

**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 the
2 following order to amend ATCP 29.11(3)(intro.) and (c), 29.15(4)(b), 29.20(6)(b) and
3 29.25(5)(a)2., relating to pesticide license fee surcharges.

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

Statutory authority: ss. 93.07(1) and 94.73(15), Stats.
Statutes interpreted: ss. 94.681(3), 94.685(3)(a)2., 94.703(3)(a)2. and
94.704(3)(a)2., Stats.

This rule increases pesticide license fee surcharges in order to continue funding for the agricultural chemical cleanup program under s. 94.73, Stats. This rule does not affect fertilizer license fees.

Background

The department of agriculture, trade and consumer protection (DATCP) administers an agricultural chemical cleanup program under s. 94.73, Stats. This program is designed to clean up environmental contamination caused by spills of fertilizers and nonhousehold pesticides. Under the cleanup program, DATCP may reimburse a portion of the eligible cleanup costs. Over 360 contaminated sites are being cleaned up under this program.

The department pays reimbursement out of the agricultural chemical cleanup fund. The fund is supported by pesticide and fertilizer license fee surcharges. For several years, there was a surplus in the fund. But several factors have combined to eliminate the surplus:

- When the cleanup program was first established, it was funded by a combination of general tax dollars (GPR) and agricultural chemical license fee surcharges. The Legislature subsequently withdrew the GPR funding. The program is now funded entirely by license fee surcharges.
- The department reduced license fee surcharges by rule, creating a 4-year “fee holiday” beginning in 1999 and ending after 2002.

- In the last two biennial budgets, the Legislature transferred \$2,980,000 in *license fee surcharge funds* (including interest) from the cleanup program to the state general fund. These industry funds were lost from the program.
- A rapid increase in cleanup reimbursement claims has depleted the fund balance.

Under s. 94.73(15), Stats., the department must adjust license fee surcharges by rule, as necessary, to maintain a cleanup fund balance of not less than \$2 million. But the department may not exceed the maximum surcharge amounts specified by statute.

Under *current* rules, pesticide license fee surcharges are scheduled to resume for the 2003 license year (at the end of the 4-year “fee holiday” that began in 1999). Beginning license year 2003, the surcharges will return to the maximum levels allowed by statute. But that increase will come too late to maintain a positive balance in the cleanup fund, much less the \$2 million minimum balance required by statute.

In order to stabilize the rapidly declining fund balance, this rule partially reinstates license fee surcharges for the *2002 license year* (thus eliminating the fourth year of the 4-year “fee holiday”). This rule change will prevent the fund balance from falling to zero in the short run, but will not necessarily maintain the required minimum balance of \$2 million. The fund balance will continue to decline in the long run.

Pesticide Manufacturers and Labelers; License Fee Surcharges

Under this rule, pesticide manufacturers and labelers must pay license fee surcharges based on their annual gross sales of pesticide products in Wisconsin:

- For each product with annual gross sales less than \$25,000, the surcharge is \$5. This surcharge is added to the current basic license fee of \$275 per product.
- For each product with annual gross sales between \$25,000 and \$75,000, the surcharge is \$100. This surcharge is added to the current basic license fee of \$790.
- For each product with annual gross sales greater than \$75,000, the surcharge is 0.75% of gross sales for the 2002 calendar year license and 1.1% of gross sales for each subsequent year. This surcharge is added to the current basic license fee of \$2760 plus 0.2% of gross sales.

A manufacturer or labeler must pay the required surcharge for each license year, based on sales for the 12 months ending September 30 of the preceding license year. This rule first applies to license applications for the year 2002. To obtain a license for the year 2002, an applicant must pay surcharges based on sales for the 12 months ending September 30, 2001.

Dealers and Distributors of Restricted-Use Pesticides; License Fee Surcharges

Under this rule, a dealer or distributor of restricted-use pesticides must pay an annual license fee surcharge for each business location. This surcharge adds \$40 to the current annual license fee of \$60 per business location. A dealer or distributor must pay the surcharge to obtain a license for each license year, beginning with the 2002 license year.

Pesticide Application Businesses

Under this rule, a pesticide commercial application business must pay an annual license fee surcharge for each business location. The surcharge adds \$55 to a current annual license fee of \$70 per business location. A pesticide application business must pay the surcharge in order to obtain a license for each license year, beginning with the 2002 license year.

Individual Commercial Applicators

Under this rule, an individual commercial applicator of pesticides must pay an annual license fee surcharge of \$20, which is added to the current annual license fee of \$30. An individual commercial applicator must pay the surcharge in order to obtain a license for each license year, beginning with the 2002 license year.

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SECTION 1. ATCP 29.11(3) (intro.) is amended to read:

ATCP 29.11(3) NONHOUSEHOLD PESTICIDES; CLEANUP SURCHARGE. Beginning with the license year that begins on January 1, ~~2003~~ 2002, an applicant for a license under s. ATCP 29.10 shall pay an agricultural chemical cleanup surcharge for each nonhousehold pesticide product that the applicant sells or distributes. Except as provided under sub. (6) or (7), the amount of the surcharge is as follows:

SECTION 2. ATCP 29.11(3)(c) is amended to read:

ATCP 29.11(3)(c) If the applicant sold at least \$75,000 of the product during the preceding year for use in this state, an amount equal to 1.1% of the gross revenues from product sales during the preceding year for use in this state, except that for the license year beginning January 1, 2002, the surcharge amount is 0.75% of the gross revenues from product sales during the preceding year.

SECTION 3. ATCP 29.15(4)(b) is amended to read:

1 ATCP 29.15(4)(b) Beginning with the license year that begins on January 1, ~~2003~~
2 2002, an agricultural chemical cleanup surcharge of \$40.

3 **SECTION 4.** ATCP 29.20(6)(b) is amended to read:

4 ATCP 29.20(6)(b) Beginning with the license year that begins on January 1, ~~2003~~
5 2002, an agricultural chemical cleanup surcharge of \$55.

6 **SECTION 5.** ATCP 29.25(5)(a)2. is amended to read:

7 ATCP 29.25(5)(a)2. Beginning with the license year that begins on January 1, ~~2003~~
8 2002, an agricultural chemical cleanup surcharge of \$20.

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

Dated this _____ day of _____, 2001

PROTECTION

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER

By _____
James E. Harsdorf
Secretary