

**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 adopts the
2 following order to repeal 40.06(3)(a)(note); to amend 40.06(3)(a)1. and 5.; and to create
3 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 distributed~~
3 ~~on or before June 30, 1999 and 32~~ 30 cents per ton for fertilizer sold or distributed after June
4 ~~30, 1999~~, with a minimum fee of \$25 if any fertilizer was sold or distributed.

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

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

8 40.06(3)(a)6. A weights and measures inspection fee of 2 cents per ton, with a
9 minimum fee of \$1.

10 **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