating whether any portion of the corrective action costs for which
6 the responsible person seeks reimbursement may be covered by insurance, or a statement from
7 the responsible person's insurance company stating that the insurance company has denied the
8 responsible person's claim for reimbursement of the corrective action costs.

9 2. Other relevant information requested by the department.

10 (e) A map showing the town, range, section and quarter-quarter section location of the
11 discharge site. If the agricultural chemical was discharged while being transported from a site
12 owned or controlled by a person who owned or controlled the agricultural chemical at the time
13 of the discharge, the application shall include a second map showing the town, range, section
14 and quarter-quarter section location of the site from which the agricultural chemical was being
15 transported.

16 (f) An accurate legal description of the land parcel on which the discharge site is
17 located. If the agricultural chemical was discharged while being transported from a site owned
18 or controlled by a person who owned or controlled the agricultural chemical at the time of the
19 discharge, the application shall also include an accurate legal description of the land parcel on
20 which that site is located. A parcel description under this paragraph shall correspond to the
21 most recent parcel description filed with the register of deeds in the county where the land
22 parcel is located.

23 (g) A summary statement identifying each eligible corrective action cost for which the
24 applicant seeks reimbursement from the department. The statement shall include each eligible
25 corrective action cost, paid by the applicant prior to the date of the reimbursement application,

1 for which the applicant seeks reimbursement. The summary statement shall allocate each cost
2 to one of the following categories:

- 3 1. Soil investigation.
- 4 2. Soil remediation.
- 5 3. Laboratory and other analysis.
- 6 4. Groundwater investigation.
- 7 5. Groundwater remediation.
- 8 6. Miscellaneous.

9 NOTE: Under s. ATCP 35.08(5)(b), if any person applies for reimbursement
10 of an ineligible cost, the department may deduct twice the amount of that cost
11 from that person's reimbursement claim if the responsible person knew or
12 should have known that the cost was not eligible. If a responsible person is not
13 certain whether a corrective action cost is eligible for reimbursement under this
14 chapter, the responsible person may contact the department for a preliminary
15 opinion under s. ATCP 35.08(1).
16

17 (h) Invoices or other information documenting each of the costs under par. (g).

18 Documentation shall identify the nature of the materials or services provided, the amount
19 charged for the materials or services, the identity of the provider, and the dates on which the
20 materials or services were provided.

21 (i) Canceled checks or other information documenting that the applicant has paid all of
22 the costs under par. (g).

23 (j) For each cost item under par. (g), a summary of all the following:

24 1. Every bid required under s. ATCP 35.16(2)(a), including every accepted and
25 rejected bid. For each bid, the summary shall indicate the name of the contractor and the
26 amount of the bid.

27 2. Every cost estimate required under s. ATCP 35.16(2)(b)3., including the name of
28 the contractor and the amount of the cost estimate.

1 3. Every authorization required under s. ATCP 35.16(2)(b)5., including the name of
2 the contractor and the amount of the authorization.

3 (k) A spreadsheet that identifies and matches each invoiced cost in par. (h) with the
4 documentation under pars. (i) and (j) supporting that invoiced cost.

5 (L) A substitute W-9 tax form.

6 (m) Other relevant information required by the department.

7
8 NOTE: To obtain application materials, contact the Department of Agriculture,
9 Trade & Consumer Protection, Agricultural Resource Management Division,
10 P.O. Box 8911, Madison, WI 53708. The department will provide application
11 materials, including illustrative examples and all of the forms required under
12 pars. (a) to (d) and (L). Reimbursement paid to a responsible person under this
13 chapter may be reportable, for tax purposes, as income received by that person.
14

15 **SECTION 46.** ATCP 35.06(4) is repealed and recreated to read:

16 **ATCP 35.06(4) FAILURE TO SEEK REIMBURSEMENT IN PRIOR**
17 **APPLICATION.** A responsible person may not apply for reimbursement of eligible corrective
18 action costs which the responsible person paid before making a prior reimbursement
19 application to the department, unless those costs were not eligible for reimbursement under
20 this chapter at the time of that prior application.

21 **SECTION 47.** ATCP 35.08(1) and (5)(b) are amended to read:

22 **ATCP 35.08(1) PRELIMINARY OPINION.** ~~Before or after the department receives~~
23 ~~an application under s. ATCP 35.06, the~~ The department may issue a preliminary opinion on
24 whether an applicant is eligible for reimbursement of corrective action costs. The preliminary
25 opinion is not binding on the department.

26 (5)(b) ~~If, after consulting with the agricultural chemical cleanup council, the~~
27 department finds that any portion of an applicant's reimbursement claim is ineligible, and that
28 the applicant knew or should have known that it was ineligible, the department shall deduct
29 twice the amount of the ineligible claim from the applicant's total claim. Deductions under
30 this paragraph may not exceed the total amount of the applicant's claim. The department may

1 not make a deduction under this paragraph from a reimbursement claim awarded before July 1,
2 1999 unless the agricultural chemical cleanup council adopts a motion approving the
3 deduction.

4 **SECTION 48.** ATCP 35.08(5)(b)(note) is amended to read:

5 NOTE: The department will invoke sub. (5)(b) in cases where a claim is
6 clearly ineligible, either because it is clearly prohibited under s. ATCP 35.14 or
7 because there is no plausible basis for claiming reimbursement under this
8 chapter. Applicants In order to protect themselves against a double deduction
9 under sub. (5)(b), applicants may discuss questionable items with the
10 department before submitting a claim.
11

12 **SECTION 49.** ATCP 35.10(1) to (4), (6) and (6)(note) are amended to read:

13 ATCP 35.10(1) The responsible person files with the department, by October 14, 2000
14 or within 3 years after incurring the corrective action costs, whichever is later, a
15 reimbursement application that complies with s. ATCP 35.06.

16 (2) The responsible person complies with every corrective action order issued by the
17 department under s. ATCP 35.02 or the department of natural resources under s. ~~144.76(7)~~
18 ~~(e)~~ 292.11(7)(c), Stats.

19 (3) The responsible person, upon discovering the discharge, promptly reports the
20 discharge to the department or, if the responsible person is required to report the discharge
21 under s. ~~144.76(2)~~ 292.11(2), Stats., to the department of natural resources.

22 (4) If the responsible person is a commercial application business, the responsible
23 person is in compliance, at the time of the discharge, with s. ~~ATCP-29-11(1)~~ 29.20.

24 (6) The corrective action complies with applicable requirements under chs. ~~144 and~~
25 ~~147~~ 281 to 285 and 289 to 299, Stats., this chapter, chs. ATCP 29 to 33, and chs. NR 700,
26 706, 708 and 712 to 726.

27 NOTE: For corrective actions under this chapter, the department is authorized
28 to review compliance with chs. NR 700, 706, 708, and 712 to 726, and to grant
29 required approvals and variances under those chapters on behalf of the
30 department of natural resources.
31

1 **SECTION 50.** ATCP 35.12(1) to (3), (6)(a) to (c), (8) and (10) are amended to read:

2 ATCP 35.12(1) Taken in response to a discharge that is an intentional use of an
3 agricultural chemical for an agricultural purpose, unless the corrective action is ordered by the
4 department under s. ATCP 35.02 or by the department of natural resources under s. 144.76
5 ~~(7)-(e)~~ 292.11(7)(c), Stats. An intentional use of an agricultural chemical includes an
6 application of that chemical, but does not include handling, mixing, loading or disposal that is
7 incidental to an application.

8 (2) Taken by the department of natural resources under s. ~~144.442 (4), (6) or (8)~~
9 292.31(1), (3) or (7), Stats.

10 (3) Taken by the department of natural resources under s. ~~144.76 (7) (a)~~ 292.11(7)(a),
11 Stats., because the applicant failed or refused to respond adequately to a discharge.

12 (6)(a) A facility required to be licensed under s. ~~144.44 (4)~~ 289.31, Stats.

13 (6)(b) A facility that would be required to be licensed under s. ~~144.44 (4)~~ 289.31,
14 Stats., except that the department of natural resources has issued a specific exemption under s.
15 ~~144.44 (7)~~ 289.43, Stats., or rules promulgated under s. ~~144.435 (1) or (2)~~ 289.05(1) or (2),
16 Stats.

17 (6)(c) A closed or abandoned solid or hazardous waste disposal facility that, if
18 operating today, would require a license under s. ~~144.44 (4)~~ 289.31, Stats., or a specific
19 license exemption under s. ~~144.435 (1) or (2)~~ 289.05(1) or (2), Stats.

20 (8) Taken in response to a discharge caused by ~~that responsible person's~~ an intentional
21 or grossly negligent violation of law committed by the responsible person or the responsible
22 person's agent, including an intentional or grossly negligent violation of ss. 94.645, 94.67 to
23 94.71, 94.73 or 144.76 292.11, Stats., or of any rule or order adopted under those sections.

24 (10) Taken without a reasonable prospect of success, ~~or without any reasonable~~
25 ~~prospect of~~ or environmental benefit.

26 **SECTION 51.** ATCP 35.14(2)(note) is created to read:

1 NOTE: An example of a reasonable cost allocation formula may be obtained
2 from the Department of Agriculture, Trade & Consumer Protection,
3 Agricultural Resource Management Division, P.O. Box 8911, Madison WI
4 53708
5

6 **SECTION 52.** ATCP 35.14(3)(intro.) is amended to read:

7 ATCP 35.14(3)(intro.) A responsible person's indirect costs, ~~including indirect costs~~
8 ~~for equipment, supplies or services.~~ This does not prohibit the department from reimbursing
9 any of the following:

10 **SECTION 53.** ATCP 35.14(3)(c) is created to read:

11 ATCP 35.14(3)(c) Costs for equipment owned by the responsible person and used
12 during a corrective action for excavating, trucking or landspreading, provided that all of the
13 following apply:

- 14 1. The equipment is reasonably sized and designed to perform the corrective action.
- 15 2. The hours or units of equipment use are reasonable and necessary for the task
16 performed.
- 17 3. The equipment costs are determined according to a reasonable cost allocation
18 formula.
- 19 4. The equipment costs do not exceed reasonable rental costs for equivalent
20 equipment, including any operator costs.

21 **SECTION 54.** ATCP 35.14(4), (15), (16), (24), (27), (28) and (30) are amended to
22 read:

23 ATCP 35.14(4) The cost of ~~for the time which~~ that the responsible person, or any
24 officer of the responsible person, spends ~~on planning or implementing~~ a corrective action. This
25 does not prohibit the department from reimbursing normal employe wages, salaries, expenses
26 or fringe benefit allocations for time which employes, other than officers, ~~actually spend on~~
27 implementing a corrective action.

1 (15) Costs incurred by any federal, state or local government entity. The department
2 may reimburse a responsible person for corrective action costs incurred by the department of
3 natural resources under s. ~~144.76(7)(a)~~ 292.11(7)(a), Stats., and charged to the responsible
4 person, provided that the responsible person reimbursed the department of natural resources
5 and did not fail or refuse to take corrective action in response to an order or directive from the
6 department or the department of natural resources.

7 (16) Costs for a contractor's services that exceed the contractor's bid price for those
8 services under s. ~~ATCP 35.16(2)~~, except as provided under s. ATCP 35.16(2)(c). This
9 subsection does not prohibit reimbursement of contract service costs incurred, at the specified
10 contract rate, for additional hours or units of service authorized under s. ~~ATCP 35.16(2)(b)2~~.

11 (24) Costs to prepare an application under s. ATCP 35.06, to contest an application
12 decision under s. ATCP 35.32 or to consult with the department on the application.

13 (27) Supplementary charges for expedited services, including expedited laboratory
14 analysis, ~~expedited mail service or parcel delivery service, or other services performed on an~~
15 ~~expedited basis, unless the expedited service charges are approved in advance by~~ unless the
16 department approves those charges in advance.

17 (28) Contractor charges that are not based on services provided by the contractor and
18 documented under s. ~~ATCP 35.06(1)(k) and (l)~~ 35.06(1)(g) and (h).

19 (30) Costs for the rental or use of land ~~used for the application of~~ on which the
20 responsible person landspreads soil or water under s. ~~94.73(2)(d), Stats.,~~ ATCP 35.03 unless
21 the department's permit under s. ~~94.73(2)(d), Stats.,~~ ATCP 35.03 prohibits the harvesting of
22 crops from ~~that land that would otherwise be cropped~~.

23 **SECTION 55.** ATCP 35.14(31) and (32) are created to read:

24 ATCP 35.14(31) Costs for subcontractor service charges or markups.

25 (32) Costs to plant or till land on which the responsible person landspreads soil or
26 water under s. ATCP 35.03, unless the department requires that land to be planted or tilled.

1 **SECTION 56.** ATCP 35.16(1) is amended to read:

2 ATCP 35.16(1) **GENERAL REQUIREMENT.** If a responsible person hires a
3 contractor to provide a contract service, the department may not reimburse the responsible
4 person for the cost of that contract service unless the responsible person contracts that service
5 ~~is contracted according to this section and the responsible person provides the department with~~
6 ~~the documentation required under sub. (7).~~

7 **SECTION 57.** ATCP 35.16(2) is repealed and recreated to read:

8 ATCP 35.16(2) **BIDS AND ESTIMATES REQUIRED.** (a) The department may not
9 reimburse a responsible person for contract services performed at a discharge site unless the
10 responsible person selects the contractor to provide services at that site on the basis of at least
11 3 competitive bids. The department may require a responsible person to obtain additional bids
12 if the department finds that existing bids are unreasonable.

13 (b) Except as provided in par. (c), the department may not reimburse a responsible
14 person for contract service costs that exceed the contractor's bid for those services under par.

15 (a).

16 (c) The department may reimburse a responsible person for contract services not
17 included in the contractor's initial bid under par. (a), or for additional hours or units of service
18 beyond those included in the bid under par. (a), if all of the following apply:

19 1. The contractor providing the additional services was selected by the competitive
20 bidding procedure under par. (a).

21 2. The contractor bills for the additional services at the same per-unit price at which
22 the contractor agreed to provide equivalent services, if any, in the contractor's initial bid under
23 par. (a).

24 3. The contractor provides the responsible person with a cost estimate for the
25 additional services before performing those services. The department may require the

1 responsible person to obtain competitive bids for the additional services if the department finds
2 that the cost estimate is unreasonable.

3 4. The responsible person provides the department with a copy of the cost estimate
4 under subd. 3 before authorizing the contractor to proceed if the total cost of the additional
5 services exceeds \$1,500.

6 5. The responsible person gives the contractor written authorization to proceed with
7 the additional services, after receiving the contractor's estimate under subd. 3.

8 6. The cost for the additional services does not exceed the contractor's estimate under
9 subd. 3.

10 7. The additional services do not involve the selection, design or installation of active
11 groundwater remediation.

12 (d) A responsible person requesting reimbursement from the department shall keep
13 copies of all bids and estimates required under this subsection, and shall make those copies
14 available to the department for inspection and copying upon request. The responsible person
15 shall keep copies of the bids and cost estimates for at least 2 years after the department has
16 paid or denied all reimbursements to which those bids or cost estimates pertain.

17 **SECTION 58.** ATCP 35.16(2m) is created to read:

18 ATCP 35.16(2m) BID AND ESTIMATE CONTENTS. Every bid under sub. (2)(a)
19 and every cost estimate under sub. (2)(c)3. shall include all of the following:

20 (a) A clear description and itemization of the contract services included in the bid or
21 estimate. The description shall be based on an approved workplan or, if there is no workplan,
22 on a good faith estimate of the scope of the project as stated in the bid or estimate.

23 (b) A total bid price or cost estimate for all of the contract services included in the bid
24 or estimate, and a subtotal price for each of the component services itemized in the bid or
25 estimate.

1 (c) The following information related to every service priced on an hourly or per unit
2 basis:

- 3 1. The price per hour or per unit of service.
- 4 2. A reasonable, good faith estimate of the number of hours or units of service to be
5 provided.
- 6 3. The total estimated price for the service, based on the estimate under subd. 2.
- 7 4. The estimated date by which the contractor will perform the service.

8 (d) Every certification required of the contractor under sub. (6).

9 **SECTION 59.** ATCP 35.16(3), (4), (4)(note) and (5) are repealed and recreated to
10 read:

11 **ATCP 35.16(3) SERVICES PRICED ON AN HOURLY OR PER UNIT BASIS.** (a)

12 Bids and cost estimates for the following services shall be priced on an hourly or per unit
13 basis:

- 14 1. Excavating.
- 15 2. Trucking.
- 16 3. Landspreading and other waste treatment or disposal services.
- 17 4. Drilling, including at-depth soil sampling and well installation.
- 18 5. Laboratory services.
- 19 6. Services normally billed on an hourly or per unit basis.

20 (b) Bids and cost estimates for professional or personal services, including
21 engineering, hydrogeologic, field technician and general contracting services, shall be priced
22 on an hourly basis.

23 (4) **RESPONSIBLE PERSON; CHOICE OF CONTRACTORS.** (a) The department
24 may require a responsible person to explain that person's choice of contractors.

1 (b) A responsible person may select any contract service provider, but may not claim
2 reimbursement of any corrective action costs that exceed the low bid for any of the following
3 contract services:

- 4 1. Excavating.
- 5 2. Trucking.
- 6 3. Landspreading and waste disposal services.
- 7 4. Drilling, including at-depth soil sampling and well installation.

8 NOTE: A responsible person may obtain full reimbursement for services provided by
9 a consultant or laboratory that is not the lowest bidder, provided that other
10 requirements under this section are met. A responsible person should consider
11 bid amounts, but may consider other factors including professional
12 qualifications and special project needs.
13

14 (5) SEPARATE CONTRACTORS. (a) No contractor who provides any of the
15 following contract services for a corrective action may provide contract services other than the
16 following contract services for that corrective action:

- 17 1. Excavating.
- 18 2. Trucking.
- 19 3. Landspreading and other waste treatment or disposal services.
- 20 4. Drilling, including at-depth soil sampling and well installation.

21 (b) No contractor who provides laboratory services for a corrective action, other than
22 immuno assay services or field testing services using hand-held devices, may provide other
23 contract services related to that corrective action.

24 (c) Paragraphs (a) and (b) do not apply to a general contractor who subcontracts with
25 independent subcontractors to provide services under par. (a) or (b) for a corrective action,
26 provided the subcontractors comply with pars. (a) and (b).

27 **SECTION 60.** ATCP 35.16(5)(note) is repealed.

28 **SECTION 61.** ATCP 35.16(6)(a)(intro.) and 1. are amended to read:

1 ATCP 35.16(6)(a)(intro.) In every bid or cost estimate under sub. (2), the bidding
2 contractor shall certify both of the following:

3 (6)(a)1. That the contract services will comply with applicable requirements under this
4 chapter, chs. ATCP 29 to 33, and chs. NR 700, 706, 708 and 712 to 726.

5 **SECTION 62.** ATCP 35.16(7) is repealed.

6 **SECTION 63.** ATCP 35.16(8)(b) is amended to read:

7 ATCP 35.16(8)(b) The department may reimburse contract service costs totalling not
8 more than ~~\$500~~ \$3,000 for each contractor, regardless of compliance with subs. (2) to (6).

9 **SECTION 64.** ATCP 35.16(note) is repealed.

10 **SECTION 65.** ATCP 35.18(title) and (1) are repealed and recreated to read:

11 **ATCP 35.18(title) REIMBURSEMENT CONDITIONS.** (1) **WORKPLAN**

12 **REQUIRED.** (a) Except as provided under par. (b) or (c), the department may not reimburse
13 a responsible person for any of the following unless the department approves a written
14 workplan for the corrective action before the responsible person takes that corrective action:

15 1. Eligible corrective action costs exceeding \$7,500 if the responsible person took the
16 corrective action after October 13, 1997.

17 2. Eligible corrective action costs exceeding \$20,000 if the responsible person takes
18 the corrective action on or after August 12, 1993 but on or before October 13, 1997.

19 (b) Paragraph (a) does not apply to a reasonable and necessary corrective action taken
20 on an emergency basis.

21 (c) A responsible person is not required to obtain department approval for a workplan
22 under par. (a) if the responsible person submits the workplan to the department at least 30
23 days before taking the corrective action, and the department neither approves nor rejects the
24 workplan within 30 days after the department receives the workplan.

25 **SECTION 66.** ATCP 35.18(2) is amended to read:

1 ATCP 35.18(2) ADDITIONAL SITE INVESTIGATION OR CORRECTIVE
2 ACTION. The department may, ~~in a workplan under sub. (1) or by order under s. ATCP~~
3 ~~35.02~~, require a responsible person to perform additional investigation, or take additional
4 corrective action, as a precondition to the reimbursement of any corrective action cost under
5 this chapter.

6 SECTION 67. ATCP 35.20(title) and (1) are amended to read:

7 **ATCP 35.20(title) MULTIPLE RESPONSIBLE PERSONS.** (1)

8 REIMBURSEMENT LIMIT. If more than one responsible person is eligible for
9 reimbursement under this chapter for corrective action taken in response to one or more
10 discharges at the same discharge site, the combined amount paid to those responsible persons
11 may not exceed the maximum amount specified ~~under this chapter~~ for a ~~single responsible~~
12 ~~person~~ discharge under s. ATCP 35.22(4)(a) or a discharge site under s. ATCP 35.22 (1) or
13 (2).

14 SECTION 68. ATCP 35.22 is repealed and recreated to read:

15 **ATCP 35.22 REIMBURSEMENT AMOUNTS.** (1) GENERAL

16 REIMBURSEMENT FORMULA. Except as provided in subs. (2) or (4), the department
17 shall reimburse a responsible person for each discharge site an amount equal to 80% of the
18 corrective action costs that are greater than \$3,000 and less than \$400,000. To this amount
19 the department shall add interest costs under s. ATCP 35.25. The total amount reimbursed
20 under this subsection, including interest costs under s. ATCP 35.25, may not exceed
21 \$317,600.

22 (2) DIFFERENT REIMBURSEMENT FORMULA FOR SOME PERSONS. (a)

23 Except as provided in sub. (4), the department shall reimburse a responsible person for each
24 discharge site an amount equal to 80% of the corrective action costs that are greater than
25 \$7,500 and less than \$400,000 if any of the following applies at the time the discharge occurs
26 or is discovered:

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

2 2. The responsible person employs more than 25 persons

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

4 (b) To the amount under sub. (a), the department shall add interest costs under s.
5 ATCP 35.25. The total amount reimbursed under this subsection, including interest costs
6 under s. ATCP 35.25, may not exceed \$314,000.

7 (3) TRANSPORTATION DISCHARGES. For purposes of subs. (1) and (2),
8 whenever an agricultural chemical is discharged while being transported from a site owned or
9 controlled by a person who owns or controls the discharged agricultural chemical, the
10 discharge is deemed to occur at that site.

11 (4) PREAPPROVAL REQUIRED FOR SOME CORRECTIVE ACTION COSTS. (a)
12 The department may not reimburse corrective action costs that exceed \$100,000 for any
13 discharge unless the department, after determining that the costs are reasonable and necessary
14 based on the nature, size and complexity of the corrective action, approves the additional costs
15 before the responsible person incurs them. The department may specify conditions and
16 limitations on its approval.

17 (b) Paragraph (a) does not require prior department approval of reasonable and
18 necessary corrective action costs that a responsible person incurred before October 14, 1997.

19 (c) A discharge under paragraph (a) includes all discharges that occur at a discharge
20 site before the responsible person initiates corrective action in response to any of those
21 discharges. A subsequent discharge is considered a separate discharge under par. (a), subject
22 to a separate \$100,000 limit.

23 (d) A reimbursement under this subsection may not exceed the limits provided under
24 subs. (1) and (2).

25 **SECTION 69.** ATCP 35.24 is repealed.

26 **SECTION 70.** ATCP 35.25 is amended to read:

1 **ATCP 35.25 INTEREST ON APPROVED REIMBURSEMENT AMOUNTS.** The
2 department shall add interest to a reimbursement amount calculated under s. ATCP 35.22-~~or~~
3 ~~35.24~~, at a rate equal to the prime interest rate on the ~~January 31, May 31 or September 30~~
4 ~~date that first follows the department's receipt of~~ date when the department receives a complete
5 reimbursement application. ~~Interest shall be calculated on a compounded rate from the same~~
6 ~~January 31, May 31 or September 30 date,~~ The department shall calculate interest from that
7 date for the unpaid balance approved under s. ATCP 35.22-~~or~~ ~~ATCP 35.24.~~ ~~Amounts,~~
8 ~~including interest, not paid June 30 of any year shall be calculated and a new interest rate~~
9 ~~equal to the prime rate on June 30 of that year be applied to the unpaid balance.~~

10 **SECTION 71.** ATCP 35.26 is repealed and recreated to read:

11 **ATCP 35.26 PARTIAL CORRECTIVE ACTION; REIMBURSEMENT.** (1)

12 Upon completing any of the following portions of a corrective action, a responsible person
13 may apply for and receive reimbursement of eligible corrective action costs which the
14 responsible person pays prior to the reimbursement application date:

15 (a) An emergency response, if any.

16 (b) A soil investigation approved by the department. If the soil investigation
17 concludes that active soil remediation is necessary, the department shall approve an active soil
18 remediation plan before reimbursing the responsible person for the soil investigation.

19 (2) The department may not reimburse any portion of a corrective action under sub.

20 (1) unless the responsible person demonstrates, to the department's satisfaction, that the
21 responsible person is proceeding in a timely manner with the remainder of the corrective
22 action. The department may withhold reimbursement pending department approval of a
23 workplan for the remainder of the corrective action.

24 (3) If, after receiving any reimbursement under sub. (1), a responsible person fails to
25 complete a corrective action as required under this subsection, the department may direct the
26 responsible person to return that reimbursement by a specified date. If the department

1 properly directs a responsible person to return a reimbursement, the responsible person shall
2 return the reimbursement according to the department's directive.

3 (4) Reimbursement under sub. (1) for a portion of a corrective action does not affect
4 the reimbursement rate that applies to a discharge under s. ATCP 35.22(4)(a) or to a discharge
5 site under s. ATCP 35.22(1) or (2).

6 **SECTION 72.** ATCP 35.28(1) and (2) are repealed and recreated to read:

7 ATCP 35.28(1) GENERAL. (a) Except as provided in par. (b), the department shall
8 reimburse responsible persons for approved corrective action costs, in the total amount
9 approved for each corrective action under s. ATCP 35.08(4)(c), in the order in which the
10 department receives complete reimbursement applications from those responsible persons.

11 (b) If the balance in the agricultural chemical cleanup fund under s. 25.468, Stats., is
12 less than \$1,000,000, the department shall reimburse approved corrective action costs in
13 installments as provided in subs. (2) and (3), up to the total amount approved for each
14 corrective action under s. ATCP 35.08(4)(c).

15 (c) The department shall make payments under this section from the appropriations
16 under s. 20.115 (7)(e) and (wm), Stats. Notwithstanding any other provision of this chapter,
17 payment is subject to the availability of funds in those appropriations.

18 (2) INITIAL INSTALLMENT. Upon making a decision under s. ATCP 35.08(4), the
19 department shall pay a responsible person an initial installment of \$50,000 for each discharge
20 under s. ATCP 35.22(4)(a), or the total reimbursement amount approved for that corrective
21 action under s. ATCP 35.08(4)(c), whichever is less. The department shall pay initial
22 installments to responsible persons in the order in which the department receives complete
23 reimbursement applications from those responsible persons.

24 **SECTION 73.** ATCP 35.28(3)(a) is amended to read:

25 ATCP 35.28(3)(a) If an initial installment under sub. (2) is less than the full
26 reimbursement amount approved for a corrective action under s. ATCP 35.08(4)(c), the

1 department shall pay one or more subsequent installments to that responsible person or that
2 person's designee until the department has paid the full approved amount. ~~No installment~~
3 ~~under this paragraph may exceed \$100,000 in any fiscal year.~~

4 **SECTION 74.** ATCP 35.28(3)(d) is renumbered 35.28(3)(c).

5 **SECTION 75.** ATCP 35.28(4) and (5) are repealed.

6 **SECTION 76.** ATCP 35.30(2) and (3) are amended to read:

7 ATCP 35.30(2) The responsible person may next apply the proceeds against that
8 portion of the responsible person's eligible corrective action costs which exceeds the maximum
9 amount on which the department may pay reimbursement under s. ATCP 35.22 ~~or 35.24~~.

10 (3) The responsible person shall pay to the department a percentage of any remaining
11 proceeds which equals the applicable reimbursement rate specified under s. ATCP 35.22 ~~or~~
12 ~~35.24~~, except that the total amount repaid under this subsection need not exceed the total
13 amount of reimbursement which the department paid to the responsible person for the same
14 corrective action.

15 **SECTION 77.** ATCP 35.32(1) and (3) are amended to read:

16 ATCP 35.32(1) **REQUEST FOR HEARING.** A person adversely affected by the
17 department's disapproval of a reimbursement application under s. ATCP ~~35.08~~ 35.08(5) may,
18 within 30 days after receiving notice of that disapproval, request a hearing before the
19 department to contest that disapproval. A request for hearing shall be made in writing and
20 shall specify the grounds for the request.

21 (3) **FORMAL HEARING.** If a contest related to the disapproval of a reimbursement
22 application is not resolved after an informal hearing under sub. (2), a person adversely affected
23 by the department's disapproval of the application may request a full contested case hearing on
24 the disapproval. A request for a full contested case hearing shall be filed with the department,
25 in writing, within 30 days after the date of the informal hearing under sub. (2). ~~The contested~~

1 ~~ease proceeding shall be conducted as a class 3 proceeding under ch. 227, Stats., and ch.~~
2 ~~ATCP 1.~~

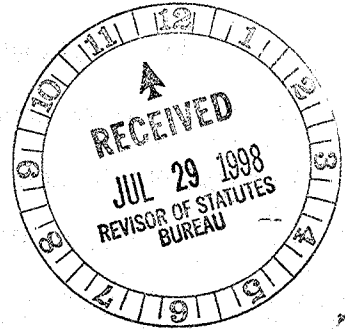
3 **SECTION 78.** ATCP 35.34 is repealed.

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

7
8
9 Dated this 29 day of July, 19 98.

10 STATE OF WISCONSIN
11 DEPARTMENT OF AGRICULTURE,
12 TRADE AND CONSUMER PROTECTION

13
14
15
16
17 By Ben Brancel
18 Ben Brancel, Secretary
19





State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

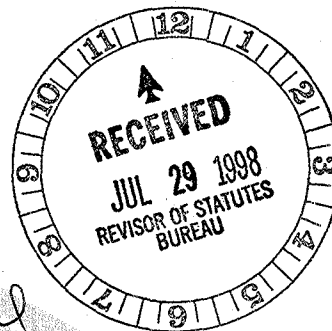


Date: July 24, 1998

To: Gary Poulson - Revisor of Statutes Office
131 West Wilson Street, Suite 800

From: Ben Brancel, Secretary *Ben Brancel*

Subject: **Clearinghouse Rule No. 98-014, Chapter ATCP 32, 33 and 35,
Relating to the Agricultural Chemical Cleanup Program and the
Storage of Bulk Pesticides and Fertilizers**



FINAL REGULATORY FLEXIBILITY ANALYSIS

for revisions to chs. ATCP 32, 33 and ATCP 35, Wis. Adm. Code

The changes to ATCP 32 and ATCP 33, Wis. Adm. Code, will have impacts to small businesses that will cause them to have some increases in expenditures. The changes in ATCP 35, Wis. Adm. Code, will allow greater reimbursement of business expenses when a business cleans up a spill of fertilizer or pesticide.

Expected Business Expense Increases

Business expenses for dry fertilizer distributors would increase due to an added requirement that all loading and unloading of dry bulk fertilizer be performed over a surface that allows for the recovery of all spilled material (s. 32.03). According to licensee records and tonnage reports, there are 151 different facilities from which dry bulk fertilizer is distributed in Wisconsin. Approximately 40% of those, or 60, would classify as small businesses. The department estimates that of those 60 sites, approximately 15%, or 9, currently do not utilize some method of spill containment at their dry fertilizer load-out area. Approximately 85%, or 51 of the 60 dry fertilizer sites, do not utilize some method of spill containment at their dry fertilizer load-in area. Virtually all the small businesses that distribute dry fertilizer would need to provide for a dry fertilizer spill containment surface for load-in, load-out or both. The impacts to these small businesses would be minimized because the use of tarpaulins, in addition to constructed load pads, would be permitted. Tarpaulins of sufficient size and strength to contain any spill and recover all spilled material are estimated to cost \$500 per year. Facilities which choose to construct or install a permanent dry fertilizer load in/out pad are estimated to expend approximately \$3,000 to \$3,500. The department estimates the construction of a permanent dry fertilizer rail-unload pad to be approximately \$1,000.

Business expenses for liquid fertilizer distributors would increase due to an added requirement that all soil liners within containment structures must be physically analyzed for permeability and mechanical properties and chemically analyzed for the nutrient stored within the containment structure over the previous 15 years. In addition, the soil liners must be reconstructed. The department estimates there are fewer than 10 facilities currently utilizing compacted clay liners in Wisconsin and 5 or fewer small businesses with clay liners. The department estimates the cost for performing this action on a small containment structure to be approximately \$3,000 to \$3,500.

Expected Business Income

The changes to ATCP 35, Wis. Adm. Code, will decrease business costs for cleaning up spills. Most of these proposed changes are the result of changes to s. 94.73, Stats., which have been incorporated into the rules. These statutory changes are outlined below.

- The cost-share rate was modified from 75% to 80% of all eligible costs above the deductible and below \$100,000.
- The reimbursement cap was modified from \$300,000 for each discharge at a site to a life-time cap of \$400,000 per discharge site. Modifications have also been made to the \$100,000 cap. The changes to the reimbursement caps have two significant impacts:
 1. A “deductible” is only paid once for each discharge site because the cap is based upon a discharge site and not every time a discharge occurs. As a result, costs for cleaning up subsequent discharges at a site will be reimbursed at a rate of 80%. Prior to this change, subsequent discharges could only be reimbursed at a rate of 50%.
 2. In the past, the \$100,000 cap could only be exceeded if groundwater remediation was ordered for a specific discharge. The \$100,000 cap is still in effect for each discharge, but in the future, the \$100,000 cap can be exceeded if approved by the department prior to incurring costs.
- Additional reimbursement for transportation-related spills can be received. Transportation-related spills were each treated individually in the past and thus, each was required to pay a separate deductible. Because of this, many claims for these spills did not get submitted. The proposed language for transportation spills does not require small businesses to pay a separate deductible and thus allows more of these costs to be reimbursable in the future, subject to the \$400,000 limit for the site from which the product was distributed.

One change included in ATCP 35 which is not the result of statutory changes is to reimburse responsible persons a reasonable rate for the use of their own equipment if it

was used to cleanup contamination. This will allow small businesses to get reimbursed for using their own equipment rather than hiring another contractor or renting equipment to complete the job and should provide small businesses with additional cost savings at no added expense to the state.

Alternative Options Considered

The department considered several options for the requirement of a dry fertilizer loading pad. Not requiring dry fertilizer loading area-containment is not a viable option based on the cost of cleaning up fertilizer contamination from the chronic discharges.

Alternate options could require that a permanent mix/load surface constructed of concrete or asphalt, or that a permanent structure constructed of steel or wood be installed or constructed to contain all dry fertilizer released during loading or unloading. The department feels that a permanent surface or structure is a more sound way of limiting fertilizer discharges to the environment, but the department also realizes that such a requirement could create a serious hardship for small businesses. Therefore, the proposal allows the use of a tarpaulin which would contain and allow for the recovery of all dry fertilizer spilled during dry fertilizer loading or unloading operations. The department also considered prohibiting the use of clay or soil liners for fertilizer secondary containment structures. This prohibition has been proposed for pesticide secondary containment structures because there are no known facilities in Wisconsin that use a soil liner for pesticide secondary containment purposes and because pesticide manufacturers do not view soil liners as acceptable for pesticide secondary containment purposes. However, for liquid bulk fertilizer, prohibiting the use of soil liners could cause serious hardships for some businesses that currently use them. For small businesses, prohibition of soil liners would require that a completely new secondary containment structure be constructed at an estimated minimum cost of \$10,000 to \$12,000. The estimated cost of the current proposal for testing and re-compaction is significantly less than the cost of building a completely new containment structure.

Most of the fiscal impacts for small businesses contained in revisions to ch. ATCP 35, Wis. Adm. Code, are costs savings and are a result of implementing statutory changes. No alternatives were considered.

Comments from Legislative Committee

On June 3, 1998, the department referred the rule changes to the Senate Committee on Transportation, Agriculture and Rural Affairs. On June 10, 1998, the department referred the rule changes to the Assembly Committee on Agriculture. We received no comments from either committee.