



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #152

### **Agricultural Chemical Cleanup Program (Agriculture, Trade and Consumer Protection)**

[LFB 2003-05 Budget Summary: Page 57, #12 (part)]

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#### **CURRENT LAW**

In 1993 Wisconsin Act 16, an agricultural chemical cleanup program was created in the Department of Agriculture, Trade and Consumer Protection (DATCP), and responsibility for the investigation and remediation of agricultural chemical spills was transferred from DNR to DATCP. The act also established a grant program to fund a portion of cleanup costs and increase current DATCP pesticide and fertilizer fees to partially fund the program. 1997 Wisconsin Act 27 split agrichemical revenues into base fees deposited to the agrichemical management (ACM) fund and surcharges deposited to the agricultural chemical cleanup program (ACCP) fund.

The ACCP funds the cleanup of fertilizers and nonhousehold pesticides, including spills occurring at commercial fertilizer blending facilities, commercial pesticide application businesses and farm sites.

#### **GOVERNOR**

Increase the fertilizer tonnage surcharge from 38¢ to 88¢ per ton for fertilizer sold or distributed in the state, unless DATCP establishes a lower surcharge by rule. This surcharge is deposited to the agricultural chemical cleanup program (ACCP) fund. The 50¢ per ton fee increase would be expected to generate additional revenues of \$650,000 annually (beginning in 2004-05).

For costs incurred beginning January 1, 2004, lower the ACCP reimbursement rate from 80% to 75% of eligible agrichemical spill cleanup costs. Require that the ACCP fund end the fiscal year with a balance of not more than \$5 million (rather than at least \$2 million, but not more than \$5 million currently).

## **DISCUSSION POINTS**

### **Fertilizer Surcharge**

1. DATCP may order a person responsible for an agrichemical discharge to take corrective action necessary to restore the environment to the extent practicable. If the responsible person takes corrective action to clean up the discharge, the person may apply to the Department for reimbursement of eligible costs associated with the cleanup. Eligible applicants must demonstrate to the Department that the discharge was promptly reported, the applicant is in compliance with DNR and DATCP rules relating to agrichemical discharges and the costs incurred are reasonable and are not reimbursable from insurance or other sources.

2. DATCP becomes aware of contaminated sites through: (a) corrective action orders from DNR and DATCP as a result of identifying problem sites during investigations or monitoring activities; and (b) facilities reporting spills and taking corrective actions. DATCP works with DNR in determining which agency takes the lead on a cleanup and in determining a workplan for cleanup when the site involves something other than an agrichemical.

3. In general, two different types of sites exist: (a) newer spills, termed "acute spills," are generally low cost, narrow in scope, accidental in nature and can be cleaned up quickly; and (b) spills that require long-term soil or groundwater remediation generally resulting from a slow discharge over time, accumulated discharges that have occurred over time or large catastrophic spills. Some of the cleanups, primarily catastrophic spills, are partially covered by insurance.

4. Responsible persons who have incurred chemical cleanup costs may apply to DATCP for reimbursement of eligible costs incurred within three years of the application date. A responsible person may be the person who owned or controlled the discharged agricultural chemical, the owner of the property where the discharge occurred, or the person who caused the discharge.

5. Eligible costs for reimbursement under the program include consultant fees, sampling and analyzing soil and groundwater, installing monitoring wells, and removing or treating contaminated soil or groundwater. Examples of ineligible costs include attorney's fees, loss of income, replacement of the spilled agricultural chemical and decreased property values.

6. Under the program, responsible persons who are licensed by DATCP to sell or apply pesticides or manufacture fertilizers, employ more than 25 persons or have gross annual sales of more than \$2,500,000 are responsible for the first \$7,500. Farmers, private applicators and others must pay the first \$3,000. After this deductible, the ACCP reimburses 80% (75% under the bill) of

all eligible costs, up to \$400,000 per discharge site.

7. Reimbursement payments from the ACCP fund are based upon the site of the discharge. If there are multiple responsible persons for a spill at a given site, the combined amount paid to all responsible persons for cleanup costs at the site may not exceed the reimbursement limit for the site (\$400,000).

8. In 2001-02, DATCP made 106 payments from the ACCP fund, totaling \$3.6 million. In 2002-03, DATCP estimates it will make 71 payments totaling almost \$3.9 million.

9. The fertilizer tonnage surcharge is due on August 14, of each fiscal year, for products sold the previous fiscal year. For example, fertilizer surcharge payments will be due on August 14, 2004, for fertilizer sold in Wisconsin between July, 2003, and June, 2004. Currently, the statutes list a fertilizer tonnage surcharge of 38¢, unless the Department sets a lower fee by administrative rule. The bill would increase this maximum surcharge in the statutes from 38¢ to 88¢, on the effective date of the bill. Administration officials anticipated \$650,000 in revenue in 2004-05 based on a July 1, 2003 effective date. However, DATCP has set 38¢ as the fertilizer tonnage surcharge fee by administrative rule, and as a result of the provision in the statutes, would need to change this rule to reflect the new statutory maximum in order to raise this fee. The rule promulgation process typically takes about one year. Under the bill, it is expected DATCP would be able to change the administrative rule to reflect the 88¢ fee by about July 1, 2004. If the rule change were effective for fertilizer sold beginning July 1, 2004, the fee increase would apply to all fertilizer sold during fiscal year 2004-05, and payment would be due to DATCP on August 14, 2005, (fiscal year 2005-06).

10. For fiscal year 2004-05, DATCP estimates 1,300,000 tons of fertilizer being sold. Provided DATCP were to change the administrative rule to increase the fertilizer tonnage surcharge to 88¢ effective July 1, 2004, an expected increase of \$650,000 in revenue would be deposited into the ACCP in fiscal year 2005-06. Thus the \$650,000 in 2004-05 revenue anticipated by the administration would not be realized. Fund revenues and expenditures under the bill are shown in Table 1.

**TABLE 1**

**Agricultural Chemical Cleanup Program Fund Condition**

	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>
Opening Balance	\$1,222,300	-\$37,300	-\$623,100
Revenue	2,626,400	2,624,200	2,624,200
Expenditures	-3,886,000	-3,200,000	-3,000,000
Closing Balance	-\$37,300	-\$613,100	-\$988,900

11. In order to avoid a deficit in the ACCP, DATCP plans to delay payments on awards as necessary to maintain a positive fund balance. Under the bill, it would be expected that over \$600,000 in claims payments would be deferred in 2003-04 and almost \$1 million would be awaiting payment by June 30, 2005. An alternative to delaying this level of payments would be to specify the fee increase take effect on July 1, 2003, with the increase in revenue being realized in 2004-05, instead of 2005-06. Under this alternative, less than \$340,000 in claims would be expected to be awaiting payment on June 30, 2005. Further, if claims volume continued at a \$3 million annual rate, claims payments would be expected to be nearly current by June 30, 2006. Further, the Department could reduce the fee level by rule if a fund balance again begins to accumulate.

12. Some would argue that raising the fees effective July 1, 2003, would be unfair to the fertilizer industry due to the lack of advance warning. They argue the industry prefers to have time to anticipate increased costs, so they can be passed on to purchasers or be offset by other measures. Others argue that industry interests would be given adequate notice in the bill with a July 1, 2003 effective date.

### **Reimbursement Rate**

13. By reducing the reimbursement rate for ACCP grants from 80% to 75%, approximately \$200,000 less in payments are expected to be made annually beginning in 2004-05. (Reimbursements rates were increased from 75% to 80% in 1997 Act 27). If the 75% rate is not adopted, DATCP would need to delay an additional \$200,000 in payments in 2004-05. Although DATCP estimates ACCP reimbursement demand of \$3,200,000 in 2003-04 and \$3,000,000 in 2004-05, base level expenditure authority of \$3,738,600 remains in the bill. As a technical matter, the continuing appropriation should be reduced by \$538,600 in 2003-04 and \$738,600 in 2004-05 to reflect current expenditure estimates.

### **ACCP Balance Requirement**

14. Due to large balances in the fund, the 1997-99 biennial budget act temporarily suspended all ACCP surcharges and gave DATCP authority to reduce future ACCP surcharges by administrative rule as long as a \$2 million to \$5 million balance is maintained in the segregated cleanup fund. DATCP chose to extend the original fee holiday by administrative rule. The suspension of ACCP surcharges virtually eliminated all surcharge revenues to the fund (about \$2.5 million annually) from 1998-99 through 2000-01, and reduced revenues by about \$1 million in 2001-02. Under current administrative rules, all surcharges are again being collected in 2002-03. These surcharges are established by the Department and can range between zero and the statutory maximum levels. The current surcharges, which DATCP has set at the statutory maximum, are shown in Table 2.

**TABLE 2**

**Current Agricultural Chemical Surcharges**

	<u>ACCP Surcharge</u>
Fertilizer License	\$20
Fertilizer Tonnage (per ton)	38¢
Restricted Use Pest Dealer License	\$40
Pesticide Application Business License	\$55
Pesticide Individual Application License	\$20
Nonhousehold Pesticide Registration	
\$0-25,000 sales	\$5
\$25,000-\$75,000 sales	\$170
>\$75,000 sales	1.1% sales

15. DATCP argues that the Governor's recommendation to eliminate the minimum \$2 million balance requirement would help alleviate some of the fiscal constraints faced by the fund. If this recommendation is not adopted, DATCP will be forced to either delay payments or propose further fee increases, in order to increase the ACCP balance.

16. While under the bill DATCP could maintain any fund balance up to \$5 million, some have argued the \$5 million figure may be unnecessarily high (representing almost two years of current revenues). A minimum balance of between \$2.5 and \$3.0 million would represent about one year of revenues.

**ALTERNATIVES**

**A. Fertilizer Surcharge**

1. Approve the Governor's recommendation to increase the ACCP fertilizer tonnage surcharge fee from 38¢ to 88¢ (revenues would not be expected until 2005-06).

<b>Alternative A1</b>	<b>SEG</b>
<b>2003-05 REVENUE</b> (Change to Bill)	- \$650,000

2. Increase the ACCP fertilizer tonnage surcharge fee from 38¢ to 88¢ effective July 1, 2003 (DATCP could reduce the fee by rule in the future). Revenues of \$650,000 in 2004-05 would be expected.

3. Delete provision.

**B. Reimbursement Rate**

1. Approve the Governor's recommendation to lower the ACCP reimbursement rate from 80% to 75% of costs in excess of the program's deductible. Program expenditures would be estimated at \$3,200,000 in 2003-04 and at \$3,000,000 in 2004-05.

<u>Alternative B1</u>	<u>SEG</u>
2003-05 FUNDING (Change to Bill)	- \$1,277,200

2. Maintain current law with respect to the reimbursement rate (80%) and reestimate program expenditures of \$3,200,000 annually.

<u>Alternative B2</u>	<u>SEG</u>
2003-05 FUNDING (Change to Bill)	- \$1,077,200

**C. ACCP Balance Requirement**

1. Approve the Governor's recommendation to eliminate the requirement that the ACCP maintain a balance of between \$2 million and \$5 million, and require a balance of not more than \$5 million.

- 2. Eliminate the \$2 million minimum balance and approve one of the following:
  - a. Require that the ACCP maintain a balance of not more than \$4 million.
  - b. Require that the ACCP maintain a balance of not more than \$3 million.
  - c. Require that the ACCP maintain a balance of not more than \$2.5 million.
  - d. Require that the ACCP maintain a balance of not more than \$1 million.
- 3. Maintain current law.

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