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Chapter ATCP 34

CLEAN SWEEP PROGRAM

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Note: Chapter Ag 164 was created by emergency rule effective August 14, 1990; Chapter Ag 164 was renumbered ch. ATCP 34 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. **Chapter ATCP 34 as it existed on December 31, 2004, was repealed and a new chapter ATCP 34 was created, Register December 2004 No. 588, effective January 1, 2005.**

ATCP 34.01 Purpose. This chapter establishes procedures for the agricultural chemical and container collection grant program under s. 93.55, Stats., and the household hazardous waste grant program under s. 93.57, Stats.

Note: Funds for the grant programs under ss. 93.55 and 93.57, Stats., are appropriated under s. 20.115 (7) (va), Stats. Grants are subject to appropriation limits.

History: CR 04-039; cr. Register December 2004 No. 588, eff. 1-1-05.

ATCP 34.02 Definitions. In this chapter:

(1) "Agricultural producer" means a person who produces agricultural commodities on land that the person owns or controls.

(2) "ARM division administrator" means the administrator of the department's agricultural resource management division.

(3) "Chemical waste" means farm chemical waste or household hazardous waste.

(4) "Clean sweep grant" means a grant under s. 93.55 or 93.57, Stats.

(5) "Clean sweep project" means a project under s. 93.55 or 93.57, Stats., to collect any of the following for disposal:

(a) Farm chemical waste from a source identified under s. ATCP 34.04 (4).

(b) Household hazardous waste.

(6) "Continuous collection event" means a clean sweep project that collects chemical waste on at least 4 days in a calendar year.

(7) "County" means a single county, a regional planning commission, or an association of 2 or more counties.

(8) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

(9) "Farm chemical waste" means waste pesticides or other waste chemicals manufactured for agricultural use. "Farm chemical waste" includes farm chemical containers and contaminated farm chemicals that cannot be accepted by recycling or other disposal programs.

(10) "Grant recipient" means a county or municipality that receives a clean sweep grant, and includes an agent of that county or municipality.

(11) "Hazardous waste" has the meaning given in s. 291.01 (7), Stats.

(12) "Hazardous waste contractor" means a person who is licensed and permitted under applicable federal and state laws to collect, pack, transport and dispose of hazardous waste.

(13) "Household hazardous waste" means a household waste as defined in s. NR 661.04 (2) (a) that would be a hazardous waste under ch. NR 661, except that it is exempt under s. NR 661.04.

(14) "Municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, or metropolitan sewage dis-

trict. "Municipality" includes a regional planning commission or an association of 2 or more municipalities.

(15) "Pesticide" has the meaning given in s. 94.67 (25), Stats.

(16) "Resource conservation and recovery act" has the meaning given in s. 291.01, Stats.

(17) "Temporary collection event" means a clean sweep project that collects chemical waste on fewer than 4 days in a calendar year.

(18) "Very small quantity generator" has the meaning given in s. NR 662.220.

History: CR 04-039; cr. Register December 2004 No. 588, eff. 1-1-05; corrections in (13) and (18) made under s. 13.93 (2m) (b) 7., Stats.

ATCP 34.04 Grants to counties and municipalities.

(1) GENERAL. (a) The department may award a clean sweep grant to a county for a clean sweep project to collect any of the following:

1. Farm chemical waste from a source identified in sub. (4).
2. Household hazardous waste.

(b) The department may award a clean sweep grant to a municipality for a clean sweep project to collect household hazardous waste.

(c) A grant recipient under par. (a) or (b) may, with the department's approval, contract with another person or entity to administer the clean sweep project on behalf of the grant recipient.

(2) PERMITTED USES. A clean sweep grant under sub. (1) may reimburse a grant recipient's direct costs for a clean sweep project, including any of the following:

(a) Direct costs to hire a hazardous waste contractor to receive, pack, transport and dispose of chemical waste.

(b) Direct costs for equipment rentals, supplies and services used to operate the collection site and handle collected chemical waste.

(c) Direct costs for county or municipal staff to receive and pack chemical waste at a continuous collection event.

(d) Direct costs for local educational and promotional activities related to the clean sweep project.

(3) PROHIBITED USES. A grant under sub. (1) may not fund the collection or disposal of any of the following:

(a) Oil, unless the oil is contaminated with chemical waste.

(b) Contaminated soil or debris, except for small quantities that the department specifically approves in advance on a case-by-case basis.

(c) Triple-rinsed plastic pesticide containers.

(d) Materials that are handled by other waste disposal or recycling programs.

(e) Batteries, non-mercury bulbs, florescent tubes, tires, electronics, freon appliances or antifreeze.

(f) Farm chemical waste from sources other than those identified in sub. (4).

(g) Chemical waste for which there is no federally-approved or state-approved disposal method. If a grant recipient receives

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a chemical waste for which there is no approved disposal method, the grant recipient shall do all of the following:

1. Securely repackage the chemical waste and return it to the person who delivered it.
2. Record the person's name and address, and the type and amount of chemical waste returned to that person.
3. Inform the person that, if an approved disposal method becomes available, the department will attempt to notify the person at the address recorded under subd. 2.
4. Report to the department the information recorded under subd. 2.

(4) FARM CHEMICAL WASTE. A grant under sub. (1) (a) may reimburse a county's cost to collect and dispose of any of the following:

(a) Farm chemical waste received from an agricultural producer, or from a person who holds the farm chemical waste from farming operations conducted on property that the person now owns or controls.

(b) Waste pesticides and other department-approved farm chemical wastes that the county receives from a very small quantity generator who is not an agricultural producer, provided that all of the following apply:

1. The department, in its announcement under s. ATCP 34.06 (2), specifies the percentage rate at which the department will reimburse that cost. The percentage rate may not exceed 50%, except that the ARM division administrator may approve a higher percentage rate for individual disposal problems that warrant the higher rate. The ARM division administrator shall consider the chemicals involved, the environmental setting, the exposure risks, the responsibility or culpability of the parties, and disposal options available to the parties.
2. The clean sweep project complies with s. ATCP 34.14.

(5) COUNTY OR MUNICIPAL CONTRIBUTION. (a) A grant recipient under sub. (1) shall fund a portion of each clean sweep project for which the grant is awarded. The department's announcement under s. ATCP 34.06 (2) shall specify a required minimum contribution that is at least 25% of the total project cost.

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

1. The value of staff services provided for the event.
2. The rental value of facilities or equipment provided for the event.

Note: A grant recipient is responsible for managing chemical waste in compliance with applicable law. This chapter does not expand or limit the application of state or federal hazardous waste laws administered by the Wisconsin department of natural resources. This chapter does not authorize or require a grant recipient to serve as an enforcement agency, nor does it require a grant recipient to indemnify persons that violate state or federal law. Participation in a clean sweep project does not relieve any person of the duty to comply with applicable law, or indemnify that person for any liability to which that person is subject.

(6) COLLECTING WASTE FROM VERY SMALL QUANTITY GENERATORS. A grant recipient under sub. (1) may collect hazardous waste from a very small quantity generator, regardless of whether the collection cost is eligible for reimbursement under this chapter. Except as provided in sub. (4), the grant recipient may not include the collection costs in its grant-eligible expenses under sub. (2) or in its local contribution under sub. (5).

History: CR 04-039; cr. Register December 2004 No. 588, eff. 1-1-05.

ATCP 34.06 Grant applications. **(1) COUNTY OR MUNICIPALITY MAY APPLY.** A county or municipality may apply for a clean sweep grant. A grant application shall comply with sub. (3).

(2) ANNOUNCEMENT SOLICITING GRANT APPLICATIONS. The department shall issue a written announcement soliciting grant applications under sub. (1) for the next calendar year if grant fund-

ing may be available for any part of that calendar year. The announcement shall specify the general terms and conditions for grant awards, including all of the following:

(a) The total amount available for clean sweep project grants, including separate amounts available for farm chemical waste collection projects and household hazardous waste collection projects. Subject to budget appropriations, the department shall offer no less than \$400,000 for farm chemical waste collection grants and no less than \$200,000 for household hazardous waste collection grants.

(b) The purposes for which grant funds may be used.

(c) The percentage rate, if any, at which the department will reimburse a county's cost to collect and dispose of farm chemical wastes received from very small quantity generators.

Note: See s. ATCP 34.04(4)(b).

(d) Minimum grant eligibility criteria, including the minimum county or municipal funding contribution required under s. ATCP 34.04 (5).

(e) Grant application deadlines and procedures.

(f) Grant evaluation criteria, including the criteria in s. ATCP 34.08 (2) and the weights that the department will give to those criteria.

(g) Other grant application terms and conditions that the department deems appropriate.

Note: The department will normally issue a notice under sub. (2) in June of each year, soliciting grant applications for the next calendar year. Grant funding depends on state budget appropriations.

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

(a) The purpose and scope of the proposed clean sweep project, including all of the following:

1. The targeted waste collection area.
2. Whether the project will collect farm chemical waste, household hazardous waste or both.
3. The agricultural or household populations served.
4. The types and amounts of chemical wastes that the applicant expects to collect.

Note: The department may assist applicants, as necessary, in estimating chemical waste types and amounts under subd. 4.

(b) The proposed collection sites.

(c) The proposed collection dates and times.

(d) The proposed collection facilities and procedures.

(e) Any relevant limitations that the applicant will impose on waste collections.

(f) A schedule of fees, if any, which the applicant proposes to charge to persons from whom it collects waste chemicals. A county may not charge an agricultural producer for the first 200 pounds of farm chemical waste collected from that agricultural producer, but may charge fees for amounts over 200 pounds.

(g) The hazardous waste contractor who will handle, transport and dispose of hazardous waste collected in the clean sweep project.

(h) The applicant's plans for handling, transporting and disposing of chemical waste collected in the clean sweep project, including the applicant's plans under s. ATCP 34.16.

(i) The applicant's plans for recycling or disposing of triple-rinsed pesticide containers and other collected materials that are not hazardous wastes.

(j) The public information program that the applicant will undertake in connection with the clean sweep project. The public information program shall do all of the following:

1. Advertise the clean sweep project to the target population.

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2. Provide information to help the target population minimize, safely handle and safely dispose of chemical waste.

(k) The proposed budget for the clean sweep project, and the amount of funding requested from the department.

(L) The applicant's proposed contribution to the project. The applicant's contribution shall comply with s. ATCP 34.04 (5). The applicant shall identify and distinguish applicant-funded project costs from grant-funded project costs.

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

(n) Other relevant information that the department requires in its announcement under sub. (2).

Note: Copies of the grant application form and related evaluation criteria are available from the department at the following address: Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, PO Box 8911, Madison, WI 53708-8911.

History: CR 04-039; cr. Register December 2004 No. 588, eff. 1-1-05.

ATCP 34.08 Evaluating grant applications.

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

(2) RANKING ELIGIBLE APPLICATIONS. The department shall rank each year's eligible grant applications under s. ATCP 34.06 (1). The department may consider the following criteria, and other criteria set forth in the department's notice under s. ATCP 34.06 (2):

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

1. Collect both farm chemical waste and household hazardous waste.
2. Collect a wide variety of chemical wastes.
3. Collect waste pesticides from very small quantity generators.
4. Effectively target chemical wastes of special concern in the project area.

(b) The extent to which the project coordinates the efforts of state and local governments and other interested parties. The department may give priority to projects that achieve cost efficiencies by combining the efforts of counties, municipalities, or counties and municipalities.

(c) The convenience of the collection service. The department may give priority to projects offering conveniences, such as continuous collection events, multiple collection locations and multiple collection periods, which are reasonably designed to maximize public participation.

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

1. Reach and involve target audiences holding chemical wastes.
2. Minimize future generation of chemical waste.

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

(f) The applicant's capacity to perform. The department may give priority to applicants that demonstrate effective preparation, expertise, capacity and commitment.

(g) Safety and suitability. The department may evaluate proposed collection sites, facilities and waste handling procedures from the standpoint of safety, public access, environmental protection and inclement weather protection. The department may reject unsuitable sites, facilities and procedures.

(h) The overall quality of the project, including likely impact, cost-effectiveness and public participation.

History: CR 04-039; cr. Register December 2004 No. 588, eff. 1-1-05.

ATCP 34.10 Grant awards. (1) DEADLINE. The department shall announce each year's clean sweep grant awards within 60 business days after the grant application deadline specified in the department's announcement under s. ATCP 34.06 (2).

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

(3) HOUSEHOLD HAZARDOUS WASTE COLLECTION PROJECTS. The department shall annually award clean sweep grants for household hazardous waste collection projects based on the ranking under s. ATCP 34.08 (2). The department shall annually award grants totaling at least \$200,000 for household hazardous waste collection projects, subject to eligible grant application requests and available appropriations.

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

History: CR 04-039; cr. Register December 2004 No. 588, eff. 1-1-05.

ATCP 34.12 Grant contracts. (1) GENERAL. The department shall enter into a written grant contract with each grant recipient, specifying the terms and conditions of the grant. No grant award under s. ATCP 34.10 is final until the grant contract is signed. The contract may incorporate, by reference, all or part of the grant application.

(2) CONTENTS. A contract under sub. (1) shall include all of the following:

(a) The amount of the grant award.

(b) The purposes for which the grant award may be used. The contract may identify those purposes by reference to this chapter, the department's announcement under s. ATCP 34.06 (2), or the grant application.

(c) The grant recipient's responsibilities under the contract. The contract may identify those responsibilities by reference to this chapter, the department's announcement under s. ATCP 34.06 (2), or the grant application.

(d) The nature and amount of the grant recipient's contribution under s. ATCP 34.04 (5).

(e) The grant recipient's responsibility as a hazardous waste generator, under s. ATCP 34.16 (1), for hazardous waste collected by the clean sweep project.

(f) The grant recipient's contract with the hazardous waste contractor who will receive, transport or dispose of chemicals collected during the clean sweep project. The contract shall include a schedule of the contractor's charges to receive, transport and dispose of relevant categories of chemicals.

(g) The grant recipient's agreement to comply with applicable requirements under this chapter.

(h) Other contract terms specified by the department.

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(3) GRANTS CONTINGENT UPON FUNDING. Every grant award and grant contract under this chapter is contingent upon the availability of funding. If funding is not available for all of the grants awarded, the department may do any of the following notwithstanding its contract with any grant recipient:

(a) Cancel one or more grants in the reverse order in which they were awarded.

(b) Reduce grant amounts.

(4) REALLOCATION OF FUNDS. A county that receives grant funds for both a farm chemical waste collection project and a household hazardous waste collection project may reallocate up to 50% of either project's grant funding to the other project, based on unanticipated changes in demand for collection services in either project. A county may not reallocate funds from a project if the reallocation results in a shortage of funds for that project.

History: CR 04-039; cr. Register December 2004 No. 588, eff. 1-1-05.

ATCP 34.14 Collecting waste pesticides from very small quantity generators. A county may collect waste pesticides and other department-approved farm chemical wastes from a very small quantity generator who is not an agricultural producer, provided that all of the following apply:

(1) The very small quantity generator pre-registers with the county or its hazardous waste contractor. The registration shall include all of the following:

(a) The registrant's name and address.

(b) The registrant's license status, if the registrant is required to be licensed under ch. ATCP 29.

(c) The registrant's certification that the registrant is a very small quantity generator under s. NR 662.220.

(d) A complete inventory of the pesticides and other department-approved farm chemical wastes that the registrant proposes to deliver for collection.

(2) The county gives each registrant under sub. (1) a receipt that shows all of the following:

(a) The amounts and kinds of pesticides and other department-approved farm chemical wastes actually collected from the registrant.

(b) The amount paid by the registrant, if any.

(3) The county keeps a record of all the following, and includes that record in its final report under s. ATCP 34.18 (1):

(a) The name and address of the very small quantity generator.

(b) The types and amounts of pesticides and other department-approved farm chemical wastes actually collected from the very small quantity generator.

(c) The total cost to collect and dispose of the pesticides and other department-approved farm chemical wastes collected from the very small quantity generator.

(d) The total of all payments received from the very small quantity generator, if any.

History: CR 04-039; cr. Register December 2004 No. 588, eff. 1-1-05; correction in (1) (c) made under s. 13.93 (2m) (b) 7., Stats.

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

(b) A grant recipient is not a hazardous waste generator under par. (a) with respect to wastes that are exempt from regulation as hazardous wastes under s. 291.21, Stats., and the resource conservation and recovery act, even if the grant recipient manages those wastes as hazardous wastes after collecting them.

(c) A grant recipient is not a hazardous waste generator under par. (a) with respect to hazardous waste collected from a very small quantity generator.

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

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

(4) HAZARDOUS WASTE CONTRACTOR FOR CONTINUOUS COLLECTION EVENT. (a) For a continuous collection event, a grant recipient shall contract under sub. (2) with a hazardous waste contractor that is qualified to do all of the following:

1. Help the grant recipient and very small quantity generators to identify and segregate hazardous and solid wastes.

2. Provide essential waste handling services including drum packing and pickup, testing for unknown chemicals, containing loose chemicals, and approving cylinders for disposal.

3. Collect, pack and transport poison solids, poison liquids and flammables to waste management sites licensed by federal and state governments.

4. Provide waste collection and disposal services for mercury-bearing and dioxin-bearing chemicals, acids, bases, lead paint and low pressure gas cylinders and canisters, unless there are no federally-approved or state-approved disposal options for the materials.

5. Provide services under s. ATCP 34.04 (3) (g) if there are no federally-approved or state-approved disposal options.

6. Collect and report information related to chemicals that are banned or specially restricted by this state or the United States.

7. Comply with s. ATCP 34.14 if a clean sweep project collects pesticides from very small quantity generators who are not agricultural producers.

8. Comply with other requirements specified in the department's announcement under s. ATCP 34.06 (2).

(b) The department may require a grant recipient to submit proof that the hazardous waste contractor selected by the grant recipient complies with par. (a), and may disapprove a contractor who does not comply with par. (a).

Note: The contractor who manages the state of Wisconsin's hazardous wastes under the cooperative state purchasing agreement meets applicable requirements under sub. (4)(a).

History: CR 04-039; cr. Register December 2004 No. 588, eff. 1-1-05.

ATCP 34.18 Reports and payments. (1) FINAL REPORT. A grant recipient shall provide the department with a final report on a clean sweep project within 60 days after the grant recipient completes the project. The final report shall include all of the following:

(a) The number of persons who delivered chemical waste for collection.

(b) The types and amounts of chemical wastes collected.

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

(d) An evaluation of the project, including an identification of problems and possible solutions.

(e) An evaluation of the public information program conducted in connection with the project.

(f) An estimate of future chemical waste collection needs. The report shall estimate future needs based, in part, on collections at

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the completed clean sweep project. The report shall discuss the need for future clean sweep projects, if any, and the appropriate timing of those projects. It shall also include suggestions on how to collect chemical waste in the future.

(g) The information required under s. ATCP 34.14 (3) if the clean sweep project collects pesticides from very small quantity generators.

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

(b) A grant contract for a continuous collection event may provide for partial payments during the continuous collection event. The grant recipient shall file an interim report prior to each partial payment. The interim report shall contain information required by the grant contract, including interim information of the type required in sub. (1).

History: CR 04-039: cr. Register December 2004 No. 588, eff. 1-1-05.

ATCP 34.20 Contract termination for cause. (1) The department may terminate a clean sweep grant contract, and withhold some or all contract payments, if the department finds that the grant recipient or the grant recipient's agent has done any of the following:

- (a) Violated this chapter or the grant contract.
- (b) Failed to perform the clean sweep project.
- (c) Obtained the grant contract by fraud or illegal conduct.
- (d) Administered the project in a grossly negligent, illegal or corrupt manner.

(2) NOTICE OF TERMINATION. If the department terminates a grant contract or withholds contract payments under sub. (1), the

department shall give the grant recipient written notice specifying the reasons for the department's action. The ARM division administrator or designee may issue a notice under this subsection.

(3) REQUEST FOR RECONSIDERATION. A grant recipient adversely affected by a department action under sub. (1) may ask the department to reconsider that action. The grant recipient shall make the request in writing, within 30 days after the grant recipient receives the department's notice under sub. (2). The request shall include all of the following:

- (a) The grant recipient's objections to the department's action, including disputed facts and conclusions.
- (b) The information that supports the grant recipient's objections.
- (c) The legal basis for the grant recipient's objections.
- (d) The requested remedy.

(4) INFORMAL CONFERENCE. (a) If the department receives a written request for reconsideration that complies with sub. (2), the ARM division administrator shall schedule an informal conference with the grant recipient. The ARM division administrator or designee shall hold the informal conference within 10 business days after the department receives the request unless the grant recipient agrees to a later date.

(b) Following the informal conference under par. (a), the ARM division administrator or designee shall affirm, reverse or modify the department's action under sub. (1). The ARM division administrator or designee shall issue the decision in writing within 30 working days after the informal conference, and shall give a copy to the grant recipient.

(5) CONTESTED CASE HEARING. A grant recipient may request a contested case hearing, pursuant to ch. 227, Stats., and ch. ATCP 1, on a decision under sub. (4) (b). A hearing request shall include the information required under sub. (3) (a) to (d).

History: CR 04-039: cr. Register December 2004 No. 588, eff. 1-1-05.