



# Agricultural Chemical Fees and Programs

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# Agricultural Chemical Fees and Programs

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

## Regulatory Authority for the Cleanup Program

Under section 94.73 of the statutes, DATCP is authorized to order any of the following actions for the cleanup of an agricultural chemical: (a) investigate a site to determine the extent and severity of contamination; (b) contain, remove, treat or monitor contaminated soils; and (c) transport, store, land apply or dispose of contaminated soils. DATCP actions must be in compliance with cleanup standards set in the statutes and DNR administrative rules. DATCP and DNR signed a memorandum of understanding in August, 1994, to establish their respective responsibilities.

DNR is authorized to take corrective actions or issue orders related to agricultural chemical discharges if one of the following conditions apply: (a) if necessary, in an emergency to prevent or mitigate an imminent hazard to public health, safety or welfare or to the environment; (b) DATCP requests DNR to take an action or issue an order; (c) the Secretary of DNR approves the action or

order in advance, after providing notice to DATCP; (d) DNR takes corrective action after a responsible party fails to comply with an order issued by DNR; or (e) the action or order is authorized under the DNR and DATCP memorandum of understanding.

## Agricultural Chemical Management Fund

The agrichemical management fund receives revenues from several feed, fertilizer and pesticide license and tonnage fees. In fiscal year 2003-04, ACM revenues totaled \$6.4 million (\$5.8 million from fees and \$0.6 million in loan repayment revenue) and expenditures were \$5.4 million. The funds are used for: (a) DATCP administration of the cleanup reimbursement program; (b) inspection and regulation of the individuals and businesses that manufacture and distribute feed, fertilizer and pesticide products in Wisconsin; (c) DATCP administration of groundwater management programs; and (d) agriculture in the classroom program grants that help teachers educate students about agriculture (\$100,000 in 2004-05). DATCP is authorized 45.5 positions in the 2003-05 biennium from the ACM. This reflects a reduction of four staff (from 49.5 positions, previously) that was a part of 2003 Act 33 (the 2003-05 biennial budget act).

In 2004-05, agricultural chemical fee revenues of approximately \$5.5 million are expected to be deposited into the ACM fund from the following sources: (a) \$30 annual license fees for fertilizer manufacturers and distributors; (b) fertilizer fees of 30¢ per ton; (c) non-agricultural fertilizer permits of \$25; (d) \$25 annual licenses for soil and plant additive manufacturers and distributors; (e) \$100 one-time soil and plant additive permits for new products; (f) soil and plant additive fees of 25¢ per ton; (g) annual lime license fees of \$10; (h) \$25

annual licenses for commercial feed manufacturers and distributors; (i) commercial feed tonnage fees of 23¢ per ton; (j) restricted use pesticide dealer licenses of \$60; (k) pesticide applicator licenses (\$40 for individuals, \$70 for businesses); (l) nonresident commercial applicator reciprocal certificate fees of \$75; (m) \$25 biennial veterinary clinic permits; and (n) household, industrial and nonhousehold pesticide registration fees ranging from \$141 to over \$3,000, depending on the quantity sold. The Appendix provides a display of all agricultural chemical fees.

In addition to revenue from agricultural chemical fees, the ACM fund also receives revenue from repayment of a \$2 million start-up loan that the ACM made to the agricultural producer security (APS) fund in 2001-02. The APS program is a separate, segregated public trust fund created to secure payments to agricultural producers who are owed money when an agricultural commodity firm defaults. The APS fund is required to repay the ACM fund, with annual interest (2% as of July 1, 2003, annual interest was 5% prior to this date) by July 1, 2006. The statutes require annual payments of at least \$250,000 starting on July 1, 2003. To date, payments of \$650,000 have been made in 2002-03, \$600,000 in 2003-04, and \$250,000 in 2004-05. An additional payment of at least \$142,000 from the APS to the ACM is expected in 2004-05. This would leave a balance of about \$534,000 to be paid by July 1, 2006.

Further, in order to implement 2003 Act 33 state agency lapse requirements (totaling \$865,200 in 2003-04 and \$847,200 in 2004-05 for DATCP) DATCP recommended, and DOA approved, a lapse of \$116,200 in expenditures from the ACM administration appropriation to the general fund in 2003-04. Table 1 depicts the ACM fund condition for 2002-03 through 2004-05.

### **Agricultural Chemical Cleanup Program Fund**

The ACCP funds the cleanup of fertilizers and nonhousehold pesticides, including spills occurring

**Table 1: ACM Fund Condition**

	Actual <u>2002-03</u>	Actual <u>2003-04</u>	Budgeted <u>2004-05</u>
Opening Balance	\$548,500	\$857,800	\$1,718,700
Fee Revenue	5,437,600	5,739,800	5,500,000
APS Loan Repayments	650,000	600,000	392,000
Interest and Misc. Income	<u>24,400</u>	<u>20,200</u>	<u>17,200</u>
Total Revenue	\$6,112,000	\$6,360,000	\$5,909,200
Total Available	\$6,660,500	\$7,217,800	\$7,627,900
Expenditures	-5,802,700	-5,382,900	-5,351,200
Reserves			-26,400
Lapse to the General Fund		-116,200	0
Closing Balance	\$857,800	\$1,718,700	\$2,250,300

at commercial fertilizer blending facilities, commercial pesticide application businesses and farm sites. Reimbursement grants may be provided for cleanup costs incurred within three years of the application date. Further, grants may be provided for first and subsequent spills at the same site. The program requires a one-time deductible of \$3,000 for farms and small businesses and \$7,500 for larger commercial businesses. For costs incurred between 1998 and 2003, the ACCP fund reimbursed owners for up to 80% of agricultural chemical spill cleanup costs, with a maximum \$400,000 per cleanup site lifetime limit for all discharges. As part of 2003 Act 33, the reimbursement rate reverted to 75% (the same rate as prior to 1998) for costs between the deductible and the \$400,000 limit. Table 2 shows the maximum ACCP reimbursement amounts for which the two types of facilities are eligible at various cleanup cost levels.

Revenues deposited to the ACCP were nearly \$3 million in 2003-04. These revenues consist of fertilizer and pesticide license and tonnage surcharges deposited to the ACCP and come from the following sources: (a) a fertilizer tonnage surcharge of 86¢ per ton (this surcharge was 38¢ per ton prior to 2004-05); (b) a pesticide (nonhousehold) surcharge of \$5 per registered pesticide for products with Wisconsin sales of less than \$25,000, \$170 for products with Wisconsin

**Table 2: ACCP Maximum Grant Levels**

Licensed Commercial Facilities			Non-Licensed Facilities		
Costs Incurred	Percent Reimbursed	Grant	Costs Incurred	Percent Reimbursed	Grant
Up to \$7,500	0%	\$0	Up to \$3,000	0%	\$0
\$7,500 to \$100,000	75%	\$69,375	\$3,000 to \$100,000	75%	\$72,750
\$100,000 to \$400,000*	75%	\$294,375	\$100,000 to \$400,000*	75%	\$297,750
Over \$400,000	0%	\$294,375	Over \$400,000	0%	\$297,750

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

sales from \$25,000 to \$75,000, or 1.1% of sales for products with Wisconsin sales greater than \$75,000; (c) a \$20 annual license surcharge for fertilizer manufacturers and distributors; (e) a \$55 annual surcharge for commercial application businesses; and (f) a \$20 annual surcharge for individual commercial applicators.

2003 Act 33 increased the maximum fertilizer tonnage surcharge by 48¢, from 38¢ to 86¢, through an item veto made by the Governor. Prior to the veto, the budget bill, as passed by the Legislature, would have allowed up to a 25¢ fee increase by stating "(a)n agricultural chemical cleanup surcharge of ~~38~~ 63 cents per ton" unless a lower surcharge was set by DATCP through administrative rule. Through the Governor's veto of the strikethrough of the "8" in "38," and the "3" in "63," Act 33 set the maximum fertilizer tonnage surcharge at 86¢, unless a lower surcharge is established through administrative rule. Since DATCP had an existing administrative rule specifying the fertilizer tonnage surcharge at 38¢, the fee remained at 38¢ per ton after the passage of the act. However, DATCP proposed a revision to administrative rule ATCP 40 that increased the fee to the 86¢ per ton maximum surcharge established by Act 33. This revised ATCP 40 became effective September 1, 2004, but applies to all fertilizer sales starting July 1, 2004. The fee increase is expected to

increase revenues deposited into the ACCP fund by \$648,000 annually. However, because fertilizer surcharge revenues are not due until the August 15 after the fiscal year in which the fertilizer is sold (meaning that 2004-05 surcharges will not be due until August 15, 2005, which is in fiscal year 2005-06), the increased revenue resulting from the fee increase will not be realized until 2005-06.

During deliberations for the 2003-05 biennial budget, DATCP projected revenues of \$2.6 million annually and projected payable cleanup claims of \$3.2 million each year in the 2003-05 biennium. As a result, the Department would have been required to delay some cleanup payments until the following fiscal year due to a potential shortage of funds in 2003-04 and 2004-05. However, in 2003-04 the ACCP funded 87 cleanup grants at a total cost of \$2.6 million and had revenues of nearly \$3.0 million. As a result, no grant payments are expected to be delayed in the 2003-05 biennium. Department officials are not certain of the cause of the drop in grant claims (\$3.9 million in payments were made in 2002-03), but suspect that a number of grant claim filings may have been delayed by a year, and expect eligible grant claims to return to about \$3 million annually beginning in 2004-05. Table 3 provides an historical overview of agricultural chemical grants, while Table 4 shows the condition of the ACCP fund for 2002-03 through 2004-05.

**Table 3: Agricultural Chemical Cleanup Grants by Site**

Year	Commercial Sites Grants			Non-Commercial Sites Grants (primarily farms)		
	New	Follow-Up*	Expenditures	New	Follow-Up*	Expenditures
1994-95	18	0	\$764,100	2	0	\$11,700
1995-96	24	8	904,700	4	0	86,000
1996-97	27	16	1,265,100	1	0	69,400
1997-98	19	25	1,333,500	7	1	130,900
1998-99	24	24	2,805,000	4	1	70,100
1999-00	22	18	2,072,300	3	1	71,800
2000-01	36	27	3,913,700	2	1	50,300
2001-02	34	62	3,467,300	3	1	91,300
2002-03	27	42	3,760,800	0	1	103,400
2003-04	<u>16</u>	<u>69</u>	<u>2,564,300</u>	<u>1</u>	<u>1</u>	<u>35,800</u>
Total	247	291	22,850,800	27	7	720,700

\*Follow-up grants are those monies given to previously appropriated sites for further reimbursements.

program pays for the collection and disposal of unwanted fertilizer and agricultural chemicals and had corresponding funding of \$560,400 SEG annually. Further, Act 33 transferred administration of DNR's household chemical disposal program to DATCP to be administered along with the agricultural clean sweep program, and provided total annual funding of \$710,400 SEG (from the recycling fund).

**Table 4: ACCP Fund Condition**

	Actual <u>2002-03</u>	Actual <u>2003-04</u>	Projected <u>2004-05</u>
Opening Balance	\$1,222,300	\$200,200	\$584,000
Revenue	2,841,700	2,983,900	2,956,600
Expenditures	<u>-3,863,800</u>	<u>-2,600,100</u>	<u>-3,000,000</u>
Closing Balance	\$200,200	\$584,000	\$540,600

**2003 Act 33**

2003 Act 33 made a number of changes to the ACM and ACCP. First, the act deleted \$154,600 for supplies in 2003-04 and \$418,400 and 4.0 SEG positions in 2004-05 from the ACM fund general operations appropriation. The 2004-05 spending reduction included: \$203,600 in permanent salaries; \$85,600 in fringe benefits; and \$129,200 in supplies and services.

In addition, Act 33 transferred funding of agricultural chemical and pesticide collection grants (the agricultural "clean sweep" program) from the ACM fund to the recycling fund (which receives revenue from a recycling surcharge on certain businesses and a tipping fee on certain solid waste disposed in Wisconsin landfills). This

Moreover, Act 33 made a number of changes to the ACCP. In addition to increasing the maximum fertilizer tonnage surcharge from 38¢ to 86¢, Act 33 lowered the ACCP reimbursement rate from 80% to 75% of eligible agrichemical spill cleanup costs for costs incurred beginning January 1, 2004. This provision is expected to reduce cleanup awards by about \$200,000 annually beginning in 2004-05. Act 33 also requires the ACCP fund to end each fiscal year with a balance of not more than \$2.5 million, rather than at least \$2 million but not more than \$5 million previously.

DATCP officials indicate it may be desirable to maintain a significant ACCP fund balance in order to avoid potential cash flow problems during a fiscal year. This is because, while fertilizer fees are received in August, the majority of surcharge revenues (relating to pesticide sales) are not received until January, but claims are paid quarterly (generally in September, December, March and June) each fiscal year. Therefore, if the opening fund balance is too low, revenues may be inadequate to meet the December claims payment. In this case some payments may need to be delayed until January. If a substantial delay were necessary, the program could begin to incur interest charges.

## Fee Reduction and Surcharge Holiday

Due to large balances in the fund, both the 1997-99 and 1999-01 biennial budget acts established temporary ACM fee reductions. ACM fees for commercial feed and fertilizer products were reduced from January 1, 1999, to December 31, 2002. Revenue reductions as a result of these fee changes were about \$870,000 per fiscal year in 2000-01 and 2001-02. As the fee holiday has expired, fees have returned to their 1997-98 levels.

In addition, the 1997-99 biennial budget act temporarily suspended all ACCP surcharges and gave DATCP authority to reduce future ACCP surcharges by administrative rule as long as a \$2 million to \$5 million balance was maintained in the segregated cleanup fund (as a part of 2003 Act 33, this requirement was changed to specify that DATCP maintain a balance of not more than \$2.5 million in the ACCP fund). DATCP chose to extend the original fee holiday by administrative rule. The suspension of ACCP surcharges reduced revenues to the fund by about \$2.5 million in 2000-01, and about \$1 million in 2001-02. Surcharge levels established by the Department can range between zero and the statutory maximum levels. DATCP has set the current surcharges at the statutory maximum levels. The Appendix to this paper provides an overview of the current agrichemical fees and surcharges that are deposited into the ACM, ACCP and other funds.

As shown in the Appendix, in addition to the ACM and ACCP funds, agricultural chemical fee revenues are also deposited into five other places. These include: (a) the environmental management account of the environmental fund; (b) DATCP's fertilizer research appropriation account; (c) the University of Wisconsin-Extension Outreach appropriation account; (d) DATCP's weights and measures inspection appropriation account; and (e) DATCP's liming material research appropriation account.

Environmental Management Account. The environmental management account is one of the

two accounts, along with the nonpoint account, that are a part of the segregated environmental fund. These two accounts are tracked separately, but are statutorily maintained as one fund. In addition to the fees shown in the Appendix, the environmental management account receives revenues from a variety of other sources including a temporary motor vehicle environmental impact title fee, solid waste tonnage fees, petroleum inspection fees and hazardous spills reimbursements from responsible parties. These fees are used primarily for Commerce brownfields grants, and DNR activities related to environmental response and repair programs, including enforcement, prevention, cleanup, brownfields grants, liability determinations, and groundwater management. Additional information on this account can be found in the Legislative Fiscal Bureau informational paper entitled, "Contaminated Land and Brownfields Cleanup Programs." As shown in Table 5, in 2003-04, agricultural chemical related revenues to the environmental fund totaled \$1,375,800.

**Table 5: 2003-04 Environmental Management Account Agricultural Chemical Related Revenues**

<u>License/Fee</u>	<u>Fee Amount</u>	<u>2003-04 Revenue</u>
Fertilizer Tonnage	10¢	\$141,600
Soil and Plant Additive Tonnage	10¢	1,500
Primary Producer Fee	\$150	18,900
Household Pesticide Registration	\$124	685,300
Industrial Pesticide Registration	\$94	99,900
Nonhousehold Pesticide Registration	\$94	414,300
Wood Preservative Surcharge	*	<u>14,300</u>
Total		\$1,375,800

\*For pesticide products with annual sales of less than \$25,000, the annual fee is \$5. For pesticide products with annual sales between \$25,000 and \$74,999, the annual fee is \$170. For pesticide products with annual sales of \$75,000 or more, the annual fee is 1.1% of sales.

As part of a 2003 review of agricultural chemical fees and revenues, the Legislative Audit Bureau (LAB) examined the agricultural chemical fees that were deposited to the environmental management account and the uses to which they were put. In this review, the LAB found that DNR

could not document how it spent pesticide and fertilizer fees and was unable to account for the actual time its staff spent on pesticide and fertilizer-related activities (though a portion of each person's time was spent on cleanup of pesticide and fertilizer spills). As a result, the LAB recommended that DNR establish time-keeping codes specific to pesticide and fertilizer activities to better track resources devoted to this purpose by December 31, 2003. LAB also recommended that DNR and DATCP complete and implement revisions to a memorandum of understanding that would ensure the timely exchange of useful program management information on spills and site cleanups. The agencies hope to implement a revised memorandum of understanding in 2005.

In February, 2004, DNR implemented time-keeping codes specific to pesticide and fertilizer activities in its remediation and redevelopment section of the Division of Air and Waste. DNR staff estimate about 900 hours of staff time has been devoted to sites with the new agrichemical time code in the Division of Air and Waste in the 10 months from February, 2004, through November, 2004. In addition, in the Water Division, tests performed on water includes testing for numerous pollutants, which makes it difficult to determine the amount of time spent specifically on agrichemical issues. Further, several other environmental repair sites with agrichemical-related work have their own activity codes.

Fertilizer Research. DATCP's fertilizer research appropriation account collects revenue from a fertilizer and soil additive tonnage fee (both of which are 10¢ per ton). Revenues from this account are forwarded to the University of Wisconsin System to be used for research on soil management, soil fertility, plant nutrition problems and for research on surface water and groundwater problems which may be related to fertilizer usage. In addition, the funding may be used to disseminate the results of the research and other activities that promote the correct usage of fertilizer materials. DATCP's fertilizer research council (a council of six volunteer voting members

consisting of three fertilizer industry representatives and three crop producers, who are appointed jointly by DATCP's Secretary and the Dean of the University of Wisconsin-Madison's College of Agricultural and Life Sciences) recommends projects to be financed by this appropriation and may recommend other nonprofit research institutions for receipt of these funds if the University of Wisconsin System is unable to carry on the projected research. These revenues totaled \$143,100 in 2003-04.

UW-Extension Outreach. DATCP collects a 10¢ tonnage fee and deposits the revenues into the University of Wisconsin-Extension's Outreach appropriation account. This revenue is used to support UW-Extension's nutrient and pest management program, which provides education and outreach on the efficient use of fertilizers to farmers and other businesses. In 2003-04, revenue from this surcharge was \$141,600.

Weights and Measures Inspection. In addition to the fertilizer and commercial feed tonnage fees found in the Appendix (both of which are 2¢ per ton), DATCP's weights and measures inspection appropriation account also receives revenue from the following sources: the testing of weights and measures machines; weights and measures tests performed by the Department; vehicle scale operator licenses; licenses for people who install, test or calibrate weights and measures equipment; and the registration of petroleum meters. This account funds the Department's weights and measures inspection, testing and enforcement responsibilities under Chapter 98 of the statutes. Duties include the oversight of: milk and cream testing; vehicle scale operator licensing; installing and servicing weights and measures equipment; bulk deliveries sold by weight and delivered by vehicle, and petroleum product sales. In 2003-04, revenues from fertilizer and feed tonnage fees were \$86,000.

Liming Material Research. DATCP's liming material research appropriation supports research related to liming materials or crop response thereto

by the University of Wisconsin-Madison College of Agricultural and Life Sciences (or another entity if the UW is unable to), the dissemination of the results of such research, and other activities that promote the correct use of liming materials. The 1.25¢ tonnage fee on all liming materials sold in the state is the only revenue deposited into this account with revenues totaling \$14,000 in 2003-04.

### **Transfers to the General Fund**

Higher revenues and lower than expected grant activity resulted in large fund balances in the mid to late 1990s and the transfer of revenues from the two funds to the state's general fund. In the 1997-99 biennium, interest earned from the ACCP account was transferred to the state's general fund. These

transfers totaled \$506,900 in 1997-98 and \$479,300 in 1998-99, for a total of \$986,200 over the biennium. In the 1999-01 biennium, an additional \$2 million (\$1,500,000 in 1999-00 and \$500,000 in 2000-01) was transferred from the ACCP to the state's general fund. Further, \$1 million was transferred from the ACM fund to the state's general fund in 1999-00. In addition, \$116,200 was transferred from the ACM to the general fund in 2003-04 in order to meet the 2003 Act 33 lapse requirements. As a result, a total of \$4.1 million (\$2,986,200 from the ACCP and \$1,116,200 from the ACM) has been transferred from the two segregated funds to the state's general fund. It should also be noted that from 1994-95 through 1998-99 state GPR expenditures for agricultural chemical cleanup grants totaled \$4.1 million.



## APPENDIX

### Agricultural Chemical Fees

License/Fee	ACM	ACCP	EMA*	Other	Total Fees/ Surcharges	2003-04 Total Revenue
Commercial Feed License	\$25				\$25	\$32,500
Commercial Feed Tonnage	23¢			2¢ <sup>a</sup>	25¢	\$725,100
Fertilizer License	\$30	\$20			\$50	\$26,100
Fertilizer Permit Applications	\$25				\$25	\$6,400
Fertilizer Tonnage	30¢	86¢	10¢	22¢ <sup>b</sup>	\$1.48	\$1,426,000
Lime License	\$10				\$10	\$900
Lime Tonnage				1.25¢ <sup>c</sup>	1.25¢	\$14,000
Pesticide Application Business	\$70	\$55			\$125	\$207,400
Pesticide Dealer- Restricted Use	\$60	\$40			\$100	\$40,300
Pesticide Individual Applicator	\$40	\$20			\$60	\$362,200
Pesticide Reciprocal Certification	\$75				\$75	\$14,500
Soil and Plant Additive License	\$25				\$25	\$9,800
Soil and Plant Additive Permit Application	\$100				\$100	\$1,900
Soil and Plant Additive Tonnage	25¢		10¢	10¢ <sup>d</sup>	45¢	\$7,800
Veterinary Clinic Permit	\$25 <sup>e</sup>				\$25	\$7,200
Primary Producer Fee			\$150		\$150	\$18,900
<b>Pesticide Registration Household</b>						
\$0-\$24,999	\$141		\$124		\$265	\$1,304,300
\$25,000-\$74,999	\$626		\$124		\$750	\$229,500
\$75,000 plus	\$1,376		\$124		\$1,500	\$420,000
<b>Pesticide Registration Industrial</b>						
\$0-\$24,999	\$221		\$94		\$315	\$288,500
\$25,000-\$74,999	\$766		\$94		\$860	\$68,600
\$75,000 plus	\$2,966		\$94		\$3,060	\$247,500
<b>Pesticide Registration Nonhousehold</b>						
\$0-\$24,999	\$226	\$5	\$94		\$325	\$1,268,400
\$25,000-\$74,999	\$796	\$170	\$94		\$1,060	\$290,400
\$75,000 plus	\$2,966	1.1%	\$94		\$3,060 + 1.3%	\$3,430,900
<b>Wood Pesticide Surcharge</b>						
\$0 - 24,999			\$5		\$5	\$0
\$25,000 - \$74,999			\$170		\$170	\$0
\$75,000 plus			1.1%		1.1%	<u>\$14,300</u>
<b>Total</b>						<b>\$10,463,400</b>

<sup>a</sup> Deposited to DATCP's weights and measures inspection appropriation for weights and measures testing.

<sup>b</sup> Includes 10¢ to fund UW-Extension outreach, 10¢ for UW soil and fertilizer research and 2¢ for weights and measures testing.

<sup>c</sup> Deposited to DATCP's liming research appropriation to fund UW lime material research.

<sup>d</sup> Deposited to DATCP's fertilizer research appropriation to fund UW soil and fertilizer research.

<sup>e</sup> Consists of a \$25 biennial permit fee.

\*Environmental management account of the environmental fund.