

Clearinghouse Rule 00-058

STATE OF WISCONSIN)
) ss. Clearinghouse Rule
DEPARTMENT OF AGRICULTURE,) No. 00-058
TRADE & CONSUMER PROTECTION) Docket No. 99-R-3

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 of the Wisconsin Administrative Code ATCP 35; relating to the Agricultural Chemical Cleanup Program was signed and adopted by the department on September 12, 2000.

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 12th day of September, 2000.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

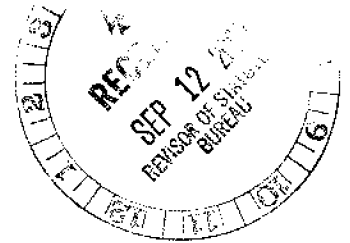


By Ben Brancel
Ben Brancel
Secretary



11-1-00

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



1 The state of Wisconsin department of agriculture, trade and consumer protection adopts an order to
2 repeal ATCP 35.16(2)(c)4. and 35.22(4)(b); renumber ATCP 35.03(3)(f); amend ATCP 35.01(4),
3 35.03(3)(intro.), 35.04(3), 35.06(1)(f), 35.06(1)(j)(intro.) and 1., 35.08(5)(b), 35.14(5) and (6),
4 35.16(1), (2)(a), (2)(c)3., (2m)(d), and (6)(b) and (c), 35.22(1), (2)(a)(intro.) and (4)(a); repeal and
5 recreate ATCP 35.03(6)(a) and (b), 35.04(4) to (6), 35.06(4), 35.14(30), 35.16(8) and 35.18(1)(a); and
6 to create ATCP 35.01(17m), 35.03(3)(f) and (g), 35.03(6)(c) to (e), 35.06(1)(a)5., 35.06(5), 35.08(6),
7 35.16(2m)(e), (6)(d), (7) and (9), and 35.34; relating to the agricultural chemical cleanup program.

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

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

This rule modifies current rules related to Wisconsin's agricultural chemical cleanup program. This program is designed to clean up spills of agricultural chemicals and minimize environmental contamination. Under this program, the Department of Agriculture, Trade and Consumer Protection (DATCP) may reimburse a portion of the cleanup cost. Cleanups, reimbursement applications and reimbursement payments must comply with DATCP rules under ch. ATCP 35, Wis. Adm. Code.

This rule makes the following changes to the current rules:

- It clarifies landspreading requirements, and expands DATCP's authority to reimburse landspreading costs incurred in a cleanup project.
- It clarifies and expands DATCP's authority to reimburse the cost of removing or relocating utilities and other fixtures.
- It modifies competitive bidding and other cost control procedures.
- It requires consultants to identify, in their project bids to persons needing cleanup services, any contract services and costs that are not eligible for DATCP reimbursement.

- It authorizes DATCP to reimburse a person for some reasonable and necessary cleanup costs, even if the person fails to comply with competitive bidding or other cost control requirements. (Current rules prohibit reimbursement.) This rule authorizes DATCP to pay reimbursement at its discretion, at a reduced rate.
- It creates an advisory council to advise DATCP on the cleanup program.

Landspreading

Current rules authorize landspreading of soils contaminated with fertilizers or pesticides if those fertilizers or pesticides can be legally applied to land. Landspreading reduces the concentration of the fertilizer or pesticide, and provides an economical and potentially useful disposal option in many cases. Persons proposing to landspread soils contaminated with fertilizers or pesticides must obtain a permit from DATCP. This rule clarifies permit application requirements, and describes the documentation required. This rule also authorizes DATCP to reimburse some additional landspreading costs.

Costs to Move Utilities, Equipment and Other Fixtures

This rule authorizes DATCP to reimburse costs for moving utilities, equipment and other fixtures, so that contaminated soils can be removed. Current rules prevent reimbursement of these costs. Under this rule, claimants may amend their prior reimbursement applications to request reimbursement of costs that are newly eligible for reimbursement.

Bidding for Services

Under current rules, a person seeking DATCP reimbursement of cleanup costs must use a competitive bidding process to contract for cleanup services. This rule modifies the current bidding requirements. Under this rule:

- The applicant must submit the initial bids to DATCP. DATCP must also approve any revised cost estimate.
- The general contractor (consultant) must give the responsible person written notice of any cleanup costs that are ineligible for reimbursement.

Failure to Implement Cost Controls; Partial Reimbursement

Under current rules, DATCP must deny a reimbursement claim if the applicant fails to comply with competitive bidding and other cost control measures. This rule authorizes DATCP to reimburse a portion of the reasonable and necessary cleanup costs, even if the claimant fails to comply with cost control measures. Under this rule, DATCP *may* pay up to 75% of the reasonable and necessary costs that would have been eligible for reimbursement, had the claimant complied with all required cost control measures.

Advisory Council

This rule creates an advisory council for the agricultural chemical cleanup program. The agricultural chemical cleanup council will advise DATCP on reimbursement decisions, program funding and rulemaking needs. This advisory council will replace a statutory advisory council that was recently eliminated.

1 **SECTION 1.** ATCP 35.01(4) is amended to read:

2 ATCP 35.01(4) "Agricultural chemical cleanup council" means the council ~~created under s.~~
3 ~~15.137(4), Stats.~~ appointed under s. ATCP 35.34.

4 **SECTION 2.** ATCP 35.01(17m) is created to read:

5 ATCP 35.01(17m) "Fixture" means any of the following:

6 (a) Railroad tracks, ties and ballast.

7 (b) Culverts.

8 (c) Fences.

9 (d) Gas mains, pipelines and related structures.

10 (e) Electric poles, power lines and related structures.

11 (f) Water and sewer mains and pipelines.

12 (g) Facilities for the transmission of telecommunications or television services, including
13 wires, optics, cables, poles and towers.

14 **SECTION 3.** ATCP 35.03(3)(intro.) is amended to read:

1 ATCP 35.03(3) PERMIT APPLICATION. A person applying for a landspreading permit under
2 sub. (1) or (2)(a) shall apply on a form prescribed by the department. The person shall submit the
3 application at least 5 department business days before any landspreading occurs. The application shall
4 include all of the following:

5 **SECTION 4.** ATCP 35.03(3)(f) is renumbered ATCP 35.03(3)(h).

6 **SECTION 5.** ATCP 35.03(f) and (g) are created to read:

7 ATCP 35.03(3)(f) Any proposed tillage for which the applicant may request reimbursement.

8 (g) A landspreading agreement form, provided by the department and completed by the
9 applicant. The completed form shall document all the following:

10 1. That the owner of the proposed landspreading site has consented to the proposed
11 landspreading.

12 2. That the applicant has disclosed in writing, to the owner of the proposed landspreading site,
13 the kinds and anticipated amounts of agricultural chemicals that will be landspread on the site. The
14 disclosure shall state that persons applying agricultural chemicals to the site must, by law, take account
15 of the pesticides applied by landspreading.

16 3. That the owner of the proposed landspreading site has agreed to provide a copy of the
17 disclosure under subd. 2 to any other person who may grow crops on that site within 18 months after
18 the landspreading is completed.

19 **NOTE:** To obtain a copy of the landspreading agreement form, contact the Department of
20 Agriculture, Trade and Consumer Protection, Agricultural Resource Management
21 Division, P.O. Box 8911, Madison, Wisconsin 53708.

22
23 **SECTION 6.** ATCP 35.03(6)(a) and (b) are repealed and recreated to read:

24 ATCP 35.03(6)(a) The dates and fields on which the landspreading occurred.

25 (b) The rate at which the landspread materials were applied to each field.

26 **SECTION 7.** ATCP 35.03(6)(c) to (e) are created to read:

1 ATCP 35.03(6)(c) Written confirmation that the responsible person notified the owner of the
2 landspreading site of the actual kinds and amounts of agricultural chemicals that were applied to the
3 site as a result of the landspreading.

4 (d) A description of any problems incurred in connection with the landspreading.

5 (e) A description of the tillage performed in connection with the landspreading.

6 **SECTION 8.** ATCP 35.04(3) is amended to read:

7 ATCP 35.04(3) Costs to excavate contaminated soils and other contaminated materials,
8 including backfilling and grading to restore the contours or drainage characteristics of land altered by
9 the corrective action. ~~This paragraph does not authorize the reimbursement of costs incurred for the~~
10 ~~removal of buildings or other fixtures, except paving materials that are necessarily removed in the~~
11 ~~course of excavation.~~

12 **SECTION 9.** ATCP 35.04(4) to (6) are repealed and recreated to read:

13 ATCP 35.04(4) Costs to collect, handle, transport, treat or dispose of contaminated soils,
14 groundwater or other contaminated materials. If the responsible person disposes of contaminated soils
15 by means of landspreading under s. ATCP 35.03, the department may reimburse the following
16 additional costs related to that landspreading:

17 (a) Reasonable costs for tillage that is in excess of normal tillage and that is needed to reduce
18 soil compaction caused by the landspreading. The department may not reimburse costs for more than 2
19 tillage passes.

20 (b) Costs for pre-plant nitrogen testing of the landspreading site to determine appropriate
21 nitrogen credits for landspread soil that includes a significant nitrogen component. The department
22 may reimburse pre-plant nitrogen testing only if that testing uses sampling and analytical methods that
23 are scientifically recognized and standard within the agronomic community.

1 (c) Locally reasonable rent, not to exceed rent for one growing season, for cropland taken out
2 of production for any of the following reasons:

- 3 1. The necessary stockpiling of soil, pending landspreading.
- 4 2. Crop harvesting restrictions in the landspreading permit.

5 (d) Costs to compensate a landowner for crop loss or yield reduction that occurs within one
6 year after the landspreading if the landowner demonstrates, to a reasonable degree of certainty, that the
7 crop loss or yield reduction was caused by one of the following:

- 8 1. Agricultural chemicals that were present in the landspread soil, but not known to be present
9 when the landspreading occurred.
- 10 2. Planting delays caused by the landspreading.
- 11 3. Soil compaction caused by landspreading, notwithstanding reasonable tillage of the
12 landspreading site.

13 (e) Costs to compensate a landspreading site owner for access, scheduling and like costs
14 related to landspreading, if that compensation is necessary to obtain access to a landspreading site. The
15 department may reimburse costs that are locally reasonable, and do not exceed \$0.50 per cubic yard of
16 landspread soil. This paragraph does not apply to landspreading on a site owned by the responsible
17 person.

18 (f) Costs to remove rocks and other debris from landspread soils. The department may
19 reimburse costs to remove rocks and other debris before or after the landspreading occurs, but not both.
20 The department may not reimburse costs to remove rocks or debris more than 90 days after
21 landspreading is completed. If a responsible person obtains competitive bids to screen the soil before it
22 is landspread, the responsible person may not substitute the costs for post-landspreading debris
23 removal without obtaining competitive bids under s. ATCP 35.16.

1 (5) Costs for any of the following corrective measures that the department requires, or pre-
2 approves in writing, if the department finds that those measures are less expensive than the available
3 alternatives:

4 (a) Removal and disposal of containment structures that comply with s. ATCP 29.45, 32.03,
5 32.04, 33.03 or 33.04 at the time of the corrective action. The department may not reimburse costs for
6 the removal or disposal of a containment structure constructed after January 1, 1998 unless the
7 responsible party proves to the department, by credible laboratory tests, that the construction site was
8 free of agricultural chemical contamination when the structure was constructed. The cost to remove a
9 containment structure may include its depreciated value, calculated as the original construction cost
10 less the depreciation claimed to date for tax purposes.

11 (b) Installation of concrete or asphalt as an engineered barrier to limit infiltration of existing
12 contaminated materials, provided the responsible person has agreed in writing to maintain the barrier at
13 that person's expense until the contamination is removed or has degraded.

14 (6) Costs for any of the corrective measures in pars. (a) to (c) that the department requires, or
15 pre-approves in writing, if the department finds that those measures are less expensive than the
16 available alternatives. The department may not reimburse costs for any of the following corrective
17 measures that pertain to any surface, structure, equipment or fixture constructed after January 1, 2001
18 unless the responsible party proves to the department, by credible laboratory tests, that the construction
19 site was free of agricultural chemical contamination when that surface, structure, equipment or fixture
20 was constructed:

21 (a) Removal and disposal of concrete or asphalt parking areas or roadways, and associated
22 curbs and sidewalks. The department may not reimburse costs incurred for the replacement of these
23 surfaces, curbs or sidewalks.

1 (b) Temporary removal and reinstallation of equipment or structures, if the equipment or
2 structures are returned to their original use and approximate original location.

3 (c) The following corrective measures related to fixtures that are in good condition and
4 operating adequately when the corrective measure occurs:

- 5 1. Removal and reinstallation at approximately the same location.
- 6 2. Temporary or permanent relocation.
- 7 3. Removal and replacement with a new fixture of the same size and quality, including any
8 upgrade required by law.
- 9 4. Protection during a corrective action, through shoring or other methods.

10 **SECTION 10.** ATCP 35.06(1)(a)5. is created to read:

11 ATCP 35.06(1)(a)5. The last date for which an eligible corrective action cost paid by the
12 responsible person is being submitted for reimbursement. If the last date is not specified on the
13 application form, the last date will be the day the department receives the application.

14 **SECTION 11.** ATCP 35.06(1)(f) is amended to read:

15 ATCP 35.06(1)(f) An accurate legal description of the land parcel on which the discharge site
16 is located. If the agricultural chemical was discharged while being transported from a site owned or
17 controlled by a person who owned or controlled the agricultural chemical at the time of the discharge,
18 the application shall also include an accurate legal description of the land parcel on which that site is
19 located. A parcel description under this paragraph shall correspond to the ~~most recent~~ parcel
20 description filed that was on record, at the time the discharge occurred or was discovered, with the
21 register of deeds in the county where the land parcel is located.

22 **SECTION 12.** ATCP 35.06(1)(j)(intro.) and 1. are amended to read:

23 ATCP 35.06(1)(j)(intro.) ~~For~~ All of the following, for each cost item under par. (g), a
24 summary of all the following:

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

3 **SECTION 13.** ATCP 35.06(4) is repealed and recreated to read:

4 ATCP 35.06(4) FAILURE TO SEEK REIMBURSEMENT IN PRIOR APPLICATION. A
5 responsible person may not apply for reimbursement of an eligible corrective action cost which the
6 responsible person paid during or before the period for which a prior reimbursement claim has been
7 submitted for that discharge site, unless the corrective action cost was not eligible for reimbursement
8 under this chapter at the time of any prior reimbursement application for that discharge site.

9 **SECTION 14.** ATCP 35.06(5) is created to read:

10 ATCP 35.06(5) RETROACTIVE ELIGIBILITY. Notwithstanding s. ATCP 35.10(1), the
11 department may reimburse corrective action costs under s. ATCP 35.04(5) or (6) that are related to any
12 claim filed under this chapter prior to **[revisor inserts effective date of ss. ATCP 35.04(5) and (6)]** if
13 all the following apply:

14 (a) The responsible person files by **[revisor inserts date that is one year after the effective**
15 **date of ss. ATCP 35.04(5) and (6)]** an amended application for reimbursement of those costs.

16 (b) The amended application complies with other applicable requirements under this chapter,
17 and includes all the following information:

18 1. The claim number of any prior application for reimbursement of the same costs.

19 2. Invoices, cancelled checks or other documentation substantiating the corrective costs under
20 s. ATCP 35.04(5) or (6).

21 **SECTION 15.** ATCP 35.08(5)(b) is amended to read:

22 ATCP 35.08(5)(b) If the department finds that any portion of an applicant's reimbursement
23 claim is ineligible, and that the applicant knew or should have known that it was ineligible, the
24 department shall deduct twice the amount of the ineligible claim from the applicant's total claim.

1 Deductions under this paragraph may not exceed the total amount of the applicant's claim. ~~The~~
2 ~~department may not make~~ Before making a deduction under this paragraph ~~from a reimbursement~~
3 ~~claim awarded before July 1, 1999 unless,~~ the department may consult with the agricultural chemical
4 cleanup council ~~adopts a motion approving the deduction~~ appointed under s. ATCP 35.31.

5 **SECTION 16.** ATCP 35.08(6) is created to read:

6 ATCP 35.08(6) FAILURE TO SUBMIT INFORMATION. If an applicant for reimbursement
7 fails to provide an adequate report of the corrective measures taken or corrective action costs incurred,
8 or fails to provide any other relevant information required by the department, the department may
9 disapprove all or part of the application for reimbursement.

10 **SECTION 17.** ATCP 35.14(5) and (6) are amended to read:

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

13 (6) Loss or impairment of property values or other assets, except as provided under s. ATCP
14 35.04(5) and (6).

15 **SECTION 18.** ATCP 35.14(30) is repealed and recreated to read:

16 ATCP 35.14(30) The following costs related to landspreading under s. ATCP 35.03:

17 (a) Compensation for crop damage, except as provided in s. ATCP 35.04(4)(d).

18 (b) Residue sampling for nutrients or pesticides, except as provided in s. ATCP 35.04(4)(b).

19 (c) Land rental or access charges, except as provided in s. ATCP 35.04(4)(c) and (e).

20 **SECTION 19.** ATCP 35.16(1) is amended to read:

21 ATCP 35.16(1) GENERAL REQUIREMENT. ~~If a responsible person hires a contractor to provide a~~
22 ~~contract service~~ Except as provided in sub. (8), the department may not reimburse ~~the~~ a responsible
23 person for the cost of ~~that~~ a contract service unless the responsible person contracts that service
24 according to ~~this section~~ subs. (2) to (7).

1 **SECTION 20.** ATCP 35.16(2)(a) is amended to read:

2 ATCP 35.16(2) BIDS AND ESTIMATES REQUIRED. (a) The department may not reimburse a
3 responsible person for contract services performed at a discharge site unless the responsible person
4 selects the contractor to provide services at that site on the basis of at least 3 competitive bids. The
5 responsible person shall provide the department with a copy of the accepted bid before authorizing the
6 contractor to proceed. ~~The department may require a responsible person to obtain additional bids if the~~
7 ~~department finds that existing bids are unreasonable.~~

8 **SECTION 21.** ATCP 35.16(2)(c)3. is amended to read:

9 ATCP 35.16(2)(c)3. The contractor provides the responsible person and the department with a
10 cost estimate for the additional services, and obtains the approval of the responsible person and the
11 department, before performing those services. ~~The department may require the responsible person to~~
12 ~~obtain competitive bids for the additional services if the department finds that the cost estimate is~~
13 ~~unreasonable.~~

14 **SECTION 22.** ATCP 35.16(2)(c)4. is repealed.

15 **SECTION 23.** ATCP 35.16(2m)(d) is amended to read:

16 ATCP 35.16(2m)(d) Every certification and disclosure required of the contractor under ~~sub.~~
17 subs. (6) and (7).

18 **SECTION 24.** ATCP 35.16(2m)(e) is created to read:

19 ATCP 35.16(2m)(e) The basis for attributing project costs to corrective measures under this
20 chapter, if the project is also designed to investigate or repair environmental contamination involving
21 substances that are not agricultural chemicals. The attribution shall take into account the reasons for
22 which the overall project was initiated, and the end goals of the project.

23 **SECTION 25.** ATCP 35.16(6)(b) and (c) are amended to read:

1 ATCP 35.16(6)(b) If a contractor ~~bids~~ submits a bid or cost estimate under sub. (2) to provide
2 ~~drilling~~, engineering, hydrogeologic, field technician or general contractor services, the contractor's bid
3 shall certify that the contractor has and will maintain insurance coverage for errors and omissions,
4 including pollution impairment liability coverage of not less than \$1,000,000 per claim, for not less
5 than \$1,000,000 in annual aggregate claims, with a deductible of not more than \$100,000 per claim.

6 NOTE: If a general contractor solicits other contractors on behalf of a responsible person and
7 the responsible person contracts directly with or directly compensates the other
8 contractors, the general contractor is subject to the insurance provisions contained in
9 this paragraph. A contractor who subcontracts for corrective action services and
10 directly compensates the subcontractor is not acting as a general contractor with regard
11 to that subcontracted service.

12
13 (c) If a contractor ~~bids~~ submits a bid or cost estimate under sub. (2) to provide laboratory
14 services, the contractor's bid shall certify that the contractor has and will maintain insurance coverage
15 for errors and omissions (professional liability) of not less than \$1,000,000 per claim, for not less than
16 \$1,000,000 in annual aggregate claims, with a deductible of not more than \$100,000 per claim.

17 **SECTION 26.** ATCP 35.16(6)(d) is created to read:

18 ATCP 35.16(6)(d) If a contractor submits a bid or cost estimate under sub. (2) to provide
19 drilling services or soil probing, the contractor's bid shall certify that the contractor has and will
20 maintain insurance coverage for pollution impairment liability coverage of not less than \$1,000,000 per
21 claim, for not less than \$1,000,000 in annual aggregate claims, with a deductible of not more than
22 \$100,000 per claim.

23 **SECTION 27.** ATCP 35.16(7) is created to read:

24 ATCP 35.16(7) **CONTRACTOR DISCLOSURE.** If a contractor's bid or cost estimate under sub. (2)
25 includes any contract service or cost a contractor knows or should know is not eligible for
26 reimbursement under this chapter, the bid or cost estimate shall clearly identify that service or cost and
27 shall clearly disclose that it is not eligible for reimbursement by the department.

1 **SECTION 28.** ATCP 35.16(8) is repealed and recreated to read:

2 ATCP 35.16(8) **EXEMPTIONS.** The department may reimburse necessary and reasonable
3 contract service costs incurred by a responsible person who fails to comply with subs. (2) to (7) if any
4 of the following applies:

5 (a) The responsible person demonstrates that compliance with subs. (2) to (7) is not reasonably
6 possible.

7 (b) The contract service costs charged by the contractor do not exceed \$3,000.

8 (c) The department pays reimbursement at a rate that is no more than 75% of the rate normally
9 allowed under s. ATCP 35.22.

10 **SECTION 29.** ATCP 35.16(9) is created to read:

11 ATCP 35.16(9) **DISAPPROVED BIDS OR ESTIMATES.** If the department finds that a bid or cost
12 estimate under sub. (2) is unreasonable, or that all or part of the contract service is unnecessary, the
13 department may do any of the following:

14 (a) Disapprove the bid or estimate.

15 (b) Require the responsible person to obtain up to 3 additional bids or estimates. Additional
16 bids or estimates, if any, shall comply with this section.

17 (c) Determine that the corrective action cost eligible for reimbursement is less than the amount
18 bid or estimated.

19 **SECTION 30.** ATCP 35.18(1) (a) is repealed and recreated to read:

20 ATCP 35.18(1) **WORKPLAN REQUIRED.** (a) Except as provided in par. (b) or (c), the
21 department may not reimburse a responsible person for eligible corrective action costs exceeding
22 \$7,500 unless the department approves a written workplan for the corrective action before the
23 responsible person takes the corrective action.

24 **SECTION 31.** ATCP 35.22(1) is amended to read:

1 ATCP 35.22(1) GENERAL REIMBURSEMENT FORMULA. Except as provided in subs. (2) or (4),
2 the department shall reimburse a responsible person for each discharge site an amount equal to 80% of
3 the eligible corrective action costs that are greater than \$3,000 and less than \$400,000. To this amount
4 the department shall add interest costs under s. ATCP 35.25. The total amount reimbursed under this
5 subsection, including interest costs under s. ATCP 35.25, may not exceed \$317,600.

6 **SECTION 32.** ATCP 35.22(2)(a)(intro.) is amended to read:

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

11 **SECTION 33.** ATCP 35.22(4)(a) is amended to read:

12 ATCP 35.22(4)(a) The department may not reimburse corrective action costs that exceed
13 \$100,000 for any discharge unless the department, after determining that the costs are reasonable and
14 necessary based on the nature, size and complexity of the corrective action, approves the additional
15 costs before the responsible person incurs them. The department may specify conditions and
16 limitations on its approval. An approval under s. ATCP 35.16(2)(c)3. constitutes an approval under
17 this paragraph.

18 **SECTION 34.** ATCP 35.22(4)(b) is repealed.

19 **SECTION 35.** ATCP 35.34 is created to read:

20 **ATCP 35.34 Agricultural chemical cleanup council.** (1) CREATION. The department shall
21 appoint an advisory council to advise the department on matters related to the administration of this
22 chapter. The advisory council shall be called the agricultural chemical cleanup council.

23 (2) MEMBERS. The agricultural chemical cleanup council shall consist of the following
24 members, appointed for 2-year terms:

- 1 (a) Two farmers.
- 2 (b) Two pesticide dealers or commercial applicators.
- 3 (c) One environmental consultant.
- 4 (d) One agricultural chemical manufacturer or wholesaler.

5 (3) MEETINGS. The agricultural chemical cleanup council shall meet, at the call of the
6 department, to advise the department on any of the following matters on which the department seeks
7 advice:

- 8 (a) Rules proposed under s. 94.73, Stats.
- 9 (b) Fees and surcharges to fund reimbursement of corrective action costs.
- 10 (c) Proposed department actions under s. ATCP 35.08(5)(b) and (c).
- 11 (d) Other matters related to the administration of this rule.

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

15 Dated this 12th day of Sept, 2000.

16 STATE OF WISCONSIN
17 DEPARTMENT OF AGRICULTURE,
18 TRADE AND CONSUMER PROTECTION

19
20
21
22 By Ben Brancel
23 Ben Brancel, Secretary
24