

**Senate Committee on Agriculture, Financial Institutions
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882
(608) 266-0703

Senator Dale W. Schultz, Chairman

May 11, 2004

Members
Sen. Com. on Ag. Fin. Inst. & Insurance
Re; CR-03-120

The following clearinghouse rule was referred to the Senate Committee on Agriculture Financial Institutions and Insurance. The thirty-day review period began on May 5th, 2004.

CR 03-120 relating to Fertilizer Tonnage Fees and Surcharges.

The department of agriculture, trade and consumer protection (DATCP) currently administers an agricultural chemical cleanup program under s. 94.73, Stats. The program is partly funded by fertilizer tonnage fee surcharges.

Fertilizer manufacturers and distributors currently pay tonnage fees and surcharges, based on their annual gross sales of fertilizer in this state. Under current rules, manufacturers pay a surcharge of 38 cents per ton to fund the agricultural chemical cleanup program. This rule increases the surcharge to 86 cents per ton, as authorized by 2003 Wis. Act 33. The new surcharge will apply to fertilizer distributed after July 1, 2004, with initial payment due in August 2005.

This rule also updates current rules to reflect fee changes made by 1999 Wisconsin Act 9 (DATCP has already changed its fee collections according to reflect the statutory changes). The statutory changes decreased the basic fertilizer inspection fee by 2 cents per ton, and added a fertilizer weights and measures inspection fee of 2 cent per ton.

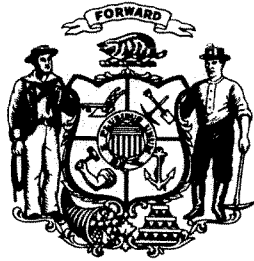
A hard copy of the rule is attached. The text is also available online in the FOLIO Clearinghouse Rules infobase.

The last business day for action on this rule is **Friday, June 4th, 2004.**

If you have concerns or questions related to this rule, please contact John in my office (6-0703) with any questions, or to request the committee hold a hearing on this rule.

Thank you.

Senator Dale Schultz
Chairman



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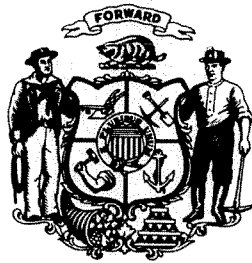
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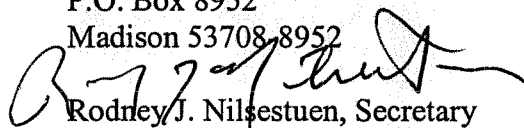
State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: April 28, 2004

TO: The Honorable Alan Lasee, President
Wisconsin State Senate
Room 219 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable John Gard, Speaker
Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison 53708-8952

FROM: 
Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Fertilizer License Fee Surcharges for Agricultural Chemical Cleanup Program; Final Draft Rule (*Clearinghouse Rule # 03-120*)

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

Background and Purpose

DATCP currently administers an agricultural chemical cleanup program under s. 94.73, Stats. This program is designed to clean up spills of agricultural chemicals and minimize environmental contamination. Under this program, DATCP may reimburse a portion of the eligible cleanup cost.

The agricultural chemical cleanup program is financed by license fees (tonnage fees) on agricultural chemicals, including pesticides and fertilizers. This rule increases fertilizer tonnage fee surcharges, as authorized by 2003 Wis. Act 33, in order to keep the agricultural chemical cleanup fund solvent. This will allow continued timely reimbursement of cleanup costs.

Wisconsin Food and Agricultural Products - \$40 Billion for Wisconsin's Economy

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • 608-224-5012 • Wisconsin.gov

Rule Contents

Fertilizer manufacturers and distributors currently pay tonnage fees based on their annual gross sales of fertilizer in this state. Under current rules, manufacturers pay a surcharge of 38 cents per ton to fund the agricultural chemical cleanup program. This rule increases the current surcharge to 86 cents per ton, as authorized by 2003 Wis. Act 33. The new surcharge will apply to fertilizer distributed after July 1, 2004, with initial payment due in August 2005.

This rule also updates current rules to reflect fee changes made by 1999 Wis. Act 9 (DATCP has already changed its fee collections to reflect the statutory changes). The statutory changes decreased the basic fertilizer inspection fee by 2 cents per ton, and added a fertilizer weights and measures inspection fee of 2 cents per ton.

Hearings and DATCP Response

DATCP held a public hearing on January 22, 2004 in Madison, and received the following testimony:

- Two agrichemical distributors, Dale Rezabeck and Mahlon Nordahl, registered in support of the proposed rule.
- Jim Skillen, of Responsible Industry for a Sound Environment (an organization representing the nonagricultural fertilizer and pesticide industry), submitted written testimony. That testimony suggested a statutory change to establish a separate tonnage fee for nonagricultural fertilizers, based on the (erroneous) assumption that nonagricultural fertilizer cleanups were not eligible for reimbursement from the fund. Those cleanups are in fact eligible for reimbursement, so DATCP proposes no rule changes in response to the hearing testimony.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse recommended minor technical changes to the draft rule. DATCP modified the final draft rule to address those technical comments.

Business Impact

This rule will have the following effects on businesses:

- It will increase fertilizer tonnage fees paid by farm centers and agricultural cooperatives that supply fertilizer to farmers. Many of these businesses may be considered "small businesses." This rule will not increase record keeping or reporting requirements for these businesses.
- The increase in tonnage fees may increase the prices of fertilizer to farmers, many of whom are "small businesses." However, the tonnage fee increase is expected to increase fertilizer prices by less than 3/10ths of one percent.

Honorable Alan Lassee
Honorable John Gard
April 28, 2004
Page 3

- The increased tonnage fees will help keep the agricultural chemical cleanup program solvent. This will help many businesses, particularly farm supply businesses and farmers, by helping them pay for costly cleanups of agricultural chemicals. In some cases, this may allow affected businesses to stay in business.

A small business analysis ("final regulatory flexibility analysis") is attached.

Fiscal Impact

This rule will increase revenues for the Agricultural Chemical Cleanup Fund. Fund revenues are used to reimburse costs of agricultural chemical cleanup spills. The fund currently has generated total revenues of \$2.6-\$2.8 million per year from all sources, and has experienced expenditures of \$3.6-\$3.9 million per year, with projected expenditures falling to \$3.0-\$3.2 million per year. A complete fiscal analysis is attached.



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, 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 #: 03-120
SUBJECT: Fertilizer License Fee Surcharges for
Agricultural Chemical Cleanup Program
ADM. CODE REFERENCE: ATCP 40
DATCP DOCKET #: 03-R-05

Dated this 29 day of April, 2004.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By


Rodney J. Nilsestuen
Secretary

**PROPOSED ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING AND REPEALING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection proposes
2 the following order to repeal 40.06(3)(a)(note); to amend 40.06(3)(a)1. and 5.; and to
3 create 40.06(3)(a)6.; relating to fertilizer tonnage fees and 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. 94.64(4)(a)1., 5. and 6., and s. 94.73(15), Stats.

The department of agriculture, trade and consumer protection (DATCP) currently administers an agricultural chemical cleanup program under s. 94.73, Stats. The program, which helps reimburse private costs to clean up agricultural chemical spills, is partly funded by fertilizer tonnage fee surcharges. This rule increases current fertilizer tonnage fee surcharges, consistent with recent statutory changes, in order to address a projected deficit in the agricultural chemical cleanup fund.

Rulemaking Authority

DATCP has general rulemaking authority, under s. 93.07(1), Stats., to interpret statutes that it administers. DATCP has specific rulemaking authority, under s. 94.73(15), Stats., to set fertilizer tonnage fee surcharges up to a maximum amount set by statute. The Legislature, in 2003 Wis. Act 33, increased the maximum surcharge amount from 38 cents per ton (the old maximum) to 86 cents per ton (the new maximum).

Rule Content

Fertilizer manufacturers and distributors currently pay tonnage fees and surcharges, based on their annual gross sales of fertilizer in this state. Under current rules, manufacturers pay a surcharge of 38 cents per ton to fund the agricultural chemical cleanup program. This rule increases the surcharge to 86 cents per ton, as authorized by 2003 Wis. Act 33. The new surcharge will apply to fertilizer distributed after June 30, 2004. The increased surcharge is designed to prevent a projected deficit in the agricultural chemical cleanup program.

This rule also updates current rules to reflect fee changes made by 1999 Wisconsin Act 9 (DATCP has already changed its fee collections to reflect the statutory changes). The statutory changes decreased the basic fertilizer inspection fee by 2 cents per ton, and added a fertilizer weights and measures inspection fee of 2 cents per ton.

Fiscal Impact

This rule is designed to prevent a projected deficit in Wisconsin's agricultural chemical cleanup program (see complete fiscal estimate attached). DATCP projects that the cleanup fund balance will drop to zero at the end of the current fiscal year, and that cleanup reimbursement will be delayed accordingly. Future cleanup costs are projected to continue at over \$3 million per year, whereas current revenues total only \$2.6 to \$2.8 million per year.

Fertilizer sales vary from year to year, but have averaged 1.3 million tons per year over the past 10 years (sales vary by less than ± 10 percent per year). DATCP's fiscal projections assume stable fertilizer sales, at the current average level of 1.3 million tons per year. DATCP tracks fertilizer sales based on confidential tonnage and sales revenue reports from fertilizer distributors.

Over the past 3 years, DATCP has paid cleanup cost reimbursements totaling \$3.6 to \$3.9 million per year. However, DATCP projects that payments will decrease to about \$3.0 to \$3.2 per year for the near future, based on reductions in statutory reimbursement rates (2003 Wis. Act 33) and slower case progress due to staff reductions. DATCP's fund balance projections are based on these lower projected reimbursement amounts.

Fertilizer tonnage fee surcharges currently generate \$2.6 to \$2.8 million per year for the agricultural chemical cleanup fund. DATCP projects that, by increasing the surcharge rate from \$0.38 per ton (current rate) to \$0.86 per ton (proposed rate), this rule will generate an additional \$624,000 per year. This additional revenue will first be received beginning in FY 2005-06, at which point the fund is expected to have a reimbursement backlog of up to \$1.4 million. So while the fee change is expected to generate more revenue than needed for current case demand, the excess will be needed for several years to reduce the reimbursement backlog.

Business Impact

This rule will increase fertilizer tonnage fee surcharges paid by fertilizer distributors, including farm centers and agricultural cooperatives. This rule will increase the surcharge from 38 cents per ton (current surcharge) to 86 cents per ton (new surcharge). Fertilizer distributors will likely pass on all or part of this increased surcharge to farmers and other fertilizer purchasers, in the form of increased fertilizer prices. However, the surcharge increase represents only about 3/10 of 1% of the retail price of fertilizer. This is not likely to have a major economic impact on fertilizer distributors or farmers.

This rule will benefit fertilizer distributors and farmers who must clean up spills of agricultural chemicals. Cleanups can be very costly, and can have a very large impact on these businesses. The agricultural cleanup program reimburses a portion of the eligible cleanup costs. This program reduces costs to the affected businesses, expedites cleanups, and minimizes environmental damage and related liabilities. This rule will keep the cleanup fund solvent, and help ensure timely reimbursement of eligible cleanup costs. This will benefit a large number of businesses, and may prevent some business insolvencies.

Many of the businesses affected by this rule are "small businesses." A complete small business analysis (final regulatory flexibility analysis) is attached.

Federal and Surrounding State Programs

There is no federal program to cleanup agricultural chemical spill sites (unless the sites qualify as "Superfund" sites). Minnesota is the only adjoining state with an agricultural chemical cleanup program. Minnesota has a slightly lower fertilizer tonnage charge (\$0.30 per ton) for its cleanup program, but a larger volume of fertilizer sales. Other adjoining states charge no fees, but have no programs to reimburse cleanup costs.

1 SECTION 1. ATCP 40.06(3)(a)1. and 5. are amended to read:

2 ATCP 40.06(3)(a)1. A basic fee of ~~25 cents per ton for fertilizer sold or~~
3 ~~distributed on or before June 30, 1999 and 32~~ 30 cents per ton for fertilizer sold or
4 ~~distributed after June 30, 1999~~, with a minimum fee of \$25 if any fertilizer was sold or
5 distributed.

6 (a)5. An agricultural chemical cleanup surcharge of ~~38~~ 86 cents per ton on all
7 fertilizer that the person sells or distributes after June 30, ~~2001~~ 2004.

8 SECTION 2. ATCP 40.06(3)(a)6. is created to read:

9 40.06(3)(a)6. A weights and measures inspection fee of 2 cents per ton, with a
10 minimum fee of \$1.

11 SECTION 3. ATCP 40.06(3)(a)(note) is repealed.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, _____

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary

FISCAL ESTIMATE

DOA-2048 N(R10/98)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

2001 Session

LRB No. and Bill/Adm. Rule No. Ch. ATCP 40, Wis.

Adm. Code

Amendment No. If Applicable

Subject

Fertilizer and Related Products---ACCP Surcharge Fee

Fiscal EffectState: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain 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 CostsLocal: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive 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 Ch. 20 Appropriations

115(7)(wm)

Assumptions Used in Arriving at Fiscal Estimate

This proposed rule would increase the Agricultural Chemical Cleanup Program surcharge fee on fertilizers from \$0.38 to \$0.86 per ton, the maximum allowed by statute, under 2003 Wisconsin Act 33. The surcharges are deposited to the Agricultural Chemical Cleanup Program Fund, to partially reimburse the costs incurred by persons that clean up spills of fertilizers and pesticides.

In recent years the fund has expended from \$3.6 to \$3.9 million per year in reimbursements, while the fund generates only \$2,614,000 (without this rule). The fund had a substantial reserve until recently, but that reserve dropped below \$200,000 at the end of FY 2002/2003. Fiscal year 2003/2004 is expected to end with unreimbursed claims (a deficit) of \$784,000. Those costs and the associated interest expenses would be reimbursed in subsequent years.

Based on program history and 2003 Act 33, revenues for the program would remain stable (without this rule), while expenses are expected to drop to near \$3 million. A reimbursement backlog of \$1,400,000 would occur by the end of FY 2004/2005. This rule, if completed by June, 2004, would generate \$624,000 per year, beginning in FY 2005/2006, allowing a gradual decline in the reimbursement backlog. Lower fees would further prolong the backlog, or increase the backlog. Higher fees are not provided for in statute.

Long-Range Fiscal Implications

Given statutory limitations, this rule will not completely offset the anticipated reimbursement backlog for several biennium. If adjusted for inflation, the department cannot anticipate complete elimination of the backlog in the foreseeable future.

Agency/Prepared by: (Name & Phone No.)

Dept of Agriculture, Trade & Consumer Protection

Paul Morrison 608/224-4512

Authorized Signature/Telephone No.

Barbara Knapp

Barbara Knapp (608) 224-4746

Date

3/25/04

Fiscal Estimate Worksheet — 2001 Session

Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ATCP 40

Subject
 Fertilizer Tonnage Surcharge Fee for the Agricultural Chemical Cleanup Program

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

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)	(- FTE)
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	\$	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S	624,000	-
Total State Revenues	\$ 624,000	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ 624,000	\$ _____

Prepared By: Paul Morrison	Telephone No. 608/224-4512	Agency DATCP
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Fertilizer Tonnage Fee—Agricultural Chemical Cleanup Surcharge
Adm. Code Reference: ATCP 40
Rules Clearinghouse #: 03-120
DATCP Docket #: 03-R-05

Rule Description

This rule amends the agricultural chemical cleanup surcharge fee from \$0.38 per ton of fertilizer sold to \$0.86 per ton. The total per ton fee paid to the Department for fertilizers distributed in this state are increased by this rule, from \$1.00 per ton to \$1.48 per ton.

Small Businesses Affected by this Rule

This rule affects businesses that manufacture or distribute fertilizers in Wisconsin and may also affect farms, lawncare businesses and other businesses that consume those fertilizers. The rule also affects person that clean up spill of fertilizers and pesticides, which are typically the same entities that are involved in the manufacture, distribution or consumption of fertilizers. There are approximately 500 licensed manufacturers of fertilizers in Wisconsin and more than 20,000 farmers that purchase those fertilizers. Currently more than 360 of these persons are involved in a fertilizer or pesticide cleanup, with the majority of these cleanups occurring at farm centers and agricultural cooperatives. Many of these businesses are "small businesses" as defined in s. 227.114(1)(a), Stats.

Effects on Small Business

This rule will not, by itself, have a major impact on small business. The rule will generate an additional \$624,000 in fees on the 1,300,000 tons of fertilizer sold annually in Wisconsin. These fertilizers have an average price of more than \$150 per ton. The fee increase represents a price increase of about 0.3% on an agricultural input with annual price fluctuations of several percent.

The revenues generated by this rule are deposited in the Agricultural Chemical Cleanup Fund, along with additional revenues from the pesticide industry and are solely used to reimburse expenses that are primarily incurred by this same industry for cleanup of spills of fertilizers and pesticides.

Steps to Assist Small Business

This rule does not add to any reporting requirements, since the fee simply changes the totals on existing reporting.

While no special measure have been identified to assist small business, the overall impacts on ACCP fund availability created by this rule will have its greatest impact on small businesses. The cleanup of fertilizers or pesticides can be very costly. While an immediate response can often be completed for only a few thousand dollars, a spill that went undetected for an extended period, or a cleanup of an uncontained mixing or loading area will typically cost more than \$30,000 and sometimes over \$100,000. This rule will assist small businesses by assuring adequate funding to cover up to 75% of the cleanup costs, following a \$3,000 deductible for small businesses. Without the proposed fee increase contained in this rule, a small business may be forced to carry a \$30,000 or larger debt for several years while that person awaits their turn for reimbursement. This rule will shorten the period between incurring cleanup costs and reimbursement of those costs.

Conclusion

This rule will not, by itself, have a major impact on small business. The primary impact will be positive for those small businesses that experience a fertilizer or pesticide spill. Small businesses will not need additional professional services to comply with this rule.

Dated this 25th day of March, 2004

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

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