

Potential Actions to Balance the Agrichemical Management Fund and the
Agricultural Chemical Cleanup Fund within the
Department of Agriculture, Trade & Consumer Protection

Paul Morrison ^{1/}

Summary

The department believes a combination of programmatic adjustments, existing fee transfers, and increased fees are needed to balance these funds, as outlined in the following table. Accomplishing these changes requires passage of legislation and a modified rule, but the department can pursue the non-legislative components concurrent with the legislative process.

ACTION	FISCAL IMPACTS	WHAT IS REQUIRED
A. Restructure ACCP by shifting 1 FTE from case management to pollution prevention & lead arsenate	15% reduction in ACCP expenditures (\$510,000 ACCP Fund savings)	Administrative discretion with constituent concurrence
B. Decrease ACCP reimbursement percentage from 80% to 75%, consistent with original statute	Reduce ACCP expenditures by \$180,000 per year (based on reduction above).	Statutory change
C. Provide increased ACCP surcharge authority to better reflect fertilizer related ACCP reimbursements and provide a margin needed to assure a positive ACCP fund balance is maintained without further legislation.	No fiscal impact is expected. Increasing the ACCP surcharge authority by \$0.50/ton is suggested, but only a portion of this is expected to be implemented if the above changes are made.	Statutory change Subsequent rulemaking would also be required before any increased surcharge would be implemented
D. Reduce Environmental Fund transfers to reflect ongoing and anticipated agrichemical related work at DNR, COM and DHFS	Increases ACM fund revenues by \$775,000, while reducing the Environmental fund by a like amount	Statutory change and DNR must increase alternate funding or reduce spending for non-pesticide work
E. Increase feed tonnage and resume minimum tonnage fee to better reflect associated program costs and likely increases to address food safety concerns.	Feed tonnage increase of \$0.05 will provide \$140,000 in ACM fund revenue. A minimum fee of \$30 for 100 tons or less will restore \$10,000 in prior fees for small volume manufacturers (pet foods and specialty ingredients)	Statutory change

^{1/} Special Projects Coordinator, Agrichemical Management Bureau, Wisconsin Department of Agriculture, Trade and Consumer Protection.

ACTION	FISCAL IMPACTS	WHAT IS REQUIRED
F. Increase fertilizer permit and delayed tonnage fee increase as needed to better reflect associated ACM fertilizer program costs	Increase of \$0.15 for ACM provides \$195,000, but is delayed until the Producer Security loan is repaid. Increasing permit review cost to \$100 provides \$7,500	Statutory change with effective date for sales after July 2006. Proposed now to show complete package and to avoid retroactive announcement.
G. Modify pesticide fee payment structure to resolve potential “retroactive” fee changes	No impact on state funds Resolves potential industry windfalls and shortfalls	Statutory change
H. Reduce ACCP Fund balance provisions from \$2 to \$5 million to just a maximum of \$3 million	Reduces potential legislative “raids” on larger fund reserves	Statutory change
I. Improve timeliness of fee change notices by announcing fee changes through an administrative notice and hearing vs. full rulemaking for each change	Reduces ACCP fund balance fluctuation by allowing more timely adjustment in funding levels	Rulemaking
J. Accelerated repayment of Producer Security loan	\$800k in 02/03 and \$700k in 03/04, dropping to less than \$350k for next 2 years, then to zero	Administrative discretion, with limited defaults in producer securities

A more detailed explanation of each action item follows in the attached analysis.

Background

The Agricultural Chemical Cleanup Program (ACCP) Fund is used exclusively for partial reimbursement of cleanup costs incurred by agricultural coops, farm centers and farmers (plus other distributors and consumers of fertilizers and pesticides). Initially these reimbursements were subsidized with a near 50/50 match of general purpose revenues (GPR). During this period the surcharge fees collected not only met but exceeded reimbursement demand. Following this multi-year start-up phase, GPR was reduced and removed, and surcharge collections were temporarily discontinued with a portion transferred to GPR.

Maximum ACCP surcharge fees are established by statute but can be adjusted to any lower level by rule. Statutes direct the agency to adjust fees as needed to maintain a fund balance of between \$2 and \$5 million. Surcharge fees recently resumed at the maximum level allowed by statute. Even at this maximum level, the ACCP fund is under a spending deficit. It will drop below \$2 million during the current fiscal year and is expected to reach a zero balance both early and late in FY 03/04, unless the proposed action described above are implemented.

The Agrichemical Management (ACM) Fund is used to fund DATCP operations in more than a dozen agrichemical program areas, including such broad areas as feed and fertilizer regulations, pesticide enforcement, groundwater protection, agricultural clean sweeps, ACCP program management, school IPM and the lawncare registry. For the ACCP the staff and laboratory expenses are from the ACM Fund and reimbursements are from the ACCP Fund. For agricultural clean sweeps both staff and grants are from the ACM Fund.

Transfers to DNR extend back to the mid 1980s groundwater law, before establishing the ACM Fund, ACCP Fund or Environmental Fund. Initially deposits were made to a Groundwater Account and the Environmental Repair Fund, with the amounts based on projected pesticide-related cleanup work, plans to monitor groundwater by DNR and associated standards development. All such activities were combined with funding from other potential contaminants, based on the program authorities and staff assumptions of that time. Over time the funds into which these fees were deposited were re-named and reorganized and the transferred amounts were increased when the Environmental Fund projected a deficit. Despite its size, (or because of it) there has not been a comprehensive review that compares current responsibilities and expenditures of DNR with the revenue sources from which the Environmental fund operates. The attached information provides the results of an analysis for the agrichemical component of the Environmental Fund.

Analysis

A. Restructuring ACCP

Spending under the ACCP fund can result from work initiated by DATCP and work initiated by responsible persons. Typically responsible persons initiate cases during property transfers and facility mergers. Once initiated, continuing costs at these sites are controlled at least in part by the level of management (i.e. the volume of workplans reviewed and cost estimates approved). A parallel program in Minnesota manages voluntary cleanups separate from mandated cleanups and has found that with a reduced level of mandated cases, their voluntary case load now exceeds the mandated cases. The department believes that reducing staff management could reduce industry expenditures to some degree. Alternatively, a more dramatic decrease in case management is expected to have detrimental affects, as has occurred with the limited project management that is available under the PECFA program (because of its size). Essentially, DATCP believes a mild reduction in case management will mean slower but acceptable case progress, whereas a more dramatic cut in case management would result in un-monitored and excessive expenditures on some cases.

DATCP has also conducted a pilot voluntary pollution prevention program that has DATCP staff and facility managers conduct a joint review of facilities and practices to identify and prioritize non-regulatory improvements that may reduce contamination potential. Initial response has been positive and those involved believe this program may reduce contamination problems in the long term. DATCP proposes that a portion of the reduction in case management effort be utilized to continue and expand this pollution prevention effort.

From the early 1900s through the 1950s lead arsenate was used as a pesticide on apple and cherry orchards, plus some other crops. The many years of applications made several times per year on orchards have resulted in accumulations at a level where some health risks exist in situations where frequent soil contact may occur. Current development pressure in Door County and other traditional apple growing areas of the state has and is continuing to result in conversions of former orchards to residential properties, parks and school grounds.

When the ACCP was started, DNR was concluding work on lead arsenate mixing sites in Door County. The agencies agreed, at that time, that DNR would continue as the lead agency on lead arsenate issues. Recently DNR has informed DATCP that it intended to step back from this lead role for most known and future lead arsenate sites.

Prior work to assess the degree of contamination and an assessment by the Wisconsin Division of Environmental Health have been used by DATCP to develop guidance that would simplify the normal site-specific investigation and remedial design process. Identification and tracking of former orchard sites, along with responding to questions by developers, homeowners and potential property buyers is expected to be a significant time commitment. DATCP proposes that a portion of the current case management time be used to track lead arsenate contaminated sites and respond to questions.

Both pollution prevention and lead arsenate are ACCP related work projects, but neither is expected to generate significant ACCP reimbursement expenses. DATCP believes reassigning 1 FTE to manage these issues will decrease current ACCP expenditures by industry by about 15%, with a resultant decrease in ACCP reimbursement claims of \$510,000, beginning two years after the change is implemented. This adjustment would allow performance of added program efforts under the ACM program with no added ACM costs.

B. Decreasing ACCP Reimbursement Rate

When the ACCP was initially developed the program required a responsible person to pay the first \$3,000 to \$7,500 (depending upon specified conditions), and then reimbursed 75% of all additional costs, up to a fund cap of \$300,000. Shortly after the program was initiated, the reimbursement rate was increased from 75% to 80%, retroactive to all prior claims. Expenses to the ACCP Fund could be reduced by returning to the 75% reimbursement rate. In combination with the 15% decrease described in item A., the department estimates this 5% reduction in reimbursement rate would reduce ACCP expenditures by \$180,000. This reduction would be implemented for all expenditures incurred (paid) after a pre-determined date, preferably the first day of the year following passage of the bill (January 1, 2003).

C. Increased ACCP Surcharge Authority for Fertilizer Tonnage

The combined impacts of items A. and B. would reduce ACCP expenditures to the same level as projected ACCP revenues. Both these proposals would have a delayed effect, leaving the fund balance near zero. Under existing rules fees are already set at the maximum levels for fertilizer and pesticides. While the department believes the fund

could be managed in the future through these modifications, the delay may cause a short-term deficit and the existing structure provides no margin for missed estimates or inflationary impacts.

Within ACCP, staff report pesticide related issues continue to dominate the groundwater and analytical costs of the program. Since many of the most heavily pesticide contaminated sites have been addressed, fertilizers have become the controlling factor for more than half of today's excavated soil mass. Soil excavation and landspreading account for half the ACCP reimbursed expenses. ACCP Fund related fertilizer costs substantially exceed the \$494,000 in ACCP tonnage surcharges.

Based on our analysis, increases needed to balance the ACCP fund in a manner that more equally represents the cleanup costs being reimbursed would require the maximum ACCP fertilizer tonnage surcharge be increased in the statutes by \$0.55 per ton. If combined with items A. and B. above, plus additional changes described in items G. through I. below, the department believes that increasing the authority by only \$0.50 would be sufficient to handle any unanticipated variations in reimbursement requests. This \$0.50 increase in surcharge authority (or any portion of it) would not be implemented without additional rulemaking, combined with a justification demonstrating that without a change the ACCP Fund would suffer an insufficient balance to pay projected reimbursements. The attached projections suggest only a small portion of the increased fee authority may be needed to restore the fund balance, and that even this limited increase would only be needed for a few years. (Our projections assume a \$0.15 increase in the surcharge paid beginning FY 04/05 and ending FY 06/07. Subsequent years should resume at the current level. This would coincide with the start of the base fee increase described under item F.)

D. Reducing Environmental Fund Transfers

DATCP strongly believes the current balance of responsibilities and increases in funding to meet past Environmental Fund deficits have contributed to a substantial imbalance in agrichemical revenues transferred to the Environmental Fund compared to the agrichemical work performed under that fund.

When agrichemical funding of DNR programs began in the mid 1980s, DNR was expected and did play a substantial role in agrichemical work, including groundwater protection, spill response and cleanup of contaminated sites. In the years since, those roles have decreased dramatically. While DNR once coordinated and conducted most pesticide related groundwater monitoring and was very involved in the regulatory oversight for protection of groundwater from pesticides, these functions are now almost exclusively DATCP duties. While DNR once managed all pesticide and fertilizer spills, DNR now forwards essentially all spill calls to DATCP for management and closure. (In many cases, DATCP is the first called and we notify DNR so they can maintain a log of all reported spills.) While DNR was once responsible for all agrichemical contaminated site investigations, all but a handful of historical cases have been transferred to DATCP's ACCP. This trend toward work responsibilities being transferred to DATCP continues,

with the most recent example being the transfer of responsibility for lead arsenate contamination.

DNR acknowledges they do not track time and expenses in relation to revenue sources. Agrichemical revenues in particular are such a minor component of DNR's Environmental Fund that their time codes do not attempt to distinguish agrichemical work. This lack of specific records limits their ability to provide reliable estimates. Yet DNR also emphasizes their efforts to communicate with DATCP on any agrichemical activities they conduct. While DATCP occasionally does not find out about DNR activities until considerably later, the department believes it has a reasonably complete knowledge of DNR's pesticide related activities. While not duplicative, most of DNR activities have associated components at DATCP that are tracked by time and expense. DATCP believes that its data can be used to reliably estimate DNR's agrichemical related program time and cost. Such an analysis suggests a substantial imbalance between agrichemical revenues deposited to the Environmental Fund and agrichemical outputs from the DNR and external Environmental Fund appropriations. Our analysis suggests that continuing funding to the Environmental Fund should be approximately \$512,000 (compared to an estimated annual transfer of \$1,288,000). This analysis suggests that pesticide fees are substantially subsidizing non-agrichemical related work at DNR.

Most of the agrichemical revenues transferred to the Environmental Fund are derived from pesticide registrations. Of these, the agrichemical industry recognizes that the household and industrial products more closely parallel the "general public" benefactors of the Environmental Fund expenditures. Elimination of the Environmental Fund transfers for nonhousehold products and reducing transfers on household and industrial products to \$60 per product, plus the wood preserving surcharge, well compensation fee and fertilizer tonnage fees would closely match the continuing and anticipated agrichemical expenditures from the Environmental Fund.

E. Increasing Feed Tonnage Fees

DATCP's analysis of ACM program costs versus revenue sources point to two industry segments that are not paying fees proportionate to program expenses. The smaller of these imbalances is for feed related activities. Current expenditures are approximately \$743,000, whereas current (post-holiday) revenues from feed licenses and tonnage fees are only \$675,000. Given the increasing public emphasis on food safety and biosecurity, DATCP expects its animal feed-related activities to increase. Given current fiscal projections, increases in feed program efforts are expected to occur through reduction in time spent on related agrichemical programs (versus increased ACM appropriations).

A \$0.05 increase in feed tonnage fees would generate an estimated \$140,000 and reinstating a minimum fee for small tonnage firms would add about \$10,000. Small tonnage feed producers are primarily pet food producers and manufacturers of specialty ingredients or feed additives. Most such firms are believed to be out-of-state manufacturers. Labels on these products require a disproportionately higher degree of label review time. These revenues are expected to adequately cover the current share of feed related expenses to the ACM fund, plus marginal increases in the program. Should

food safety or biosecurity issues require substantial changes to the program, this would require an overall review of program authorities, staffing and funding. Changes to feed tonnage would begin the calendar year after bill passage (January 2003) and be collected in FY 2003/2004.

F. Increasing Fertilizer Tonnage Base Fees and Permit Fees

A larger imbalance in ACM fees versus program costs exists for nutrients. Program expenses include the fertilizer regulatory program itself, plus nutrient management (part of the water quality program), bulk containment and ACCP staff, lab and supply expenses. Combined, these ACM fund expenditures for fertilizer related issues are estimated at \$1,400,000, whereas the current fertilizer license, permit and tonnage revenues deposited to ACM are \$436,000. This funding shortfall represents most of the annual deficit between program revenues and annual operation costs for the Agrichemical Management bureau.

Reducing the Environmental Fund transfer would off-set a major portion of this deficit. This would leave the pesticide industry subsidizing fertilizer related issues, but both programs are within the agrichemical management arena; a much a closer match than the current transfer that subsidizes the waste management and groundwater programs far beyond those issues associated with agrichemicals. This proposal also recognizes that given the GPR shortfalls, a pesticide fee decrease is unlikely and it provides a practical and appropriate alternative to another dramatic fee increase on fertilizer.

Making up the difference between the Environmental Fund transfer reduction and the ACM shortfall associated with fertilizers could be accomplished with a tonnage fee increase of \$0.15 per ton, plus a low analysis fertilizer permit review fee of \$100. Combined these changes would generate about \$202,000. With an accelerated producer security repayment and the decreased Environmental Fund transfer, the tonnage increase could be forestalled until the producer security loan is repaid (beginning with products sold after July 1, 2006. Without the Environmental Fund transfer reduction the fertilizer tonnage fee would need to increase by \$0.60 per ton for product sold after July 1, 2002 and still increase another \$0.15 after July 1, 2006, or sooner if a large producer security default occurred.

G. Modifications to Resolve Retroactive Fee Payments

Under current law, manufacturers pay their license (registration) fees based on sale volume in a preceding 12 month period. When fee changes have occurred in the past, these changes have either affected sales that have already occurred or the fee changes have been postponed to avoid affecting past sales. Both the department and industry anticipate that such an issue may occur again if the existing fee payment structure is maintained.

In comparison, feed and fertilizer tonnage payments are based on actual sales, with payments made after the end of each year. The department believes a slight variation on the model used for feed and fertilizer could be applied to pesticides. While a simple switch to end-of-year payments would leave the department without revenue in the initial

year, the department could use an estimated payment system based off projected forward sales. Manufacturers could report actual past year sales and estimate future sales based on the past amount. At the end of that year, they would report actual sales, make payment adjustments, and again estimate and pay for the subsequent year sales. To assure reasonable estimates on future sales (and avoid a first year revenue shortfall), the department would allow each manufacturer the choice of basing their estimate on 90% of prior year sales or making a smaller payment at risk of a substantial penalty if they substantially under-estimate their sales.

Under the system described above, the department assumes manufacturers in the upper fee tier may take advantage of the 90% payment option at the upper fee tier for those nonhousehold products making percent-of-sales payments. Implementing this provision could delay the remaining 10% to the end of each calendar year, which is the subsequent fiscal year. This is estimated to have a first year fiscal impact of -\$35,000 for the ACM Fund and -\$192,000 for the ACCP Fund. Subsequent years would each include full payments comprised of 10% from the ending year and 90% for the following year. The first year losses would be gradually recovered in subsequent years as individual products are discontinued and replaced by new products. This provision would be first implemented for the 2004 licenses, in order to allow other provisions of this proposal to recover fund balances from their near-zero levels at the end of FY 02/03.

H. Reduce ACCP Fund Balance Requirements

The ACCP statute provides DATCP rulemaking authority to manage the balance in the ACCP Fund, while also requiring the agency to maintain a balance in the fund of not less than \$2 million and not more than \$5 million. This statute also establishes maximum fee levels that can be imposed by the agency's rule. Based on fund projections, DATCP expects the fund to drop below the \$2 million balance by the end of the current fiscal year, and that even with the maximum fee level allowed by statute, the fund will not only remain below \$2 million, but will continue dropping.

In addition to the inability to maintain the statutory minimum, both DATCP and the paying agricultural industry are concerned that a balance that climbs as high as \$5 million might again become a target for another fund "raid". This concern is based on past transfers of funds from both the ACM and ACCP to GPR, despite the now realized predictions that these funds would reach a deficit if the transfers occurred.

The combined effects of statutory changes, rule changes and a larger history on program costs, plus other recommendations in this proposal, DATCP believes it can manage the fund with a lower balance. DATCP recommends the upper balance be decreased to \$3 million and the lower balance be eliminated. This provision must be combined with increased fee authority or elimination of the maximum fee being specified by statute, since it eliminated the \$2 million "margin" that allows time for statutory revisions. Rule revisions that allow the agency to adjust fees more rapidly through a notice and public hearing will further aid close management of the fund.

I. Improve Timeliness of ACCP Surcharge Adjustments

Currently DATCP establishes ACCP surcharge amounts through rules that numerically specify the fee amounts. To adjust these fees requires the full rulemaking process, which takes a minimum of one year to complete, plus a second year during which the industry collects the modified fees. Hence any rule change requires projecting the fee balance at least two years in advance. While emergency rules can be implemented more rapidly, they are limited to a 150 day period and can only be written upon demonstrating emergency conditions exist.

The department believes the existing rules that numerically specify the fee amount could be replaced with a rule that identifies a formula that will be used to adjust fees through an administrative notice and public hearing process. This notice and hearing process is already successfully used by Minnesota's parallel to Wisconsin's ACCP, and would substantially eliminate the time lag between recognizing the need for a fee change and collection of those fees, without impacting industry's ability to collect those fees.

Under such an approach, the rule would evaluate the revenues, expenditures and fund status at the end of each fiscal year. By approximately August 1 of each year, the department would use a formula prescribed by the rule that considers each of these factors, to calculate and announce the intended surcharge for the subsequent year. The alternate surcharge would take effect almost immediately, with any changes to pesticide registration fees affecting products sold after October 1 and paid that December, and any changes in fertilizer tonnage being effective immediately and paid the subsequent August. Under such a rule, DATCP believes it could manage the fund balance between \$1 million and \$3 million. Without this type of rule, the delays caused by the current rule process may require a higher balance.

J. Accelerated Repayment of Producer Security Loan

2001 Wisconsin Act 16 provided a \$2,000,000 loan from the Agrichemical Management Fund to re-create the Agricultural Producer Security Program. Act 16 specified a minimum repayment schedule of \$250,000 on July 1 of each year, beginning July 1, 2003, with full payment (with 5% interest) by July 1, 2006

Alternatives to Be Considered

The committee that assisted the Division with reviewing funding options recognized the importance of the Agrichemical Bureau's programs and services, but also asked the department to consider program savings as part of the solution to the funding shortfall. While some program savings and restructuring have been included in the package above, the Division has identified additional options. These options have not been included because the Division believes these cuts to be counter productive to the long-term purposes of these programs. At the same time, these represent the changes that the Division would pursue first, if some of the fee increases, restructuring or transfers proposed above were not feasible.

- Fewer or smaller clean sweep grants. DATCP is authorized to spend \$560,000 per year for clean sweep grants. Grants are made to counties based on each county's estimate of the waste volume they may collect. History has shown that it is difficult to predict waste volumes. So while the department has been committing the full appropriation, some counties spend less than their grant and other counties spend greater than their grant. Overall, spending has varied from \$55,000 to \$250,000 below the appropriation. The Department could reduce either the number or size of clean sweep grants. Further limiting the size of grants would likely result in increased costs for counties that hold successful collection events. Limiting the number of grants would reduce the waste volumes collected.
- Reduced DATCP role in spills sampling. For most immediate spill responses post excavation sampling is required to assure the fertilizer or pesticide spill was fully recovered. Currently DATCP collects and analyzes these samples. Alternatively, those responsible for a spill could hire a consultant and private lab to collect and analyze the samples, then seek partial reimbursement for these costs from the ACCP Fund. DATCP believes the disproportionately high costs to retain a consultant on a simple spill and then reimburse that cost anyway is inappropriate. Yet the use of a private lab for sample analysis would reduce ACM expenses, while having a more limited impact on the ACCP fund. By substantially eliminating spills samples, the department believes it could reduce the laboratory services budget by an estimated \$46,000, essentially leaving this cost to private labs and partial reimbursement under the ACCP. The net impact of this transition would be increased private sector costs for spill response and decreased laboratory funding by 1 FTE.
- Fertilizer sampling reductions. The ACM Bureau currently runs a fertilizer sampling program to assure consumers are receiving the properly blended products that they purchase. Under a sampling system that is intentionally biased to collect more samples from firms with a poor compliance record, we have found a non-compliance rate between 15% and 20%. Efforts with individual sites with poor compliance generally increase compliance by those firms, but as equipment ages and personnel change, additional firms constantly develop problems. Over the past 15 years, we have substantially reduced the number of samples collected without significantly changing the rate of noncompliance. Our records clearly demonstrate a continuing need to monitor compliance, and with the increased efforts on nutrient management the importance of high quality fertilizers will become a growing concern. The department believes it could further reduce laboratory costs if it substantially decreased its sampling efforts. Cuts would need to be significant and long-standing enough to allow the laboratory to reduce staffing. A 50% reduction in fertilizer sampling may allow a laboratory reduction of 1 FTE, totaling \$37,000, but may require increased monitoring of product quality by industries, particularly when department sampling has already demonstrated a problem. Field staff time that was previously used for sampling may instead be more productively used for early season field screening of particle sizes, a primary indicator of blending problems.

