

SUMMARY OF PROPOSED CHANGES

The proposed changes include:

- **Adding "unwanted prescription drugs" to the list of definitions in the rule.** This includes Schedule II to V controlled substances; other drugs that can be prescribed for humans, including analgesics, anti-inflammatory drugs, gastrointestinal drugs, inhalers and antihistamines; and some veterinary drugs.
- **Changing the term "event" to "collection" in the rule to reflect the trend toward multiple collections or permanent collection sites, rather than one- or two-day events; redefining temporary and continuous collections; and adding a definition for permanent collections.** A temporary collection would be defined as one that operates five or fewer days in a calendar year. A continuous collection would change to one that operates six or more days in the year, and a permanent collection would mean one that operates at least at least six months of the year and has a permanent infrastructure. Grantees holding temporary collections will still be required to use the state hazardous waste contractor as their waste hauler. Those holding continuous or permanent collections may contract with other haulers. Applicants would no longer have to provide specific dates, locations and facilities for collections.
- **Allowing local governments to request funds to buy and install drug drop boxes, where residents can dispose of prescription and veterinary drugs.** The current rule does not allow Clean Sweep funds to be used to buy permanent equipment.
- **Allowing local governments to request reimbursement for disposal of "sharps" that contain medication, such as EpiPens® or prefilled syringes.** Disposal costs for needles or lancets would remain ineligible for reimbursement.
- **Changing the rule to require that at least two-thirds of available funding go to household hazardous waste collections.** This reflects a change in the statute, as well as the increasing demand for household hazardous waste disposal and decreasing demand for agricultural chemical disposal.
- **Specifying that DATCP will designate a means of applying for grants.** The rule now requires that applicants use paper forms provided by DATCP. The change leaves room for other types of applications, such as electronic or online forms.

- **Changes to the criteria for assessing grant applications.** Evaluating applications for safety and suitability is no longer necessary, because local coordinators and their staffs are so experienced. Previously, we placed a priority on coordination across multiple jurisdictions. We still encourage such coordination, but local coordinators have taken it upon themselves to do so and it is no longer necessary to make it a top priority.
- **Dropping the requirement that the contract between the grant recipient and DATCP include the recipient's contract with a hazardous waste hauler.**
- **Specifying that the department can cancel grants if there is not enough money to cover them.**
- **Removing the requirement that local coordinators get the license status of very small quantity generators (VSQG) licensed under ATCP 29.** They will need to get the name and address of the VSQG, but DATCP can determine license status with that information.
- **Ending the requirement that hazardous waste contractors attend training sessions provided by DATCP.** This was necessary in the program's early days, but contractors now are experienced and familiar with the program rules.
- **Allows a 45-day extension of the final report deadline; consolidates some required elements of the report; and removes the requirement for estimations of future collection needs and timing, and suggestions for collecting chemical waste.** Again, this is no longer necessary when program participants are experienced.

**PROPOSED ORDER OF THE
STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 permanent rule *to repeal* ATCP 34.06 (3) (a) 4. and (Note), (3) (h) and (i), 34.08 (2) (a) 1. to 4., (g) and
3 (h), 34.12 (2) (f), 34.14 (1) (b), 34.18 (1) (e); *to amend* ATCP 34.01 (intro.), 34.02 (6), (13), (17), 34.04
4 (2) (c), (5) (b) (intro.), 34.06 (2) (intro.) and (a), (3) (intro.), (b) to (d), (f), (g), (m) and (n) (Note), 34.08
5 (1) (intro.), (2) (title), (intro.) and (a), 34.08 (2) (b) to (d) 1., 2., and (e), 34.10 (2) (intro.), (3) (intro.) and
6 (4) (intro.), 34.12 (3) (a), 34.16 (1) (a), (2), (3) (title), (intro.), (4) (title), (intro.), 1. to 3., 34.18 (1)
7 (intro.), (a) to (d), and (f), 34.18 (2) (a) and (b); and *to create* ATCP 34.02 (5) (c), (14g), (14r), (17g),
8 (17r), 34.04 (2) (e), (3) (h), 34.06 (1) (Note); *relating to* the clean sweep program.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

This rule modifies ch. ATCP 34, Wis. Admin. Code, related to Wisconsin's "clean sweep" program. The department of agriculture, trade and consumer protection ("DATCP" or "department") administers the program pursuant to its authority in Chapter 93, Stats. The clean sweep program is designed to distribute grant funds to counties and municipalities. The funds pay for costs associated with collecting and safely disposing of agricultural pesticides, farm chemical waste and household hazardous waste that might otherwise pose a threat to public health or the environment. Program funds are also used to collect unwanted prescription drugs and veterinary drugs from individuals. This rule does not alter the level of available funding for the clean sweep program.

This rule will:

- Update provisions related to grant applications, grant evaluation and approval, grant contracts, reporting requirements, reimbursement procedures, selection of hazardous waste handlers, and other matters to keep up with developments in programs relating to the collection of hazardous wastes.

- Add standards for the statutory prescription drug component of the clean sweep program to the rule.
- Amend the rule to resolve existing conflicts between the statute and rule concerning funding amounts for the grants and to take into consideration the overall needs of grant recipients.
- Reduce paperwork by permitting electronic applications for grants. Make changes to improve the administrative and operational efficiency of the “clean sweep” program.

Statutes Interpreted

Statutes Interpreted: ss. 93.55 and 93.57, Stats.

Statutory Authority

Statutory Authority: ss. 93.07 (1), 93.55 and s. 93.57, Stats.

Explanation of Agency Authority

DATCP has authority under s. 93.07 (1), Stats., to make regulations as necessary for the proper enforcement of Chapters 93 to 100, which includes the administration of the clean sweep grant program. Grants go to local governments for the collection of agricultural and household hazardous waste, including prescription drugs, as required under ss. 93.55 and 93.57, Stats. The department considers it necessary to adopt rules to establish the basis for grant determinations in order to effectuate these laws.

Related Rules or Statutes

Wisconsin statutes and rules relating to the manufacture, distribution, and use of pesticides in Wisconsin are set forth in ss. 94.67 to 94.71, Stats., and chs. ATCP 29 and 30, Wis. Admin. Code. Waste management is governed by ch. 289, Stats., and ch. NR 500, Wis. Admin Code. The manufacture, distribution and dispensing of prescription drugs falls under the authority of the Pharmacy Examining Board. *See* ch. 450, Stats. “Veterinary drugs” is defined in s. 453.02 (9), Stats. The Uniform Controlled Substances Act sets standards for prescription drugs that are “controlled substances,” pursuant to ch. 961, Stats.

Plain Language Analysis

Under the clean sweep program, DATCP distributes grants to counties and other local governments to assist in funding their hazardous waste collection events and permanent waste collection sites. The clean sweep program was established in 1990 to provide financial assistance to Wisconsin counties to collect unwanted agricultural pesticides. In 2004, the program expanded to provide grants to local governments to collect household hazardous wastes such as acids, flammable chemicals, mercury, lead paint, and solvents. In 2007, Wis. Act 20 was enacted, which authorized the department to include the funding of county, municipal, and regional planning commission programs to collect unwanted prescription drugs, including controlled substances, analgesics, anti-inflammatory drugs, antibiotics, gastrointestinal drugs, and antihistamines. DATCP implemented a pilot prescription drug program to develop standards for

issuing grants related to collection of unwanted prescription drugs, and those standards are now incorporated into this proposed rule.

Other changes in the rule are designed to improve the operational and administrative efficiency of the program for the department and local governments that participate in the “clean sweep” program. Since 1990, the program has matured and several current requirements are no longer needed. At the same time, the needs of the grant recipients have changed. These rule revisions address these changes and reflect the current state of hazardous waste collection in Wisconsin.

Rule Content

This proposed rule amends ch. ATCP 34 relating to the clean sweep program. The following provides a summary of the rule changes by section:

Purpose of the Rule

The establishment of procedures for making grants to local governments to dispose of unwanted prescription drugs will be added to the “Purpose” section of the rule.

Definitions

The term “unwanted prescription drugs” is added and includes Schedule II to V controlled substances, and all other drugs that can be prescribed for human health needs, including drugs such as analgesics, anti-inflammatory drugs, antibiotics, gastrointestinal drugs, inhalers and antihistamines. Unwanted prescription drugs also include certain veterinary drugs.

When local governments first decided to collect pesticide and household wastes, they often held one- or two-day collection “events.” Since then, many local governments have expanded to multiple collections or have established permanent collection sites that offer convenience for local residents. The rule removes the term “event” and references a project as a “collection.”

In this rule, “temporary collection” means a clean sweep project that collects hazardous waste five days or less in a calendar year. A “continuous collection” means a clean sweep project that collects chemicals on six or more days in a calendar year. A “permanent collection” means a clean sweep project that operates at least six months out of the year and includes permanent infrastructure dedicated to clean sweep collections. Comments received during our listening sessions showed a desire to broaden the gap between temporary and continuous collections. Local governments holding temporary collections are still required to use the state hazardous waste contractor as their waste hauler.

Grants to Counties and Municipalities

- Drug Drop Boxes. Currently, clean sweep grant funds cannot be used to purchase permanent equipment. However, a large expense associated with the collection of unwanted prescription drugs is a drug drop box. These drop boxes are a secure place for residents to dispose of their unwanted prescription and veterinary drugs. The boxes typically are located within law

enforcement agencies and are designed in such a way that drugs cannot be removed except by authorized personnel. The rule would allow a local government to request funds for the direct costs associated with the purchase and installation of a drug drop box.

- Disposal of Dual-Hazardous Waste. This proposed rule will allow counties and municipalities to request reimbursement for the disposal of “sharps” that contain medication such as epinephrine auto-injectors (an example is an EpiPen®) or prefilled syringes. Disposal costs for sharps such as needles or lancets would remain ineligible for reimbursement.

Grant Applications

- Grant Solicitation Announcements. This proposed rule expands the methods of announcing a request for proposals for clean sweep grant funds beyond a written announcement.
- Grant Fund Amounts. Ch. ATCP 34 states that the department shall offer no less than \$400,000 for farm chemical waste collection and not less than \$200,000 for household hazardous waste collection. In recent years, the demand for the collection and disposal of household hazardous waste has outpaced agricultural pesticides and farm chemical waste. Also, with the statutory addition of grants for unwanted prescription drug collections in 2008, a different allocation of funds among the collection grants is now required. The new statutory language requires the department to offer a minimum of two-thirds of the available funds for household hazardous waste under s. 93.57, Stats. This proposed rule reflects the change in statutory requirements and eliminates the conflict between rule and statute. This change is also supported by the data collected from clean sweeps in recent years. The demand for household hazardous waste disposal is increasing while the demand for agricultural waste disposal is declining. Household waste disposal demand is outpacing agricultural demand by about a 3:1 margin.
- Grant Applications. The current rule requires that grant applications be submitted on a form provided by the department. To keep up with changing and available technology such as electronic or web-based applications, the rule specifies that future applications will be submitted in a manner designated by DATCP.
- Required Information in Applications. Because of the gap between grant submittal and acceptance and the possibility that a grant may not be funded, this rule specifies that applicants no longer have to provide specific dates, locations and facilities for collections. The department will gather that information after grants are awarded. The proposed rule also removes the requirement that an applicant describe its plans for collecting, handling and disposing of chemical waste. Clean sweep collections are not new and local governments and waste haulers have developed much experience since 1990. Unwanted prescription drug collection information will be incorporated into clean sweep applications. Finally, because multi-government collections are quite common as a way to reach more residents and gain efficiencies with collections, applicants no longer need to describe the role of each government participant under this rule.

Evaluating Grant Applications

Evaluation of Eligible Applications. Under this proposed rule, the department will modify the criteria used to assess clean sweep grant applications. Early in the program's history, applicants were encouraged to collect farm and household waste and determine what chemicals were of concern in their areas. Now the majority of applicants are experienced project coordinators familiar with local needs and available resources. For some, it is impractical to collect more than one waste type because there is no need. Because of the experience of the local government coordinators and their staff, evaluating an application based on its safety and suitability is no longer necessary. Coordination across multiple governments is encouraged and points are awarded for these types of collections, but it is no longer necessary to place a priority on such coordination.

Grant Awards

Farm Waste and Household Waste. This proposed section reflects the changes in the statute for grant awards and removes the discrepancy between statute and rule. The current rule states that the department will annually award grants totaling at least \$400,000 for farm chemical waste, while the statute directs that the department to offer a minimum of two-thirds of the available funds for household hazardous waste. This rule corrects the discrepancy by taking into consideration the current appropriation under s. 20.115 (7) (va), Stats.

Grant Contracts

- Hazardous Waste Contract. This proposed rule removes the requirement that the written contract between the department and the clean sweep grant recipient include the recipient's contract with its hazardous waste contractor. The department has found that the information provided in the grant applications is sufficient to make awards.
- Limited Funding. Should the amount of grant funds available be insufficient to cover the awarded grants, the department has the ability to cancel one or more of the grants at its discretion.

Collecting Waste Pesticides from Very Small Quantity Generators (VSQGs)

Generally, a "VSQG" is an individual or business who generates limited quantities of waste pesticides and can include certain hardware stores, farm supply stores, cooperatives, municipalities, or commercial pesticide applicators. This proposed section removes the requirement that a county must collect the license status of a VSQG licensed under ch. ATPC 29. As long as the VSQG's name and address is captured, the department can verify licensure, if necessary.

Hazardous Waste

Hazardous Waste Contractor. This proposed section incorporates unwanted prescription drug collection into the rule. It also removes the requirement that hazardous waste contractors selected by grant recipients attend a training session provided by the department. This was a necessary requirement in the early days of the program but is no longer needed since the program participants, including waste contractors, have gained experience and familiarity with the clean sweep program rules.

Reports and Payments

Final Report. This proposed section allows for a 45-day extension on the final report deadline. Other required elements of the final report are consolidated within the rule. This proposed section removes the requirement to estimate future collection needs, the timing of collection and suggestions on how to collect chemical waste. This is no longer necessary with a mature program.

Comparison with Existing or Proposed Federal Statutes and Regulations

The United States Environmental Protection Agency (EPA) administers the Resource Conservation and Recovery Act (RCRA), which includes regulations affecting the collection, movement, and disposal of hazardous agricultural and household waste. EPA has also adopted universal waste management rules under 40 CFR 273. Wisconsin's "clean sweep" grantees and vendors must comply with all applicable RCRA and universal waste provisions.

Prescription drugs that are controlled substances are regulated under the federal Controlled Substance Act (21 USC 801) and the Controlled Substances Import and Export Act (21 USC 951). Wisconsin's prescription drug "clean sweep" program must comply with these and related federal laws.

Comparison with Rules in Adjacent States

The surrounding states of Illinois, Iowa, Michigan and Minnesota also collect unwanted pesticides, household hazardous waste or unwanted prescription drugs. The agencies involved, their funding sources, and distribution of funds vary greatly. Wisconsin is the only state that has one agency overseeing these various types of grants.

Illinois

Illinois offers a grant for agricultural and structural pesticide collections through the Illinois department of agriculture. The Illinois environmental protection agency also offers four one-day collections for household hazardous waste and unwanted drugs, in addition to some county hosted events. Illinois's Prescription Pill and Drug Disposal Fund provides reimbursement to law enforcement agencies for collection, transport and incineration of medicines collected from residential sources.

Iowa

Iowa no longer holds household hazardous waste collection days and eliminated the award of grants to fund those one-day collections. Instead, the Iowa department of natural resources offers Regional Collection Centers (RCCs) that are open year-round. These RCCs take household waste but can also accept agricultural waste at their discretion. In addition to main RCCs, there are satellite RCC sites and mobile collections that contract with an RCC and travel within a county for collections. Iowa offers two kinds of funds: (1) reimbursement funds to cover operating expenses/disposal costs, and (2) establishment funds to help a county set up a permanent site. Unlike Wisconsin's clean sweep program, Iowa allows its funds to be used to build permanent facilities.

Iowa also offers a pharmaceutical disposal program called TakeAway, in which patients or caregivers can bring unwanted or expired medicines into participating TakeAway pharmacies. The pharmacist will dispose of the returned medications (prescription drugs or over-the-counter products) into a waste bin

specially designed to safely store discarded pharmaceutical products, along with their packaging. Once filled, the TakeAway system is sealed and shipped to a medication disposal facility where the system and its contents are incinerated at a waste-to-energy facility. Some participating pharmacies also sell TakeAway envelopes, pre-addressed, postage pre-paid large envelopes that can be taken into the home, filled with unused and expired medicine, and mailed through the United States postal service to the disposal facility. Controlled substances must go to law enforcement or one of the United State drug enforcement administration collections.

Michigan

Michigan offers a clean sweep program for agricultural pesticides through its department of agriculture & rural development (MDARD). The Michigan department of environmental quality covers household collections, supported by an EPA grant. No grants are given. MDARD will cover the cost of transportation and disposal costs of pesticides collected at household events.

Minnesota

Minnesota enters into cooperative agreements with counties to collect non-agricultural and agricultural waste pesticides. For those counties without a cooperative agreement, the Minnesota department of agriculture (MDA) holds collections. Agricultural pesticides are collected every other year and household hazardous wastes are collected each year. MDA pays supplies, transportation and disposal costs and \$0.25/lb. for “reasonable overhead costs.” The Minnesota pollution control agency (MPCA) provides stipends to counties for household hazardous waste collections. Stipends cover about 10 percent of costs and are determined by different formulas. Minnesota does not offer drug grants. Collections, transportation and disposal are overseen by county law enforcement and the counties pay all associated costs.

Summary of Factual Data and Analytical Methodologies

To develop this rule, four listening sessions were held throughout Wisconsin. Participants included representatives from local government entities that are current and past grant recipients, many of whom manage county or municipal solid waste programs. Comments were also received from law enforcement agencies that administer unwanted prescription drug collections.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

No supporting documents were used. DATCP relied on information obtained through the listening sessions (See Summary of Data and Analytical Methodologies, above), as well as any comments received through the economic impact analysis comment period.

Effects on Small Business

This rule revision will have no effect on small business. By statute, the department may only award grants under the clean sweep program to *local government entities* for expenses related to the collection of and disposal of unused agricultural pesticides, household waste, and unwanted prescription drugs. No

changes have been made to the current rule that directly would impact small businesses. The proposed rule will continue to benefit certain small businesses such as farmers, farm supply stores, and cooperatives that generate small quantities of waste pesticides per month, since clean sweep collections provide a no- or low-cost method of disposing of agricultural pesticides and other farm chemical waste.

DATCP Contact Information and Deadline for Submission of Rule Comments

Questions and comments related to this rule may be directed to:

Ms. Jane Larson
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4545
E-mail: Jane.Larson@wisconsin.gov

Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Board of Agriculture, Trade and Consumer Protection. Please contact Ms. Larson to obtain hearing dates and locations.

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- 1 **SECTION 1.** ATCP 34.01 (intro.) is amended to read:
- 2 ATCP 34.01 **Purpose.** This chapter establishes procedures for the agricultural chemical and
- 3 container collection grant program under s. 93.55, Stats., and the household hazardous waste grant
- 4 program, which includes unwanted prescription drugs, under s. 93.57, Stats.
- 5 **SECTION 2.** ATCP 34.02 (5) (c) is created to read:
- 6 ATCP 34.02 (5) (c) Unwanted prescription drugs.
- 7 **SECTION 3.** ATCP 34.02 (6) is amended to read:
- 8 ATCP 34.02 (6) “Continuous collection-~~event~~” means a clean sweep project that collects
- 9 chemical waste or unwanted prescription drugs on at least 4 6 or more days in a calendar year.
- 10 **SECTION 4.** ATCP 34.02 (13) is amended to read:
- 11 ATCP 34.02 (13) “Household hazardous waste” means a household waste as defined in s. NR
- 12 661.04 (2) (a) that would be a hazardous waste under ch. NR 661, except that it is exempt under s. NR
- 13 661.04. Household hazardous waste also includes unwanted prescription drugs.
- 14 **SECTION 5.** ATCP 34.02 (14g) and (14r) are created to read:

1 ATCP 34.02 (14g) “Permanent Collection” means a clean sweep project that collects wastes
2 under this program during at least 6 months of the year and includes permanent infrastructure dedicated
3 to the program use.

4 (14r) “Person” means an individual, corporation, partnership, cooperative association, limited
5 liability company, or other organization or entity. “Person” includes a county or local government
6 entity, but does not include a state or federal government entity.

7 **SECTION 6.** ATCP 34.02 (17) is amended to read:

8 ATCP 34.02 (17) “Temporary collection-~~event~~” means a clean sweep project that collects
9 chemical waste on ~~fewer than 4 days~~ 5 days or less in a calendar year.

10 **SECTION 7.** ATCP 34.02 (17g) and (17r) are created to read:

11 ATCP 34.02 (17g) “Total project cost” means the sum of all direct, reimbursable costs and in-
12 kind costs.

13 (17r) “Unwanted prescription drugs” means Schedule II to V controlled substances and all other
14 drugs that can be prescribed for human health needs, including such drugs as analgesics, anti-
15 inflammatory drugs, antibiotics, gastrointestinal drugs, inhalers and antihistamines. Unwanted
16 prescription drugs include veterinary drugs as defined in s. 453.02 (9), Stats.

17 **SECTION 8.** ATCP 34.04 (2) (c) is amended to read:

18 ATCP 34.04 (2) (c) Direct costs for county or municipal staff to receive and pack chemical waste
19 at a continuous or permanent collection ~~event~~.

20 **SECTION 9.** ATCP 34.04 (2) (e) is created to read:

21 ATCP 34.04 (2) (e) Direct costs for purchase and installation of permanent drug drop boxes for
22 unwanted prescription drugs.

23 **SECTION 10.** ATCP 34.04 (3) (h) is created to read:

1 ATCP 34.04 (3) (h) Sharps, including needles and lancets; thermometers; intravenous bags;
2 bloody or infectious wastes; personal care products such as soaps, perfumes, hand lotions; nebulizers;
3 oxygen-containing devices; and any drug or medical device for which another collection, disposal, or
4 recycling
5 option is presently available.

6 **SECTION 11.** ATCP 34.04 (5) (b) (intro.) is amended to read:

7 ATCP 34.04 (5) (b) For a continuous or permanent collection ~~event~~, a grant recipient's
8 contribution under par. (a) may include any of the following costs that are directly related to the
9 collection and handling of chemical waste collected at that event:

10 **SECTION 12.** ATCP 34.06 (1) (Note) is created to read:

11 **Note:** Pursuant to s. 20.002 (10), Stats., a grant by a state agency made to any city, county,
12 village, or town for any purpose also may be granted by that state agency to any federally
13 recognized tribal governing body for the same purpose.
14

15 **SECTION 13.** ATCP 34.06 (2) (intro.) and (a) are amended to read:

16 ATCP 34.06 (2) ANNOUNCEMENT SOLICITING GRANT APPLICATIONS. The department shall
17 issue a ~~written announcement~~ request for proposals soliciting grant applications under sub. (1) for the
18 next calendar year if grant funding may be available for any part of that calendar year. The
19 announcements shall specify the general terms and conditions for grant awards, including all of the
20 following:

21 (a) The total amount available for clean sweep project grants, including separate amounts
22 available for farm chemical waste collection projects and household hazardous waste collection projects.
23 Subject to budget appropriations, the department shall offer ~~no less than \$400,000 for farm chemical~~
24 ~~waste collection grants and no less than \$200,000~~ a minimum of two-thirds of the funds available from
25 the appropriation account under s. 20.115 (7) (va) for household hazardous waste collection grants.

1 **SECTION 14.** ATCP 34.06 (3) (intro.) is amended to read:

2 ATCP 34.06 (3) APPLICATION CONTENTS. A county or municipality shall submit its grant
3 application under sub. (1) ~~on a form provided in a manner designated~~ by the department. The
4 application shall comply with requirements contained in the department's announcement under sub. (2)
5 and shall describe all of the following:

6 **SECTION 15.** ATCP 34.06 (3) (a) 4. and (Note) are repealed.

7 **SECTION 16.** ATCP 34.06 (3) (b) to (d), (f) and (g) are amended to read:

8 (b) The proposed collection sites, if known.

9 (c) The proposed collection dates ~~and times,~~ if known.

10 (d) The proposed collection facilities ~~and procedures,~~ if known.

11 (f) A schedule of fees, if any, which the applicant proposes to charge to persons from whom it
12 collects waste chemicals or unwanted prescription drugs. A county may not charge an agricultural
13 producer for the first 200 pounds of farm chemical waste collected from that agricultural producer, but
14 may charge fees for amounts over 200 pounds of farm chemical waste or for agricultural producers
15 disposing of household hazardous waste.

16 (g) The hazardous waste contractor who will handle, transport and dispose of hazardous waste
17 or unwanted prescription drugs collected in the clean sweep project.

18 **SECTION 17.** ATCP 34.06 (3) (h) and (i) are repealed.

19 **SECTION 18.** ATCP 34.06 (3) (m) and (n) (Note) are amended to read:

20 (m) The agency and individual that are primarily responsible for coordinating the project on
21 behalf of the applicant, and any other agencies involved in implementing the project. ~~If the project will~~
22 ~~involve multiple units of government, the application shall describe the role of each actively participating~~
23 ~~government unit.~~

1 (n) Note: ~~Copies of the~~The grant application form and related evaluation criteria are available
2 from the department at the following address: Department of Agriculture, Trade and
3 Consumer Protection, Agricultural Resource Management Division, PO Box 8911,
4 Madison, WI 53708-8911 or <http://datcp.wi.gov> .
5

6 **SECTION 19.** ATCP 34.08 (1) (intro.), (2) (title), (intro.), and (a), are amended to read:

7 ATCP 34.08 **Evaluating grant applications.** (1) DETERMINING ELIGIBILITY. The department
8 shall review each grant application under s. ATCP 34.06 (3) to determine whether it complies with
9 minimum eligibility requirements under this chapter. ~~The department shall conduct this review before~~
10 ~~the department ranks eligible grant applications under sub. (2).~~ The department shall reject grant
11 applications that fail to meet minimum eligibility requirements, or that fail to comply with application
12 procedures prescribed under s. ATCP 34.06 (2).

13 ATCP 34.08 (2) ~~RANKING~~-EVALUATING ELIGIBLE GRANT APPLICATIONS. The department shall
14 ~~rank~~ evaluate each year's eligible grant applications under s. ATCP 34.06 (1). The department may
15 consider the following criteria, and other criteria set forth in the department's notices under s. ATCP
16 34.06 (2):

17 (a) The types of chemical wastes or unwanted prescription drugs to be collected. ~~The department~~
18 ~~may give priority to projects that do one or more of the following:~~

19 **SECTION 20.** ATCP 34.08 (2) (a), 1., 2., 3., and 4. are repealed.

20 **SECTION 21.** ATCP 34.08 (2) (c) to (e) are amended to read:

21 ATCP 34.08 (2) (c) The convenience of the collection service. The department may give priority
22 to projects offering conveniences, such as continuous collection events or permanent collections,
23 multiple collection locations and multiple collection periods, which are reasonably designed to
24 maximize public participation.

25 (d) The scope and quality of the public information and promotional program that will
26 accompany the project. The department may give priority to projects that are effectively designed to do

1 the following:

2 (1) Reach and involve target audiences holding chemical wastes or unwanted prescription drugs.

3 (2) Minimize future generation of chemical waste or unwanted prescription drugs.

4 (e) Innovation. The department may give priority to applicants that offer new collection sites or
5 other sound innovations designed to increase public participation, decrease waste generation, increase
6 waste collection or expand geographic outreach.

7 **SECTION 22.** ATCP 34.08 (2) (g) and (h) are repealed.

8 **SECTION 23.** ATCP 34.10 (2) (intro.), (3) (intro.) and (4) (intro.) are amended to read:

9 ATCP 34.10 (2) FARM CHEMICAL WASTE COLLECTION PROJECTS. The department shall annually
10 award clean sweep grants for farm chemical waste collection projects based on the ranking evaluation
11 under s. ATCP 34.08 (2). ~~The department shall annually award grants totaling at least \$400,000 for~~
12 ~~farm chemical waste collection projects, subject to eligible grant application requests and available~~
13 ~~appropriations.~~

14 (3) HOUSEHOLD HAZARDOUS WASTE COLLECTION PROJECTS. The department shall annually
15 award clean sweep grants for household hazardous waste collection projects based on the ranking
16 evaluation under s. ATCP 3408 (2). The department shall annually award ~~grants totaling at least~~
17 ~~\$200,000 for household hazardous waste collection projects, subject to eligible grant application~~
18 ~~requests and available appropriations~~ a minimum of two-thirds of the funds available from the
19 appropriation account under s. 20.115 (7) (va).

20 (4) REMAINING GRANT FUNDS. Following awards under subs. (2) and (3), the department may
21 award grant funds for other projects ~~based on their ranking under s. ATCP 34.08 (2),~~ without regard to
22 whether the projects will collect farm chemical waste or household hazardous waste.

23 **SECTION 24.** ATCP 34.12 (2) (f) is repealed:

1 **SECTION 25.** ATCP 34.12 (3) (a) is amended to read:

2 ATCP 34.12 (3) (a) Cancel one or more of the grants in the reverse order in which they were
3 awarded.

4 **SECTION 26.** ATCP 34.14 (1) (b) is repealed.

5 **SECTION 27.** ATCP 34.16 (1) (a), (2), (3) (title), (4) (title), 1., 2., and 3. are amended to read:

6 ATCP 34.16 (1) COUNTY OR MUNICIPALITY RESPONSIBLE AS WASTE GENERATOR. (a) Except as
7 provided in par. (b) or (c), a grant recipient shall take responsibility, as a hazardous waste generator
8 under the resource conservation and recovery act, for hazardous waste, as well as unwanted prescription
9 drugs, that the grant recipient collects under a funded clean sweep project. As a hazardous waste
10 generator, the grant recipient shall comply with applicable requirements under s. 291.21, Stats., and the
11 resource conservation and recovery act related to that hazardous waste.

12 (2) HAZARDOUS WASTE CONTRACTOR; GENERAL. A grant recipient shall contract with a
13 hazardous waste contractor to receive, pack, transport and dispose of hazardous wastes or unwanted
14 prescription drugs collected under the funded clean sweep project. The hazardous waste contractor shall
15 ~~attend training provided by the department and shall~~ comply with applicable requirements under this
16 chapter. ~~The grant recipient shall select a hazardous waste contractor that has attended the most recent~~
17 ~~training session provided by the department.~~

18 (3) HAZARDOUS WASTE CONTRACTOR FOR TEMPORARY ~~COLLECTION~~ EVENT COLLECTIONS. For a
19 temporary ~~collection event~~ collections, a grant recipient shall contract under sub. (2) with the hazardous
20 waste contractor who manages the state of Wisconsin's hazardous wastes under the cooperative state
21 purchasing agreement.

1 (4) HAZARDOUS WASTE CONTRACTOR FOR PERMANENT AND CONTINUOUS COLLECTION EVENT

2 COLLECTIONS. (a) For a permanent or continuous collection-event, a grant recipient shall contract under
3 sub. (2) with a hazardous waste contractor that is qualified to do all of the following:

4 1. Help the grant recipient and very small quantity generators to identify and segregate
5 hazardous and solid wastes and unwanted prescription drugs.

6 2. Provide essential waste handling services including drum packing and pickup, testing for
7 unknown chemicals, containing loose chemicals and approving cylinders for disposal and drum packing
8 and pickup for unwanted prescription drugs.

9 3. Collect, pack and transport poison solids, poison liquids, ~~and~~ flammables, and unwanted
10 prescription drugs including controlled substances to waste management sites licensed or permitted by
11 federal and state governments.

12 **SECTION 28.** ATCP 34.18 (1) (intro.) and (a) to (d) are amended to read:

13 ATCP 34.18 (1) FINAL REPORT. A grant recipient shall provide the department with a final
14 report on a clean sweep project within 60 days after the grant recipient completes the project. The
15 department may grant an extension, not to exceed 45 days, if requested within the 60-day period. The
16 final report shall include all of the following:

17 (a) The number of persons who delivered chemical waste or if known, unwanted prescription
18 drugs, for collection.

19 (b) The types and amounts of chemical wastes and unwanted prescription drugs collected.

20 (c) The total cost of the project. The report shall include supporting documentation, including
21 invoices for the transportation and disposal of chemical waste and unwanted prescription drugs.

22 (d) An evaluation of the project, including the need for future clean sweeps projects, if any, and
23 the appropriate timing of those projects, an identification of problems and possible solutions, the public

1 information program conducted in connection with the project, and suggestions on how to collect
2 chemical waste or unwanted prescription drugs in the future.

3 **SECTION 29.** ACTP 34.18 (1) (e) is repealed.

4 **SECTION 30.** ATCP 34.18 (1) (f) is amended to read:

5 ATCP 34.18 (1) (f) An estimate of future chemical waste or unwanted prescription drug
6 collection needs. ~~The report shall estimate future needs based, in part, on collections at the completed~~
7 ~~clean sweep project. The report shall discuss the need for future clean sweep projects, if any, and the~~
8 ~~appropriate timing of those projects. It shall also include suggestions on how to collect chemical waste~~
9 ~~in the future.~~

10 **SECTION 31.** ATCP 34.18 (2) (a) and (b) are amended to read:

11 ATCP 34.18 (2) (a) Except as provided in par. (b), the department may not distribute any grant
12 funds under this chapter until the ~~applicant~~ recipient completes the clean sweep project and submits its
13 final report to the department under sub. (1). The department shall pay the full grant award, less any
14 amount withheld under s. ATCP 34.20 (1), within 60 days after the department accepts the ~~applicant's~~
15 recipient's final report under sub. (1).

16 (b) A grant contract for a permanent or continuous collections ~~event~~ may provide for partial
17 payments during the ~~continuous collection event~~ collections not to exceed two payments. The grant
18 recipients shall file an interim report prior to each partial payment. The interim reports shall contain
19 information, required by the grant contract, including interim information of the type required in sub.
20 (1).

21 **SECTION 32. EFFECTIVE DATE.** (1) This rule takes effect on the first day of the month
22 following publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (intro.).

Dated this _____ day of _____, 2014

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary

RULEMAKING HEARING

Rule Summary

<i>Rule Subject:</i>	Wisconsin Clean Sweep
<i>Adm. Code Reference:</i>	ATCP 34, Wis. Adm. Code
<i>Rules Clearinghouse#:</i>	CR 14-007
<i>DATCP Docket #:</i>	12-R-05

Under the clean sweep program, DATCP distributes grants to counties and other local governments to assist in funding their hazardous waste collection events and permanent waste collection sites. The clean sweep program was established in 1990 to provide financial assistance to Wisconsin counties to collect unwanted agricultural pesticides. In 2004, the program expanded to provide grants to cities, villages, and other municipalities to collect household hazardous wastes such as acids, flammable chemicals, mercury, lead paint, and solvents. In 2007, Wis. Act 20 was enacted that authorized the department to include the funding of local government programs to collect unwanted prescription drugs such as controlled substances, analgesics, anti-inflammatory drugs, antibiotics, gastrointestinal drugs, and antihistamines. In response, DATCP implemented a pilot prescription drug program to develop standards for issuing grants related to collection of unwanted prescription drugs, which are now incorporated into this proposed rule.

Other changes in the rule are designed to improve the operational and administrative efficiency of the program for the department and local governments that participate in the "clean sweep" program. Since 1990, the program has matured and several current requirements are no longer needed. At the same time, the needs of the grant recipients have changed. These rule revisions address these changes and reflect the current state of hazardous waste collection in Wisconsin.

Rule Content

This proposed rule amends ch. ATCP 34 relating to the clean sweep program. The following provides a summary of the rule changes by section:

Purpose of the Rule

The establishment of procedures for making grants to local governments to dispose of unwanted prescription drugs will be added to the "Purpose" section of the rule.

Definitions

The term "unwanted prescription drugs" is added and includes Schedule II to V controlled substances, and all other drugs that can be prescribed for human health

needs, including drugs such as analgesics, anti-inflammatory drugs, antibiotics, gastrointestinal drugs, inhalers and antihistamines. Unwanted prescription drugs also include veterinary drugs.

When local governments first decided to collect pesticide and household wastes, they often held one- or two-day collection “events.” Since then, many local governments have expanded to multiple collections or have established permanent collection sites that offer convenience for local residents. The rule removes the term “event” and references a project as a “collection.”

In this rule, “temporary collection” means a clean sweep project that collects hazardous waste five days or less in a calendar year. A “continuous collection” means a clean sweep project that collects chemicals on six or more days in a calendar year. A “permanent collection” means a clean sweep project that operates at least six months out of the year and includes permanent infrastructure dedicated to clean sweep collections. Comments received during our listening sessions showed a desire to broaden the gap between temporary and continuous collections. Local governments holding temporary collections are still required to use the state hazardous waste contractor as their waste hauler.

Grants to Counties and Municipalities

- **Drug Drop Boxes.** Currently, clean sweep grant funds cannot be used to purchase permanent equipment. However, a large expense associated with the collection of unwanted prescription drugs is a drug drop box. These drop boxes are a secure place for residents to dispose of their unwanted prescription and veterinary drugs. The boxes typically are located within law enforcement agencies and are designed in such a way that drugs cannot be removed except by authorized personnel. The rule would allow a local government to request funds for the direct costs associated with the purchase and installation of a drug drop box.
- **Disposal of Dual-Hazardous Waste.** This proposed rule will allow counties and municipalities to request reimbursement for the disposal of “sharps” that contain medication such as epinephrine auto-injectors (an example is an EpiPen®) or prefilled syringes. Disposal costs for sharps such as needles or lancets would remain ineligible for reimbursement.

Grant Applications

- **Grant Solicitation Announcements.** This proposed rule expands the methods of announcing a request for proposals for clean sweep grant funds beyond a written announcement.

- **Grant Fund Amounts.** Ch. ATCP 34 states that the department shall offer no less than \$400,000 for farm chemical waste collection and not less than \$200,000 for household hazardous waste collection. In recent years, the demand for the collection and disposal of household hazardous waste has outpaced agricultural pesticides and farm chemical waste. Also, with the statutory addition of grants for unwanted prescription drug collections in 2008, a different allocation of funds among the collection grants is now required. The new statutory language requires the department to offer a minimum of two-thirds of the available funds for household hazardous waste under s. 93.57, Stats. This proposed rule reflects the change in statutory requirements and eliminates the conflict between rule and statute. This change is also supported by the data collected from clean sweeps in recent years. The demand for household hazardous waste disposal is increasing while the demand for agricultural waste disposal is declining. Household waste disposal demand is outpacing agricultural demand by about a 3:1 margin.
- **Grant Applications.** The current rule requires that grant applications be submitted on a form provided by the department. To keep up with changing and available technology such as electronic or web-based applications, the rule specifies that future applications will be submitted in a manner designated by DATCP.
- **Required Information in Applications.** Because of the gap between grant submittal and acceptance and the possibility that a grant may not be funded, this rule specifies that applicants no longer have to provide specific dates, locations and facilities for collections. The department will gather that information after grants are awarded. The proposed rule also removes the requirement that an applicant describe its plans for collecting, handling and disposing of chemical waste. Clean sweep collections are not new and local governments and waste haulers have developed much experience since 1990. Unwanted prescription drug collection information will be incorporated into clean sweep applications. Finally, because multi-government collections are quite common as a way to reach more residents and gain efficiencies with collections, applicants no longer need to describe the role of each government participant under this rule.

Evaluating Grant Applications

Evaluation of Eligible Applications. Under this proposed rule, the department will modify the criteria used to assess clean sweep grant applications. Early in the program's history, applicants were encouraged to collect farm and household waste and determine what chemicals were of concern in their areas. Now the majority of applicants are experienced project coordinators familiar with local needs and available resources. For some, it is impractical to collect more than one waste type

because there is no need. Because of the experience of the local government coordinators and their staff, evaluating an application based on its safety and suitability is no longer necessary. Coordination across multiple governments is encouraged and points are awarded for these types of collections, but it is no longer necessary to place a priority on such coordination.

Grant Awards

Farm Waste and Household Waste. This proposed section reflects the changes in the statute for grant awards and removes the discrepancy between statute and rule. The current rule states that the department will annually award grants totaling at least \$400,000 for farm chemical waste, while the statute directs that the department to offer a minimum of two-thirds of the available funds for household hazardous waste. This rule corrects the discrepancy by taking into consideration the current appropriation under s. 20.115 (7) (va), Stats.

Grant Contracts

- **Hazardous Waste Contract.** This proposed rule removes the requirement that the written contract between the department and the clean sweep grant recipient include the recipient's contract with its hazardous waste contractor. The department has found that the information provided in the grant applications is sufficient to make awards.
- **Limited Funding.** Should the amount of grant funds available be insufficient to cover the awarded grants, the department has the ability to cancel one or more of the grants at its discretion.

Collecting Waste Pesticides from Very Small Quantity Generators (VSQGs)

Generally, a "VSQG" is an individual or business who generates limited quantities of waste pesticides and can include certain hardware stores, farm supply stores, cooperatives, municipalities, or commercial pesticide applicators. This proposed section removes the requirement that a county must collect the license status of a VSQG licensed under ch. ATCP 29. As long as the VSQG's name and address is captured, the department can verify licensure, if necessary.

Hazardous Waste

Hazardous Waste Contractor. This proposed section incorporates unwanted prescription drug collection into the rule. It also removes the requirement that hazardous waste contractors selected by grant recipients attend a training session provided by the department. This was a necessary requirement in the early days of the program but is no longer needed since the program participants, including waste contractors, have gained experience and familiarity with the clean sweep program rules.

Reports and Payments

Final Report. This proposed section allows for a 45-day extension on the final report deadline. Other required elements of the final report are consolidated within the rule. This proposed section removes the requirement to estimate future collection needs, the timing of collection and suggestions on how to collect chemical waste. This is no longer necessary with a mature program.

Comparison with Rules in Adjacent States

The surrounding states of Illinois, Iowa, Michigan and Minnesota also collect unwanted pesticides, household hazardous waste or unwanted prescription drugs. The agencies involved, their funding sources and distribution of funds vary greatly. Wisconsin is the only state that has one agency overseeing these various types of grants.

Illinois

Illinois offers a grant for agricultural and structural pesticide collections through the Illinois Department of Agriculture. The Illinois Environmental Protection Agency also offers four one-day collections for household hazardous waste and unwanted drugs, in addition to some county hosted events. Illinois's Prescription Pill and Drug Disposal Fund provides reimbursement to law enforcement agencies for collection, transport and incineration of medicines collected from residential sources.

Iowa

Iowa no longer holds household hazardous waste collection days and eliminated the award of grants to fund those one-day collections. Instead, the Iowa Department of Natural Resources offers Regional Collection Centers (RCCs) that are open year-round. These RCCs take household waste but can also accept agricultural waste at their discretion. In addition to main RCCs, there are satellite RCC sites and mobile collections that contract with an RCC and travel within a county for collections. Iowa offers two kinds of funds: (1) reimbursement funds to cover operating expenses/disposal costs, and (2) establishment funds to help a county set up a permanent site. Unlike Wisconsin's clean sweep program, Iowa allows its funds to be used to build permanent facilities.

Iowa also offers a pharmaceutical disposal program called TakeAway, in which patients or caregivers can bring unwanted or expired medicines into participating TakeAway pharmacies. The pharmacist will dispose of the returned medications (prescription drugs or over-the-counter products) into a waste bin specially designed to safely store discarded pharmaceutical products, along with their packaging. Once

filled, the TakeAway system is sealed and shipped to a medication disposal facility where the system and its contents are incinerated at a waste-to-energy facility. Some participating pharmacies also sell TakeAway envelopes, pre-addressed, postage pre-paid large envelopes that can be taken into the home, filled with unused and expired medicine, and mailed through the United States Postal Service to the disposal facility. Controlled substances must go to law enforcement or one of the DEA collections.

Michigan

Michigan offers a clean sweep program for agricultural pesticides through its Department of Agriculture & Rural Development (MDARD). The Michigan Department of Environmental Quality covers household collections, supported by an EPA grant. No grants are given. MDARD will cover the cost of transportation and disposal costs of pesticides collected at household events.

Minnesota

Minnesota enters into cooperative agreements with counties to collect non-agricultural and agricultural waste pesticides. For those counties without a cooperative agreement, the Minnesota Department of Agriculture (MDA) holds collections. Agricultural pesticides are collected every other year and household hazardous wastes are collected each year. MDA pays supplies, transportation and disposal costs and \$0.25/lb. for "reasonable overhead costs." The Minnesota Pollution Control Agency (MPCA) provides stipends to counties for household hazardous waste collections. Stipends cover about 10 percent of costs and are determined by different formulas. Minnesota does not offer drug grants. Collections, transportation and disposal are overseen by county law enforcement and the counties pay all associated costs.

Summary of Factual Data and Analytical Methodologies

To develop this rule, four listening sessions were held throughout Wisconsin. Participants included representatives from local government entities that are current and past grant recipients, many of whom manage county or municipal solid waste programs. Comments were also received from law enforcement agencies that administer unwanted prescription drug collections.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

No supporting documents were used. DATCP relied on information obtained through the listening sessions (See Summary of Data and Analytical Methodologies,

above), as well as any comments received through the economic impact analysis comment period.

Effects on Small Business

This rule revision will have no effect on small business. By statute, the department may only award grants under the clean sweep program to *local government entities* for expenses related to the collection of and disposal of unused agricultural pesticides, household waste, and unwanted prescription drugs. No changes have been made to the current rule that would impact small businesses. The proposed rule will continue to benefit certain small businesses such as farmers, farm supply stores, and cooperatives that generate small quantities of waste pesticides per month, since clean sweep collections provide a no- or low-cost method of disposing of agricultural pesticides and other farm chemical waste.

Next steps

Following the public hearings, the department will prepare a final draft rule for the Board's consideration. If the Board approves the final draft rule, DATCP will transmit the final draft rule for legislative committee review. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the month following publication in the Wisconsin administrative register as provided under s. 227.22 (2) (intro.)