

11

Ann cont.

Wants to see lock box status - to send a message to keep industry & covered

GRN is not really needed

- Wants better ways to secure the fund in the future.

- Not opposed to the fund but to the retroactivity.

Betsy

- Companies license fewer things in CA because of high fees.  
yet don't want to have different prices in nearby states.

Supports fund, & the rule  
but wants retroactivity taken out.

8/2/01

## Committee action:

Dave L. (leg. C) suggests committee needs to:

- ① object to the rule or
  - ② propose modifications
- all within jurisdiction ...

## Discussion of option developed

- Repeal rule: Acc. to Nick, what the rule is in the retro stuff, everything else is in statute.

- Schedule Excl in 2 wks.

- Modify rule:

- ① Remove retro active part
- ② recommend 1310 - get \$ back
- ③ change statutory levels for fees in Max.
- ④ Transfer \$ from Ag. Chem Mgmt. fund to this
- ⑤ form advisory groups

Note 1310 Jt. Finance will look at all financing options including the retro fee stuff...

**Napralla, Erin**

**From:** James.Gray@aventis.com  
**Sent:** Wednesday, August 01, 2001 1:11 PM  
**To:** rep.ott@legis.state.wi.us; sen.hansen@legis.state.wi.us  
**Subject:** Agriculture Chemical Cleanup Fund Rule

**Importance:** High

Dear Chairman Ott and Chairman Hansen,

I am writing on behalf of Aventis CropScience, a leading manufacturer of crop protection products which are sold by distributors and dealers and used by agricultural producers in the great State of Wisconsin.

Aventis is a relatively new company, formed by the merger of AgrEvo and Rhone-Poulenc Ag Companies in 1999. Both AgrEvo and RP have been supporters of the ACCP and its' stated purpose of site cleanup. This purpose is both practical and noble, and is of great benefit to the people of the State of Wisconsin; not just those in agriculture. To that end we believe the ACCP fund needs to be funded well; and as the original Legislature intended, by fees and assessments on products sold and used within the state matched by State General Funds.

We are quite concerned with the intent of this rule-making to increase the assessment on product sales, and make such assessment retro-active to January 1, 2001. Such a move will prove to be a hardship on manufacturers who always have and will continue to support Wisconsin agriculture. With this retroactive process there is no opportunity to plan or budget for such added expense. It would be a wiser move to instate such an increase for budget year 2002, to allow for the appropriate planning by all of the affected parties.

Wisconsin agriculture has had a tough year. We as input suppliers are recipients of how well our customers fare. Please do not add to this burden by promulgating a retroactive assessment.

Regards,

Jim Gray  
Manager, State Affairs  
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**Napralla, Erin**

**From:** Ab BASU [basu@acpa.org]  
**Sent:** Wednesday, August 01, 2001 3:55 PM  
**To:** rep.ott@legis.state.wi.us; sen.hansen@legis.state.wi.us  
**Cc:** awinters@wisagri.com  
**Subject:** Wisconsin Agriculture Chemical Cleanup Fund Rule

Dear Senator Hansen and Representative Ott:

You already have heard from some of our companies and will hear later this week from our allied organizations in Madison on the issue of the final rule regarding the Ag Chemical Cleanup Fund. I would like to add to the messages of concern, but this time with the perspective of the national trade association - ACPA.

The American Crop Protection Association (ACPA) represents virtually all of the manufacturers, formulators and distributors of crop protection chemicals sold in North America today. Many of our members are crop protection registrants in Wisconsin, and were thoroughly supportive of the ag chemical remediation fund when it was first structured several years ago. Clearly, the ag chemical remediation fund has shown tremendous positives, both for small chemical dealers and farmers who otherwise may have been forced out of business due to one or a few isolated spill accidents, and for larger companies in terms of decreased potential liabilities from contaminations due to spills, etc. On top of all this is the very positive message for agriculture vis a vis the general public: We care about the environment and we are putting our money into helping prevent accidents and to help clean up if they happen.

We have been dismayed with the total \$3 Million raid in the last two biennial budgets from the cleanup fund to the state general fund. We also know that the Wisconsin Department of Agriculture, Trade and Consumer Protection has known for a while about the seriously low level of the fund as early as last year. We disagree that the way to solve this situation would be to raise fees on our companies and even make it retroactive to past sales of ag chemicals. The raising of funds like this followed by the potential to again lose the monies to the general fund is tantamount to an unfair and very significant tax on our member companies. In aggregate, heavily taxing our industry and, ultimately all farmers in Wisconsin, is an unjust way to raise general fund or any other purpose non-germane to agricultural interests. Agriculture has not fared well in recent years and it makes no sense to use agricultural resources to make up for deficiencies in other areas of the state's budget.

This proposed Rule and the Wisconsin Legislature's recent history of raiding the fund also jeopardize the integrity of the fund itself. What would happen if the numbers of claimants increased with no financial help in sight despite the fact that industry had previously more than met the projected financial needs of the fund?

On behalf of our member companies and agricultural interests nationwide, I urge you to vote against adoption of the Final Rule before you and to send it back to the Department to work with industry to better manage the fund.

Sincerely,

Ab Basu  
Senior Director, Government Affairs  
American Crop Protection Association  
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Washington, D.C. 20005  
(202) 872-3841 tel  
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## Agricultural Chemical Cleanup Program Surcharge

*The following information was faxed to WFCA members on Tuesday, September 25. Due to its importance we are reprinting it here for anyone who may have missed it.*

The ACCP surcharge will be **1.3%** on October 1, 2001.

The rule changes for the cleanup program will be published on November 1, 2001. Normally we cannot begin to implement the rule before it is published but the Department of Agriculture Trade and Consumer Protection has given us permission to begin collection on October 1. The rule names October 1 as the effective date of the increase and waiting until November to begin collection of the surcharge will cause problems for the industry.

Please note that the 1.3% surcharge is only applicable to **chemicals** that have gross sales of \$75,000 or more in Wisconsin. If you have any questions on which chemicals this affects, contact your sales representative.

## Fertilizer Tonnage Fee

The Agricultural Chemical Cleanup Program surcharge has been reinstated on fertilizer tonnage effective July 1, 2001. Effective immediately you should be collecting \$1 per ton instead of the 55 cents that you have been charging.

There has been some confusion about the correct amount of the increase but discussions with DATCP and a closer review of the rules has confirmed that \$1 is the correct amount.

This surcharge has been reinstated one year earlier than expected because the legislative raid on the fund has depleted it sooner than planned. So much attention has been focused on the pesticide portion of the surcharge that the fertilizer increase went unnoted and we apologize for that.

WFCA and other ag associations are meeting with DATCP on October 10 to discuss this and other problems that we have been having with the ACCP surcharge. If you would like to attend the meeting or submit written comments, please call the WFCA at 608-249-4070.

## **Important Message for Ammonium Nitrate and Urea Retailers from the FBI**

The DATCP has been asked by the FBI and Association of American Plant Food Control Officials to pass on the following message. Many WFCA members may have already received it as a fax but we are repeating it in case you haven't seen it.

*Following the terrorist incidents on September 11, 2001, the Federal Bureau of Investigation (FBI) is requesting the assistance of all retailers of bagged ammonium nitrate or urea, to be aware of anyone acting suspicious and wishing to purchase either ammonium nitrate or urea, or has already purchased quantities and were suspicious to you.*

*Should you be approached by such an individual or have already sold to such an individual, you are requested to contact your local FBI office and provide any details regarding the purchase or information regarding the purchaser. You can locate the telephone number for your local FBI Field Office inside the front cover of your telephone book.*

Editor's note: in Wisconsin the FBI numbers are -- Madison 608-833-4600 and Milwaukee 414-276-4684.

## **Be Secure for America**

The Fertilizer Institute has posters available for retailers to display. The posters call attention to the need to keep crop protection and fertilizer products secure and to know your customers.

During the past two weeks we have had many reminders of the need to keep our products out of the hands of persons who may use them for other than their intended purposes.

The WFCA plans to have copies of the posters available at the Fertilizer, Aglime, and Pest Management Conference. If you would like more information before then, you may log onto TFI's web site at [www.tfi.org](http://www.tfi.org)

## **Ag Safety for Children**

A request to the WFCA from western Wisconsin for pesticide safety information for children prompted a search for available resources. We found more than we expected and thought you might be interested in knowing what is out there.

Marshfield Clinic Farm Safety Center  
[www.marshfieldclinic.org/research/children](http://www.marshfieldclinic.org/research/children)

USDA Ag in the Classroom  
[www.agclassroom.org](http://www.agclassroom.org)

EPA  
[www.epa.gov/kids](http://www.epa.gov/kids)

Farm Safety 4 Just Kids  
[www.fsrjk.org](http://www.fsrjk.org) or phone 800-423-5437

This site had the most information on pesticide safety and produces a coloring book and a reproducible packet of lessons that can be used in the classroom. There is a charge for all materials.

## **Urban Legends Strike Again**

The recent terrorist attacks have prompted a new wave of e-mails that fall under the category of urban legends. The most common e-mails we have seen include Nostradamus predictions, a tribute to America by a Canadian journalist, and a rumor that the celebration scene broadcast on television by a national broadcasting company was actually filmed nine years earlier.

According to National Public Radio Nostradamus did not predict the terrorist attack on the World Trade Center, the tribute to America was written by a Canadian journalist - 30 years ago, and the footage of celebrations at the news of the attack was shot by Reuters and was legitimate.

If you receive an e-mail with a suggestion that you forward it on to your friends and would like to verify its authenticity, one web site that screens legends is [www.netsquirrel.com/combatkit](http://www.netsquirrel.com/combatkit)

## **590 Rewrite**

The NRCS 590 code has been rewritten to be in compliance with the non-point rules that the DNR and DATCP are developing. As expected it will be a P based standard. Wisconsin is one of the last two states to get this rewrite finished and they hope to wrap it up in October. The WFCA legislative committee is currently reviewing it in preparation for comments. If you would like a copy of the draft, call the WFCA office at 608-249-4070.

Fee Rule: **The following does not include the 0.2% surcharge used for salaries and lab analysis**

The rule proposal is to reinstate the "large" product surcharges for 2002 licenses at 0.75%

These fees would be collected by Dec 31, 2001 based on sales made from Oct 1, 2000 to Sept 30, 2001

The maximum surcharge allowed by statute, 1.1%, would be automatically re-instituted under the existing rule, as well as under the proposal, for 2003 licenses. These fees will be collected by Dec 31, 2002 based on sales made from Oct 1, 2001 to Sept 30, 2002.

For 2002, if the **rule is not passed**, we will be **unable** to pay all claims normally paid in June – some of these will be paid in August when fertilizer tonnage fees are received – we will also be **unable** to pay claims normally paid in September, until late December when pesticide fees are received for 2003 licenses.

Net effect if the **rule is not passed** will be a delay in \$1.5M in reimbursement, costing the fund an additional \$50,000 - 100,000 in interest to be paid. If fees are not increased, the same delays and cost increases will be perpetuated.

*Draft motion prepared by Mark P. (Leg. C.)*

MOVED, that the Assembly Committee on Agriculture, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Agriculture, Trade and Consumer Protection to consider modifications to Clearinghouse Rule 01-021, relating to the agricultural chemical cleanup ~~XXXX~~ program surcharge fees. The committee requests the Department of Agriculture, Trade and Consumer Protection consider modifications so that the surcharge fees paid by manufacturers <sup>Y</sup> and ~~X~~ labelers would not apply to pesticide product sales that occur prior to the effective date of the Clearinghouse Rule.

If the Department of Agriculture, Trade and Consumer Protection does not agree to this request to consider modifications to the rule, in a letter addressed to the chair of the Assembly Committee on Agriculture by the end of the workday on Friday, August 17, 2001, then the Assembly Committee on Agriculture objects to SECTIONS 1 and 2 of Clearinghouse Rule 01-021, pursuant to s. 227.19 (4) (b) 5, Stats., on the grounds that the proposed rule is arbitrary and ~~X~~ capricious and imposes and undue hardship.



posed of as the department authorizes or directs. If the final disposition is not agreed upon within 30 days after the service of notice of the extended order, the feed product shall be disposed of as the department by notice in writing may authorize or direct. Any order under this paragraph has the effect of a special order under s. 93.18 and is subject to the right to a hearing before the department if a request is received within 10 days after the service of the notice.

(c) Cooperate with any agency of the United States government in the inspection of medicated feeds and establishments where such feed is manufactured.

(d) Require persons manufacturing or distributing in this state any feed product to furnish the department with a label or facsimile thereof for the feed product sold or distributed by them.

**(14) PENALTY.** (a) A person who violates this section or an order issued or a rule promulgated under this section shall be fined not more than \$200 or imprisoned not more than 6 months or both.

(b) In addition to any other penalty, an adulterated feed product is subject to seizure by court action, condemnation and disposition as the court directs and the proceeds from any sale shall be paid into the state treasury. The court may release the feed product seized when the requirements of this section have been complied with, and upon payment of all costs and expenses incurred by the state in any proceedings connected with the seizure.

**History:** 1975 c. 39, 198, 199; 1977 c. 29 s. 1650m (4); 1979 c. 34; 1983 a. 189; 1985 a. 138; 1991 a. 39, 112; 1995 a. 4; 1997 a. 27, 253; 1999 a. 9.

#### 94.73 Agricultural chemical cleanup program.

**(1) DEFINITIONS.** In this section:

(a) "Agricultural chemical" means a substance that is a fertilizer or a nonhousehold pesticide and that is a hazardous substance, as defined in s. 299.01 (6).

(b) "Corrective action" means action that is taken in response to a discharge and that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands or waters of this state. "Corrective action" includes action taken or ordered by the department of natural resources under s. 292.11 (7) in response to a discharge, but does not include action ordered by the department of natural resources under s. 291.37 (2) or 291.95. "Corrective action" does not include action taken, or ordered to be completed, before January 1, 1989.

(c) "Corrective action costs" means reasonable costs incurred in taking corrective action.

(e) "Discharge" means the discharge, as defined in s. 292.01 (3), of an agricultural chemical.

(f) "Fertilizer" has the meaning given in s. 94.64 (1) (e), except that it does not include nitrates or other forms of nitrogen found in the environment that cannot be attributed to a discharge.

(g) "Nonhousehold pesticide" has the meaning given in s. 94.681 (1) (c).

(h) "Responsible person" means a person who owns or controls an agricultural chemical that is discharged, a person who causes a discharge or a person on whose property an agricultural chemical is discharged or any of their successors in interest.

**(2) CORRECTIVE ACTION ORDERED OR AUTHORIZED BY THE DEPARTMENT.** (a) The department may issue an order requiring a responsible person to take corrective action. Except as provided in a memorandum of understanding under sub. (12), if a discharge involves a hazardous substance that may also become a hazardous waste, the department and the department of natural resources shall consult to determine whether corrective action should be taken under this section or s. 291.37 (2), 291.95 (1) or 292.31 (3).

(b) An order under par. (a) shall include all of the following:

1. The name and address of the responsible person.
2. A description of the property on which the responsible person is required to take the corrective action.
3. A description of the corrective action required to be taken.

4. A date by which the responsible person is required to complete the corrective action.

(bg) The corrective action ordered under par. (a) may include any of the following:

1. Investigation to determine the extent and severity of environmental contamination caused by the discharge.

2. Containment, removal, treatment or monitoring of environmental contamination caused by the discharge if the containment, removal, treatment or monitoring complies with chs. 281 to 285 and 289 to 299, except s. 281.48.

3. Transportation, storage, land application or disposal of contaminated materials, in compliance with chs. 281 to 285 and 289 to 299, except s. 281.48.

(c) The department may issue an order under par. (a) on a summary basis without prior notice or a prior hearing if the department determines that a summary order is necessary to prevent imminent harm to public health or safety or to the environment. If the recipient of a summary order requests a hearing on that order, the department shall hold a hearing within 10 days after it receives the request unless the recipient agrees to a later hearing date. The department is not required to stay enforcement of a summary order issued under this paragraph pending the outcome of the hearing. If the responsible person prevails after a hearing, the department shall reimburse the responsible person from the appropriation under s. 20.115 (7) (e) or (wm) for the corrective action costs incurred as the result of the department's order.

(d) Soil or water removed from a discharge site as part of a corrective action may only be spread on land if that spreading on land is in compliance with chs. 281 to 285 and 289 to 299, except s. 281.48, and if the department has given its written authorization.

**(2m) CORRECTIVE ACTION ORDERED BY THE DEPARTMENT OF NATURAL RESOURCES.** The department of natural resources may take action under s. 292.11 (7) (a) or may issue an order under s. 292.11 (7) (c) in response to a discharge only if one or more of the following apply:

(a) The action or order is necessary in an emergency to prevent or mitigate an imminent hazard to public health, safety or welfare or to the environment.

(b) The department of agriculture, trade and consumer protection requests the department of natural resources to take the action or issue the order.

(c) The secretary of natural resources approves the action or order in advance after notice to the secretary of agriculture, trade and consumer protection.

(d) The department of natural resources takes action under s. 292.11 (7) (a) after the responsible person fails to comply with an order that was issued under s. 292.11 (7) (c) in compliance with this subsection.

(e) The department of natural resources takes the action or issues the order in compliance with a memorandum of understanding under sub. (12) between the department of agriculture, trade and consumer protection and the department of natural resources.

**(3) ELIGIBILITY FOR REIMBURSEMENT.** A responsible person who takes corrective action may apply to the department for reimbursement of corrective action costs. Except as provided in sub. (3m), an applicant is eligible for reimbursement if all of the following conditions are met:

(a) The applicant submits an application that complies with sub. (5) within 3 years after incurring the corrective action costs or after October 14, 1997, whichever is later.

(b) The department finds that the corrective action costs incurred by the applicant are reasonable and the corrective action taken is necessary.

(c) The applicant demonstrates, to the department's satisfaction, that the corrective action costs are not covered by insurance and have not been reimbursed from other sources.

(d) The applicant has complied with every corrective action order issued to the applicant by the department under sub. (2) or the department of natural resources under s. 292.11 (7) (c).

(f) The applicant, upon discovery of the discharge, promptly reported the discharge to the department or, if the applicant was required to report the discharge under s. 292.11 (2), to the department of natural resources.

(g) If the discharge occurred at a pesticide mixing and loading site owned or operated by the applicant, the applicant has fully complied with rules promulgated by the department under sub. (11) (d) requiring registration of pesticide mixing and loading sites.

(h) If the applicant was required to submit a work plan under sub. (4), the corrective action taken by the applicant was in accordance with a work plan approved by the department.

**(3m) COSTS NOT ELIGIBLE FOR REIMBURSEMENT.** An applicant under sub. (3) is not eligible for reimbursement of any of the following costs:

(a) Costs for corrective action taken in response to a discharge that is an intentional use of an agricultural chemical for agricultural purposes, unless the corrective action is ordered by the department under sub. (2) or by the department of natural resources under s. 292.11 (7) (c).

(b) Costs of reimbursing the department of natural resources for action taken under s. 292.11 (7) (a) or 292.31 (1), (3) or (7) because the applicant failed to respond adequately to a discharge.

(c) Costs for corrective action that a pesticide manufacturer or labeler takes in response to a discharge by that pesticide manufacturer or labeler.

(d) Costs for corrective action taken in response to a discharge that occurs while the agricultural chemical is being held or transported by a common carrier.

(e) Costs for corrective action taken in response to a discharge from a facility that is required to be licensed under s. 289.31 or that would be required to be licensed except that the department of natural resources has issued a specific exemption under s. 289.43 or rules promulgated under s. 289.05 (1) or (2).

(f) The cost of an activity that the department determines does not contribute to cleaning up a discharge.

(g) A cost related to the repair, replacement or upgrading of a facility, structure or equipment, except that, if a responsible person who applies for reimbursement demonstrates to the department's satisfaction that the removal of an existing structure is the least expensive corrective action alternative, the department may reimburse the responsible person the depreciated value of the structure as determined by the department by rule.

(h) Loss of income.

(i) Attorney fees.

(j) Costs of permanent relocation of residents.

(k) Decreased property values.

(L) The cost of a responsible person's time spent in planning and implementing the corrective action.

(m) Costs incurred for the review of corrective action work plans.

(n) Costs of aesthetic improvements.

(o) The cost of corrective action that is not in compliance with federal, state or local safety codes.

(p) A cost payable under an insurance or other contract.

(q) The cost of replacing discharged agricultural chemicals.

(r) The cost of providing alternative sources of drinking water, except that, subject to sub. (6) (b) to (f), the department may reimburse a responsible person who applies for reimbursement a total of not more than \$20,000 for the replacement of private wells if the department or the department of natural resources orders the well replacement in response to a discharge.

(s) Liability claims.

(t) Costs incurred by any federal, state or local governmental entity.

(u) Corrective action costs incurred by a responsible person in response to a discharge caused by that responsible person's intentional or grossly negligent violation of law, including ss. 94.645 or 94.67 to 94.71, a rule promulgated under those sections or an order issued under those sections.

(v) Other costs excluded by the department by rule.

**(4) WORK PLAN REQUIREMENTS.** (a) Except as provided in par. (d), no responsible person may receive reimbursement for corrective action costs exceeding \$7,500 unless the responsible person submits to the department in writing, and the department approves, a work plan for the corrective action before the corrective action is taken.

(b) Except as agreed under sub. (12), the department of agriculture, trade and consumer protection shall promptly furnish the department of natural resources with a copy of each work plan submitted to the department of agriculture, trade and consumer protection under par. (a) for comment by the department of natural resources. Within 14 days after it receives a copy of a work plan or within a different time period agreed to under sub. (12), the department of natural resources may provide the department of agriculture, trade and consumer protection with any comments of the department of natural resources on the work plan. If the department of natural resources timely submits written comments on a proposed work plan, the department of agriculture, trade and consumer protection shall either incorporate those comments into the approved work plan or give the department of natural resources a written explanation of why the comments were not incorporated.

(c) The department shall approve or reject a work plan submitted under par. (a) within 30 days after its submission. If the department fails to approve or reject the work plan within 30 days after its submission, the work plan approval requirement in par. (a) no longer applies.

(d) This subsection does not apply to any of the following:

1. A reasonable and necessary corrective action taken on an emergency basis.

2. A corrective action taken before August 12, 1993.

**(5) APPLICATION.** (a) A responsible person who seeks reimbursement for corrective action costs shall submit an application to the department. The application shall be made on a form provided, and shall contain information reasonably required, by the department.

(b) A responsible person may not submit more than one application under par. (a) within a 12-month period for the same discharge site.

(c) Within 10 days from the date of the receipt of an application under par. (a), the department shall notify the applicant of the receipt of the application. The department shall grant or deny the application within 90 days after receipt of the application unless the applicant agrees to an extension.

(d) Before or after the department receives an application under par. (a), the department may issue a preliminary opinion on whether an applicant is eligible for reimbursement of corrective action costs. The opinion is not binding on the department.

(e) No person may make a false statement or misrepresentation on an application submitted under this section. A person who makes a false statement or misrepresentation on an application related to a corrective action is ineligible for reimbursement related to that corrective action and is ineligible for any reimbursement related to any other corrective action taken or ordered within 5 years after the date of the false statement or misrepresentation. If the responsible person has received any reimbursement for which the responsible person is ineligible under this paragraph, the responsible person shall refund the full amount of that reimbursement to the department. The amounts refunded to the depart-

a meeting for the purpose of reviewing the proposed rule, the department may begin the procedures under s. 227.24. If, within 14 working days after the date of the department's notification, the cochairpersons of the committee notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed rule, the department may not begin the procedures under s. 227.24 until the committee approves the proposed rule.

**History:** 1993 a. 16, 437; 1995 a. 27, 227; 1997 a. 27, 86.

**94.76 Honeybee disease and pest control.** (1) The department shall maintain surveillance of the beekeeping industry for the detection and prevention of honeybee diseases and pests, and may promulgate or issue such rules or orders or adopt such control measures which in its judgment may be necessary to prevent, suppress or control the introduction, spread or dissemination of honeybee diseases and pests in this state.

(2) In the execution of its functions under this section, the department and its authorized agents shall have free access at all reasonable times to all apiaries, buildings, structures, rooms, vehicles or places where honeybees, beehives, beekeeping equipment or appliances, or honeybee products may be kept or stored, or in which they may be transported, and may open any package or container believed to contain honeybees, honeycombs, honeybee products, beekeeping equipment or appliances or any other materials capable of transmitting honeybee diseases or harboring pests, and obtain inspectional samples from such products or materials for further testing, examination or analysis.

(3) Honeybees shall be kept in movable frame hives. No person shall knowingly store, hold or expose honeybee products, beehives or any other beekeeping equipment or appliances in a

manner which may contribute to the spread or dissemination of honeybee diseases or pests.

(4) No person may bring or cause to be brought into this state any honeybee, beehive, drawn comb or used beekeeping equipment or appliances without reporting the shipment to the department. Reports shall be made on forms furnished by the department which shall include the name and address of the consignor, name and address of the consignee, date and manner of shipment, and any further information that the department requires. All reports shall be accompanied by a certificate from an official inspector certifying that the materials have been inspected as required by the department by rule and are apparently free from honeybee diseases or pests.

(5) The department shall charge fees sufficient to cover the reasonable cost of inspections made at the request of any beekeeper to enable the interstate movement of beekeeping equipment or appliances, or honeybees or their products, and may bring an action for the payment thereof including reasonable costs of collection.

**History:** 1975 c. 39; 1993 a. 216; 1995 a. 307.

**94.761 Beekeepers, etc.; agricultural pursuit.** The moving, raising and producing of bees, beeswax, honey and honey products shall be deemed an agricultural pursuit. Any keeper of 50 or more hives of bees who is engaged in the foregoing activities is a farmer and engaged in farming for all statutory purposes.

**94.77 Penalties.** Any person who violates any provision of this chapter for which a specific penalty is not prescribed shall be fined not to exceed \$200 or imprisoned in the county jail not to exceed 6 months or both.

**History:** 1999 a. 83.

ment under this paragraph shall be deposited in the agricultural chemical cleanup fund.

**(6) AMOUNT OF REIMBURSEMENT.** (a) If the department determines that a responsible person is eligible for reimbursement of corrective action costs under sub. (3), the department shall authorize reimbursement in the amount specified in this subsection and in the manner provided in sub. (7).

(am) If more than one responsible person is eligible for reimbursement under sub. (3) for corrective action taken in response to one or more discharges at the same site, the combined amount paid to those responsible persons may not exceed the maximum amount specified for a single responsible person under this section, except as provided by the department by rule. The department shall allocate payments among the responsible persons according to rules promulgated by the department.

(b) Except as provided in pars. (c) and (e), the department shall reimburse a responsible person an amount equal to 80% of the corrective action costs incurred for each discharge site that are greater than \$3,000 and less than \$400,000.

(c) Except as provided in par. (e), the department shall reimburse a responsible person an amount equal to 80% of the corrective action costs incurred for each discharge site that are greater than \$7,500 and less than \$400,000 if any of the following applies:

1. The responsible person is required to be licensed under ss. 94.67 to 94.71.
2. The responsible person employs more than 25 persons.
3. The responsible person has gross annual sales of more than \$2,500,000.

(d) For the purposes for pars. (b) and (c), a discharge that occurs in the course of transporting an agricultural chemical is considered to have occurred at the site from which the agricultural chemical was being transported if the site from which the agricultural chemical was being transported is under the ownership or control of the person transporting the agricultural chemical.

(e) The department may not reimburse corrective action costs that exceed \$100,000 for any one discharge for which groundwater remediation is not ordered unless the criteria in rules promulgated under par. (f) are satisfied.

(f) The department may promulgate rules under which it may provide reimbursement under pars. (b) and (c) for corrective action costs that exceed \$100,000 at a site at which groundwater remediation is not ordered if the applicant obtains the approval of the department before incurring the costs and if the contamination is extensive or complex cleanup strategies are required. The rules shall establish criteria for exceeding the \$100,000 limit, such as the size of the area contaminated or the type of agricultural chemical that is involved.

**(7) PAYMENT.** (a) The department may make payments to a responsible person who is eligible for reimbursement under sub. (3) if the department has authorized reimbursement to that person under sub. (6). The department shall make payment from the appropriation accounts under s. 20.115 (7) (e) and (wm), subject to the availability of funds in those appropriation accounts. If there are insufficient funds to pay the full amounts authorized under sub. (6) to all eligible responsible persons, the department shall distribute payments in the order in which applications were received, unless the department specifies, by rule, a different order of payment.

(b) The department may promulgate rules specifying the procedure by which, and the order in which, it will distribute payments under par. (a). The department may establish distribution priorities or formulas based on the severity of contamination, the time elapsed since corrective action costs were incurred or other factors that the department considers appropriate.

**(8) SUBROGATION.** The department is entitled to the right of subrogation for the reimbursement of corrective action costs to the extent that a responsible person who receives reimbursement of corrective action costs may recover the costs from a 3rd party. The

amounts collected by the department under this subsection shall be deposited in the agricultural chemical cleanup fund.

**(9) SAMPLING REQUIREMENTS.** The department, in cooperation with the department of natural resources, shall establish a program for the collection and analysis of soil and other environmental samples at sites where discharges may have occurred, including sites required to be registered according to rules promulgated by the department of agriculture, trade and consumer protection under sub. (11).

**(11) RULES.** The department shall promulgate rules to implement this section. The department may promulgate rules regarding all of the following:

(a) The form of the application required to be filed with the department by persons seeking reimbursement of corrective action costs.

(b) The procedures to be used by the department in determining eligibility for and the amount of reimbursement for corrective action costs.

(c) The procedures to be used in making annual payments under sub. (7).

(d) Registration requirements for persons who own or operate pesticide mixing and loading sites.

(e) Reasonable and customary charges for corrective action costs.

(f) Payment priorities under sub. (7) among eligible responsible persons.

(g) Requirements related to the contents of orders under sub. (2) or work plans under sub. (4) (a).

(h) Corrective action costs that are not eligible for reimbursement under this section.

**(12) MEMORANDUM OF UNDERSTANDING.** The department and the department of natural resources shall enter into a memorandum of understanding establishing their respective functions in the administration of this section. The memorandum of understanding shall establish procedures to ensure that corrective actions taken under this section are consistent with actions taken under s. 292.11 (7). The department and the department of natural resources may request that the secretary of administration provide assistance in accomplishing the memorandum of understanding.

**(12m) SAMPLE COLLECTION AND ANALYSIS.** For the purpose of investigating a discharge or exercising its authority under this section, the department may collect and analyze samples of plants, soil, surface water, groundwater and other material.

**(13) PENALTY.** Any person who violates this section or an order issued or rule promulgated under this section shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.

**(14) ENFORCEMENT.** The department, the department of justice at the request of the department or any district attorney at the request of the department may bring an action in the name of the state to recover a forfeiture under sub. (13) or to seek an injunction restraining the violation of an order issued by the department under this section.

**(15) SURCHARGE ADJUSTMENTS.** (a) The department may, by rule, reduce any of the surcharges in ss. 94.64 (3r) (b) and (4) (a) 5., 94.681 (3), 94.685 (3) (a) 2., 94.703 (3) (a) 2. and 94.704 (3) (a) 2. below the amounts specified in those provisions. The department shall adjust surcharge amounts as necessary to maintain a balance in the agricultural chemical cleanup fund at the end of each fiscal year of at least \$2,000,000 but not more than \$5,000,000, but may not increase a surcharge amount over the amount specified in s. 94.64 (3r) (b) or (4) (a) 5., 94.681 (3), 94.685 (3) (a) 2., 94.703 (3) (a) 2. or 94.704 (3) (a) 2.

(b) If the department proposes to promulgate a rule under par. (a) using the procedures under s. 227.24, the department shall notify the cochairpersons of the joint committee on finance before beginning those procedures. If the cochairpersons of the committee do not notify the secretary that the committee has scheduled