



ATCP 35, Wis. Adm. Code

INTERPRETATIONS AND CLARIFICATIONS

**Wisconsin Department of Agriculture,
Trade and Consumer Protection**

Revised May 2020

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This guidance document is based on Wis. Stat. ch. 94. 73 and chapter(s) ATCP 35 Wis. Admin. Code. This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed.

INTRODUCTION

This document is intended to assist responsible persons, environmental consultants, and others involved in the Agricultural Chemical Cleanup Program (ACCP) in understanding and complying with the requirements of ch. ATCP 35, Wis. Adm. Code. Appendix 1 includes a flow chart showing the relationship between bidding, cost estimates, and DATCP approvals. A checklist to assist with documentation requirements for bids, estimates and invoices is also included in Appendix 1.

Rule interpretations and clarifications are incorporated within the body of the rule language, following the standard rule language it is intended to clarify. It is printed in a bold and italicized font.

For additional information, call our office at (608) 224-4519, visit our website at https://datcp.wi.gov/Pages/Programs_Services/AgriculturalChemicalCleanupProgram.aspx, or write to us at:

Agricultural Chemical Cleanup Program
DATCP
PO Box 8911
Madison, WI 53708-8911

Please note that many of the forms referenced within this document can be printed directly off our website. The forms may change so contact the department, at (608) 224-4522, for the most recent version of any form.

This Interpretations and Clarifications documents has been revised to include the following changes:

- On September 21, 2017 eligibility was restored to all sites when the following repeal of s. 94.73 (3m)(w) Wisc. Stats, and
- Effective July 1, 2017 the discharge site maximum increased from \$400,000 in eligible costs to \$650,000 in eligible costs per 94.73(6)(b) and (c), Wis. Stats.

The following interpretations and clarifications were presented in a document entitled *Frequently Asked Questions Related to Recent Biennial Budget Changes Affecting the ACCP*, which was posted at the DATCP website in November 2017.

What does it mean that eligibility is restored to all sites?

A previous biennial budget prohibited reimbursement for a discharge from a bulk storage facility constructed after July 2, 2013. This prohibition was repealed, and all facilities—including those constructed after July 2, 2013 are now eligible. The following provision was repealed:

[t]he cost of corrective action taken in response to a discharge from a bulk storage facility, owned or operated by a person who manufactures or distributes fertilizer or pesticide, that is

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located on property on which no bulk storage facility was located before July 2, 2013, unless the person filed construction plans for the bulk storage facility with the department before July 2, 2013.

How is the maximum amount of reimbursement affected by the increase in costs eligible for reimbursement at a discharge site?

For discharge sites with a \$3,000 deductible, with all costs incurred on or after 1/1/04, the new maximum reimbursement that can be issued is **\$485,250** [(\$650,000 maximum eligible costs - 3,000 deductible) x 75% remaining after 25% copayment].

For discharge sites with a \$7,500 deductible, with all costs incurred on or after 1/1/04, the new maximum reimbursement that can be issued is \$481,875 [(\$650,000 maximum eligible costs - 7,500 deductible) x 75% remaining after 25% copayment].

If some of the costs for a discharge site were incurred prior to 1/1/04, the maximum amount of reimbursement that can be issued will vary. Please contact the ACCP auditor at (608) 224-4522 if you want to learn the maximum payment for those discharge sites.

How will the increase in the discharge site maximum impact all discharge sites in the ACCP?

The discharge site maximum was increased from \$400,000 to \$650,000 for eligible costs *incurred* on or after July 1, 2017. The reimbursement requirements and conditions for ACCP eligible costs are unchanged.

How will the increase in the discharge site maximum impact open case discharge sites that received the maximum reimbursement before July 1, 2017?

Costs incurred after July 1, 2017 are eligible for additional ACCP reimbursement under the \$650,000 maximum. The department's review and approval of the cost estimates and associated scopes of work are required. If not already approved, cost estimates for costs incurred on or after July 1, 2017 should be submitted to the department by December 15, 2017 for approval.

Future applications with costs incurred between July 1, 2017 and December 15, 2017 under cost estimates not provided by December 15, will be ineligible for reimbursement. Reconsideration of those costs can be requested using the "75% provision" in s. ATCP 35.16 (8) (c), Wis. Admin. Code.

How will the increase affect closed case discharge sites that received the maximum reimbursement before July 1, 2017?

In the event additional cleanup is planned, a cost estimate and associated scope of work should be submitted for the department's review and approval.

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Do I need to obtain competitive bids for open or closed case sites that received the maximum reimbursement before July 1, 2017?

Not necessarily. All reimbursement requirements and conditions for ACCP-eligible costs are unchanged. Therefore, consulting costs submitted for reimbursement must be at rates allowed in the original proposal. If a new consultant was hired without obtaining three competitive bids, the rates in the original cost estimate will be used as the basis for the billing rates as long as the Department determines that the rates are reasonable.

INTERPRETATIONS AND CLARIFICATIONS
Chapter ATCP 35
AGRICULTURAL CHEMICAL CLEANUP PROGRAM

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ATCP 35.34	Agricultural chemical cleanup council.

Note: This chapter codifies the agricultural chemical cleanup program created under s. 94.73, Stats. Persons seeking information about the program, or wishing to file an application for reimbursement of cleanup costs, may contact the agricultural cleanup program in the division of agricultural resource management, Wisconsin department of agriculture, trade and consumer protection, P.O. Box No. 8911, Madison, Wisconsin, 53708-8911.

A copy of the most current version of Section 94.73, Wis. Stats. Agricultural Chemical Cleanup Program is included in Appendix 2.

ATCP 35.01 Definitions.

In this chapter

- (1) "Active groundwater remediation" means active physical, biological or chemical manipulation of groundwater, or of the rock or soil media in which groundwater is situated, for the purpose of reducing the amount of agricultural chemical contamination or minimizing the spread of contamination. "Active groundwater remediation" includes treatment by means of aeration, bio-augmentation, planned nutrient loading or pump-and-treat methods.
- (2) "Active soil remediation" means active physical, biological or chemical manipulation of soil for the purpose of reducing the amount of agricultural chemical contamination in soil. "Active soil remediation" includes treatment by means of excavation and landspreading, aeration, bio-augmentation or planned nutrient loading.
- (3) "Agricultural chemical" means a substance that is a fertilizer or a nonhousehold pesticide, and that is a hazardous substance as defined in s. 299.01 (6), Stats.

Agricultural chemical does not include animal feeds that have urea or other nitrogen-related compounds in the feed mixture.

Contact the department at (608) 224-4519 for further clarification of whether a specific product is considered an agricultural chemical.

- (4) "Agricultural chemical cleanup council" means the council appointed under s. ATCP 35.34.
- (5) "Approved corrective action costs" means eligible corrective action costs which the department has approved for reimbursement under s. ATCP 35.08 (4).
- (6) "Approved workplan" means a workplan for corrective action that is approved by the department under s. ATCP 35.18 (1) (a).
- (7) "Commercial application business" has the meaning given under s. 94.67 (5), Stats.
- (7m) "Contiguous land" means land included in the same parcel or an adjacent parcel. "Contiguous land" includes parcels that are separated only by a road, railway, or utility right-of-way, or by a government-owned land corridor or waterway not wider than 66 feet.
- (8) "Contractor" means a person who contracts to perform all or part of a corrective action. "Contractor" includes a consultant, general contractor or subcontractor who contracts to perform all or part of a corrective action, but does not include a responsible person or an employee of a responsible person.
- (9) "Contract services" means services provided by a contractor as part of a corrective action. "Contract services" includes all of the following services:
 - (a) Excavating.
 - (b) Trucking.
 - (c) Landspreading.
 - (d) Waste disposal services.
 - (e) Drilling, including at-depth soil sampling and well installation.
 - (f) Laboratory services.
 - (g) Professional consulting services.
 - (h) General contractor services.
 - (i) Other services provided by contractors.
- (10) "Corrective action" means an action, consisting of one or more corrective measures under sub. (12), that is taken or ordered in response to a discharge in this state, and that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands or waters of this state. "Corrective action" includes an action taken or ordered by the department of natural resources under s. 292.11 (7), Stats., in response to a discharge, but does not include an action ordered by the department of natural resources under s. 291.37 (2) or 291.95, Stats. "Corrective action" does not include any action taken or required to be taken before January 1, 1989.
- (11) "Corrective action costs" means reasonable costs that a responsible person has actually incurred for a necessary corrective action.

An example of an unnecessary remedial action cost would be the cost to hire a second consultant to review the work of the primary consultant.

Reasonable costs to locate private utilities are viewed as a necessary for the remedial action.

A cost is "incurred" at the time payment is made, based upon the date of the check.

- (12) "Corrective measures" means any of the following:
 - (a) Investigation to determine the extent and severity of environmental contamination caused by a discharge, including sampling and analysis of soils, groundwater or other media.
 - (b) Containment, removal, treatment or monitoring of environmental contamination caused by a discharge.
 - (c) Transportation, storage, land application or disposal of materials contaminated by a discharge.
 - (d) Other corrective measures approved or ordered by the department.
- (13) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.
- (14) "Discharge" means the discharge, as defined in s. 292.01 (3), Stats. of an agricultural chemical.

Note: Under s. 292.01 (3), Stats., "discharge" includes, but is not limited to, spilling, leaking, pumping, pouring, emptying, emitting or dumping.

(15) "Discharge site" means the area affected by one or more discharges. "Discharge site" includes all contiguous land that is owned, leased or controlled by the responsible person at the time the discharge occurs, plus any other area affected by the discharge.

If a discharge occurs at a commercial application business or a distributor of agricultural chemicals, then that firm would be required to look at their entire site including all the contiguous land they own, lease, or control. If a discharge occurs at a farm site, the owner of the farm may decide to expand the investigation to include other locations on the farm based upon the owner's knowledge of past practices or spills at the farm. If the discharge date is not known, the discharge site includes all contiguous land that is owned, leased or controlled by the responsible party and affected by the discharge at the time the discharge is identified. Contiguous property is further interpreted to include all immediately adjacent land as defined in ATCP 29.01(25), Wis. Adm. Code.

(16) "Eligible corrective action costs" means costs on which the department is authorized to pay reimbursement under this chapter.

(17) "Fiscal year" means the state fiscal year ending June 30.

(17m) "Fixture" means any of the following:

(a) Railroad tracks, ties and ballast.

(b) Culverts.

(c) Fences.

(d) Gas mains, pipelines and related structures.

(e) Electric poles, power lines and related structures.

(f) Water and sewer mains and pipelines.

(g) Facilities for the transmission of telecommunications or television services, including wires, optics, cables, poles and towers.

(18) "General contractor" means a consultant or other contractor who, on behalf of a responsible person, secures or directs the services of other contractors related to a corrective action. "General contractor" includes a person who solicits or receives contract bids, prepares contracts, directs corrective measures performed by others, or enters into contracts with subcontractors to perform corrective measures.

Also see note at end of s. ATCP 35.16 (6) (b) as it pertains to "General Contractor".

(19) "Household pesticide" means a pesticide that is any of the following:

(a) A sanitizer.

(b) A disinfectant.

(c) A germicide.

(d) An insect repellent that is applied to the human body or to clothing.

(e) A pesticide that is used exclusively for the treatment of household pets.

(f) A pesticide product that is labeled exclusively for household, lawn or garden use if the product either is sold in ready-to-use form or is sold exclusively in container sizes of less than one gallon.

(g) A solid or liquid pesticide product that is used exclusively for the treatment of swimming pools, spas or hot tubs.

(20) "Indirect cost" means any general cost of doing business that cannot be directly and exclusively attributed to a corrective action. "Indirect cost" includes costs for equipment, supplies, services, real estate, structures and improvements, overhead, managerial and staff support, staff training, taxes, insurance, financing and other items which are not directly and exclusively attributable to a corrective action or whose use is not limited to the corrective action.

(20m) "Industrial pesticide" means any of the following pesticides that is not a household pesticide:

(a) A pesticide that is solely labeled for use on wood and contains pentachlorophenol, coal tar creosote or inorganic arsenical wood preservatives.

Other wood preserving compounds commonly used in millwork, consumer wood treatment products, and sap-stain treatments may be nonhousehold pesticides.

- (b) A pesticide that is labeled for use in controlling algae, fungi, bacteria, other microscopic organisms or mollusks in or on one or more of the following, and is labeled for no other use except a use described in sub. (19) (f) or (g):
1. Textiles, paper, leather, plastic, vinyl or other synthetic materials, metal or rubber.
 2. Paints, varnishes, other coating products, lubricants or fuels.
 3. Commercial, construction, manufacturing or industrial fluids, including adhesives, additives and pigments.
 4. Commercial, construction, manufacturing or industrial processes, equipment, devices or containers, other than those used in the production or storage of human food or animal feed.
 5. Air washing, cooling or heat transfer systems.
 6. Medical equipment.
 7. Drinking water or wastewater systems.
- (21) "Installment" means a payment by the department, under s. ATCP 35.28, of all or part of a reimbursement amount which the department has approved for payment under s. ATCP 35.08 (4) (c).
- (22) "Laboratory services" means laboratory analysis and activities that are incidental to laboratory analysis.
- (22m) "Landspread" means to spread or deposit on land, other than in a landfill approved by the department of natural resources under s. 289.31, Stats. soil or water removed from a discharge site.
- (22r) "Nonhousehold pesticide" means a pesticide that is not a household pesticide or industrial pesticide.
- (23) "Responsible person" means any of the following persons, or that person's successor in interest:
- (a) A person who owns or controls an agricultural chemical that is discharged.
 - (b) A person who causes a discharge.
 - (c) A person on whose property an agricultural chemical is discharged.
- History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (1), (3), (6), (10), (14), (15) and (20), cr. (7m), (20m), (22m) and (22r), r. and recr. (9) and (19), Register, September, 1998, No. 513, eff. 10-1-98; am. (4), cr. (17m), Register, October, 2000, No. 538, eff. 11-1-00; CR 14-047: am. (3) Register May 2015 No. 713, eff. 6-1-15.

ATCP 35.02 Corrective action order.

- (1) GENERAL. The department may issue an order requiring a responsible person to take a corrective action. An order under this subsection shall include all of the following:
- (a) The name and address of the responsible person.
 - (b) A description of the property on which the responsible person is required to take corrective action.
 - (c) A description of the corrective action which the responsible person is required to take.
 - (d) A date by which the responsible person is required to complete the corrective action.
 - (e) Notice that the corrective action is required to comply with the following:
 1. Applicable department rules under chs. ATCP 29 to 33 and this chapter.
 2. Applicable rules of the department of natural resources under chs. NR 700, 706, 708 and 712 to 727.
- Note: For corrective actions under this chapter, the department is authorized to review compliance with chs. NR 700, 706, 708, and 712 to 727, and to grant required approvals and variances under those chapters on behalf of the department of natural resources.
- (2) SUMMARY ORDER.
- (a) The department may issue an order under sub. (1) on a summary basis, without prior notice or hearing, if the department determines that a summary order is necessary to prevent imminent harm to public health or safety or to the environment.
 - (b) If the recipient of a summary order under par. (a) requests a hearing on that order, the department shall hold an informal hearing within 10 days after the department receives the hearing request unless the recipient of the order consents to a later date for the informal hearing. If a contested matter is not

resolved at the informal hearing, the recipient of the order is entitled to a class 2 contested case hearing under ch. 227, Stats. and ch. ATCP 1.

- (c) The department is not required to stay a summary order issued under par. (a) pending the outcome of a hearing under par. (b). If, after a hearing under par. (b), the department determines that a summary order under par. (a) was not justified, the department shall reimburse the recipient of the order for reasonable corrective action costs necessarily incurred by the recipient to comply with the unjustified order.

Note: See ch. ATCP 1 for procedure related to administrative orders and contested cases. Under s. 94.73 (13), Stats., a person who violates a corrective action order issued by the department under this section is subject to a civil forfeiture of not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (1) (e) 1., 2., (2) (b) and (c), Register, September, 1998, No. 513, eff. 10-1-98; CR 14-047: am. (1) (e) 2. Register May 2015 No. 713, eff. 6-1-15.

ATCP 35.03 Landspreading.

(1) SOIL.

(a) No person may landspread soil that is removed from a discharge site, and contains an agricultural chemical, unless the department issues to that person a permit authorizing that landspreading. Landspreading shall comply with conditions that the department specifies in the permit.

(b) An individual who landspreads soil containing a pesticide is deemed, for purposes of licensing and certification under ss. ATCP 29.25 to 29.27, to be applying that pesticide.

Note: Landspreading is a potential method for destroying or recycling agricultural chemicals removed from a discharge site as part of a corrective action. The department may approve landspreading which applies agricultural chemicals at rates that are comparable to normal agronomic practice.

(2) WATER. No person may landspread water that is removed from a discharge site, and is contaminated with an agricultural chemical, unless all of the following apply:

(a) The department issues to that person a permit authorizing that landspreading.

(b) The department of natural resources issues to that person a pollution discharge elimination system permit, if required under ch. 283, Stats., which authorizes that landspreading.

(c) The landspreading complies with conditions specified by the department and the department of natural resources under pars. (a) and (b).

(3) PERMIT APPLICATION. A person applying for a landspreading permit under sub. (1) or (2) (a) shall apply on a form prescribed by the department. The person shall submit the application at least 5 department business days before any landspreading occurs.

Contact the department at (608) 224-4519 to receive a landspreading application packet. The department has 30 days to review and approve landspreading applications. We receive many landspreading applications and other documents to review. To prevent any delays, we recommend that all landspreading applications be submitted at least 30 days in advance of the anticipated spreading date. Under s. ATCP 35.03 (3) the department requires submittal of the application a minimum of 5 days before the anticipated spreading date. Failure to submit the application at least 5 days prior to the anticipated spreading date or spreading without an approved permit may lead to civil forfeitures.

The application shall include all of the following:

(a) The name of the applicant and any other persons involved in the landspreading.

(b) The source and quantity of soil or water that will be spread on land.

(c) The kinds and amounts of agricultural chemical contaminants present in the soil or water under par. (b).

(d) The proposed application rate for each agricultural chemical under par. (c).

(e) The locations at which the soil or water will be spread on land.

(f) Any proposed tillage for which the applicant may request reimbursement.

(g) A landspreading agreement form, provided by the department and completed by the applicant. The completed form shall document all the following:

1. That the owner of the proposed landspreading site has consented to the proposed landspreading.
2. That the applicant has disclosed in writing, to the owner of the proposed landspreading site, the kinds and anticipated amounts of agricultural chemicals that will be landspread on the site. The disclosure shall state that persons applying agricultural chemicals to the site must, by law, take account of the pesticides applied by landspreading.
3. That the owner of the proposed landspreading site has agreed to provide a copy of the disclosure under subd. 2 to any other person who may grow crops on that site within 18 months after the landspreading is completed.

Note: To obtain a copy of the landspreading agreement form, contact the Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, P.O. Box 8911, Madison, Wisconsin 53708.

A copy of the Landspreading Agreement Form is provided in Appendix 3.

- (h) Other relevant information which the department may require.
- (4) ACTION ON PERMIT APPLICATION. The department may approve landspreading which applies agricultural chemicals at rates that are comparable to those used in normal agronomic practice. The department shall grant or deny a permit application under sub. (3) within 30 days after the department receives a complete application.
- (5) PERMIT CONDITIONS. The department may specify conditions which apply to a permit issued under sub. (1) or (2) (a), including any applicable requirements under chs. 94, 281 to 285 and 289 to 299, Stats. The department shall specify the conditions in writing, as part of the permit.
- (6) REPORT. Within 30 days after a permit holder landspreads soil or water pursuant to a department permit under sub. (1) or (2) (a), the permit holder shall provide the department with documentation showing all of the following:
- (a) The dates and fields on which the landspreading occurred.
 - (b) The rate at which the landspread materials were applied to each field.
 - (c) Written confirmation that the responsible person notified the owner of the landspreading site of the actual kinds and amounts of agricultural chemicals that were applied to the site as a result of the landspreading.
 - (d) A description of any problems incurred in connection with the landspreading.
 - (e) A description of the tillage performed in connection with the landspreading.
- History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98; am. (3) (intro.), renum. (3) (f) to be (3) (h), cr. (3) (f), (g) and (6) (c) to (e), r. and recr. (6) (a) and (b), Register, October, 2000, No. 538, eff. 11-1-00; CR 03-119: renum. (1) to be (1) (a), cr. (1) (b) Register October 2004 No. 586, eff. 11-1-04.

Contact the department at (608) 224-4519 to receive a copy of the Post Application Report form that must be submitted to the department within 30 days of the landspreading.

Eligible Costs - The following section (ATCP 35.04) describes those cost that are eligible for reimbursement.

ATCP 35.04 Costs eligible for reimbursement. Subject to the provisions of this chapter, the department shall reimburse a responsible person for the following corrective action costs, and no others:

- (1) The cost of qualified professional services needed for the effective planning and implementation of a corrective action, including engineering, hydrogeologic, field technician, hazardous waste disposal or general contractor services.
- (2) Costs to sample and analyze soils, groundwater or other media. This may include costs for soil boring, installation of monitoring wells, sample collection, sample analysis and related activities.
- (3) Costs to excavate contaminated soils and other contaminated materials, including backfilling and grading to restore the contours or drainage characteristics of land altered by the corrective action.

Reasonable costs to restore the site can be submitted for reimbursement. This includes backfilling with gravel or providing topsoil and grading the site to pre-cleanup conditions.

Based upon an interpretation we received from the Wis. Dept. of Revenue:

The services of excavating, removing contaminated soil from the earth, transporting it to a different site, and landspreading it, are not taxable. However, if the subcontractor is also processing the soil to remove the contaminants, and does not place the processed soil back into the earth, he is performing a taxable service, the cleaning of tangible personal property. If he places the processed soil back into the earth, the cleaning service is not taxable because it is part of a real property improvement.

Charges for the sale and transportation of the backfill would be taxable if the subcontractor did not place the backfill in its final resting-place. When the subcontractor places the backfill in its final resting-place to replace the contaminated soil; this is a real property improvement that is not subject to sales tax. When performing real property activities, a contractor does not charge sales tax, but pays tax on his purchase of all materials used. The sale and installation of soil are subject to sales tax only if it is the installation of topsoil, because this is a taxable landscaping service.

If a subcontractor is unsure about the sales and use tax treatment of his services, he should request a ruling from the Department of Revenue.

- (4) Costs to collect, handle, transport, treat or dispose of contaminated soils, groundwater or other contaminated materials. If the responsible person disposes of contaminated soils by means of landspreading under s. ATCP 35.03, the department may reimburse the following additional costs related to that landspreading:
- (a) Reasonable costs for tillage that is in excess of normal tillage and that is needed to reduce soil compaction caused by the landspreading. The department may not reimburse costs for more than 2 tillage passes.

The department has used the Wisconsin's Custom Rate Guide for determining reasonable tillage rates for areas around the state. A copy of the Wisconsin's Custom Rate Guide may be obtained by contacting your local University of Wisconsin Extension office. It is also available on-line at <http://www.uwex.edu/ces/ag/facstaff/rateguide.html>.

A copy of the department's Land Use Agreement Form and Landspreading Agreement Form can be found in Appendix 3.

- (b) Costs for pre-plant nitrogen testing of the landspreading site to determine appropriate nitrogen credits for landspread soil that includes a significant nitrogen component. The department may reimburse pre-plant nitrogen testing only if that testing uses sampling and analytical methods that are scientifically recognized and standard within the agronomic community

If performed, soil tests for plant available nitrate should occur following landspreading but before planting. Samples should be collected in accordance with University of Wisconsin (UW) recommended sampling procedures and be analyzed by an FSA-certified laboratory that provides UW recommendations as part of the soil test report. For locations of FSA-certified

laboratories, contact the UW Soil & Forage Laboratory at (715) 387-2523. For information regarding the best test to suit your needs, contact your local UW-Extension office, or see UW-Extension publication A3624 - Soil Nitrate Tests For Wisconsin Cropping Systems. Soil Nitrate Tests For Wisconsin Cropping Systems is available at your local UW-Extension office or you may obtain a copy by contacting Cooperative Extension Publications at (608) 262-2655.

The need for soil nitrate testing following the spreading of nitrogen-contaminated soil is dependent on a number of factors such as soil type, crop type, yield goal, the addition of other fertilizers to the landspread site, timing of the application, and the amount of data already available on the landspread soil.

- (c) Locally reasonable rent, not to exceed rent for one growing season, for cropland taken out of production for any of the following reasons:
 1. The necessary stockpiling of soil, pending landspreading.
 2. Crop harvesting restrictions in the landspreading permit.
- (d) Costs to compensate a landowner for crop loss or yield reduction that occurs within one year after the landspreading if the landowner demonstrates, to a reasonable degree of certainty, that the crop loss or yield reduction was caused by one of the following:
 1. Agricultural chemicals that were present in the landspread soil, but not known to be present when the landspreading occurred.
 2. Planting delays caused by the landspreading.
 3. Soil compaction caused by landspreading, notwithstanding reasonable tillage of the landspreading site.

In all cases, the department must be allowed to view the affected crop and surrounding fields in order to substantiate any claim of crop loss or yield reduction caused by landspreading. Independent third-party verification of the loss or reduction and the cause of the loss or reduction may be required. Once verified, the landowner must propose an approach for quantifying the crop loss or yield reduction caused by landspreading.

Crop loss due to compaction may not be reimbursed when it was specifically decided that tillage would not be performed.

- (e) Costs to compensate a landspreading site owner for access, scheduling and like costs related to landspreading, if that compensation is necessary to obtain access to a landspreading site. The department may reimburse costs that are locally reasonable, and do not exceed \$0.50 per cubic yard of landspread soil. This paragraph does not apply to landspreading on a site owned by the responsible person.

See Land Use Agreement Form and Landspreading Agreement Form in Appendix 3.

For purposes of this paragraph, the department does not view members or acting board members of an agricultural cooperative performing a cleanup as the responsible person. The department will allow the reimbursement of access and scheduling costs up to \$0.50 per cubic yard to members and board members of agricultural cooperatives who allow the use of their privately owned land for landspreading.

- (f) Costs to remove rocks and other debris from landspread soils. The department may reimburse costs to remove rocks and other debris before or after the landspreading occurs, but not both. The department may not reimburse costs to remove rocks or debris more than 90 days after landspreading is completed. If a responsible person obtains competitive bids to screen the soil before it is landspread, the responsible person may not substitute the costs for post-landspreading debris removal without obtaining competitive bids under s. ATCP 35.16.
- (5) Costs for any of the following corrective measures that the department specifically requires, or that the department specifically pre-approves in writing after finding that the measures are less expensive than the available alternatives:
- (a) Removal and disposal of concrete or asphalt. The department may not reimburse costs for the removal or disposal of concrete or asphalt installed after January 1, 1998 unless the responsible person proves to the department, by credible laboratory tests, that the construction site was free of agricultural chemical contamination when the concrete or asphalt was installed. The cost to remove concrete or asphalt may include its depreciated value calculated as the original construction cost less all depreciation claimed to date by any person for tax purposes.

When an agrichemical dealer collects samples for this purpose, unless they can justify otherwise, the compounds to be analyzed should include at a minimum those listed on the department's standard analyte list. They should also have the lab quantify any significant peaks they find on the chromatogram. Contact the department to determine the number of samples to collect. At a minimum, two samples are almost always needed, one at 0-12 inches and one at 18-30 inches.

Concrete or asphalt includes, but is not limited to, containment structures, parking areas, roadways, curbs, and sidewalks.

- (b) Installation of an engineered barrier to limit infiltration of existing contamination, provided that the responsible person agrees in writing to maintain the barrier at his or her expense until the contamination is removed or fully degraded

An agreement to maintain an engineered barrier may require that the owner, in order to obtain case closure under ch. NR 726, record a deed restriction or affidavit for the site at the office of the register of deeds in the county in which the property is located.

- (c) Temporary removal and reinstallation of a structure, fixture or equipment item that is removed intact, and returned intact to its original use and approximate original location.
- (d) The following corrective measures related to fixtures that are in good condition and operating adequately when the corrective measure occurs:
1. Temporary or permanent relocation.
 2. Removal and replacement with a new fixture of the same size and quality, including any upgrade required by law.
 3. Protection during a corrective action, through shoring or other methods.

Depending on the circumstances, costs related to railroad access may or may not be viewed necessary. The Agricultural Chemical Cleanup Council (ACCC) has evaluated the following railroad associated costs:

Railroad Access Costs Eligible for Reimbursement

- ***Safety flagger and signal wire locator.***

- **Up front work of the consultant, including identifying the right-of-way, etc. (The Agricultural Chemical Cleanup Council believed that improved communication between the consultant, the railroad, and the responsible person would eliminate the need for having the railroad's consultant on site during the project's implementation.)**
- **Application for permit.**
- **Access fees, up to \$1,500, if the responsible person is not a current lessee of the railroad property.**

Railroad Access Costs Ineligible for Reimbursement

- **Annual license fee, "nuisance fee".**
- **On site consultant staff during the project's implementation. (The Agricultural Chemical Cleanup Council believed that the railroad's consultant was not necessary in most cases, unless the integrity of the tracks was compromised.)**
- **Railroad protection insurance.**

Please contact the department at (608) 224-4522 for further clarifications.

To maximize reimbursement of corrective action costs identified under paragraph 5, we encourage you to contact the department prior to planning the work.

- (7) Interest on approved reimbursement amounts as calculated by the department under s. ATCP 35.25.
History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (5), renum. (6) to be (7) and cr. (6), Register, September, 1998, No. 513, eff. 10-1-98; am. (3), r. and recr. (4) to (6), Register, October, 2000, No. 538, eff. 11-1-00; CR 03-119: r. and recr. (5), r. (6) Register October 2004 No. 586, eff. 11-1-04.

ATCP 35.06 Application for reimbursement.

- (1) APPLICATION REQUIRED. A responsible person who seeks reimbursement of corrective action costs shall complete and submit to the department all of the following:

For purposes of interest calculation under ch. ATCP 35.25 and payment priorities under s. ATCP 35.28 (1) (a), a complete reimbursement application will consist of all the items listed under this section.

Contact the department at (608) 224-4522 to receive the reimbursement application materials.

- (a) An "application cover sheet" containing all of the following:
1. The responsible person's name and address.
 2. The name and address of the person directing the corrective action on behalf of the responsible person, if other than the responsible person.
 3. A statement indicating whether the responsible person has applied or will apply to another government agency for reimbursement of corrective action costs incurred for the same discharge site.
 4. Other relevant information requested by the department.
 5. The last date for which an eligible corrective action cost paid by the responsible person is being submitted for reimbursement. If the last date is not specified on the application form, the last date will be the day the department receives the application.

Where the applicant identifies a last (cut-off) date in the application, invoices paid after that date should not be part of the application. For example, if an applicant identifies October 1,

2004 as the date through which their application extends, then all proofs of payment need to be included through October 1, 2004 and costs paid after that date cannot be included in the application.

- (b) A "multiple responsible persons form" containing all of the following:
 1. A certification that the responsible person has made a reasonable effort to notify other responsible persons as required under s. ATCP 35.20 (2).
 2. Other relevant information requested by the department.
- (c) A "total reimbursement costs form" containing all of the following:
 1. The total eligible corrective action costs for which the responsible person seeks reimbursement from the department.
 2. Other relevant information requested by the department.
- (d) An "insurance information form" containing all of the following:
 1. A statement indicating whether any portion of the corrective action costs for which the responsible person seeks reimbursement may be covered by insurance, or a statement from the responsible person's insurance company stating that the insurance company has denied the responsible person's claim for reimbursement of the corrective action costs.
 2. Other relevant information requested by the department.

Applicants whose sites have cleanup costs that are partially covered by insurance must submit documentation indicating which specific invoices or costs are covered by insurance, along with documentation of invoices or costs not covered by insurance. If this documentation is not provided, the total amount of the insurance payment will be deducted from the total amount of the eligible costs.

- (e) A map showing the township, range, section and quarter-quarter section location of the discharge site. If the agricultural chemical was discharged while being transported from a site owned or controlled by a person who owned or controlled the agricultural chemical at the time of the discharge, the application shall include a second map showing the township, range, section and quarter-quarter section location of the site from which the agricultural chemical was being transported.

The map must clearly define the boundaries of the discharge site.

See s. ATCP 35.22 (3) for a more detailed explanation of what constitutes a transportation-related spill and how those cases are addressed through the ACCP.

- (f) An accurate legal description of the land parcel on which the discharge site is located. If the agricultural chemical was discharged while being transported from a site owned or controlled by a person who owned or controlled the agricultural chemical at the time of the discharge, the application shall also include an accurate legal description of the land parcel on which that site is located. A parcel description under this paragraph shall correspond to the parcel description that was on record, at the time the discharge occurred or was discovered, with the register of deeds in the county where the land parcel is located.

Descriptions that contain only the town, range, section and quarter-quarter section are not adequate.

- (g) A summary statement identifying each eligible corrective action cost for which the applicant seeks reimbursement from the department. The statement shall include each eligible corrective action cost,

paid by the applicant prior to the date of the reimbursement application, for which the applicant seeks reimbursement. The summary statement shall allocate each cost to one of the following categories:

1. Soil investigation.
2. Soil remediation.
3. Laboratory and other analysis.
4. Groundwater investigation.
5. Groundwater remediation.
6. Miscellaneous.

The summary statement may be a spreadsheet or an adding machine tape that sums the costs submitted for reimbursement. Costs must be broken out and labeled with the appropriate categories. Use of the department's template for the linking spreadsheet eliminates the need to prepare a separate summary statement, because it is already included in the linking spreadsheet.

Note: Under s. ATCP 35.08 (5) (b), if any person applies for reimbursement of an ineligible cost, the department may deduct twice the amount of that cost from that person's reimbursement application if the responsible person knew or should have known that the cost was not eligible. If a responsible person is not certain whether a corrective action cost is eligible for reimbursement under this chapter, the responsible person may contact the department for a preliminary opinion under s. ATCP 35.08 (1).

- (h) Invoices or other information documenting each of the costs under par. (g). Documentation shall identify the nature of the materials or services provided, the amount charged for the materials or services, the identity of the provider, and the dates on which the materials or services were provided.

Reimbursement applicants are required to submit copies of all DNR approved work plans. For DATCP approved work plans they need only submit a copy of the DATCP letter approving the work plan.

All invoices must provide a clear and accurate description of the work that was performed for the amount of the invoice. In addition, par. (k) requires that all invoiced costs be linked to an estimate or a bid when they are submitted for reimbursement. To eliminate confusion when the reimbursement application is submitted, the responsible person should request that costs on invoices be coded to indicate which amounts relate to which bid or estimate. In doing so, they will save significant time and money when submitting a reimbursement application

When a responsible person submits costs for use of his own equipment, he must include a copy of the cost allocation formula that was used to determine those costs.

- (i) Canceled checks or other information documenting that the applicant has paid all of the costs under par. (g).

It is not necessary to wait until canceled checks are returned to submit an application. Proof of recent payments should be submitted as soon as possible after submitting an application.

If an applicant cannot provide proof of payment via canceled checks, the applicant is required to obtain:

- 1) ***a copy of the pre-canceled check and a bank statement that shows the check has cleared the account,***

- 2) ***a letter from the bank verifying that the payment was withdrawn from their bank account, or***
- 3) ***a signed statement from the contractor to which the payment was made stating the date that the full payment amount was received.***

If an applicant cannot provide proof of payment because they traded or bartered services with the contractor, an invoice for the services rendered still needs to be submitted. Proof of payment can be achieved through a letter signed by both parties outlining the transaction, or other similar documentation

- (j) All of the following, for each cost item under par. (g):
1. Every bid required under s. ATCP 35.16 (2) (a), including every accepted and rejected bid. Each bid shall indicate the name of the contractor and the amount of the bid.
 2. Every cost estimate required under s. ATCP 35.16 (2) (c) 3., including the name of the contractor and the amount of the cost estimate.
 3. Every authorization required under s. ATCP 35.16 (2) (c) 5, including the name of the contractor and the amount of the authorization.
- (k) A spreadsheet that identifies and matches each invoiced cost in par. (h) with the documentation under pars. (i) and (j) supporting that invoiced cost.

Please refer to Appendix 3 for more information on linking costs when submitting an application.

A template of the department's linking spreadsheet may be obtained from the DATCP website <https://datcp.wi.gov/Documents/ACCPLinkSpreadSheet.xls>.

- (L) A substitute W-9 tax form.

If you want another payee named on the reimbursement check (i.e. your lender), then indicate this on the substitute W-9 form.

- (m) Other relevant information required by the department.

Note: To obtain application materials, contact the Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, P.O. Box 8911, Madison, WI 53708. The department will provide application materials, including illustrative examples and all of the forms required under pars. (a) to (d) and (L). Reimbursement paid to a responsible person under this chapter may be reportable, for tax purposes, as income received by that person.

Sites which have cleanup costs which are partially covered by insurance need to submit documentation indicating which specific invoices or costs are covered by insurance along with documentation of invoices not covered by insurance. If this documentation is not provided, the total amount of their insurance payment will be deducted from the total amount of their eligible costs.

- (2) APPLICATION FREQUENCY. A responsible person may not submit more than one application under sub. (1) within any 12- month period for the same discharge site.

If a responsible party submits an application that is withdrawn or rejected as incomplete, they do not have to wait 12 months prior to submitting another application.

(3) FALSE, DECEPTIVE OR MISLEADING REPRESENTATIONS.

- (a) No person may make, or conspire with another person to make, any false, deceptive or misleading representation in connection with any reimbursement application under this section.
- (b) Any person who makes, or conspires with another person to make any false, deceptive or misleading representation in connection with a reimbursement application under this section is ineligible for any reimbursement for that corrective action, and is also ineligible for reimbursement for any other corrective action taken or ordered at any discharge site within 5 years after the date of that application.

Note: Persons filing fraudulent applications may also be subject to criminal prosecution.

- (c) If any person has reason to believe that he or she has received any reimbursement for which he or she is ineligible under this subsection, that person shall immediately notify the department and shall refund with the notification the full amount of any reimbursement for which the responsible person is ineligible.

(4) FAILURE TO SEEK REIMBURSEMENT IN PRIOR APPLICATION. A responsible person may not apply for reimbursement of an eligible corrective action cost which the responsible person paid during or before the period for which a prior reimbursement application has been submitted for that discharge site, unless the corrective action cost was not eligible for reimbursement under this chapter at the time of any prior reimbursement application for that discharge site.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; r. and recr. (1) and (4), Register, September, 1998, No. 513, eff. 10-1-98; cr. (1) (a) 5. and (5), am. (1) (f), (j) (intro.) and 1., r. and recr. (4), Register, October, 2000, No. 538, eff. 11-1-00; CR 03-119: r. (5) Register October 2004 No. 586, eff. 11-1-04; CR 10-122: am. (4) Register July 2011 No. 667, eff. 8-1-11.

ATCP 35.08 Department action on reimbursement application.

- (1) PRELIMINARY OPINION. The department may issue a preliminary opinion on whether an applicant is eligible for reimbursement of corrective action costs. The preliminary opinion is not binding on the department.
- (2) NOTICE ACKNOWLEDGING APPLICATION. Within 10 days after the department receives an application under s. ATCP 35.06, the department shall issue a notice to the applicant acknowledging the department's receipt of the application.
- (3) REQUEST FOR ADDITIONAL INFORMATION. Following receipt of an application under s. ATCP 35.06, the department may require an applicant to submit any additional information which may be relevant to the department's review of the application.

If a response is not provided within the time specified in the department's request for additional information, then the department will consider the application incomplete. Any interest paid on eligible costs will then be calculated from the date the additional information is received.

If, after sending the responsible person a request for additional information necessary to make a complete application, the responsible person does not reply, the DATCP will send the responsible person a second request for this information. This letter will be sent out after 30 days has elapsed since the initial request and will notify the responsible person that if a written response is not received within 60 days, the application will be considered inactive. All inactive files will then be given a close out date one year after the first application letter was received.

- (4) DECISION. Within 90 days after the department receives a complete application under s. ATCP 35.06, including any additional information required by the department under sub. (3), the department shall issue a written decision approving or disapproving the application. The department may approve an application in part, or approve an application subject to conditions specified by the department. In its decision, the department shall specify all of the following:
 - (a) The amount of eligible costs, if any, on which reimbursement may be paid.

- (b) The applicable rate of reimbursement under s. ATCP 35.22, if any.
 - (c) The total reimbursement amount, if any, that is approved for payment under s. ATCP 35.28. The decision shall specify that payment is subject to the terms and conditions specified under s. ATCP 35.28.
 - (d) If the department disapproves all or part of an application, the reasons for that disapproval. The department shall also explain any amounts deducted from the reimbursement application under sub. (5).
- (5) INELIGIBLE COSTS REJECTED.
- (a) The department shall disapprove any portion of a reimbursement application that the department finds to be ineligible for reimbursement under this chapter, and shall deduct any costs that the department finds to be ineligible for reimbursement.
 - (b) If the department finds that any portion of an applicant's reimbursement application is ineligible, and that the applicant knew or should have known that it was ineligible, the department shall deduct twice the amount of the ineligible cost from the applicant's total application. Deductions under this paragraph may not exceed the total amount of the applicant's application. Before making a deduction under this paragraph, the department may consult with the agricultural chemical cleanup council appointed under s. ATCP 35.34.
- Note:** The department will invoke sub. (5) (b) in cases where a cost is clearly ineligible, either because it is clearly prohibited under s. ATCP 35.14 or because there is no plausible basis for applying for reimbursement under this chapter. In order to protect themselves against a double deduction under sub. (5) (b), applicants may discuss questionable items with the department before submitting an application.

As indicated in the note, the department encourages responsible parties and consultants to contact the department before incurring the cost, or before submitting an application, to discuss whether the cost is eligible for reimbursement. Where this step was taken, the costs in question have not been double deducted.

- (c) If, after consulting with the agricultural cleanup council, the department determines that the cost submitted for any goods or services is clearly unreasonable in relation to current market cost for those goods or services, the department may deny reimbursement of the excessive cost, and may reimburse a lesser cost which the department considers reasonable. In determining whether a cost is unreasonable, the department may consider the nature of the goods or services, the geographic location of the discharge site, the need for the goods or services, the availability of alternative goods or services, and other factors that may reasonably affect the cost of the goods or services.
- (6) RECONTAMINATION; REDUCED REIMBURSEMENT RATE.
- (a) The department, after consulting with the agricultural chemical cleanup council, may reduce the reimbursement rate for a corrective action related to a discharge discovered after November 1, 2004 if the department has received or paid a reimbursement application related to a prior discharge at the same discharge site.
 - (b) The presumptive reimbursement rate under par. (a) is 50%, unless the department finds that a different rate is appropriate. In determining the appropriate reimbursement rate, the department may consider all of the following in consultation with the agricultural chemical cleanup council:
 1. The type of agricultural chemical discharged.
 2. The nature, size and location of discharge.
 3. The similarity between the discharge and prior discharges.
 4. The number of prior discharges, and the number of prior discharges for which the department has reimbursed corrective action costs.
 5. The responsible person's apparent negligence, if any.
 6. Whether the discharge was caused by a law violation.
- Note:** See s. ATCP 35.12 (8), which prohibits the department from reimbursing any costs for corrective actions made necessary by intentional or grossly negligent violations of law.

(7) FAILURE TO SUBMIT INFORMATION. If an applicant for reimbursement fails to provide an adequate report of the corrective measures taken or corrective action costs incurred, or fails to provide any other relevant information required by the department, the department may disapprove all or part of the application for reimbursement.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (1) and (5) (b), Register, September, 1998, No. 513, eff. 10-1-98; correction in (4) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1998, No. 513; am. (5) (b), cr. (6), Register, October, 2000, No. 538, eff. 11-1-00; correction in (5) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 2000, No. 538; CR 03-119: renum. (6) to be (7), cr. (6) Register October 2004 No. 586, eff. 11-1-04; CR 10-122: am. (5) (title), (a), (b), (c), (6) (a) Register July 2011 No. 667, eff. 8-1-11.

ATCP 35.10 Responsible person; eligibility for reimbursement. A responsible person is not eligible for reimbursement of corrective action costs unless all of the following requirements are met:

(1) The responsible person files with the department, by October 14, 2000 or within 3 years after incurring the corrective action costs, whichever is later, a reimbursement application that complies with s. ATCP 35.06.

All costs must be submitted on a complete application no later than three years from the date the cost was paid.

- (2) The responsible person complies with every corrective action order issued by the department under s. ATCP 35.02 or the department of natural resources under s. 292.11 (7) (c), Stats.
- (3) The responsible person, upon discovering the discharge, promptly reports the discharge to the department or, if the responsible person is required to report the discharge under s. 292.11 (2), Stats., to the department of natural resources.

Call (800) 943-0003 to report a spill.

Agrichemical spills must be reported if:

- 1) **It has adversely impacted or threatens to impact public health, public welfare or the environment.**
- 2) **It meets or exceeds the following quantities:**
 - **dry fertilizer: 250 pounds**
 - **liquid fertilizer: 25 gallons**
 - **pesticides: when applied according to the label, it would cover more than one acre of land.**

(4) If the responsible person is a commercial application business, the responsible person is in compliance, at the time of the discharge, with s. ATCP 29.20.

(5) If an approved workplan is required under s. ATCP 35.18 (1), the corrective action complies with the approved workplan for that corrective action.

(6) The corrective action complies with applicable requirements under chs. 281 to 285 and 289 to 299, Stats., this chapter, chs. ATCP 29 to 33, and chs. NR 700, 706, 708 and 712 to 727.

Note: For corrective actions under this chapter, the department is authorized to review compliance with chs. NR 700, 706, 708, and 712 to 727, and to grant required approvals and variances under those chapters on behalf of the department of natural resources.

(7) The corrective action is performed by or under the direct supervision of a person who meets applicable qualification requirements under ch. NR 712, and who has adequate training and experience to perform the corrective action.

(8) The responsible person's application for reimbursement includes an application or waiver, under s. ATCP 35.20 (3), from each of the responsible persons identified under s. ATCP 35.20 (2).

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (1) to (4) and (6), Register, September, 1998, No. 513, eff. 10-1-98; CR 10-122: am. (8) Register July 2011 No. 667, eff. 8-1-11; CR 14-047: am. (6) Register May 2015 No. 713, eff. 6-1-15.

All applications for the same discharge site should be submitted to the department at the same time, preferably in the same mailing.

ATCP 35.12 Corrective actions not eligible for reimbursement. The department may not reimburse a responsible person for a corrective action that is any of the following:

- (1) Taken in response to a discharge that is an intentional use of an agricultural chemical for an agricultural purpose, unless the corrective action is ordered by the department under s. ATCP 35.02 or by the department of natural resources under s. 292.11 (7) (c), Stats. An intentional use of an agricultural chemical includes an application of that chemical, but does not include handling, mixing, loading or disposal that is incidental to an application.
- (2) Taken by the department of natural resources under s. 292.31 (1), (3) or (7), Stats.

Fees, such as GIS Registration fees, paid to the Department of Natural Resources are not eligible for reimbursement. Reasonable costs for the preparation of the registry packets and deed restriction information are eligible for reimbursement.

- (3) Taken by the department of natural resources under s. 292.11 (7) (a), Stats., because the applicant failed or refused to respond adequately to a discharge.
- (4) Taken by a pesticide manufacturer or labeler who is required to be licensed under s. 94.68 (1), Stats., or who is exempt from licensing under s. 94.68 (1) (b), Stats., in response to a discharge by that pesticide manufacturer or labeler.

For purposes of Wisconsin licensing, a pesticide manufacturer is a firm that places their own label on the pesticide products they are packaging. If a firm has a Wisconsin location listed on the EPA Establishment Report, and it is also a licensed Wisconsin pesticide manufacturer, then that location is considered a pesticide manufacturer. It is therefore ineligible for ACCP reimbursement of any costs incurred for the cleanup of products that were part of their operation as a licensed pesticide manufacturer. If the facility had a discharge wholly unrelated to their repackaging or production of licensed products, that other discharge may be eligible for reimbursement.

A location in Wisconsin that does not manufacture pesticides, or only repackages pesticides for the original pesticide manufacturer, is eligible for ACCP reimbursement.

- (5) Taken in response to a discharge that occurs while the agricultural chemical is being held or transported by a common carrier.

Our definition of a common carrier is slightly broader than the common motor carrier definition provided in Chapter 194, Wis. Stats. The department's definition includes transporters using all modes of transportation, including air, railway, highway and waterway, for the physical movement of agricultural chemicals between licensed entities and their customers.

- (6) Taken in response to a discharge from a landfill or other facility that is any of the following:
 - (a) A facility required to be licensed under s. 289.31, Stats.
 - (b) A facility that would be required to be licensed under s. 289.31, Stats., except that the department of natural resources has issued a specific exemption under s. 289.43, Stats., or rules promulgated under s. 289.05 (1) or (2), Stats.

- (c) A closed or abandoned solid or hazardous waste disposal facility that, if operating today, would require a license under s. 289.31, Stats., or a specific license exemption under s. 289.05 (1) or (2), Stats.
 - (7) Taken in violation of federal, state or local law.
 - (8) Taken in response to a discharge caused by an intentional or grossly negligent violation of law committed by the responsible person or the responsible person's agent, including an intentional or grossly negligent violation of ss. 94.645, 94.67 to 94.71, 94.73 or 292.11, Stats., or of any rule or order adopted under those sections.
 - (9) Taken without a reasonable technical or scientific basis.
 - (10) Taken without a reasonable prospect of success or environmental benefit.
 - (11) Taken at a discharge site located outside this state.
- History:** Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (1) to (3), (6) (a) to (c), (8) and (10), Register, September, 1998, No. 513, eff. 10-1-98.

Not Eligible - The following section (ATCP 35.14) describes those cost that are **not eligible** for reimbursement.

ATCP 35.14 Costs not eligible for reimbursement. The department may not reimburse a responsible person for any of the following:

- (1) Costs that are not eligible for reimbursement under s. ATCP 35.04.
- (2) Indirect costs charged by a contractor unless those costs are allocated to the contract according to a reasonable cost allocation formula that the contractor uses for other, similar contracts.

Note: An example of a reasonable cost allocation formula may be obtained from the Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, P.O. Box 8911, Madison WI 53708

The department will not make reimbursements for costs charged on any invoice which are defined as "surcharges", "miscellaneous", "mark-ups" or charged by using an allocation percentage (i.e. 10%). These costs must be itemized in order for a determination to be made as to whether or not they are eligible costs.

Contractor costs for computer equipment and re-usable field equipment are considered overhead costs and should be included in the hourly wages of the person operating the equipment (engineer or clerical, etc.). If the contractor separates these costs, they must submit to the department a reasonable cost allocation formula. To be accepted, the hourly rates of the contractor must be less than what is normally charged by other similar contractors that may include these costs as overhead expenses. Contact the department at (608) 224-4522, to obtain a Cost Allocation form.

Consumable equipment costs for items that are not permanent property (disposable bailers, tarp, etc.) should be itemized on invoices and will be reimbursed based on actual costs where reasonable and necessary.

- (3) A responsible person's indirect costs. This does not prohibit the department from reimbursing any of the following:
 - (a) Actual costs for equipment, supplies or services that are used exclusively for the corrective action. If a responsible person purchases equipment that is used exclusively for the corrective action, the department may pay reimbursement on the difference between the purchase cost and the reasonable salvage value of that equipment, provided that the difference does not exceed the reasonable rental cost for equivalent equipment.

The full purchase price of equipment may be reimbursed if its value will be substantially exhausted over the life of the corrective action. The salvage value of the equipment purchased must be determined before closure of the case or final payment is made. The salvage value of the equipment will be deducted from the last payment. If the department has already provided reimbursement, the responsible person will be required to refund the salvage value to the department.

- (b) Normal employee wages, salaries, expenses or fringe benefit allocations for time which the responsible person's employees actually spend on a corrective action.

The following documentation should be submitted when requesting reimbursement for employee wages:

- ***A log of the hours worked, with the corresponding services provided***
- ***Hourly wage and associated fringe benefit information***
- ***A timesheet for the week(s) over which the work was conducted***
- ***A copy of the canceled paycheck.***

Examples of eligible employee costs include: landspreading coordination, operating excavation equipment, operating landspreading equipment, obtaining bids, obtaining landspreading sites, changing filters on a groundwater treatment system, and taking soil or groundwater samples. Costs that are not considered eligible for reimbursement include meetings with consultants and / or DATCP staff and reviewing consultants work or workplans.

- (c) Costs for equipment owned by the responsible person and used during a corrective action for excavating, trucking or landspreading, provided that all of the following apply:
1. The equipment is reasonably sized and designed to perform the corrective action.
 2. The hours or units of equipment use are reasonable and necessary for the task performed.
 3. The equipment costs are determined according to a reasonable cost allocation formula.

A reasonable cost allocation formula, which includes the calculation of the rate requested for reimbursement, plus the total amount requested for reimbursement, must be submitted with the ACCP reimbursement application.

4. The equipment costs do not exceed reasonable rental costs for equivalent equipment, including any operator costs.

Contact the Department at (608) 224-4522 to receive a Cost Allocation form to help determine the rate at which this equipment could be reimbursed. Preparing a cost allocation before deciding to use the responsible person's equipment allows a more timely evaluation of whether a savings will be realized by using owned equipment.

- (4) The cost for the time that the responsible person, or any officer of the responsible person, spends planning or implementing a corrective action. This does not prohibit the department from reimbursing normal employee wages, salaries, expenses or fringe benefit allocations for time which employees, other than officers, spend implementing a corrective action.
- (5) Costs to construct, repair, replace, improve, relocate or demolish any structure, equipment or fixture, except as provided under s. ATCP 35.04 (5).
- (6) Loss or impairment of property values or other assets, except as provided under s. ATCP 35.04 (5).
- (7) Loss or impairment of revenue or income.

- (8) Attorney fees or other legal costs.
- (9) Costs of relocating residents or business operations.
- (10) Costs of aesthetic or other improvements that are not essential to a corrective action, except for restorative grading and filling costs authorized under s. ATCP 35.04 (3).
- (11) A cost that is reimbursed from another source. If, after being reimbursed by the department for any cost, a responsible person is reimbursed for the same cost from another source, the responsible person shall promptly notify the department and repay any duplicate reimbursement.
 - Note:** See s. ATCP 35.30 related to duplicate reimbursement recovered as a result of a contested insurance claim.
- (12) The cost of replacing discharged agricultural chemicals.
- (13) The cost of providing alternative sources of drinking water or point-of-use water purification devices, except that the department may reimburse a responsible person up to \$50,000 for any of the following corrective actions if the department or the department of natural resources orders that action in response to a discharge:

For this provision, the department may reimburse a responsible person up to \$50,000. Therefore, the department will reimburse up to \$62,500 ($\$62,500 \times 80\%$ co-payment = \$50,000) in eligible costs for providing alternative sources of drinking water or point-of-use water purification devices if the costs were incurred prior to January 1, 2004. The department will reimburse up to \$66,666.67 ($\$66,666.67 \times 75\%$ co-payment = \$50,000) in eligible costs for providing alternative sources of drinking water or point-of-use water purification devices if the costs were incurred on or after January 1, 2004.

- (a) Replacement or restoration of private wells.
- (b) Connection to alternative water sources, whether public or private.

A private well is defined under ch. NR 845.04 to include “any drilled, driven point, dug, bored, or jetted well constructed for the purpose of obtaining groundwater for potable use, including wells constructed in special well casing depth areas and non-community wells. It does not include springs, or private wells that require written plan approval from the department.”

- (14) Liability claims or judgments.
- (15) Costs incurred by any federal, state or local government entity. The department may reimburse a responsible person for corrective action costs incurred by the department of natural resources under s. 292.11 (7) (a), Stats., and charged to the responsible person, provided that the responsible person reimbursed the department of natural resources and did not fail or refuse to take corrective action in response to an order or directive from the department or the department of natural resources.
- (16) Costs for a contractor's services that exceed the contractor's bid price for those services, except as provided under s. ATCP 35.16 (2) (c).
- (17) Costs that the responsible person has not yet paid, or on which the responsible person may later receive a discount or rebate.
- (18) Costs not supported by a canceled check or other conclusive proof of payment by the responsible person who is applying for reimbursement of those costs.
- (19) Costs to investigate or repair environmental contamination involving substances that are not agricultural chemicals. If a corrective action under this chapter is combined with the investigation or repair of environmental contamination involving substances that are not agricultural chemicals, the department may reimburse a portion of the combined project costs based on a reasonable cost allocation formula approved by the department. If, for any combination project, a responsible person also submits a reimbursement application to another governmental agency, the cost allocation formula shall be approved by the department and that other agency.

- (20) Costs to analyze environmental samples for substances that are not agricultural chemicals, except that the department may reimburse costs for the analysis of environmental parameters if that analysis is needed for the design or implementation of a corrective action.
- (21) Costs to analyze environmental samples for agricultural chemicals that are not reasonably suspected of having been discharged at the discharge site.
- (22) Costs for environmental audits, evaluations or appraisals, other than those needed for the effective planning and implementation of a corrective action.

At least one sample must be collected identifying contamination at levels where the department determines an investigation is needed. A prior sample is not needed for response to catastrophic releases, such as a tank spilling its contents. Once contamination has been identified, it must be promptly reported in order for future costs to be eligible for reimbursement. If the site is involved in a property transfer, most costs associated with a site assessment are ineligible for reimbursement. Costs that may be considered eligible for reimbursement include: lab costs for analysis of useful samples, mileage to the site for sampling, drilling costs associated with usable samples, and preparation of useful site maps. Costs not eligible for reimbursement include: consulting labor and report or workplan preparation costs.

- (23) Costs incurred by a responsible person because of a contractor's breach of contract.
- (24) Costs to prepare an application under s. ATCP 35.06, to contest an application decision under s. ATCP 35.32 or to consult with the department on the application.
- (25) Air travel expenses.
- (26) Expense charges for meals, lodging, travel or other personal expenses that exceed actual, necessary or reasonable expenses.

Vehicles that are rented or leased will be reimbursed at the same rate as owned vehicles. These rates are established using the State of Wisconsin vehicle mileage reimbursement rates (as of July 1, 2012 these rates are 51¢ per mile for all autos, including trucks and vans). If the rental rate is less than the mileage, then the cost will be reimbursed at the rental rate.

- (27) Supplementary charges for expedited services, including expedited laboratory analysis, mail service or parcel delivery service, unless the department approves those charges in advance.
- (28) Contractor charges that are not based on services provided by the contractor and documented under s. ATCP 35.06 (1) (g) and (h).
- (29) Interest expenses or other financing costs, except as calculated by the department under s. ATCP 35.25.

Interest costs paid by a responsible person for late payment of invoices are not eligible for reimbursement. Early payment discounts should be taken where offered. Invoice discounts that were offered but not taken are not eligible for reimbursement.

- (30) The following costs related to landspreading under s. ATCP 35.03:
 - (a) Compensation for crop damage, except as provided in s. ATCP 35.04 (4) (d).
 - (b) Residue sampling for nutrients or pesticides, except as provided in s. ATCP 35.04 (4) (b).
 - (c) Land rental or access charges, except as provided in s. ATCP 35.04 (4) (c) and (e).
- (31) Costs for subcontractor service charges or markups.
- (32) Costs to plant or till land on which the responsible person landspreads soil or water under s. ATCP 35.03, unless the department requires that land to be planted or tilled.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (3) (intro.), (4), (15), (16), (24), (27), (28) and (30), cr. (3) (c), (31) and (32), Register, September, 1998, No. 513, eff. 10-1-98; am. (5) and (6), r. and recr. (30),

Register, October, 2000, No. 538, eff. 11-1-00; CR 03-119: am. (5), r. and recr. (13) Register October 2004 No. 586, eff. 11-1-04; CR 10-122: am. (19) Register July 2011 No. 667, eff. 8-1-11.

Many landspreading sites are required to be tilled following the application. When contracting for tillage costs, the bid or estimate should be based upon a per acre basis for comparison to local rates in the area.

ATCP 35.16 Contract services.

- (1) GENERAL REQUIREMENT. Except as provided in sub. (8), the department may not reimburse a responsible person for the cost of a contract service unless the responsible person contracts that service according to subs. (2) to (7).

Lack of bids or estimates is a common reason for denial of reimbursement of costs. Additionally, these applications frequently include unnecessary costs that could have been avoided through compliance with this rule.

(2) BIDS AND ESTIMATES REQUIRED.

- (a) The department may not reimburse a responsible person for contract services performed at a discharge site unless the responsible person selects the contractor to provide services at that site on the basis of at least 3 competitive bids. The responsible person shall provide the department with a copy of the accepted bid before authorizing the contractor to proceed.

If a responsible person has multiple discharge sites, the bids must be done on a per site basis.

Annual bids can be used for hiring laboratories provided three bids for agricultural chemical analyses are received on an annual basis.

- (b) Except as provided in par. (c), the department may not reimburse a responsible person for contract service costs that exceed the contractor's bid for those services under par. (a).
- (c) The department may reimburse a responsible person for contract services not included in the contractor's initial bid under par. (a), or for additional hours or units of service beyond those included in the bid under par. (a), if all of the following apply:
1. The contractor providing the additional services was selected by the competitive bidding procedure under par. (a).
 2. The contractor bills for the additional services at the same per-unit price at which the contractor agreed to provide equivalent services, if any, in the contractor's initial bid under par. (a).

Price increases will only be allowed if the date and amount of change are specified in the original bid.

3. The contractor provides the responsible person and the department with a cost estimate for the additional services, and obtains the approval of the responsible person and the department, before performing those services.

Department staff will not review cost estimates for cases where eligible corrective action costs have exceeded the \$400,000 reimbursement cap. In the event that the cap is increased, costs that are reasonable and necessary for the corrective actions will be reimbursed with the appropriate co-payment because the responsible person would qualify for the exemption allowed under s. ATCP 35.16 (8) (a), Wis. Adm. Code.

Effective July 1, 2017 the discharge site maximum increased from \$400,000 in eligible costs to \$650,000 in eligible costs per 94.73(6)(b) and (c), Wis. Stats.

Cost estimates are a good way to manage costs and we encourage their use even after exceeding the reimbursement cap.

5. The responsible person gives the contractor written authorization to proceed with the additional services, after receiving the contractor's estimate under subd. 3.
6. The cost for the additional services does not exceed the contractor's estimate under subd. 3.
7. The additional services do not involve the selection, design or installation of active groundwater remediation.

Paragraph (c) applies to expansions of existing work and additional phases of work. It applies to office and field work and all types of contractors, including consultants. Contractors must keep in constant contact with their subcontractors to assure work stays within the written bid or cost estimate.

Cost changes while the contractor is in the field should rarely happen. To accommodate in-field expansions, a contractor should identify conditions most likely to require additional field time and include this in their bid or cost estimate with the specific conditions under which they will occur.

For unanticipated work changes, contractors and subcontractors must be prepared to explain (to the responsible person and DATCP) the unanticipated conditions and the additional cost before the work progresses.

- (d) A responsible person requesting reimbursement from the department shall keep copies of all bids and estimates required under this subsection, and shall make those copies available to the department for inspection and copying upon request. The responsible person shall keep copies of the bids and cost estimates for at least 2 years after the department has paid or denied all reimbursements to which those bids or cost estimates pertain.
- (2m) BID AND ESTIMATE CONTENTS. Every bid under sub. (2) (a) and every cost estimate under sub. (2) (c) 3. shall include all of the following:
 - (a) A clear description and itemization of the contract services included in the bid or estimate. The description shall be based on an approved workplan or, if there is no workplan, on a good faith estimate of the scope of the project as stated in the bid or estimate.

This description must include a list of all subcontractors that will complete any portion of the services that will be provided.

- (b) A total bid price or cost estimate for all of the contract services included in the bid or estimate, and a subtotal price for each of the component services itemized in the bid or estimate.
- (c) The following information related to every service priced on an hourly or per unit basis:
 1. The price per hour or per unit of service.

Per unit of service means per yard, ton, foot, etc.

2. A reasonable, good faith estimate of the number of hours or units of service to be provided.
3. The total estimated price for the service, based on the estimate under subd. 2.
4. The estimated date by which the contractor will perform the service.

- (d) Every certification and disclosure required of the contractor under subs. (6) and (7).
- (e) The basis for attributing project costs to corrective measures under this chapter, if the project is also designed to investigate or repair environmental contamination involving substances that are not agricultural chemicals. The attribution shall take into account the reasons for which the overall project was initiated, and the end goals of the project.
- (3) SERVICES PRICED ON AN HOURLY OR PER UNIT BASIS.
 - (a) Bids and cost estimates for the following services shall be priced on an hourly or per unit basis:
 1. Excavating.
 2. Trucking.
 3. Landspreading and other waste treatment or disposal services.
 4. Drilling, including at-depth soil sampling and well installation.
 5. Laboratory services.
 6. Services normally billed on an hourly or per unit basis.
 - (b) Bids and cost estimates for professional or personal services, including engineering, hydrogeologic, field technician and general contracting services, shall be priced on an hourly basis.
- (4) RESPONSIBLE PERSON; CHOICE OF CONTRACTORS.
 - (a) The department may require a responsible person to explain that person's choice of contractors.
 - (b) A responsible person may select any contract service provider, but may not apply for reimbursement of any corrective action costs that exceed the low bid for any of the following contract services:
 1. Excavating.
 2. Trucking.
 3. Landspreading and waste disposal services.
 4. Drilling, including at-depth soil sampling and well installation.

Note: A responsible person may obtain full reimbursement for services provided by a consultant or laboratory that is not the lowest bidder, provided that other requirements under this section are met. A responsible person should consider bid amounts, but may consider other factors including professional qualifications and special project needs.

A responsible person is not required to select the lowest bid for consulting, laboratory services provided they submit an explanation of their choice of contractors if the department requests them to do so. It is acceptable to select different laboratories for different services.

If someone other than the low bidder is selected for services listed under par (b), the reimbursement will be based upon the low bid as adjusted to reflect actual units of service provided. The services must be billed at the same rates as quoted in the selected contractor's bid.

- (5) SEPARATE CONTRACTORS.
 - (a) No contractor who provides any of the following contract services for a corrective action may provide contract services other than the following contract services for that corrective action:
 1. Excavating.
 2. Trucking.
 3. Landspreading and other waste treatment or disposal services.
 4. Drilling, including at-depth soil sampling and well installation.

No contractor or subcontractor that offers any of these services may act as a contractor or a subcontractor on more than one bid.

- (b) No contractor who provides laboratory services for a corrective action, other than immunoassay services or field testing services using hand-held devices, may provide other contract services related to that corrective action.

Laboratory services include mobile laboratory work.

(c) Paragraphs (a) and (b) do not apply to a general contractor who subcontracts with independent subcontractors to provide services under par. (a) or (b) for a corrective action, provided the subcontractors comply with pars. (a) and (b).

(6) CERTIFICATION BY CONTRACTOR.

(a) In every bid or cost estimate under sub. (2), the contractor shall certify both of the following:

1. That the contract services will comply with applicable requirements under this chapter, chs. ATCP 29 to 33, and chs. NR 700, 706, 708 and 712 to 727.

Note: For corrective actions under this chapter, the department is authorized to review compliance with chs. NR 700, 706, 708, and 712 to 727, and to grant required approvals and variances under those chapters on behalf of the department of natural resources.

2. That the contractor will make available to the department upon request, for inspection and copying, all of the contractor's documents and records related to the contract services.

Contractors are required to maintain these documents and records for five years from the date the work was completed.

(b) If a contractor submits a bid or cost estimate under sub. (2) to provide engineering, hydrogeologic, field technician or general contractor services, the contractor's bid shall certify that the contractor has and will maintain insurance coverage for errors and omissions, including pollution impairment liability coverage of not less than \$1,000,000 per claim, for not less than \$1,000,000 in annual aggregate claims, with a deductible of not more than \$100,000 per claim.

Note: If a general contractor solicits other contractors on behalf of a responsible person and the responsible person contracts directly with or directly compensates the other contractors, the general contractor is subject to the insurance provisions contained in this paragraph. A contractor who subcontracts for corrective action services and directly compensates the subcontractor is not acting as a general contractor with regard to that subcontracted service.

(c) If a contractor submits a bid or cost estimate under sub. (2) to provide laboratory services, the contractor's bid shall certify that the contractor has and will maintain insurance coverage for errors and omissions (professional liability) of not less than \$1,000,000 per claim, for not less than \$1,000,000 in annual aggregate claims, with a deductible of not more than \$100,000 per claim.

(d) If a contractor submits a bid or cost estimate under sub. (2) to provide drilling services or soil probing, the contractor's bid shall certify that the contractor has and will maintain insurance coverage for pollution impairment liability coverage of not less than \$1,000,000 per claim, for not less than \$1,000,000 in annual aggregate claims, with a deductible of not more than \$100,000 per claim.

(7) CONTRACTOR DISCLOSURE.

(a) If a contractor's bid or cost estimate under sub. (2) includes any contract service or cost a contractor knows or should know is not eligible for reimbursement under this chapter, the bid or cost estimate shall clearly identify that service or cost and shall clearly disclose that it is not eligible for reimbursement by the department.

For example, contractor's who have experience working within the program should know that the program reimburses no more than the current rate (51¢ per mile as of July 1, 2012) for all autos, including trucks and vans. Bids or cost estimates with higher mileage rates that a contractor with this experience prepares needs to disclose that mileage costs in excess of this rate are not eligible for reimbursement.

(b) A contractor shall disclose, in every bid under sub. (2) that includes landspreading services, the name of the subcontractor who will provide the landspreading services.

(8) EXEMPTIONS. The department may reimburse necessary and reasonable contract service costs incurred by a responsible person who fails to comply with subs. (2) to (7) if any of the following applies:

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- (a) The responsible person demonstrates that compliance with subs. (2) to (7) is not reasonably possible.

An example of where it may not be reasonably possible to comply with subs. (2) to (7) is when immediate response to a spill is required. If the responsible party intends to apply this exemption, they should contact the department prior to proceeding or as quickly as possible thereafter.

- (b) The contract service costs charged by the contractor do not exceed \$3,000.

Under this provision, bids or cost estimates are not necessary for contractors whose costs do not exceed or would not be expected to exceed \$3,000 over the life of the project. For example, a work scope identifies needed drilling costs of \$2,800 by ABC Drilling Co. This work alone would not require bidding; however, prior drilling work on the project by ABC Drilling Co. totaled \$1,200. Since the total drilling work for this contractor will exceed \$3,000, the new drilling work will need to be bid.

When using a contractor that performs dissimilar scopes of work, it is necessary to consider all costs paid to THAT contractor. For example, although ECCS performed only \$2,900 in mobile lab services, bidding would be required in order to use ECCS for fixed base laboratory services if that work would cost more than \$100.

- (c) The department pays reimbursement at a rate that is no more than 75% of the rate normally allowed under s. ATCP 35.22.

See Appendix 4 for an example of how the department might implement this provision. Appendix 5 shows the format for requesting reimbursement under this provision.

- (9) DISAPPROVED BIDS OR ESTIMATES. If the department finds that a bid or cost estimate under sub. (2) is unreasonable, that bids or cost estimates appear to be noncompetitive, or that all or part of the contract service is unnecessary, the department may do any of the following:
- (a) Disapprove the bid or estimate.
 - (b) Require the responsible person to obtain up to 3 additional bids or estimates. Additional bids or estimates, if any, shall comply with this section.
 - (c) Determine that the corrective action cost eligible for reimbursement is less than the amount bid or estimated.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (1), (6) (a) (intro.), 1., and (8) (b), r. and recr. (2), (3), (4) and (5), cr. (2m), r. (7), Register, September, 1998, No. 513, eff. 10-1-98; am. (1), (2) (a) and (c) 3., (2m) (d), (6) (b) and (c), r. (2) (c) 4., cr. (2m) (e), (6) (d), (7) and (9), r. and recr. (8), Register, October, 2000, No. 538, eff. 11-1-00; CR 03-119: renum. (7) to be (7) (a), cr. (7) (b), am. (9) (intro.) Register October 2004 No. 586, eff. 11-1-04; CR 10-122: am. (4) (b) Register July 2011 No. 667, eff. 8-1-11; CR 14-047: am. (6) (a) 1. Register May 2015 No. 713, eff. 6-1-15.

The intent of par. (c) is to eliminate the need for department staff to spend time negotiating reductions in bids or estimates that are unreasonably high.

ATCP 35.18 Reimbursement conditions.

(1) WORKPLAN REQUIRED.

- (a) Except as provided in par. (b) or (c), the department may not reimburse a responsible person for eligible corrective action costs exceeding \$7,500 unless the department approves a written workplan for the corrective action before the responsible person takes the corrective action.

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- (b) Paragraph (a) does not apply to a reasonable and necessary corrective action taken on an emergency basis.
 - (c) A responsible person is not required to obtain department approval for a workplan under par. (a) if the responsible person submits the workplan to the department at least 30 days before taking the corrective action, and the department neither approves nor rejects the workplan within 30 days after the department receives the workplan.
- (2) **ADDITIONAL SITE INVESTIGATION OR CORRECTIVE ACTION.** The department may require a responsible person to perform additional investigation, or take additional corrective action, as a precondition to the reimbursement of any corrective action cost under this chapter.
- History:** Cr. Register, August, 1994, No. 464, eff. 9-1-94; r. and recr. (1), am. (2), Register, September, 1998, No. 513, eff. 10-1-98; r. and recr. (1) (a), Register, October, 2000, No. 538, eff. 11-1-00.

ATCP 35.20 Multiple responsible persons.

- (1) **REIMBURSEMENT LIMIT.** If more than one responsible person is eligible for reimbursement under this chapter for corrective action taken in response to one or more discharges at the same discharge site, the combined amount paid to those responsible persons may not exceed the maximum amount specified for a discharge under s. ATCP 35.22 (4) (a) or a discharge site under s. ATCP 35.22 (1) or (2).
- Note:** See s. 94.73 (6) (am), Stats.
- (2) **NOTICE TO OTHER RESPONSIBLE PERSONS.**
- (a) Before any responsible person files a reimbursement application under s. ATCP 35.06, that responsible person shall make a reasonable effort to notify every other person, known to the applicant, who may be a responsible person and who has incurred or may foreseeably incur corrective action costs related to the same discharge site. The reimbursement application shall identify every potentially responsible person whom the applicant has notified or attempted to notify under this paragraph.
- (b) The department may require an applicant to notify other responsible persons, known to the department, who have incurred or may foreseeably incur corrective action costs related to the same discharge site.
- Note:** A responsible person who fails to give notice under sub. (2) may be liable to those not notified if, because of that failure, those persons are disqualified from all or part of the reimbursement to which they would otherwise be entitled.
- (3) **JOINT APPLICATION.** The department shall deny a reimbursement application unless every responsible person successfully notified under sub. (2) includes his or her full claim for reimbursement as part of the same joint application, or waives any claim for reimbursement related to discharges to date at that discharge site. If a notified person fails to submit an application within 30 days after receiving notice, or fails to provide documentation under s. ATCP 35.06 (1) within 60 days after receiving notice, that failure constitutes a waiver of that person's claim with respect to that application.
- History:** Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (1), Register, September, 1998, No. 513, eff. 10-1-98; CR 10-122: am. (3) Register July 2011 No. 667, eff. 8-1-11.

Once an applicant notifies the other RPs, the notified people have 30 days to inform the applicant that they want to include their costs in the same application. The notified people then have an additional 30 days to prepare an application to be included with the original application.

If an application has been submitted for a discharge site, costs incurred prior to that application date cannot be submitted on future applications. This includes costs any other responsible parties may have.

ATCP 35.22 Reimbursement amounts.

- (1) **GENERAL REIMBURSEMENT FORMULA.**
- (a) Except as provided in subs. (2) through (6), the department shall reimburse a responsible person for each discharge site an amount equal to 75% of the eligible corrective action costs that are greater

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than \$3,000 and less than \$400,000. To this amount, the department shall add interest costs under s. ATCP 35.25.

- (b) If no more than \$3,000 of the eligible corrective action costs under par. (a) were incurred prior to January 1, 2004, the total amount paid under par. (a) may not exceed \$297,750.
- (c) If more than \$3,000 of the eligible corrective action costs under par. (a) were incurred prior to January 1, 2004, the total amount paid under par. (a) may not exceed \$317,600 or the sum of the following, whichever amount is less:
 - 1. Eighty percent of the eligible corrective action costs incurred prior to January 1, 2004 that exceed \$3,000.
 - 2. Seventy-five percent of the difference between \$400,000 and the eligible corrective action costs incurred prior to January 1, 2004.

Applications that involve more than one responsible person must indicate how the deductible is to be allocated between the parties.

Deductible levels based upon licenses will be determined by the license status of the responsible person(s) at the time a discharge occurs. If that date is unknown, the deductible will be determined by the license status of the responsible person(s) at the time the discharge is discovered. Sites where the owner has obtained an individual commercial applicators license under s. 94.704, Stats., but are only required to be certified under s. 94.705, Stats., will have a \$3,000 deductible.

(2) DIFFERENT REIMBURSEMENT FORMULA FOR SOME PERSONS.

- (a) Except as provided in subs. (3) through (6), the department shall reimburse a responsible person for each discharge site an amount equal to 75% of the eligible corrective action costs that are greater than \$7,500 and less than \$400,000 if any of the following apply at the time the discharge occurs or is discovered:
 - 1. The responsible person is required to be licensed under ss. 94.67 to 94.71, Stats.
 - 2. The responsible person employs more than 25 persons.
 - 3. The responsible person has gross annual sales of more than \$2,500,000.
- (b) To the amount under par. (a) the department shall add interest costs under s. ATCP 35.25.
- (c) If no more than \$7,500 of the eligible corrective action costs under par. (a) were incurred prior to January 1, 2004, the total amount paid under pars. (a) and (b) may not exceed \$294,375.
- (d) If more than \$7,500 of the eligible corrective action costs under par. (a) were incurred prior to January 1, 2004, the total amount paid under pars. (a) and (b) may not exceed \$314,000 or the sum of the following, whichever amount is less:
 - 1. Eighty percent of the eligible corrective action costs incurred prior to January 1, 2004 that exceed \$7,500.
 - 2. Seventy-five percent of the difference between \$400,000 and the eligible corrective action costs incurred prior to January 1, 2004.

- (3) TRANSPORTATION DISCHARGES. For purposes of subs. (1) and (2), whenever an agricultural chemical is discharged while being transported from a site owned or controlled by a person who owns or controls the discharged agricultural chemical, the discharge is deemed to occur at that site.

A transportation related spill is interpreted to include any release of a product that occurs while being transported or moved, and includes any incidental release that occurs during a product application. It does not include a release from tanks or application equipment at a facility.

(4) PREAPPROVAL REQUIRED FOR SOME CORRECTIVE ACTION COSTS.

- (a) The department may not reimburse corrective action costs that exceed \$100,000 for any discharge unless the department, after determining that the costs are reasonable and necessary based on the nature, size and complexity of the corrective action, approves the additional costs before the responsible person incurs them. The department may specify conditions and limitations on its approval. An approval under s. ATCP 35.16 (2) (c) 3. constitutes an approval under this paragraph.
- (b) A discharge under par. (a) includes all discharges that occur at a discharge site before the responsible person initiates corrective action in response to any of those discharges. A subsequent discharge is considered a separate discharge under par. (a), subject to a separate \$100,000 limit.
- (c) A reimbursement under this subsection may not exceed the limits provided under subs. (1) and (2).
- (5) CORRECTIVE ACTION COSTS INCURRED PRIOR TO JANUARY 1, 2004. For eligible corrective action costs incurred prior to January 1, 2004, the applicable reimbursement rate under subs. (1) and (2) is 80%, rather than 75%.
- (6) REDUCED REIMBURSEMENT RATE FOR REPEAT DISCHARGES. The department may reduce the applicable reimbursement rate under this section, if a reduction is appropriate under s. ATCP 35.08 (6).
History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; r. and recr., Register, September, 1998, No. 513, eff. 10-1-98; am. (1), (2) (a) (intro.) and (4) (a), r. (4) (b), Register, October, 2000, No. 538, eff. 11-1-00; CR 03-119: r. and recr. (1) and (2), renum. (4) (c) and (d) to be (4) (b) and (c), cr. (5) and (6) Register October 2004 No. 586, eff. 11-1-04.

ATCP 35.25 Interest on approved reimbursement amounts. The department shall add interest to a reimbursement amount calculated under s. ATCP 35.22 at a rate equal to the prime interest rate on the date when the department receives a complete reimbursement application. The department shall calculate interest from that date for the unpaid balance approved under s. ATCP 35.22.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. Register, September, 1998, No. 513, eff. 10-1-98.

ATCP 35.26 Partial corrective action; reimbursement.

- (1) Upon completing any of the following portions of a corrective action, a responsible person may apply for and receive reimbursement of eligible corrective action costs which the responsible person pays prior to the reimbursement application date:
 - (a) An emergency response, if any.
 - (b) A soil investigation approved by the department. If the soil investigation concludes that active soil remediation is necessary, the department shall approve an active soil remediation plan before reimbursing the responsible person for the soil investigation.
- (2) The department may not reimburse any portion of a corrective action under sub. (1) unless the responsible person demonstrates, to the department's satisfaction, that the responsible person is proceeding in a timely manner with the remainder of the corrective action. The department may withhold reimbursement pending department approval of a workplan for the remainder of the corrective action.
- (3) If, after receiving any reimbursement under sub. (1), a responsible person fails to complete a corrective action as required under this subsection, the department may direct the responsible person to return that reimbursement by a specified date. If the department properly directs a responsible person to return a reimbursement, the responsible person shall return the reimbursement according to the department's directive.
- (4) Reimbursement under sub. (1) for a portion of a corrective action does not affect the reimbursement rate that applies to a discharge under s. ATCP 35.22 (4) (a) or to a discharge site under s. ATCP 35.22 (1) or (2).

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; r. and recr. Register, September, 1998, No. 513, eff. 10-1-98.

ATCP 35.28 Reimbursement payments. The department shall reimburse responsible persons for approved corrective action costs, in the total amount approved for each corrective action under s. ATCP 35.08 (4) (c), in the order in which the department receives complete reimbursement applications from those responsible persons. The department shall make payments under this section from the appropriations

under s. 20.115 (7) (wm), Stats. Notwithstanding any other provision of this chapter, payment is subject to the availability of funds in those appropriations.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; r. and recr. (1) and (2), am. (3) (a), renum. (3) (d) to be (3) (c), r. (4) and (5), Register, September, 1998, No. 513, eff. 10-1-98; CR 03-119: r. and recr. Register October 2004 No. 586, eff. 11-1-04; correction made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667.

ATCP 35.30 Contested insurance claim; duplicate reimbursement; repayment. If, after being reimbursed by the department for any corrective action cost, a responsible person recovers on a contested insurance claim related to the same corrective action, the responsible person shall apply the proceeds of that recovery as follows:

- (1) The responsible person may first apply the proceeds to pay reasonable legal fees, reasonable expert witness fees and other reasonable legal costs necessarily incurred by the responsible person to obtain the recovery.
- (2) The responsible person may next apply the proceeds against that portion of the responsible person's eligible corrective action costs which exceeds the maximum amount on which the department may pay reimbursement under s. ATCP 35.22.
- (3) The responsible person shall pay to the department a percentage of any remaining proceeds which equals the applicable reimbursement rate specified under s. ATCP 35.22, except that the total amount repaid under this subsection need not exceed the total amount of reimbursement which the department paid to the responsible person for the same corrective action.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (2) and (3), Register, September, 1998, No. 513, eff. 10-1-98.

ATCP 35.32 Hearing on denial of reimbursement application.

- (1) REQUEST FOR HEARING. A person adversely affected by the department's disapproval of a reimbursement application under s. ATCP 35.08 (5) may, within 30 days after receiving notice of that disapproval, request a hearing before the department to contest that disapproval. A request for hearing shall be made in writing and shall specify the grounds for the request.
- (2) INFORMAL HEARING.
 - (a) Within 10 business days after the department receives a request for hearing under sub. (1), the department shall hold an informal hearing in response to the request unless the requester agrees to a later date for the informal hearing. The informal hearing shall be held before a department employee or official who is authorized to reverse or modify the department's decision as necessary. The informal hearing shall be held by telephone or at a location determined by the department.
 - (b) Within 10 business days after the conclusion of the informal hearing under par. (a), the presiding officer shall issue a brief written memorandum which summarizes the informal hearing, and any decision or action resulting from the informal hearing. A copy of the memorandum shall be provided to the person who requested the hearing. The memorandum shall include a notice of the person's right to request a formal contested case hearing under sub. (3).
- (3) FORMAL HEARING. If a contest related to the disapproval of a reimbursement application is not resolved after an informal hearing under sub. (2), a person adversely affected by the department's disapproval of the application may request a full contested case hearing on the disapproval. A request for a full contested case hearing shall be filed with the department, in writing, within 30 days after the date of the informal hearing under sub. (2).

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; am. (1) and (3), Register, September, 1998, No. 513, eff. 10-1-98.

ATCP 35.34 Agricultural chemical cleanup council.

- (1) Creation. The department shall appoint an advisory council to advise the department on matters related to the administration of this chapter. The advisory council shall be called the agricultural chemical cleanup council.
- (2) Members. The agricultural chemical cleanup council shall consist of the following members, appointed for 2-year terms:

- (a) Two farmers.
 - (b) Two pesticide dealers or commercial applicators.
 - (c) One environmental consultant.
 - (d) One agricultural chemical manufacturer or wholesaler.
- (3) Meetings. The agricultural chemical cleanup council shall meet, at the call of the department, to advise the department on any of the following matters on which the department seeks advice:
- (a) Rules proposed under s. 94.73, Stats.
 - (b) Fees and surcharges to fund reimbursement of corrective action costs.
 - (c) Proposed department actions under s. ATCP 35.08 (5) (b) and (c).
 - (d) Other matters related to the administration of this rule.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00.

Appendix 1:

Bids, Estimates and DATCP Approvals



Bid, Estimate, and Invoice Checklists

These checklists are designed to help responsible persons, who will seek reimbursement through the ACCP, avoid common pitfalls associated with properly hiring and managing environmental consulting firms. *Using and understanding these checklists is not a substitute for reading and understanding ATCP 35.16, Wis. Adm. Code, and other requirements of the rule.*

BIDS AND ESTIMATES

Bids and cost estimates are needed for most work performed at agchem cleanup sites under ATCP 35, Wis. Adm. Code. To help ensure reimbursement, you should review every bid and cost estimate required by ATCP 35.16, Wis. Adm. Code, to make sure they include:

- A clear description of the work to be performed.
- A total price for the work.
- Subtotal prices for each individual task (i.e. workplan, field work, report).
- An exact price per hour (not a range) for each member of the project team.
- A good-faith estimate of the number of hours needed for each member for each task.
- An exact price per unit for all consultant expenses.
- An estimate of costs for any work that will be subcontracted by the consultant.¹
- A tentative schedule.
- A scope of work that will meet the requirements of the project.
- Certification that the work will be done in accordance with ATCP 35, Wis. Adm. Code.

In addition, if a cost estimate is submitted as part of an exemption to the three consultant bid requirement [35.16 (2) (c)], for work that is beyond the original scope, the estimate should also:

- Be sent to the DATCP case manager prior to being authorized by the RP. The Department and the RP must both provide written authorization.
- Have the same hourly and unit rates as specified in the consultant's original bid.

INVOICES

When reviewing invoices, you should make sure that:

- All the costs on the invoice are for work that was properly bid or estimated.
- Your consultant is using a spreadsheet² to link the invoiced costs to the bids or estimates.
- The total amount billed to any one task does not exceed the bid or estimate for that task.
- The costs are reasonable for the work performed.
- The unit and hourly rates are specified and are the same as those specified in the bid or estimate.

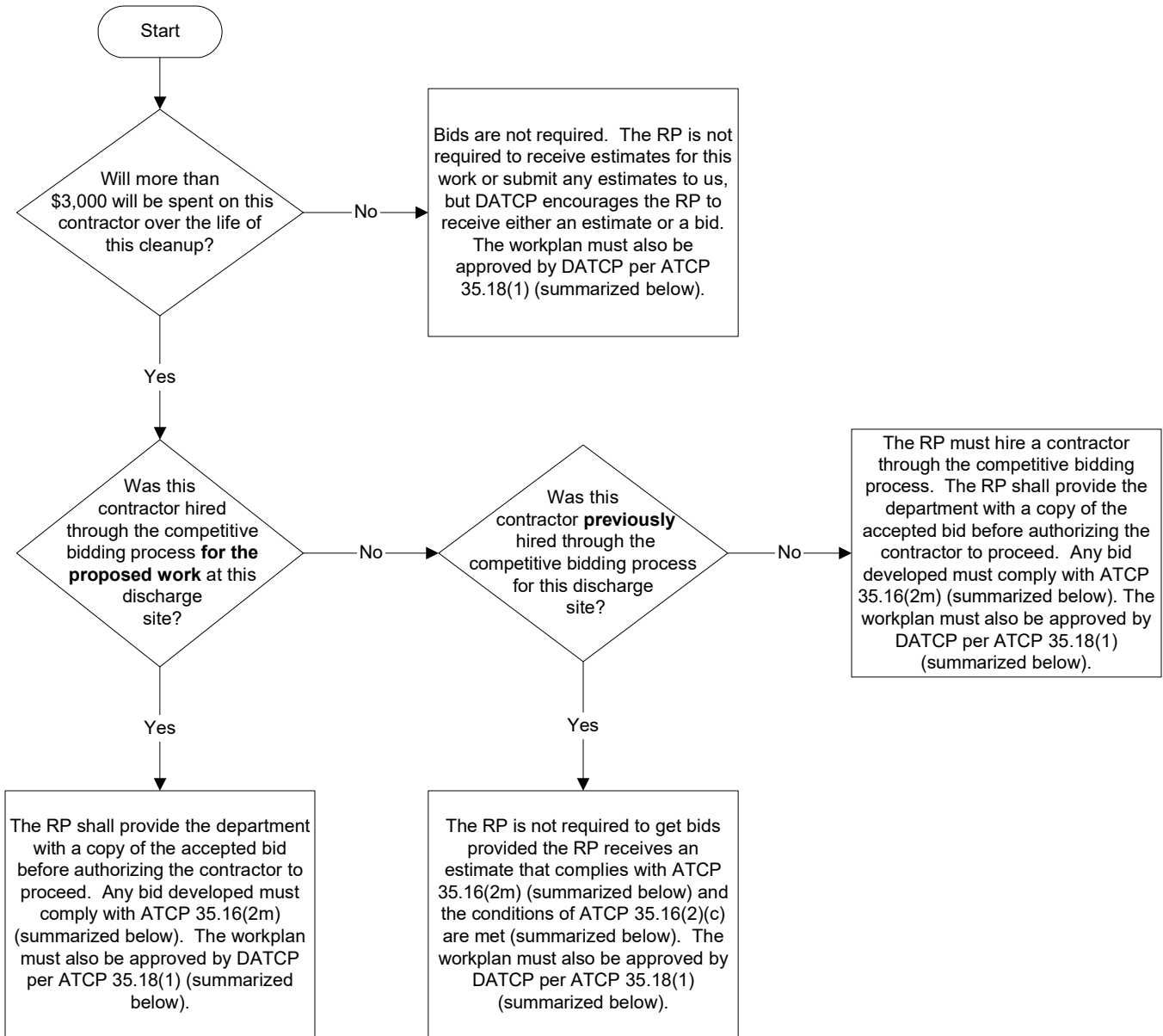
In addition, the invoice should include the following:

- A clear description of the work performed.
- The time period covered by the invoice.
- A breakout of costs between the different tasks.
- A breakout of costs between the different members working on the project.
- An explanation of any costs that will not be eligible for reimbursement from the ACCP.

NOTES:

1. The bidding requirements for subcontractor work are explained ATCP 35.16, Wis. Adm. Code.
2. A linking spreadsheet is available online at <http://datcp.wi.gov/Documents/ACCPLinkSpreadsheet.xls>

Bids, Estimates and DATCP Approvals



Summary of ATCP 35.18(1)

Corrective action costs exceeding \$7,500 must have workplans submitted and approved by the department, for the costs to remain eligible for reimbursement.

Summary of ATCP 35.16(2)(c)

Bids are not required if:

- 1.) The contractor bills for the additional services at the same per-unit rate as their most recent competitive bid.
- 2.) The contractor provides the RP and the department with a cost estimate for the additional services and obtains approval of the RP and the department before performing the services.
- 3.) The RP provides written authorization to proceed.
- 4.) The cost for the additional services do not exceed the estimate.
- 5.) The additional services do not involve the selection, design or installation of active groundwater remediation.

Summary of ATCP 35.16(2m)

Information that makes up a bid or estimate:

- a.) A clear description of the services included in the bid or estimate, based upon a good faith estimate of the scope of the project or an approved workplan.
- b.) A total price for all of the services and a subtotal for the component services.
- c.) Services priced on an hourly or per unit basis shall also include:
 1. The price per hour or per unit of service.
 2. A reasonable good faith estimate of the number of hours or units of service to be provided.
 3. The total price for the service.
 4. The estimated date by which the contractor will perform the service.
- d.) Certification by the contractor that the services will be in compliance with ATCP 29 to 33 and NR 700, 706, 708 and 712 to 726.
- e.) Certification by the contractor that they will provide their documents and records to DATCP if requested.

Appendix 2:

Chap. 94.73, Wis. Stats.

94.73 Agricultural chemical cleanup program

(1) Definitions. In this section:

- (a) "Agricultural chemical" means a substance that is a fertilizer or a nonhousehold pesticide and that is a hazardous substance, as defined in s. 299.01 (6).
- (b) "Corrective action" means action that is taken in response to a discharge and that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands or waters of this state. "Corrective action" includes action taken or ordered by the department of natural resources under s. 292.11 (7) in response to a discharge, but does not include action ordered by the department of natural resources under s. 291.37 (2) or 291.95. "Corrective action" does not include action taken, or ordered to be completed, before January 1, 1989.
- (c) "Corrective action costs" means reasonable costs incurred in taking corrective action.
- (e) "Discharge" means the discharge, as defined in s. 292.01 (3), of an agricultural chemical.
- (f) "Fertilizer" has the meaning given in s. 94.64 (1) (e), except that it does not include nitrates or other forms of nitrogen found in the environment that cannot be attributed to a discharge.
- (g) "Nonhousehold pesticide" has the meaning given in s. 94.681 (1) (c).
- (h) "Responsible person" means a person who owns or controls an agricultural chemical that is discharged, a person who causes a discharge or a person on whose property an agricultural chemical is discharged or any of their successors in interest.

(2) Corrective action ordered or authorized by the department.

- (a) The department may issue an order requiring a responsible person to take corrective action. Except as provided in a memorandum of understanding under sub. (12), if a discharge involves a hazardous substance that may also become a hazardous waste, the department and the department of natural resources shall consult to determine whether corrective action should be taken under this section or s. 291.37 (2), 291.95 (1) or 292.31 (3).
- (b) An order under par. (a) shall include all of the following:
 - 1. The name and address of the responsible person.
 - 2. A description of the property on which the responsible person is required to take the corrective action.
 - 3. A description of the corrective action required to be taken.
 - 4. A date by which the responsible person is required to complete the corrective action.
- (bg) The corrective action ordered under par. (a) may include any of the following:
 - 1. Investigation to determine the extent and severity of environmental contamination caused by the discharge.
 - 2. Containment, removal, treatment or monitoring of environmental contamination caused by the discharge if the containment, removal, treatment or monitoring complies with chs. 281 to 285 and 289 to 299.
 - 3. Transportation, storage, land application or disposal of contaminated materials, in compliance with chs. 281 to 285 and 289 to 299, except s. 281.48.
- (c) The department may issue an order under par. (a) on a summary basis without prior notice or a prior hearing if the department determines that a summary order is necessary to prevent imminent harm to public health or safety or to the environment. If the recipient of a summary order requests a hearing on that order, the department shall hold a hearing within 10 days after it receives the request unless the recipient agrees to a later hearing date. The department is not required to stay enforcement of a summary order issued under this paragraph pending the outcome of the hearing. If the responsible person prevails after a hearing, the department shall reimburse the responsible person from the appropriation under s. 20.115 (7) (wm) for the corrective action costs incurred as the result of the department's order.
- (d) Soil or water removed from a discharge site as part of a corrective action may only be spread on land if that spreading on land is in compliance with chs. 281 to 285 and 289 to 299 and if the department has given its written authorization.

94.73 Agricultural chemical cleanup program

(2m) Corrective action ordered by the department of natural resources. The department of natural resources may take action under s. 292.11 (7) (a) or may issue an order under s. 292.11 (7) (c) in response to a discharge only if one or more of the following apply:

- (a) The action or order is necessary in an emergency to prevent or mitigate an imminent hazard to public health, safety or welfare or to the environment.
- (b) The department of agriculture, trade and consumer protection requests the department of natural resources to take the action or issue the order.
- (c) The secretary of natural resources approves the action or order in advance after notice to the secretary of agriculture, trade and consumer protection.
- (d) The department of natural resources takes action under s. 292.11 (7) (a) after the responsible person fails to comply with an order that was issued under s. 292.11 (7) (c) in compliance with this subsection.
- (e) The department of natural resources takes the action or issues the order in compliance with a memorandum of understanding under sub. (12) between the department of agriculture, trade and consumer protection and the department of natural resources.

(3) Eligibility for reimbursement. A responsible person who takes corrective action may apply to the department for reimbursement of corrective action costs. Except as provided in sub. (3m), an applicant is eligible for reimbursement if all of the following conditions are met:

- (a) The applicant submits an application that complies with sub. (5) within 3 years after incurring the corrective action costs or after October 14, 1997, whichever is later.
- (b) The department finds that the corrective action costs incurred by the applicant are reasonable and the corrective action taken is necessary.
- (c) The applicant demonstrates, to the department's satisfaction, that the corrective action costs are not covered by insurance and have not been reimbursed from other sources.
- (d) The applicant has complied with every corrective action order issued to the applicant by the department under sub. (2) or the department of natural resources under s. 292.11 (7) (c).
- (f) The applicant, upon discovery of the discharge, promptly reported the discharge to the department or, if the applicant was required to report the discharge under s. 292.11 (2), to the department of natural resources.
- (g) If the discharge occurred at a pesticide mixing and loading site owned or operated by the applicant, the applicant has fully complied with rules promulgated by the department under sub. (11) (d) requiring registration of pesticide mixing and loading sites.
- (h) If the applicant was required to submit a work plan under sub. (4), the corrective action taken by the applicant was in accordance with a work plan approved by the department.

(3m) Costs not eligible for reimbursement. An applicant under sub. (3) is not eligible for reimbursement of any of the following costs:

- (a) Costs for corrective action taken in response to a discharge that is an intentional use of an agricultural chemical for agricultural purposes, unless the corrective action is ordered by the department under sub. (2) or by the department of natural resources under s. 292.11 (7) (c).
- (b) Costs of reimbursing the department of natural resources for action taken under s. 292.11 (7) (a) or 292.31 (1), (3) or (7) because the applicant failed to respond adequately to a discharge.
- (c) Costs for corrective action that a pesticide manufacturer or labeler takes in response to a discharge by that pesticide manufacturer or labeler.
- (d) Costs for corrective action taken in response to a discharge that occurs while the agricultural chemical is being held or transported by a common carrier.
- (e) Costs for corrective action taken in response to a discharge from a facility that is required to be licensed under s. 289.31 or that would be required to be licensed except that the department of natural resources has issued a specific exemption under s. 289.43 or rules promulgated under s. 289.05 (1) or (2).

94.73 Agricultural chemical cleanup program

- (f) The cost of an activity that the department determines does not contribute to cleaning up a discharge.
 - (g) A cost related to the repair, replacement or upgrading of a facility, structure or equipment, except that, if a responsible person who applies for reimbursement demonstrates to the department's satisfaction that the removal of an existing structure is the least expensive corrective action alternative, the department may reimburse the responsible person the depreciated value of the structure as determined by the department by rule.
 - (h) Loss of income.
 - (i) Attorney fees.
 - (j) Costs of permanent relocation of residents.
 - (k) Decreased property values.
 - (L) The cost of a responsible person's time spent in planning and implementing the corrective action.
 - (m) Costs incurred for the review of corrective action work plans.
 - (n) Costs of aesthetic improvements.
 - (o) The cost of corrective action that is not in compliance with federal, state or local safety codes.
 - (p) A cost payable under an insurance or other contract.
 - (q) The cost of replacing discharged agricultural chemicals.
 - (r) The cost of providing alternative sources of drinking water, except that, subject to sub. (6) (b) to (f), the department may reimburse a responsible person who applies for reimbursement a total of not more than \$50,000 for the replacement or restoration of private wells or for connection to a public or private water source if the department or the department of natural resources orders the well replacement or restoration or the connection in response to a discharge.
 - (s) Liability claims.
 - (t) Costs incurred by any federal, state or local governmental entity.
 - (u) Corrective action costs incurred by a responsible person in response to a discharge caused by that responsible person's intentional or grossly negligent violation of law, including ss. 94.645 or 94.67 to 94.71, a rule promulgated under those sections or an order issued under those sections.
 - (v) Other costs excluded by the department by rule.
- (4) Work plan requirements.
- (a) Except as provided in par. (d), no responsible person may receive reimbursement for corrective action costs exceeding \$7,500 unless the responsible person submits to the department in writing, and the department approves, a work plan for the corrective action before the corrective action is taken.
 - (b) Except as agreed under sub. (12), the department of agriculture, trade and consumer protection shall promptly furnish the department of natural resources with a copy of each work plan submitted to the department of agriculture, trade and consumer protection under par. (a) for comment by the department of natural resources. Within 14 days after it receives a copy of a work plan or within a different time period agreed to under sub. (12), the department of natural resources may provide the department of agriculture, trade and consumer protection with any comments of the department of natural resources on the work plan. If the department of natural resources timely submits written comments on a proposed work plan, the department of agriculture, trade and consumer protection shall either incorporate those comments into the approved work plan or give the department of natural resources a written explanation of why the comments were not incorporated.
 - (c) The department shall approve or reject a work plan submitted under par. (a) within 30 days after its submission. If the department fails to approve or reject the work plan within 30 days after its submission, the work plan approval requirement in par. (a) no longer applies.
 - (d) This subsection does not apply to any of the following:
 1. A reasonable and necessary corrective action taken on an emergency basis.
 2. A corrective action taken before August 12, 1993.

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(5) Application.

- (a) A responsible person who seeks reimbursement for corrective action costs shall submit an application to the department. The application shall be made on a form provided, and shall contain information reasonably required, by the department.
- (b) A responsible person may not submit more than one application under par. (a) within a 12-month period for the same discharge site.
- (c) Within 10 days from the date of the receipt of an application under par. (a), the department shall notify the applicant of the receipt of the application. The department shall grant or deny the application within 90 days after receipt of the application unless the applicant agrees to an extension.
- (d) Before or after the department receives an application under par. (a), the department may issue a preliminary opinion on whether an applicant is eligible for reimbursement of corrective action costs. The opinion is not binding on the department.
- (e) No person may make a false statement or misrepresentation on an application submitted under this section. A person who makes a false statement or misrepresentation on an application related to a corrective action is ineligible for reimbursement related to that corrective action and is ineligible for any reimbursement related to any other corrective action taken or ordered within 5 years after the date of the false statement or misrepresentation. If the responsible person has received any reimbursement for which the responsible person is ineligible under this paragraph, the responsible person shall refund the full amount of that reimbursement to the department. The amounts refunded to the department under this paragraph shall be deposited in the agricultural chemical cleanup fund.

(6) Amount of reimbursement.

- (a) If the department determines that a responsible person is eligible for reimbursement of corrective action costs under sub. (3), the department shall authorize reimbursement in the amount specified in this subsection and in the manner provided in sub. (7).
- (am) If more than one responsible person is eligible for reimbursement under sub. (3) for corrective action taken in response to one or more discharges at the same site, the combined amount paid to those responsible persons may not exceed the maximum amount specified for a single responsible person under this section, except as provided by the department by rule. The department shall allocate payments among the responsible persons according to rules promulgated by the department.
- (b) Except as provided in pars. (c) and (e), the department shall reimburse a responsible person an amount equal to 75 percent of the corrective action costs incurred for each discharge site that are greater than \$3,000 and less than \$400,000 for costs incurred before July 1, 2017, or that are greater than \$3,000 and less than \$650,000 for costs incurred on or after July 1, 2017.
- (c) Except as provided in par. (e), the department shall reimburse a responsible person an amount equal to 75 percent of the corrective action costs incurred for each discharge site that are greater than \$7,500 and less than \$400,000 for costs incurred before July 1, 2017, or that are greater than \$7,500 and less than \$650,000 for costs incurred on or after July 1, 2017, if any of the following applies:
 - 1. The responsible person is required to be licensed under ss. 94.67 to 94.71.
 - 2. The responsible person employs more than 25 persons.
 - 3. The responsible person has gross annual sales of more than \$2,500,000.
- (d) For the purposes for pars. (b) and (c), a discharge that occurs in the course of transporting an agricultural chemical is considered to have occurred at the site from which the agricultural chemical was being transported if the site from which the agricultural chemical was being transported is under the ownership or control of the person transporting the agricultural chemical.
- (e) The department may not reimburse corrective action costs that exceed \$100,000 for any one discharge for which groundwater remediation is not ordered unless the criteria in rules promulgated under par. (f) are satisfied.
- (f) The department may promulgate rules under which it may provide reimbursement under pars. (b) and (c) for corrective action costs that exceed \$100,000 at a site at which groundwater remediation is not

94.73 Agricultural chemical cleanup program

ordered if the applicant obtains the approval of the department before incurring the costs and if the contamination is extensive or complex cleanup strategies are required. The rules shall establish criteria for exceeding the \$100,000 limit, such as the size of the area contaminated or the type of agricultural chemical that is involved.

(7) Payment.

- (a) The department may make payments to a responsible person who is eligible for reimbursement under sub. (3) if the department has authorized reimbursement to that person under sub. (6). The department shall make payment from the appropriation account under s. 20.115 (7) (wm), subject to the availability of funds in that appropriation account. If there are insufficient funds to pay the full amounts authorized under sub. (6) to all eligible responsible persons, the department shall distribute payments in the order in which applications were received, unless the department specifies, by rule, a different order of payment.
- (b) The department may promulgate rules specifying the procedure by which, and the order in which, it will distribute payments under par. (a). The department may establish distribution priorities or formulas based on the severity of contamination, the time elapsed since corrective action costs were incurred or other factors that the department considers appropriate.

(8) Subrogation. The department is entitled to the right of subrogation for the reimbursement of corrective action costs to the extent that a responsible person who receives reimbursement of corrective action costs may recover the costs from a 3rd party. The amounts collected by the department under this subsection shall be deposited in the agricultural chemical cleanup fund.

(11) Rules. The department shall promulgate rules to implement this section. The department may promulgate rules regarding all of the following:

- (a) The form of the application required to be filed with the department by persons seeking reimbursement of corrective action costs.
- (b) The procedures to be used by the department in determining eligibility for and the amount of reimbursement for corrective action costs.
- (c) The procedures to be used in making annual payments under sub. (7).
- (d) Registration requirements for persons who own or operate pesticide mixing and loading sites.
- (e) Reasonable and customary charges for corrective action costs.
- (f) Payment priorities under sub. (7) among eligible responsible persons.
- (g) Requirements related to the contents of orders under sub. (2) or work plans under sub. (4) (a).
- (h) Corrective action costs that are not eligible for reimbursement under this section.

(12) Memorandum of understanding. The department and the department of natural resources shall enter into a memorandum of understanding establishing their respective functions in the administration of this section. The memorandum of understanding shall establish procedures to ensure that corrective actions taken under this section are consistent with actions taken under s. 292.11 (7). The department and the department of natural resources may request that the secretary of administration provide assistance in accomplishing the memorandum of understanding.

(12m) Sample collection and analysis. For the purpose of investigating a discharge or exercising its authority under this section, the department may collect and analyze samples of plants, soil, surface water, groundwater and other material.

(13) Penalty. Any person who violates this section or an order issued or rule promulgated under this section shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.

94.73 Agricultural chemical cleanup program

(14) Enforcement. The department, the department of justice at the request of the department or any district attorney at the request of the department may bring an action in the name of the state to recover a forfeiture under sub. (13) or to seek an injunction restraining the violation of an order issued by the department under this section.

(15) Surcharge adjustments.

(a) On May 1 annually, the department shall determine the amount available in the agricultural chemical cleanup fund.

(b) If the amount determined under par. (a) is more than \$1,500,000, the surcharges for the subsequent year shall be as follows:

1. Under s. 94.64 (3r) (b) 1. and 2., \$0.
2. Under s. 94.64 (3r) (b) 3., \$0.
3. Under s. 94.64 (4) (a) 5., \$0.
4. Under s. 94.681 (3), \$0.
5. Under s. 94.685 (3) (a) 2., \$0.
6. Under s. 94.703 (3) (a) 2., \$0.
7. Under s. 94.703 (3) (a) 3., \$0.
8. Under s. 94.704 (3) (a) 2., \$0.

(c) If the amount determined under par. (a) is \$1,500,000 or less, but more than \$750,000, the surcharges for the subsequent license year shall be as follows:

1. Under s. 94.64 (3r) (b) 1. and 2., \$10.
2. Under s. 94.64 (3r) (b) 3., \$12.50.
3. Under s. 94.64 (4) (a) 5., 5 cents per ton.
4. Under s. 94.681 (3), \$15.
5. Under s. 94.685 (3) (a) 2., \$10.
6. Under s. 94.703 (3) (a) 2., \$10.
7. Under s. 94.703 (3) (a) 3., \$12.50.
8. Under s. 94.704 (3) (a) 2., \$5.

History History: 1993 a. 16, 437; 1995 a. 27, 227; 1997 a. 27, 86; 2001 a. 16; 2003 a. 33; 2005 a. 347; 2007 a. 20; 2013 a. 20; 2017 a. 59.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

Appendix 3:

**Land Use Agreement Form
Landspreading Agreement Form**

Department of Agriculture, Trade and
Consumer Protection
PO Box 8911
Madison WI 53708-8911
Telephone: (608)224-4519
ARM.ACM.268 (11/00)
Section 94.73, Wis. Stats.



RP Name:
Case Number:

LAND USE AGREEMENT FORM

Part 1 – Tillage Information and Costs	
Field 1	Field 2
Tillage method #1, and proposed acreage:	Tillage method #1, and proposed acreage:
Tillage method #2, and proposed acreage:	Tillage method #2, and proposed acreage:
Per acre cost for tillage method #1 (\$/acre):	Per acre cost for tillage method #1 (\$/acre):
Per acre cost for tillage method #2 (\$/acre):	Per acre cost for tillage method #2 (\$/acre):
TOTAL ESTIMATED TILLAGE COST:	TOTAL ESTIMATED TILLAGE COST:
Part 2 – Land Access Fees	
Estimated landspreading rate (yds ³ /acre):	Estimated landspreading rate (yds ³ /acre):
Land access fee (\$/yd ³):	Land access fee (\$/yd ³):
TOTAL ESTIMATED LAND ACCESS COST:	TOTAL ESTIMATED LAND ACCESS COST:
Part 3 – Landowner Agreement	Part 4 – Responsible Person
<p>I am the owner of the fields identified above and I understand that the actual amount of soil spread on these fields may vary from the estimate, and, as a result, the final land use costs may vary. I also understand that nitrogen testing is available to me so that I can adjust my nitrogen inputs for these fields.</p>	<p>I agree to pay the landowner the costs identified in Part 1 and Part 2 of this form. Furthermore, I agree that any rocks or debris greater than 1" in diameter will be screened prior to landspreading.</p>
<hr/> Landowner's Name (Print or Type)	<hr/> Responsible Person's Name (Print or Type)
<hr/> Landowner's Signature	<hr/> Responsible Person's Signature

This form contains personally identifiable information which may be used for purposes other than which it was intended.

* The Department may reimburse land access costs up to \$0.50 per cubic yard of landspread soil.

Note:

To obtain the most recent version of this form, please contact the department at (608) 224-4519 or visit the DATCP website at https://datcp.wi.gov/Pages/Programs_Services/Landspreading.aspx.

Department of Agriculture, Trade and
Consumer Protection
PO Box 8911
Madison WI 53708-8911
Telephone: (608)224-4519
ARM.ACM.198 (Rev. 11/00)
Section 94.73, Wis. Stats.



Submittal Date:
RP Name:

LANDSPREADING AGREEMENT FORM

Part 1 - Landspreading Site Information			
Field 1		Field 2	
Location: _____ 1/4 of the _____ 1/4 Sec. _____, T. _____ N., R. _____ E or W (Circle one) Township Name: _____		Location: _____ 1/4 of the _____ 1/4 Sec. _____, T. _____ N., R. _____ E or W (Circle one) Township Name: _____	
Proposed Crop:	Acres in this Field:	Proposed Crop:	Acres in this Field:
Proposed Landspreading Date(s):		Proposed Landspreading Date(s):	
Proposed Landspreading Method:		Proposed Landspreading Method:	
Total Soil to be applied to this Field (yds ³):		Total Soil to be applied to this Field (yds ³):	
Proposed Tillage Method for this Field:		Proposed Tillage Method for this Field:	
Proposed Tillage Timing: Spring Fall (Circle one)		Proposed Tillage Timing: Spring Fall (Circle one)	
Part 2 – Product Credit			
Contaminant (Common Name)	Proposed Credit (lbs./acre)	Contaminant (Common Name)	Proposed Credit (lbs./acre)
Part 3 - Landowner Agreement			
<p>I am the owner of the fields identified above and I agree to take the credits listed in Part 2 for the nutrients and/or pesticide active ingredients applied to these fields. I also agree to plant the crop listed in Part 1 of this form and disclose this information to any person who may grow crops on these fields within 18 months of the landspreading event.</p> <p>_____</p> <p>Landowner's Name (Print or Type)</p> <p>_____</p> <p>Landowner's Signature</p>		<p>Mailing Address _____</p> <p>City _____</p> <p>State _____ Zip Code _____</p> <p>Telephone (_____) _____</p>	

This form contains personally identifiable information which may be used for purposes other than which it was intended.

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Appendix 4:

Example Calculation Of Reimbursement At 75%

**Example Calculation of Reimbursement Amount
When Bidding Procedures Were Not Followed**

Total Costs	\$32,000	
Eligible Costs, bidding procedures were followed	<u>\$18,000</u>	(a)
Remaining costs, bidding procedures were not followed	\$14,000	(b)
 Calculate eligible portion of costs where bidding procedures were not followed:		
Costs incurred, but bidding procedures not followed	\$14,000	(b)
Less: Unreasonable & Unnecessary Costs due to lack of cost controls	<u>\$2,000</u>	
Amount DATCP considers reasonable and necessary for the work performed (100% could have been reimbursed if bidding procedures had been followed)	\$12,000	
Less: 25% Deduction**	<u>\$3,000</u>	
Eligible portion of costs where bidding procedures were not followed	<u>\$9,000</u>	(c)
 Total Eligible Costs	 \$27,000	 (a+c)
Less: Deductible	\$7,500	
Less: 25% Co-payment	<u>4,875</u>	
Total Reimbursement Amount (before interest)	\$14,625	

****Note: In this example, it was determined that reimbursement would be made at a rate of 75%. The language in s. ATCP 35.16 (8) (c) specifies reimbursement at a rate that is no more than 75%. The department may determine that reimbursement at a rate less than 75% would be more appropriate.**

**Appendix 5:
Format for Requesting
Reimbursement at 75%**

Presentation on the Invoice

The costs should be identified as ineligible on the invoice submitted with the reimbursement application.

Presentation on the Linking Spreadsheet

The total costs (both the known eligible and ineligible costs for which you are requesting partial reimbursement) should be shown on the proper task budget line on the column for that invoice. When allocating the costs into the Cost Categories, the *eligible* costs should be allocated into the appropriate A through F Category column. The *ineligible* portion of the costs should be put into the ACCP Ineligible Costs column. In the Remarks column, note that the department should refer to a 75% request. If there is more than one 75% request, please number them.

The Request

The request should contain the following components and included as an attachment to the reimbursement application:

Request #

We request that the Department and the Agricultural Chemical Cleanup Council consider reimbursement of up to 75% of the \$Amount identified as ineligible on the Linking Spreadsheet, in accordance with s. ATCP 35.16 (8) (c), Wis. Adm. Code.

We are providing the following justification for this reimbursement:

- 1) The rule was not followed because ...
- 2) The following additional services were provided:
 - a) ..., at a cost of \$...
 - b) ..., at a cost of \$...
 - c) ..., at a cost of \$...
- 3) These costs are necessary because ...
- 4) These costs are reasonable because ...
- 5) Any further justification (optional).

An Example

Due to additional samples collected during a geoprobe investigation, additional field time was used. As a result, the \$750 budget was exceeded by \$250.

On the invoice - show the \$250 as ineligible for reimbursement.

On the Linking Spreadsheet - allocate \$1,000 in costs to the Geoprobe Investigation Oversight line in the column for that invoice; put \$750 in the Category A column; put \$250 in the ACCP Ineligible Costs column; and put "See 75% Request #1" in the Remarks column.

In the request - number the request as #1 and include all of the components listed above.