

Agricultural Chemical Cleanup Council
Meeting Minutes
Thursday December 7, 2023

The ACCC meeting convened at 9:13 a.m. in Conference Room 212 at the Prairie Oak State Office Building on Thursday December 7, 2023 and via Microsoft Teams video conference.

Council members present via Teams: Frank Masters, Arch Morton Jr., Joe Sikora, Jennifer Wickman and Kevin Solum.

Department of Agriculture, Trade and Consumer Protection employees attending in person: Mark McColloch, Alan Hopfensperger and Sally Ballweg. Via Teams: Ryan Berzinski.

ACM / ACCP Update and Discussion:

Ryan Berzinski:

Not a lot of updates to report since our last meeting. We are fully staffed except for one position which we are hoping to fill in January. That position is our Bureau Program Analyst Adv-Mgmt. which has been vacant for quite some time because it is a unique position.

We completed our federal fiscal year end reporting and meeting with EPA in November and all went well. We are waiting to see if EPA has any updates to their approach with the Endangered Species Act. We submitted comments to both the Vulnerable Species Pilot and the new Herbicide Strategy. EPA issued an update on the Vulnerable Species Pilot and only acknowledged comments, questions and concerns at this time. So we are waiting for more information in the Fall of 2024.

We are in the renewal season for Pesticide Registration, Certification and Licensing, Feed Fertilizer and all is going well.

Ryan asked if any questions. There were none.

Mark McColloch:

We are one Council Member shy today, Benjamin R Nelson took a different position with a different company and had to step down from our Council in October of this year.

We have reached out for a replacement for our Consultant Representative and are pleased to announce Thomas J Culp with TrueNorth Consultants has gladly accepted. Tom is also involved with WABA. He will take over our vacant position on the Council effective in January 2024 through the end of Ben's term which is June 2024. We will schedule our onboarding meeting with Tom soon.

We have also obtained a signed Commendation from our Secretary to send to Ben thanking him for his years of service on our Council.

Mark asked if any questions. There were none.

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Meeting Minutes Approval from September 14, 2023

Meeting Minutes from September 14, 2023 are included as Insert 21 in our Agenda Books. Mark asked if there were any comments or questions on the minutes from the previous Council meeting. Any items to discuss or items to repair? There were none.

MOTION: Kevin Solum moved, seconded by Joe Sikora to accept the minutes of the September 14, 2023 Council meeting. (Motion carried 5-0.)

Post Meeting Memo and Post Meeting Table from September 14, 2023

The post meeting memo and post meeting table are included as Insert 22 in our Agenda Books. Mark noted the Department and Council were in agreement on all decisions made regarding reimbursement amounts from the September 14, 2023 meeting. Mark asked if any questions or comments. There were none.

Next Council Meeting

The next ACCC meeting was scheduled for Tuesday, March 12, 2023, starting at 9:00 a.m. Sally will send out the meeting invite.

Summary of ACCP Program Progress

- Processed 21 applications for CY 2023 so far (compared to 28 applications for September CY 2022).
- The total amount of *eligible costs submitted* for all applications for CY 2023 (through December) is \$1,001,076.59 and the total amount reimbursed for the year is \$755,374.50
- For this second meeting for FY 2024, 6 applications were processed. The total amount of *costs submitted* for all applications for this meeting is \$202,502.98.
- Total eligible costs for this meeting are \$202,495.48; only \$7.50 was identified as *ineligible*.
- The amount proposed for reimbursement for this meeting is \$152,995.61.
- No discharge sites reviewed for today's meeting previously exceed the \$400,000 cap.
- No discharge sites reviewed for today's meeting will exceed the \$650,000 cap upon reimbursement.
- Two sites, the *United Cooperative site at Baraboo* and the *Country Visions site at Random Lake* reviewed for today's meeting were re-opened for additional corrective action.

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- Three sites, the *United Cooperative site at Baraboo*, the *CFS Specialties site at Cashton* and, the *Milaeger's Inc. site at Racine*, presented at today's meeting have been closed.
- Contaminated soil excavation and groundwater monitoring has been performed at the *Country Visions site at Random Lake*. Contaminated soil excavation has also been completed at the *Crossroads at Big Creek site at Sturgeon Bay*; case closure in the near future is anticipated for both cases.
- Additional soil and groundwater samples were recently collected at the *ProVision Partners site at Black Creek*. Additional sampling will be completed before evaluating corrective actions.
- DATCP has responded to 34 spills so far in CY 2023, compared to 28 spills in CY 2022. Reimbursement applications for one or two more spill case sites can be are expected. Costs incurred within the last three years are eligible if not covered by insurance.
- Overall number of active ACCP cases has declined slightly (around 115). Since the last meeting, four cases were closed, but six cases were re-opened.

Joe: Have we seen a lot of cases opened since the cap was increased from \$400,000 to \$650,000?

Mark: Yes. Most of the cases that exceeded the \$400,000 cap, I think there were about 35, have since been closed. Their maybe 5 or 10 at the most that are still open. Maybe one site has exceeded the \$650,000 cap, and possibly two more sites that will exceed the \$650,000 cap in the near future.

Joe: Ok. Thanks.

Mark: Although most sites that exceeded the \$400,000 cap have been closed, we also have seen some sites, that even though they didn't exceed the cap, they were re-opened to do additional work to the site. For example, if the owner takes down an old fertilizer building, they may need to clean up ground beneath it before building a new fertilizer building is constructed. That is where the clean-up funds comes in. Because the site was closed with continuing obligations, let's say with the soil contamination left in place under the building, additional investigation and corrective action would be eligible. This is pretty common for sites that we have re-opened. Good news is we are not seeing a lot of new contamination. Also, new contamination is not as expensive to clean up as the old contamination (because it is typically discovered sooner).

Joe: I think the comfort of having the extra money in the cap is part of the reason some of them were re-opened. Weather they use it or not, it is nice to know it's there if they need or want to.

Mark: Yes, it's a business decision and good for the environment as well.

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Joe: Yes

Mark asked if there were any other questions. There were none.

Review of Applications

In your agenda books you'll find our proposed reimbursement summary sheets for 6 applications included as Inserts 24 through 29.

There is 1 application for which the department proposed some *ineligible* costs; costs for the remaining 5 applications were found to be all eligible.

F. Applications WITH non-eligible costs:

The application with non-eligible cost is for the *Country Visions Cooperative site at Random Lake*. The reimbursement summary sheets is included as Insert 27 in your agenda books. As shown, an application in the amount of \$22,273.94 was submitted and the department is recommending reimbursement in the amount of \$16,789.05. Costs totaling \$7.50 were identified as ineligible by the Department. As shown on the explanation sheet this ineligible cost is for an hourly rate above the approved rate. **Note: the Department is not recommending a double deduction for these ineligible costs.**

Mark asked if there was any discussion. There was none.

Is there a motion to accept the Department's decision for non-reimbursement in the amount of \$7.50 as proposed by the department?

MOTION: Arch Morton, Jr. moved, seconded by Joe Sikora to accept the Department's recommendation for reimbursement. (Motion carried 5-0.)

Review of Applications with ALL ELIGIBLE costs

ALL ELIGIBLE applications for the five applications reviewed for today's meeting include the following:

- Insert 24 - \$6,383.20 in eligible costs for the *CFS Specialties site at Cashton* with a proposed reimbursement amount of \$4,882.16;
- Insert 25 - \$10,449.50 in eligible costs for the *United Cooperative site at Baraboo* with a proposed reimbursement amount of \$7,893.70;
- Insert 26- \$73,422.31 in eligible costs for the *Milaeger's Inc. site at Racine* with a proposed reimbursement amount of \$55,656.63;
- Insert 28 - \$13,586.86 in eligible costs for *ProVision Partners site at Black Creek* with a proposed reimbursement amount of \$10,240.40.

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- Insert 29 - \$76,387.17 in eligible costs for *Crossroads at Big Creek site at Sturgeon Bay* with a proposed reimbursement amount of \$57,533.67.

Mark asked if there was any discussion.

Frank: Mark, could we review the Crossroads at Big Creek application separate from the other 4? Because it is a unique RP, being a non profit, I have a couple questions and would like to discuss separately if we could.

Mark: Sure, we can do that.

Is there a motion to approve the reimbursement costs for all above applications except the Crossroads at Big Creek application?

Frank: One more question, Is Milaeger's, Inc. a landscape, lawn care company?

Mark: Yes, it is. They are actually required to have a mix/load pad, and we did a small cleanup project for a prior case. For this case, fertilizer contamination was discovered in an alley, and they may have paid a fine for this contamination. It is a big operation; a home and garden store, a greenhouse, and they do landscaping.

Frank: Ok. Thank you. I wasn't familiar with that company. That is my only question on that.

In the past, we've taken a motion to approve as a group, all applications where the Department's decision is to reimburse all costs. Is there a motion to accept the Department's decision to reimburse all six of these applications as proposed by the department?

MOTION: Frank Masters moved, seconded by Joe Sikora to accept the Department's recommendation for reimbursement. (Motion carried 5-0.)

Back to the Crossroads at Big Creek application, let's open up for discussion on this.

Frank: Samantha from Crossroads at Big Creek had given us information, before the meeting started today, about the company being a non-profit organization that deals with tourists in Door County?

Mark: They are actually a learning center and nature preserve. They have event space you can reserve; DATCP staff have attended meeting's there in the past. They also host students for tours, nature hikes and many other activities. They have acquired quite a bit of land and have restored it from orchard back to forest land, which may have required removing some old farm buildings. Samantha can better explain this.

Frank: Yes, Samantha, this is a non-profit? (Samantha did not respond here) So there are no tax payer dollars coming in to this organization for support of an ongoing budget? I am just trying to understand the funding source and my bottom line question is taking dollars from the ACCP to put to a business that may or may not have tax payer dollars, rather than a private entity. So I just want to understand.

Mark: this is the second application they have done. Back when the site was owned by the school district, they were not eligible because they were a government entity. But

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when they became a non-profit, a decision was made that they were eligible and their first application was then submitted back in 2010 (for an investigation), so they remain eligible for reimbursement (for the cleanup).

That's interesting Frank because this is a legacy site, so back when they were using the lead arsenic and pesticides and insecticides in orchards, there were no fees on those and yet they are eligible for the remediation program.

Frank: Yes, so it goes back far enough that the products that were used in the orchard at that time were not subject to ACCP

Mark: Yes they quit using those products in the 50's and 60's and the ACCP did not start until 1993.

Frank: So in essence we are paying for cleaning up a farm/orchard from the 50's and 60's that was mixing products, but had no containment and no regulations in place at that time.

Mark: Correct. This is not the first legacy orchard case. We probably have about 20 lead arsenic cases that have been closed. So yes, the determination was made many years ago, that this type of contamination would be eligible, because lead and arsenic were used as pesticides (because the ACCP fund collects fees for agri-chemicals currently used for orchards).

Frank: Ok.

Mark: Good questions.

Frank: Yes, I just didn't recall any prior cases like this, with lead arsenic with a non-profit, that's the only reason I am asking, to try to understand.

Mark: We have opened cases for other former orchard properties that have been developed. I can think of two sites in the Sturgeon Bay area, where we have closed the cases, but they have chosen not to use the fund.

The fund will pay for investigation and cleanup at mix/load pads, but will not pay to remediate back ground conditions if it is from field use for lead arsenic.

Frank: Samantha you said in your earlier comments that Door County had contributed some money towards this clean up?

Samantha: Correct, The County does have a cost share program, because Door County has so many of these mixing sites, that they will contribute up to \$10,000 to whatever remains after all other funding is complete.

Mark: Those funds would cover any of their ineligible costs or their 25% ACCP copay-which is over \$19,000.

Frank: Ok.

Mark: This approach is similar to what we has been done for some spill sites. For example, insurance will pay up to \$10,000 and then the cleanup fund kicks in after that. The \$10,000 can be applied towards the copay or deductible or other administrative costs that can not be reimbursed.

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Frank: Ok. I appreciate that. Helps me to understand. I have no further questions.

Mark asked if any other questions. There were none.

Is there a motion to accept the Department's decision for reimbursement in the amount of \$57,533.67 to Crossroads at Big Creek site at Sturgeon Bay as proposed by the department?

MOTION: Joe Sikora moved, seconded by Jennifer Wickman to accept the Department's recommendation for reimbursement. (Motion carried 5-0.)

That concludes our review of applications for this quarterly Council meeting.

At the March meeting we may plan to complete, as a group, our Public Records training.

Are there any comments, questions, or other business that needs attention? Hearing none, is there a motion to adjourn?

MOTION to adjourn: Frank Masters motioned, seconded by Jennifer Wickman.

Meeting adjourned at 9:42 a.m.