



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #143

Agricultural Chemical Cleanup Fund (Agriculture, Trade and Consumer Protection)

CURRENT LAW

The segregated agricultural chemical cleanup program (ACCP) fund receives deposits of fees and surcharges on licenses or product registrations of pesticides, fertilizers and other agricultural chemicals. The fund supports reimbursements of spills or discharges of fertilizers and non-household pesticides at commercial fertilizer blending facilities, commercial pesticide application businesses and farm sites. The fund also supports appropriations for: (a) the University of Wisconsin System's Discovery Farms program; and (b) 4.0 animal health inspectors.

GOVERNOR

ACCP SEG expenditures would be affected by standard budget adjustments and employee contributions for pension and health insurance, but the bill would not otherwise change current law.

DISCUSSION POINTS

1. The ACCP fund is supported by the following revenues: (a) a fertilizer tonnage surcharge of 44¢ per ton; (b) a registration surcharge of \$3.50 per product for non-household pesticides with Wisconsin sales of less than \$25,000, \$120 per product for non-household pesticides with Wisconsin sales from \$25,000 to \$74,999, or 0.75% of sales per product for non-household pesticides with Wisconsin sales greater than \$75,000; (c) a \$14 annual license surcharge for fertilizer manufacturers and distributors; (d) a \$28 annual surcharge for dealers of pesticides whose use is restricted by the Federal Insecticide, Fungicide, and Rodenticide Act; (e) a \$38 annual surcharge for commercial application businesses; and (f) a \$14 annual surcharge for individual commercial applicators.

2. Although the ACCP fund had a June 30, 2008, balance of approximately \$4.4 million, the balance has since decreased. The attachment shows the estimated condition of the fund through June 30, 2013. Under current estimates, it is projected the fund could have a shortfall beginning in 2011-12.

3. DATCP officials report that fund revenues have decreased from previous levels due to a combination of reduced economic activity as well as reduced fees following a general reduction of all ACCP fees by approximately 30% in 2007 Act 20. It was estimated fee reductions under Act 20 would reduce fund revenues to approximately \$2.2 million beginning in 2008-09. However, the 2009-10 fee revenues totaled \$1.8 million, or about \$420,000 below earlier expectations. DATCP attributes this further reduction in fee revenues to reduced economic activity.

4. DATCP further reports that although revenues have decreased, program reimbursements to cleanup sites have also decreased this biennium relative to levels of previous biennia. The cleanup program begins projects on the basis of either DATCP-identified remediation needs through site inspections or self-reported spills by chemical handlers. DATCP reports reduced cleanups in 2009-10 were attributable to the Department having fewer staff persons in the 2008 and 2009 fiscal years that were assigned to both assessing spill sites and processing cleanup claims. The Department also reports that staff members in the program at that time were recent hires, which slowed case management relative to experienced staff. Because applicants have three years to submit claims for payment on corrective actions taken, slower case processing in previous years resulted in fewer payments in 2009-10. Although two positions with the cleanup program remain vacant, DATCP expects past casework will result in cleanup reimbursements of up to \$2.2 million annually in 2011-13.

5. Although cleanup reimbursements have decreased in 2009-11, other appropriations have been created with support from the ACCP fund since 2007-08, as shown in the attachment. The ACCP fund has also been subject to the following transfers: (a) general fund transfers totaling approximately \$3.6 million since 2007-08, including \$266,000 in 2007-08, \$1,525,000 in 2008-09, \$1,143,500 in 2009-10, and an estimated \$700,000 in 2010-11; (b) \$350,000 in the 2007-09 biennium to the DATCP PR appropriation for food safety regulation and inspections; and (c) \$250,000 in the 2007-09 biennium to DATCP's PR appropriation for animal health inspections.

6. The ACCP requires a one-time deductible of \$3,000 for farms and small businesses and \$7,500 for larger commercial pesticide businesses. For costs incurred between 1998 and 2003, the ACCP fund reimbursed owners for up to 80% of agricultural chemical spill cleanup costs, with a maximum \$400,000 per cleanup site lifetime limit for all discharges. The reimbursement rate reverted in 2003 Act 33 to 75%, which was the rate prior to 1998, for costs between the deductible and the \$400,000 limit. Reimbursements may be provided within three years of a person incurring costs of corrective actions. Reimbursements may also be provided for subsequent spills at a site, but an applicant may only submit one claim per year, and rates of reimbursement may decrease to 50% for subsequent cleanups. Both the statutes and DATCP administrative code establish cleanup costs eligible for reimbursement. Table 1 shows the maximum ACCP reimbursement amounts for which the two types of facilities are eligible at various cleanup cost levels.

TABLE 1**ACCP Maximum Reimbursements**

<u>Costs Incurred</u>	<u>Percent Reimbursed</u>	<u>Maximum Total State Reimbursement</u>
Licensed Commercial Facilities		
Up to \$7,500	0%	\$0
\$7,500 to \$100,000	75	69,375
\$100,000 to \$400,000*	75	294,375
Over \$400,000	--	294,375
Non-Licensed Facilities		
Up to \$3,000	0%	\$0
\$3,000 to \$100,000	75	72,750
\$100,000 to \$400,000*	75	297,750
Over \$400,000	--	297,750

*Provided that DATCP orders groundwater remediation or approves a soil contamination reimbursement amount prior to incurring costs over \$100,000.

7. The current level of each fee deposited to the ACCP fund was set by 2007 Act 20 and mirrored in DATCP administrative rules. However, the statutes also establish a maximum level for each fee category. Table 2 shows the current fee levels for the ACCP fund and the statutory maximum.

TABLE 2**ACCP Maximum and Current Fees Levels**

	<u>Maximum Fee</u>	<u>Current Fee</u>
Fertilizer License	\$20	\$14
Fertilizer Tonnage	63¢/ton	44¢/ton
Non-Household Pesticides - Annual Sales		
Under \$25,000	\$5	\$3.50
\$25,000 - \$74,999	\$170	\$120
\$75,000 and Over	1.1%	0.75%
Pesticide Dealer - Restricted Use	\$40	\$28
Pesticide Application - Business	\$55	\$38
Pesticide Application - Individual	\$20	\$14

8. Two administrative remedies are available to DATCP to avoid the fund realizing a negative balance. First, if ACCP fund balances are insufficient to fulfill reimbursement obligations, DATCP reports it would plan to delay payments to claimants. This option would result in DATCP creating an award backlog and paying claims on a first-in, first-out basis as funds become available. However, it should be noted that ACCP administrative rules require the Department to pay interest at the prime rate, currently 3.25%, on all reimbursement claims beginning on the date an application

is received. Therefore, it could be argued that delaying payments is advisable only if the fund is experiencing short-term revenue decreases; if the fund is experiencing structural imbalances, interest accruals on delayed claims may serve to further worsen the fund condition. DATCP, UW and the Department of Administration (DOA) could also reduce expenditures for the non-ACCP expenditures currently supported by the fund. A second option is DATCP increasing fees by administrative rule, up to the maximum allowable levels shown in Table 2, although the Department is not considering a fee increase at this time.

9. The Committee could take no action [Alternative 7]. In such a case, it would be incumbent on DATCP, UW and DOA to hold expenditures to levels that would be within the means of the fund balance and annual revenues. DATCP reports it would likely first establish a waiting list for claim payments. The Departments could also administratively reduce expenditures for the UW Discovery Farms programs and the DATCP animal health inspectors by spending amounts less than appropriated. For example, if GPR or PR animal health positions became vacant in the biennium, the Department could fund the ACCP animal health positions with GPR or PR to limit ACCP SEG expenditures. Finally, DATCP could utilize its administrative rule authority to raise fees as necessary to fund the program.

10. On the other hand, the Committee could consider a number of legislative options, either as ongoing measures or one-time occurrences, to help ensure the ACCP fund continues to pay cleanup claims on a timely basis. These options may include transfers from PR appropriations, transfers from the segregated agricultural management (ACM) fund, or altering program eligibility and payment terms.

11. The Committee could consider requiring transfers in 2011-13 from the food regulation and animal health PR appropriations in amounts equal to what were transferred from the ACCP fund in the 2007-09 biennium. This would improve the ACCP fund balance by \$600,000, if transfers were made from both PR appropriations. Total transfers would include \$375,000 (\$250,000 from food regulation and \$125,000 from animal health) in 2011-12, and \$225,000 (\$100,000 from food regulation and \$125,000 from animal health) in 2012-13 [Alternative 1]. The food regulation PR appropriation is expected to have a June 30, 2013, balance of approximately \$1.7 million and the animal health PR appropriation is expected to have a balance of approximately \$530,000. Tables 3 and 4 below show the condition of these appropriations. The balances would decrease by \$350,000 and \$250,000, respectively, under the alternative. It should also be noted that the amounts identified as lapses or transfers to the general fund may be adjusted by DATCP to meet lapse requirements under the bill.

TABLE 3

DATCP Food Regulation Account Condition

	Actual <u>2009-10</u>	Estimated <u>2010-11</u>	Bill <u>2011-12</u>	Bill <u>2012-13</u>
Opening Balance	\$1,766,300	\$2,091,300	\$2,287,800	\$2,022,400
Revenue	5,734,100	5,700,000	5,700,000	5,700,000
Expenditures	-4,849,900	-5,003,500	-5,603,300	-5,644,900
Lapses/Transfers	<u>-559,200</u>	<u>-500,000</u>	<u>-362,100</u>	<u>-362,100</u>
Closing Balance	\$2,091,300	\$2,287,800	\$2,022,400	\$1,715,400

TABLE 4**DATCP Animal Health Account Condition**

	Actual <u>2009-10</u>	Estimated <u>2010-11</u>	Bill <u>2011-12</u>	Bill <u>2012-13</u>
Opening Balance	\$470,600	\$756,200	\$642,700	\$587,500
Revenue	555,000	550,000	550,000	550,000
Expenditures	-179,400	-563,500	-566,300	-566,300
Lapses/Transfers	<u>-90,000</u>	<u>-100,000</u>	<u>-38,900</u>	<u>-38,900</u>
Closing Balance	\$756,200	\$642,700	\$587,500	\$532,300

12. Consideration could be given to using the ACM fund to support the ACCP fund in 2011-13. The two funds were previously one segregated fund, but were separated under 1997 Act 27. The ACM fund currently supports administration of the ACCP, and the revenues for the ACCP fund are surcharges for licenses and fees whose base rate is deposited to the ACM fund. The ACM fund condition under the bill is shown in Table 5. It should be noted that although the fund is not projected to be at risk of depleting its balance within the near future, expenditures authorized under the bill would be estimated to exceed revenues in each year of the biennium. DATCP has also recently revised the 2010-11 general fund transfer, which is approximately double what was previously anticipated.

TABLE 5**ACM Fund Condition**

	Actual <u>2009-10</u>	Estimated <u>2010-11</u>	Bill <u>2011-12</u>	Bill <u>2012-13</u>
Opening Balance	\$4,242,600	\$3,822,000	\$1,795,700	\$1,422,400
Revenue	<u>7,065,400</u>	<u>6,900,000</u>	<u>6,900,000</u>	<u>6,900,000</u>
Total Available	\$11,308,000	\$10,722,000	\$8,695,700	\$8,322,400
Expenditures	-5,930,700	-5,903,200	-7,077,200	-7,182,500
Lapses/Transfers	<u>-1,555,300</u>	<u>-3,023,100</u>	<u>-196,100</u>	<u>-196,100</u>
Closing Balance	\$3,822,000	\$1,795,700	\$1,422,400	\$943,800

13. A transfer from the ACM balance to the ACCP fund of \$250,000 each year would reduce the June 30, 2013, ACM balance by \$500,000 [Alternative 2].

14. Since 2003 Act 33, the state has provided a 75% reimbursement on costs over the \$3,000 or \$7,500 deductibles, meaning claimants must make a 25% match. If the Committee wished to alter the ACCP reimbursement percentage, it could consider a delayed effective date for the change (October 1, 2011). This would provide industry participants additional time to plan for a change in the program's cost structure, as well as identify additional financing sources if needed to meet a higher match requirement.

15. The percentage claimants must provide could be increased from 25% to one of the following: (a) one-third, or 33% [Alternative 3a]; or (b) 50% [Alternative 3b]. Table 6 shows the

estimated amounts by which expenditures would have been reduced in the current year and previous three fiscal years, under different match requirements.

TABLE 6

Estimated Effects of Decreased ACCP Reimbursement Share

<u>Year</u>	<u>Expenditures (75%)</u>	<u>Change to 67%</u>	<u>Change to 50%</u>
Commercial Sites Reimbursements			
2007-08	\$2,162,600	-\$230,700	-\$720,900
2008-09	2,398,600	-255,900	-799,500
2009-10	1,347,700	-143,800	-449,200
2010-11	1,700,000	-181,300	-566,700
Non-Commercial Sites Reimbursements			
2007-08	\$24,500	-\$2,600	-\$8,200
2008-09	10,100	-1,100	-3,400
2009-10	209,500	-22,300	-69,800
2010-11	50,000	-5,300	-16,700

16. A two-thirds reimbursement rate for all projects could reduce reimbursements by \$235,000 on an annual basis, while a 50% match could reduce expenditures by about \$730,000 once fully implemented, assuming annual reimbursements of \$2.2 million at the current level. Due to the delay of up to three years between when costs are incurred and when claims are submitted, it is difficult to estimate the extent to which payments could be reduced in the 2011-13 biennium under such an option. This is because claimants vary widely in how quickly they make claims after incurring costs, and DATCP reports it cannot accurately be estimated how quickly claims will be submitted on a yearly basis. However, it is anticipated there may be little effect in 2011-12, and perhaps three-quarters of the reimbursements in 2012-13 would be for costs incurred after October 1, 2011. Under such an assumption, 2011-13 claim payments may decrease by \$176,000 under a 67% match and \$550,000 under a 50% match. However, it could also be argued that because agrichemical fee and surcharge collections are intended to benefit the industry, its workers and the environment, it may not be appropriate to increase the industry share of cleanup costs.

17. Some would argue that funding for the animal health and UW Discovery Farms appropriations currently supported by the fund should be reduced or eliminated to ensure cleanup claims are paid promptly. This would be consistent with the original intention of the fund and related surcharges to solely pay costs associated with agricultural chemical spill cleanups.

18. The bill would maintain \$248,400 annually with 1.2 positions for Discovery Farms. The Discovery Farms program gathers data from privately owned farms to evaluate both nutrient management strategies and nonpoint source runoff reduction practices for wider implementation across Wisconsin. The program includes research on the Pioneer Farm at UW-Platteville and research of other UW faculty and staff. UW officials report the 1.2 positions for the Discovery Farms are currently filled. The authorized ACCP expenditures for the Discovery Farms also include \$161,800 annually in non-personnel costs such as testing, supplies and \$30,000 annually for grants. If the Committee wished to reduce ACCP expenditures for Discovery Farms, it could eliminate

positions and funding [Alternative 4a], or it could consider eliminating non-personnel expenditure authority for the Discovery Farms [Alternative 4b].

19. The 4.0 animal health inspector positions represent nearly one-fifth of expected annual revenues in 2011-13. As agricultural chemical fees are not substantially related to animal health inspection, it could be argued the \$351,700 ACCP SEG should be deleted [Alternative 5a]. These positions were authorized in 2009 Act 28 for additional inspection coverage of animal movements into the state to preserve the health of the state's domestic animal herds. Funding in 2011-13 would include \$254,000 in salary and fringe benefits and \$97,700 for supplies and services. These positions were created from the ACCP fund in lieu of funding them through a fee on the slaughter of each chicken, pig, calf or head of cattle in the state. These SEG inspector positions also support other inspection and enforcement activities in DATCP's Division of Animal Health. This other staffing and funding totals \$1,980,300 with 19.0 positions in 2010-11, consisting of: (a) \$1,313,600 GPR with 11.75 positions; (b) \$509,800 PR with 5.25 positions; and (c) \$156,900 FED with 2.0 positions.

20. However, because the ACCP-supported animal health inspectors constitute approximately 15% of funding for animal health inspection and enforcement, the deletion of these positions could have a detrimental effect on DATCP's animal health programs, which are intended to ensure public health through a safe food supply and prevent the transmission of animal-based diseases, some of which could affect humans. Transferring these positions to the ACM fund in 2011-13 on a one-time basis may have merit [Alternative 5b]. This alternative would reduce the ACM balance shown above by \$703,400 in 2011-13. A transfer would reduce the obligations on ACCP revenues, and ongoing funding, if any, for the animal health staff would need to be addressed in the 2013-15 biennium. However, the transfer would also reduce the ACM balance, and the estimated June 30, 2013, balance would likely not support additional transfers. (Only one of the transfers under Alternative 2 or 5b could be accommodated.)

21. To eliminate at least a portion of the potential \$1.3 million ACCP fund shortfall, the Committee could consider adopting a combination of alternatives. For example, Alternatives 1a (\$350,000), 4b (\$383,600), and 5b (\$703,400) would provide the fund an additional \$1,437,000 over the biennium. Alternatives 1a and 1b (\$600,000), and 2 (\$500,000) would provide the ACCP fund with an additional \$1.1 million over the biennium.

22. Finally, as a technical matter, the ACCP cleanup reimbursement appropriation could be reestimated from the \$2,815,900 annual base level under the bill to the currently anticipated \$2.2 million. This would be a reduction of \$615,900 annually under Alternative 6.

ALTERNATIVES

1. Specify one or both of the following transfers:
 - a. From the DATCP PR appropriation for food regulation, \$250,000 in 2011-12 and \$100,000 in 2012-13; or

ALT 1a	Change to Bill	
	Revenue	
PR	-	\$350,000
SEG		<u>350,000</u>
Total		\$0

b. From the DATCP PR appropriation for animal health inspection and enforcement, \$125,000 each year.

ALT 1b	Change to Bill	
	Revenue	
PR	-	\$250,000
SEG		<u>250,000</u>
Total		\$0

2. Transfer \$250,000 each year from the balance of the agrichemical management fund to the agricultural chemical cleanup program fund in 2011-13 on a one-time basis.

3. Specify DATCP may provide one of the following percentages of corrective action costs incurred at agricultural chemical discharge sites on or after October 1, 2011, (current law is 75%):

- a. 67% (reimbursements would be expected to decline by \$176,000 in 2011-13); or
- b. 50% (reimbursements would be expected to decline by \$550,000 in 2011-13).

4. Delete one of the following associated with the UW Discovery Farms program:

- a. \$248,400 annually with 1.2 positions; or

ALT 4a	Change to Bill	
	Funding	Positions
SEG	- \$496,800	- 1.20

- b. \$161,800 annually for supplies and services, and \$30,000 annually for grants.

ALT 4b	Change to Bill
	Funding
SEG	- \$383,600

5. Specify one of the following associated with ACCP SEG animal health inspectors:
- a. Delete \$351,700 annually with 4.0 positions; or

ALT 5a	Change to Bill	
	Funding	Positions
SEG	- \$703,400	- 4.00

b. Transfer \$351,700 each year with 4.0 positions to the agrichemical management fund, but specify the funding is in 2011-13 only. (Ongoing funding, if any, would need to be addressed in the 2013-15 biennium.)

6. Delete \$615,900 SEG annually to reestimate ACCP cleanup reimbursement at \$2.2 million each year.

ALT 6	Change to Bill	
	Funding	
SEG	- \$1,231,800	

7. Take no action. (DATCP, UW and DOA would be required to take administrative actions to prevent a deficit in the ACCP fund.)

Prepared by: Paul Ferguson
Attachment

ATTACHMENT

Agricultural Chemical Cleanup Program (ACCP) Fund Condition

	<u>Actual</u> <u>2007-08</u>	<u>Actual</u> <u>2008-09</u>	<u>Actual</u> <u>2009-10</u>	<u>Estimated</u> <u>2010-11</u>	<u>Bill</u> <u>2011-12</u>	<u>Bill</u> <u>2012-13</u>	<u>2011-13</u> <u>Positions</u>
Opening Balance	\$4,251,300	\$4,407,200	\$2,670,700	\$1,477,900	\$475,500	-\$427,600	
Revenues							
Fertilizer Licenses	7,800	\$5,700	\$6,100	\$6,300	\$7,000	\$7,000	
Fertilizer Tonnages	947,600	654,200	521,600	604,500	610,000	613,000	
Pesticide Application Business License	69,500	70,200	74,400	71,000	73,000	74,000	
Pesticide Dealer - Restricted Use	10,900	9,700	10,600	9,600	10,000	10,000	
Pesticide Individual Applicator	93,600	94,600	94,900	84,700	85,000	86,000	
Pesticide Registration	<u>1,925,600</u>	<u>1,753,700</u>	<u>1,102,000</u>	<u>1,100,000</u>	<u>1,110,000</u>	<u>1,120,000</u>	
Fees Subtotal	\$3,055,000	\$2,588,100	\$1,809,600	\$1,876,100	\$1,895,000	\$1,910,000	
Interest and Other Income	\$179,000	\$59,100	\$11,300	\$1,500	\$2,000	\$2,500	
Revenue Total	\$3,234,000	\$2,647,200	\$1,820,900	\$1,877,600	\$1,897,000	\$1,912,500	
Expenditures							
Cleanup Reimbursements	\$2,187,100	\$2,408,700	\$1,557,200	\$1,750,000	\$2,200,000*	\$2,200,000*	0.00
UW Discovery Farms	250,000	225,000	246,700	100,000	248,400	248,400	1.20
County Fair Aids (2009-11 Only)	---	---	20,000	20,000	---	---	0.00
Animal Health Inspections	---	---	40,000	310,000	351,700	351,700	4.00
Miscellaneous	---	---	<u>6,300</u>	---	---	---	---
Expenditure Total	\$2,437,100	\$2,633,700	\$1,870,200	\$2,180,000	\$2,800,100	\$2,800,100	5.20
Transfers to General or Other Funds	\$641,000	\$1,750,000	\$1,143,500	\$700,000	\$0	\$0	
Closing Balance	\$4,407,200	\$2,670,700	\$1,477,900	\$475,500	-\$427,600	-\$1,315,200	

*Estimated cleanup reimbursement demand.