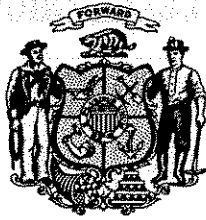


## WISCONSIN LEGISLATIVE COUNCIL STAFF

**RULES CLEARINGHOUSE**

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



Terry C. Anderson, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 01-021**

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

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

02-23-01 RECEIVED BY LEGISLATIVE COUNCIL.  
03-16-01 REPORT SENT TO AGENCY.

RS:WF:jal;ksm

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

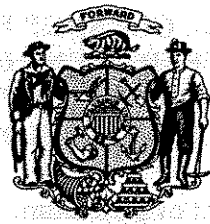
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

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## CLEARINGHOUSE RULE 01-021

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

Section 94.73 (15), Stats., requires the department to adjust pesticide license fee surcharges as necessary to maintain a balance of at least \$2 million but not more than \$5 million in the agricultural cleanup fund at the end of each fiscal year without increasing surcharges over statutory limits. The analysis to Clearinghouse Rule 01-021 states that the surcharge adjustments contained in the rule "will not necessarily maintain the required minimum balance of \$2 million." Similarly, the fiscal estimate states that the fee increases described in the rule will not be sufficient to sustain ongoing reimbursement demands. The department should explain why it is unable to meet the duty imposed upon it by the statutes. Is it simply a matter, as implied by the fiscal estimate, that the rule cannot be completed in time for license year 2002? If so, there are means by which the promulgation process can be expedited. If the surcharges are raised to statutory limits, will the amount of revenue generated nevertheless be insufficient? If so, the department should include this information in the rule-making order.

Hearing Draft  
February 21, 2001

**AGRICULTURAL CHEMICAL CLEANUP FUND PROPOSED ORDER OF THE  
STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND  
CONSUMER PROTECTION  
AMENDING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection proposes
- 2 the 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.

**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.

When the cleanup program was first established, it was funded by a combination of general tax dollars (GPR) and agricultural chemical license fee surcharges. But the Legislature later withdrew GPR funding. The Legislature also transferred \$500,000 in license fee surcharge funds from this program to the state general fund. The program is now funded entirely by license fee surcharges.

Under s. 94.73(15), Stats., DATCP must adjust these surcharges by rule, as necessary, to maintain a cleanup fund balance of not more than \$5 million and not less than \$2 million. In response to a fund surplus, DATCP adopted rules suspending license fee surcharges until December, 2002. But an increase in cleanup reimbursement claims has depleted the fund more rapidly than expected. DATCP currently projects that the fund balance will fall below the required \$2 million minimum amount later this calendar year. If no new funding is provided, the fund balance will likely fall to zero in the next biennium.

In order to provide continued funding for cleanup projects, this rule reinstates pesticide license fee surcharges beginning in December, 2001. This rule change will likely prevent the fund balance from falling to zero, but will not necessarily maintain the required minimum balance of \$2 million. This rule does not affect fertilizer license fees, which will automatically resume in August, 2002.

*stat  
with 7*

### **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. 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 ending December 31, 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 year ending December 31, 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 ending December 31, 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 ending December 31, beginning with the 2002 license year.

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

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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:

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

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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%~~ 0.75% of the gross revenues from product sales during the preceding year for use in this state.

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

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

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

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

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

ATCP 29.25(5)(a)2. Beginning with the license year that begins on January 1,

1 2003 ~~2002~~, an agricultural chemical cleanup surcharge of \$20.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2001

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Ben Brancel, Secretary

FEB 23 2001

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
NOTICE OF HEARING

RULES RELATING TO THE AGRICULTURAL CHEMICAL CLEANUP FUND

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rule changes to ATCP 29, Wis. Adm. Code. The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the proposed rule. Following the public hearing, the hearing record will remain open until April 11, 2001, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708 or by calling (608)224-4523. Copies will also be available at the public hearing.

An interpreter for the hearing impaired will be available on request for the hearing. Please make reservations for a hearing interpreter by March 21, 2001 either by writing Karen Ayers, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608/224-4523), or by contacting the message relay system (TTY) at 608/224-5058. Handicap access is available at the hearing.

One hearing is scheduled:

Wednesday, March 28, 2001

1:00 p.m. - 5:00 p.m.

Board Room

Department of Agriculture, Trade and

Consumer Protection Office Building

2811 Agriculture Drive

Madison, WI

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**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.



## 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.

When the cleanup program was first established, it was funded by a combination of general tax dollars (GPR) and agricultural chemical license fee surcharges. But the Legislature later withdrew GPR funding. The Legislature also transferred \$500,000 in license fee surcharge funds from this program to the state general fund. The program is now funded entirely by license fee surcharges.

Under s. 94.73(15), Stats., DATCP must adjust these surcharges by rule, as necessary, to maintain a cleanup fund balance of not more than \$5 million and not less than \$2 million. In response to a fund surplus, DATCP adopted rules suspending license fee surcharges until December, 2002. But an increase in cleanup reimbursement claims has depleted the fund more rapidly than expected. DATCP currently projects that the fund balance will fall below the required \$2 million minimum amount later this calendar year. If no new funding is provided, the fund balance will likely fall to zero in the next biennium.

In order to provide continued funding for cleanup projects, this rule reinstates pesticide license fee surcharges beginning in December, 2001. This rule change will likely prevent the fund balance from falling to zero, but will not necessarily maintain the required minimum balance of \$2 million. This rule does not affect fertilizer license fees, which will automatically resume in August, 2002.

## 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. 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 ending December 31, 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 year ending December 31, 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 ending December 31, 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 ending December 31, beginning with the 2002 license year.

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### **FISCAL ESTIMATE**

Based on currently pending ACCP claims and claim volumes normally submitted and reviewed in the last half of a fiscal year, the department estimates the balance in the ACCP fund will be approximately \$2.7 million at the end of FY 2000/2001. This estimate anticipates that by June 2001, the department will be able to complete its review of the large backlog of existing cases generated by an October, 2000 deadline.

Based on written cost estimates or written cost approvals, and department knowledge of which projects have been completed, the department estimates ongoing annual expenditures by the industry of between \$4.2 million and \$4.7 million per year. Department records indicate that at least 90% of these costs will be submitted for reimbursements, and that 75% of submitted costs are paid out. The department anticipates an ongoing annual reimbursement demand of \$3.1 million to \$3.4 million.

This rule assumes the final version of this rule would be published either November 1, 2001 or December 1, 2001. Based on numbers of licenses issued and dollar values of nonhousehold pesticides sold, the department anticipates that this rule could generate \$1,560,000 in annual surcharge fee revenues, beginning in FY 2001/2002. Publication after December 1, 2001 would not provide revenues during FY 2001/2002, since all affected licenses are issued during December.

Note: Separate from this rule, fertilizer license and tonnage revenue for the ACCP fund will first be collected during FY 2002/2003, providing an additional \$500,000 annually to the ACCP Fund.

## INITIAL REGULATORY FLEXIBILITY ANALYSIS

The proposed changes to ATCP 29, Wis. Adm. Code will have an effect on small businesses that sell or use pesticides in Wisconsin.

### **Businesses Affected:**

Currently all manufacturers and labelers of pesticides used in agricultural crop production must register those pesticides and pay certain fees for those pesticides, with the fees based on the value of Wisconsin sales. Agricultural coops and farm centers that sell or apply pesticides must be licensed to do these activities. A portion of these fees, known as the Agricultural Chemical Cleanup Program (ACCP) surcharge, are used to clean up sites that have been contaminated by spills of pesticides and fertilizers. Most of the surcharge fees are passed to farmers through distributor imposed surcharges on the products.

The product and license surcharge fees have not been collected since December of 1997 because the balance of funds that were available in the ACCP fund exceeded the anticipated costs of cleaning up contaminated sites. This is no longer the case, and as a result, the proposed changes to ATCP 29, Wis. Adm. Code, reinstate the product and license surcharge fees.

Most manufacturers of pesticides and many manufacturers of fertilizers, as well as many agricultural coops and farm centers are not small businesses. Some smaller coops and farm centers are small businesses. Since most of these fees are passed on to farmers, the greatest impact should be at the farm level, most of which are small businesses.

### **Anticipated Impacts**

The department estimates this rule will increase farm costs by \$1,560,000 per year. Based on 30,000 farms, the department anticipates average per farm cost of about \$52. Separate from this rule, increases in fertilizer tonnage will commence in July 2001, simultaneously adding \$500,000 to the ACCP fund and \$90,000 to the ACM fund.

There are no anticipated changes in recordkeeping, reporting, or other practices as a result of this rule.

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Dated this 26<sup>th</sup> day of February, 2001.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION

By Ben Brancel  
Ben Brancel  
Secretary

JUN 12 2001



State of Wisconsin  
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection  
James E. Harsdorf, Secretary

## PUBLIC NOTICE

### FINAL DRAFT RULE TO LEGISLATURE

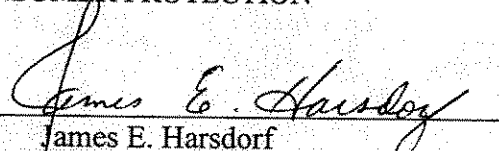
The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: 01-021  
SUBJECT: Pesticide License Fee Surcharges  
ADM. CODE REFERENCE: ATCP 29  
DATCP DOCKET #: 00-R-16

Dated this 12<sup>th</sup> day of June, 2001.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND  
CONSUMER PROTECTION

By

  
James E. Harsdorf  
Secretary



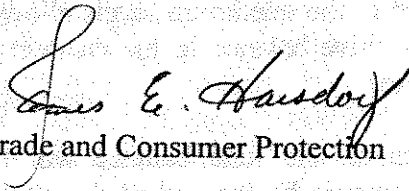
State of Wisconsin  
Scott McCallum, Governor

**Department of Agriculture, Trade and Consumer Protection**  
James E. Harsdorf, Secretary

DATE: June 8, 2001

TO: The Honorable Fred Risser  
President, Wisconsin State Senate  
Room 220 S, State Capitol  
Madison, WI 53702

The Honorable Scott R. Jensen  
Speaker, Wisconsin State Assembly  
Room 211 W, State Capitol  
Madison, WI 53702

FROM: James E. Harsdorf, Secretary   
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Pesticide License Fee Surcharges; Final Draft Rules**  
**(Clearinghouse Rule # 01-021)**

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

### Background

The department 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, the department 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 license fee surcharges related to pesticides and fertilizers. For several years, there was a surplus in the agricultural chemical cleanup 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* 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 with 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.

Without additional revenues, the fund balance will likely fall below the required \$2 million minimum this year, and to zero by the end of the 2001-2003 biennium. In order to stabilize the rapidly declining fund balance, this rule partially reinstates pesticide license fee surcharges for the *2002 license year* (thus eliminating the fourth year of the 4-year "fee holiday").

This 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 department estimates that reimbursement claims will exceed new surcharge revenues by approximately \$400,000 to \$700,000 per year. The fund balance will therefore continue to decline in the long run.

## Rule Contents

### Pesticide Manufacturers and Labelers

This rule reinstates license fee surcharges for pesticide manufacturers and labelers, beginning with license year 2002 (rather than 2003 as in current rules). Pesticide manufacturers and labelers must pay license fee surcharges based on their annual gross sales of pesticide products in Wisconsin. This rule establishes the following surcharges for license year 2002:

- \$5 for each product with annual gross sales less than \$25,000. Under *current* rules (and this rule), the same surcharge will apply in subsequent license years. The surcharge is added to the current basic license fee of \$270 per product.
- \$170 for each product with annual gross sales between \$25,000 and \$75,000. Under *current* rules (and this rule), the same surcharge will apply in subsequent license years. The surcharge is added to the current basic license fee of \$790.

The Honorable Fred Risser  
The Honorable Scott R. Jensen  
June 8, 2001  
Page 3

- 0.75% of gross sales for each product with annual gross sales greater than \$75,000. Under *current* rules (and this rule), the surcharge for subsequent license years will be 1.1% of gross sales (the maximum allowed by statute). The 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 when applying for that year's license (normally in December of the preceding year). The surcharge is based on the applicant's pesticide sales during the 12 months ending September 30 of the preceding license year. To obtain a license for the year 2002, for example, a license applicant must pay surcharges in December, 2001, based on sales for the 12 months ending September 30, 2001.

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

This rule reinstates license fee surcharges for dealers and distributors of restricted-use pesticides, beginning with license year 2002 (rather than 2003 as in current rules). A surcharge of \$40 per business location is added to the current annual license fee of \$60 per business location. Under *current* rules (and this rule), the same surcharge will apply in subsequent license years.

A dealer or distributor must pay the surcharge for each license year when applying for that year's license (normally in December of the preceding year). To obtain a license for the year 2002, for example, a dealer or distributor must pay a surcharge in December, 2001.

### **Pesticide Application Businesses**

This rule reinstates license fee surcharges for pesticide commercial application businesses, beginning with the license year 2002 (rather than 2003 as in current rules). A surcharge of \$55 per business location is added to the current annual license fee of \$70 per business location. Under *current* rules (and this rule), the same surcharge will apply in subsequent license years.

A pesticide application business must pay the surcharge for each license year when applying for that year's license (normally in December of the preceding year). To obtain a license for the year 2002, for example, a commercial application business must pay a surcharge in December, 2001.

### **Individual Commercial Applicators**

This rule reinstates license fee surcharges for individual commercial applicators of pesticides, beginning with the license year 2002 (rather than 2003 as in current rules). A surcharge of \$20 is added to the current annual license fee of \$30. Under *current* rules (and this rule), the same surcharge will apply in subsequent license years.

An individual commercial applicator must pay the surcharge for each license year when applying for that year's license (normally in December of the preceding year). To obtain a license for the year 2002, for example, an individual commercial applicator must pay a surcharge in December, 2001.

### Rule Modifications after Public Hearing

The department held one public hearing on this rule. The department held the hearing in Madison on March 28, 2001. Four people attended and testified. One other person filed written comments for the hearing record. Hearing comments may be summarized as follows:

- Two persons supported the hearing draft.
- Two persons supported a surcharge increase, but urged the department to postpone the increase for a year. This would give pesticide manufacturers more time to build the anticipated fee increase into their pesticide prices.
- One person opposed a surcharge increase.

The Legislative Council Rules Clearinghouse, in its review of the hearing draft rule, noted that the law requires the department to maintain a minimum fund balance of at least \$2 million at the end of each fiscal year. The Clearinghouse asked whether the rule would comply with this requirement and, if not, why not.

The department modified the final draft rule so that it will come *closer* to maintaining the minimum \$2 million fund balance required by statute. Under *current* rules, pesticide manufacturers selling more than \$75,000 of pesticide product per year are scheduled to pay a surcharge, beginning in license year 2003, equal to 1.1% of gross sales. The *hearing draft* rule would have imposed a new surcharge for 2002 (0.75% of gross sales), but would have *reduced* the scheduled surcharge in subsequent years (from 1.1% to 0.75% of gross sales). This *final draft* rule imposes a 0.75% surcharge in 2002, but *leaves intact* the currently scheduled surcharge of 1.1% in subsequent years.

The 1.1% surcharge, beginning in license year 2003, is the maximum allowed by statute. The department proposes a smaller surcharge for license year 2002 (0.75%), so that it will be easier for the pesticide industry to absorb the new charge. This final draft proposal will generate more revenue than the hearing draft proposal, beginning with license year 2003. But the final draft rule will *not* be adequate to maintain the required minimum fund balance of \$2 million.

The department projects that, even with these surcharge adjustments, annual reimbursement claims will exceed new surcharge revenues by approximately \$400,000 to \$700,000 per year. The fund balance will continue to decline, and the department will eventually have to consider other funding options.

### Response to Rules Clearinghouse

The Rules Clearinghouse had no editorial comments, and only one question about this rule. The Department modified the fiscal draft rule in response to the Rules Clearinghouse question (see above).



## **Fiscal Estimate**

This rule will generate approximately \$1.56 million in additional revenues during FY 2001-02, provided that the department adopts and publishes the rule prior to December 1, 2001. If the department publishes the rule after December 1, 2001, this rule will generate no additional revenues in FY 2001-02 (because all affected licenses are issued in December). This rule will not alter the surcharges collected in subsequent years. Current rules will remain in effect in those years, and will generate approximately \$2.65 million per year. A copy of the fiscal estimate is attached.

The department projects a cleanup fund balance of approximately \$2.7 million at the end of FY 2000-2001. The department also projects that cleanup reimbursement claims will continue at the rate of \$3.1 million to \$3.4 million per year. Even with the new surcharge revenues provided by this rule, the department projects that annual reimbursement claims will exceed new surcharge revenues by approximately \$400,000 to \$700,000 per year. The fund balance will therefore continue to decline over the long term.

## **Small Business Analysis**

The department assumes that pesticide manufacturers will pass surcharge costs on to pesticide purchasers. If that assumption is accurate, this rule will increase total farm costs by an estimated \$1.56 million during FY 2001-2002. Based on 30,000 farms, the department anticipates average per-farm cost of about \$52. A small business analysis ("final regulatory flexibility analysis") is attached.

These cleanup surcharges are added to the basic pesticide license fees that support the department's pesticide regulatory program. Under *current* pesticide rules, basic pesticide license fees are scheduled to increase in FY 2002-2003. The basic license fee increases will raise per-farm costs by an estimated \$71 per year, assuming that the pesticide industry passes on its license costs to farmers. The combination of surcharges and basic license fee increases will raise per farm costs by an estimated \$123 per year (\$52 plus \$71), beginning in FY 2002-2003.

## **Environmental Assessment**

This rule will benefit the environment by making more money available for environmental cleanups related to pesticide spills. But this rule does not (and cannot) cure the long-term projected shortfall in cleanup funding. Other funding sources will eventually be needed in order for cleanups to continue at their current rate. Failure to provide additional funding in future years will have an adverse effect on the environment by delaying cleanups of agricultural chemicals.

**AGRICULTURAL CHEMICAL CLEANUP FUND PROPOSED ORDER OF THE  
STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND  
CONSUMER PROTECTION  
AMENDING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection proposes
- 2 the 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.

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**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:

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ATCP 29.11(3) NONHOUSEHOLD PESTICIDES; CLEANUP SURCHARGE. Beginning

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with the license year that begins on January 1, ~~2003~~ 2002, an applicant for a license under

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s. ATCP 29.10 shall pay an agricultural chemical cleanup surcharge for each

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nonhousehold pesticide product that the applicant sells or distributes. Except as provided

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under sub. (6) or (7), the amount of the surcharge is as follows:

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

9

ATCP 29.11(3)(c) If the applicant sold at least \$75,000 of the product during the

1 preceding year for use in this state, an amount equal to 1.1% of the gross revenues from  
2 product sales during the preceding year for use in this state, except that for the license  
3 year beginning January 1, 2002, the surcharge amount is 0.75% of the gross revenues  
4 from product sales during the preceding year.

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

6 ATCP 29.15(4)(b) Beginning with the license year that begins on January 1, 2003  
7 2002, an agricultural chemical cleanup surcharge of \$40.

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

9 ATCP 29.20(6)(b) Beginning with the license year that begins on January 1, 2003  
10 2002, an agricultural chemical cleanup surcharge of \$55.

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

12 ATCP 29.25(5)(a)2. Beginning with the license year that begins on January 1,  
13 2003 2002, an agricultural chemical cleanup surcharge of \$20.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2001

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
James E. Harsdorf, Secretary

**Fiscal Estimate — 2001 Session**

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ATCP 29

**Subject**

Agricultural Chemical Cleanup Surcharges

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

- Yes       No

Decrease Costs

Local:  No Local Government Costs

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Increase Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns     Villages     Cities  
 Counties     Others  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Chapter 20 Appropriations

20.115(7)(wm)

**Assumptions Used in Arriving at Fiscal Estimate**

Based on currently pending ACCP claims and claim volumes normally submitted and reviewed in the last half of a fiscal year, the department estimates the balance in the ACCP fund will be approximately \$2.7 million at the end of FY 2000/2001. This estimate anticipates that by June 2001, the department will be able to complete its review of the majority of the backlog of cases generated by an October, 2000 deadline.

Based on written cost estimates or written cost approvals, and department knowledge of which projects have been completed, the department estimates ongoing annual expenditures by the industry of between \$4.2 million and \$4.7 million per year. Department records indicate that at least 90% of these costs will be submitted for reimbursements, and that 75% of submitted costs are paid out. The department anticipates an ongoing annual reimbursement demand of \$3.1 million to \$3.4 million.

This rule assumes the final version of this rule would be published either November 1, 2001 or December 1, 2001. Based on numbers of licenses issued and dollar values of nonhousehold pesticides sold, the department anticipates that this rule could generate \$1,560,000 in surcharge fee revenues during FY 2001/2002. Publication after December 1, 2001 would not provide revenues during FY 2001/2002, since all affected licenses are issued during December.

Note: Separate from this rule, fertilizer and pesticide license, registration and tonnage base fees and ACCP surcharges are already scheduled to increase to the maximum levels allowed by statute during FY 2002/2003. The ACCP revenues for FY 2002/2003 and beyond are estimated at \$2,650,000.

**Long-Range Fiscal Implications**

Unless supplemented by GPR under s. 20.115(7)(e), or through some other statutory revision, the fee increases described by this rule will not be sufficient to sustain ongoing ACCP reimbursement demands.

Prepared By: Paul Morrison	Telephone No. 608/224-4512	Agency DATCP-ARM
Authorized Signature <i>Barbara Knapp</i>	Telephone No. 608/224-4746	Date (mm/dd/ccyy) 05/07/01

**FISCAL ESTIMATE WORKSHEET**

**2001 Session**

Detailed Estimate of Annual Fiscal Effect	<input checked="" type="checkbox"/> ORIGINAL	<input type="checkbox"/> UPDATED	LRB No. and Bill/Adm. Rule No.	Amendment No.
DOA-2047 (R10/98)	<input type="checkbox"/> CORRECTED	<input type="checkbox"/> SUPPLEMENTAL	ATCP 29	

**Subject**  
Agricultural Chemical Cleanup Surcharge Fees

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
\$1,560,000 increased SEG revenue to ACCP Fund in FY 2001/2002

II. Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations - Salaries and Fringes			
(FTE Position Changes)	FTE		
State Operations - Other Costs			
Local Assistance			
Aids to Individuals and Organizations			
<b>TOTAL State Costs by Category</b>			
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR			
FED			
PRO/PRS			
SEG/SEG-S			
III. State Revenues		Increased Rev.	Decreased Rev.
GPR Taxes	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S		1-time, above	
<b>TOTAL State Revenues</b>			

**NET ANNUALIZED FISCAL IMPACT**

STATE

LOCAL

NET CHANGE IN COSTS \_\_\_\_\_

NET CHANGE IN REVENUES \_\_\_\_\_

Dept. of Agriculture, Trade & Consumer Protection Paul Morrison 608/224-4512	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 5-10-01
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**FINAL REGULATORY FLEXIBILITY ANALYSIS**  
for revisions to Ch. ATCP 29, Wis. Adm. Code

The proposed changes to ATCP 29, Wis. Adm. Code will have an effect on small businesses that sell or use pesticides in Wisconsin.

Businesses Affected:

Currently all manufacturers and labelers of pesticides used in agricultural crop production must register those pesticides and pay certain fees for those pesticides, with the fees based on the value of Wisconsin sales. Agricultural coops and farm centers that sell or apply pesticides must be licensed to do these activities. A portion of these fees, known as the Agricultural Chemical Cleanup Program (ACCP) surcharge, are used to clean up sites that have been contaminated by spills of pesticides and fertilizers. Most of the surcharge fees are passed to farmers through distributor imposed surcharges on the products.

The product and license surcharge fees have not been collect since December of 1997 because the balance of funds that were available in the ACCP fund exceeded the anticipated costs of cleaning up contaminated sites. This is no longer the case, and as a result, the proposed changes to ATCP 29, Wis. Adm. Code, reinstate the product and license surcharge fees.

Most manufacturers of pesticides and many manufacturers of fertilizers, as well as many agricultural coops and farm centers are not small businesses. Some smaller coops and farm centers are small businesses. Since most of these fees are passed on to farmers, the greatest impact should be at the farm level, most of which are small businesses.

Anticipated Impacts

The department estimates this rule will increase farm costs by \$1,560,000 during state FY 2001/2002. Based on 30,000 farms, the department anticipates average per farm cost of about \$52. Separate from this rule, previously scheduled increases in license fees and surcharges, fertilizer tonnage fees and surcharges and pesticide registration fees and surcharges will commence in state FY 2002/2003. These fee and surcharge increases total \$3.7 million, with a per farm cost of \$123 per year, starting in state FY 2002/2003.

There are no anticipated changes in recordkeeping, reporting, or other practices as a result of this rule.

Dated this ninth day of May, 2001.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION

By Nicholas J. Nemer  
Nicholas J. Nemer, Administrator  
Agricultural Resource Management Division





**Judith B. Robson**  
Wisconsin State Senator

June 20, 2001

Senator Dave Hansen  
Chair, Committee on Labor and Agriculture  
Room 19 South

Representative Al Ott  
Chair, Committee on Agriculture  
Room 318 North

Re: Clearinghouse Rule 01-021 (ATCP 29, relating to pesticide license fees)

Gentlemen 

I am writing in regards to the above referenced rule, which has been referred to your committees. I believe that the rule is not in accordance with the statutory authority upon which the rule is based. As co-chair of the Joint Committee for Review of Administrative Rules I am always concerned when a rule is contrary to the statutes and that is why I am writing to you.

The gist of the problem is this. State statutes require the Department of Agriculture, Trade and Consumer Protection to adjust pesticide license fee surcharges as necessary in order to maintain a minimum balance in the agricultural cleanup fund of at least \$2 million at the end of each fiscal year. The department is proposing a rule that will not satisfy this statutory requirement.

Further explanation of how the rule violates its statutory authority is provided in the Legislative Council Rules Clearinghouse report on this rule. The Department's response to the Legislative Council comments, contained in the final version of the rule, does not adequately address the issue originally raised by the Legislative Council.

Our state constitution gives the Legislature sole authority to write state law. We sometimes delegate that authority to agencies, giving them authority to write administrative rules. However, we retain oversight and control over the rules promulgated by agencies. We do this by ensuring that rules are actually based on statutes and that they properly interpret the statutes on which they are based. Rules failing to meet these criteria violate the Legislature's constitutional authority to write the laws of the state and undermine the integrity of the legislature by allowing agencies, rather than the Legislature, to make law.

I therefore urge you to look carefully at Clearinghouse Rule 01-021, relating to pesticide license fee surcharges.

If you have any questions about this rule, please do not hesitate to contact me.

Sincerely,

  
Senator Judith B. Robson  
15th Senate District

JBR:da