

Agricultural Chemical Response and Reimbursement Account
(ACRRA)

ANNUAL SUMMARY REPORT

Fiscal Year 2001

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Prepared on behalf
of the

Agricultural Chemical Response Compensation Board
and the Commissioner of Agriculture

For:
Minnesota's

Legislative Coordinating Commission
Senate Environment and Natural Resources Committee
House Environment and Natural Resources Committee

Agricultural Chemical Response Compensation Board and the Commissioner of Agriculture

Executive Summary

In state fiscal year 2001, the Commissioner of Agriculture received Agricultural Chemical Response and Reimbursement Account (ACRRA) surcharge revenues totaling \$1,976,704. This figure reflects a \$957,298 increase in revenues due to the surcharge increase in effect beginning in calendar year 2000.

The fiscal year 2001 ACRRA disbursements totaled \$2,452,523. Fiscal year 2001 disbursements were \$1,014,700 greater than fiscal year 2000. This marked increase in disbursements reflects the busiest and most expensive year in ACRRA program history.

Many factors contributed to the increase in ACRRA applications and disbursements. These factors included: trends in consolidation and restructuring of the agricultural chemical industry; changes in the types and uses of agricultural chemicals; and to a smaller degree, a recent statutory amendment that raised the maximum eligible cost per incident from \$200,000 to \$350,000.

Statutory amendments were also made to the ACRRA Law, (*Minnesota Statutes* 18E) during the 2001 legislative session. The changes made were: 1) reduced the maximum reimbursement from 100 percent to 90 percent for eligible costs between \$100,000 and \$200,000; 2) added a requirement that eligible costs must be submitted within three years; and 3) added procedural steps for requesting a hearing before the ACRRA Board when a decision on a reimbursement or payment has had an adverse effect on the eligible person.



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PROGRAM OVERVIEW

The Agricultural Chemical Response and Reimbursement Account (ACRRA) was created as a result of the 1989 Minnesota Ground Water Protection Act. It was established to provide financial assistance to cleanup agricultural chemical (pesticide and fertilizer) contamination. Contamination may occur due to sudden incidents, such as fire or transportation accidents, or sites contaminated by agricultural chemicals over a long period of time. The program is funded through annual surcharges on Minnesota sales of pesticides and fertilizers and on applicator and dealer licenses. The fund balance determines the amount of annual surcharges.

The Commissioner of Agriculture determines the surcharge rate based on: 1) the amount of revenues needed to maintain an unencumbered account balance between \$1,000,000 and \$5,000,000; 2) the amount estimated to be needed for response to incidents; and 3) the estimated amount needed for reimbursement or payment to eligible persons. Surcharges are reviewed annually for rate determination.

2000 ACRRA Surcharge Rates by Category	Rate
Commercial & Non-Commercial Pesticide Applicator Licenses	\$40
Structural Pest Control License (<i>Company License</i>)	\$100
Agricultural Fertilizer License	\$150
Lawn Service - Fertilizer	\$150
Pesticide Dealer License (<i>Restricted Use & Bulk Pesticides/per site</i>)	\$150
Fertilizer Tonnage	\$.20/Ton
Pesticide Registration (<i>Annual Gross Sales</i>)	0.2%
Out Of State Pesticide Distributors	\$2000

The Agricultural Chemical Response Compensation Board administers the ACRRA Fund. The board determines reimbursements or payments from the fund to eligible persons. In order to receive financial assistance, the Minnesota Department of Agriculture (MDA) must receive proper notice of an agricultural chemical incident and corrective action requirements must be met. Costs claimed for corrective actions must be reasonable and necessary as determined by the board.

The board holds a minimum of six regular meetings each year. Meetings are usually scheduled every other month, depending on the number of applications submitted. The five-member board consists of representatives from the agricultural chemical registrants, manufacturers and dealers, farmers, the Department of Agriculture, and the Department of Commerce.

ACRRA is supported by MDA staff, which is funded out of account revenues. Current staff includes: the Executive Director (1/2 time), Board Administrator (full-time) and Board clerical support (1/2 time). Staff perform a wide variety of duties, including: coordinating administrative activities with MDA Incident Response technical staff; reviewing applications and determining eligibility based on requirements in statute and rule; financial forecasting; legislative initiatives; and education and outreach for board members, industry and the public.

Requirements for the program are covered under Minnesota Statutes § 18E and Minnesota Rules, Chapter 1512.0100 – 1512.1100.

REVENUES AND EXPENDITURES

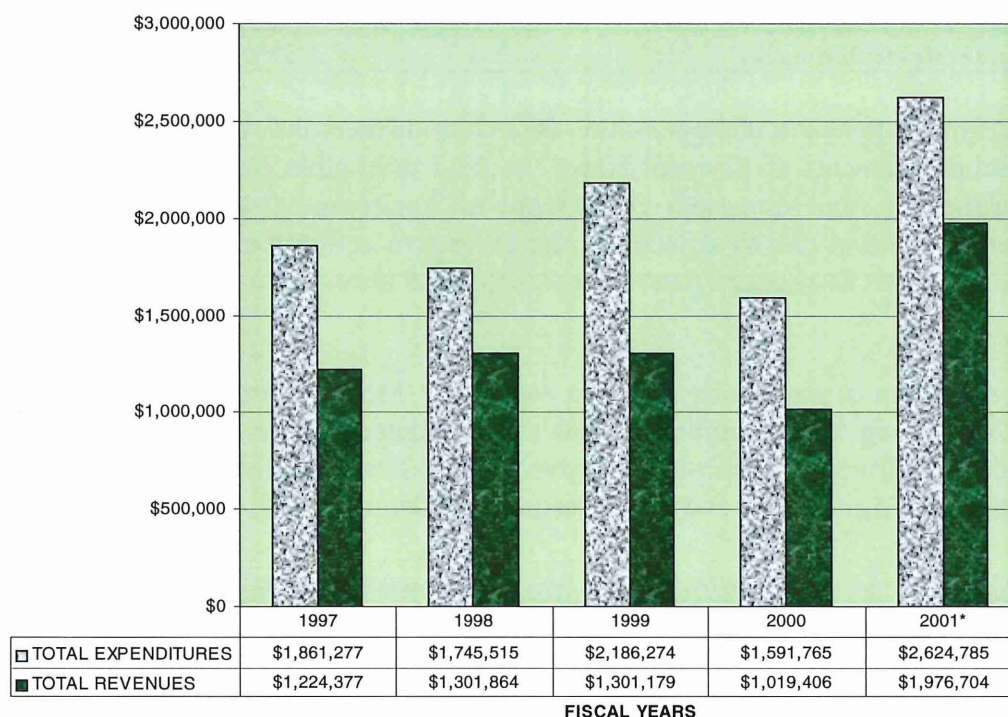
Revenues

The Commissioner of Agriculture collected ACRRA surcharges from various licensing, registration, and inspection fee programs administered by the Agronomy and Plant Protection Division of MDA¹. The fiscal year 2001 ACRRA surcharge revenue was \$1,976,704, as shown in the chart below. The account had a \$648,081 deficit for expenditures versus revenue for the fiscal year as shown in *Table I*.

The Commissioners of Agriculture, based on recommendations from the ACRRA Board, strived to keep surcharges as low as possible throughout the program's ten-year history. Due to the increasing demands on the fund, and with the ACRRA Board's concurrence, the Commissioner re-established the surcharges to previous levels beginning in calendar year 2000.

ACRRA expenditures remained significantly greater than its revenues in fiscal year 2001 despite the increase in surcharges. Another surcharge increase will probably be necessary in fiscal year 2002.

ACRRA REVENUES & EXPENDITURES



¹ Source: Department of Agriculture, Agronomy & Plant Protection Division, as of August 28, 2001

Cleanup Expenditures

The ACRRA Board authorized compensation for 79 applications for reimbursement or payment of corrective action costs. The amount of individual authorized disbursements ranged from \$1,000 to \$189,100. Reasons for this wide range of disbursements were due to the type of incident (emergency, comprehensive or voluntary clean up); type(s) and amount(s) of agricultural chemical products; scope and extent of environmental contamination; technologies available for investigation and remedy; and other factors peculiar to individual incidents/sites.

The ACRRA Board did business on a regularly scheduled basis during fiscal year 2001. The Board placed requests for reimbursement or payment on its calendar and agendas, and ordered disbursements to numerous persons. The Board authorized **reimbursement** for 77 applications and **payment** for two (2) applications of costs incurred in responding to agricultural chemical incidents. Total cleanup disbursements for fiscal year 2001 were \$2,452,523, as shown in *Table I*. The Board received several incomplete applications, and either returned them for completion and re-submittal; or filed them as inactive pending receipt of additional information.

The Board examined applications to determine if applicants and costs submitted were eligible, reasonable and necessary. Rejection or reduction of various costs submitted to the Board is common for many applications. For example, the Board has reduced or rejected requests for:

- Violations of requirements pursuant to *Minnesota Statutes* chapters 18B, 18C or 18D;
- Managers own time spent on administration or cleanup facilitation;
- Facility improvements to meet regulatory requirements, but not related to corrective actions;
- Remedial Investigation costs to determine if there was an incident; and,
- Costs
 - related to recontamination of an area,
 - incurred prior to MDA involvement,
 - related to attorney fees, and/or
 - covered by insurance.

In cases where a violation has occurred, the Board may reduce reimbursement or payment based on the culpability of the eligible person and the percentage of costs attributed to the violation.

Administrative Expenditures

Board and board staff administrative costs for the period July 1, 2000 to June 30, 2001 totaled \$172,262², as shown in *Table I*. This is an increase of \$18,320 over fiscal year 2000. The increase can be attributed to the increases in workload and rising staff costs.

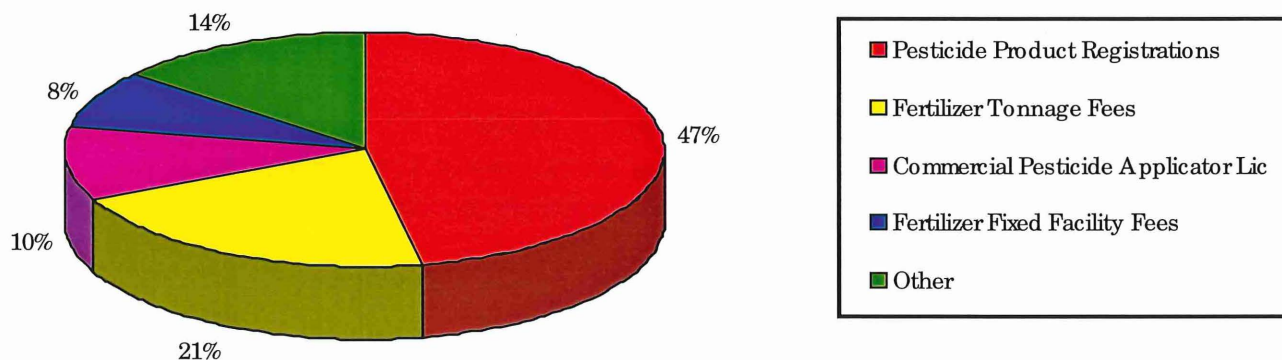
²Source: Department of Agriculture, Agronomy & Plant Protection Division, as of August 28, 2001

TABLE 1

MINNESOTA DEPARTMENT OF AGRICULTURE
AGRICULTURAL CHEMICAL RESPONSE AND REIMBURSEMENT ACCOUNT
STATEMENT OF REVENUES, EXPENDITURES & FUND BALANCE
For the fiscal years ended June 30,

	2001%	2001	2000	1999
REVENUE:				
Pesticide Product Registrations	47%	\$ 922,894	\$ 396,584	\$ 630,365
Fertilizer Tonnage Fees	21%	405,492	231,051	235,158
Commercial Pesticide Applicator Lic	10%	197,875	97,130	94,690
Fertilizer Fixed Facility Fees	8%	167,936	91,570	91,875
Other	14%			
Investment Earnings		95,441	123,704	160,376
Pesticide Dealer Storage License		93,150	48,600	49,875
Recoveries/ WCRA Refund		48,000	0	0
Non-commercial Pesticide Appl Lic		35,470	19,510	18,940
Structural Pest Control Company Lic		8,325	4,117	4,000
Commercial Applicator-Aquatic		2,120	1,140	1,900
Pesticide Storage - Outside of State		0	6,000	14,000
Net revenues		1,976,704	1,019,406	1,301,179
EXPENDITURES:				
Reimbursement claims paid		2,452,523	1,437,823	2,069,881
Administrative expenditures		172,262	153,942	116,393
		2,624,785	1,591,765	2,186,274
EXCESS OF REVENUE OVER EXPENDITURES		(648,081)	(572,359)	(885,095)
FUND BALANCE -- beginning of fiscal year		1,915,717	2,488,076	3,373,171
FUND BALANCE -- end of fiscal year		\$ 1,267,636	\$ 1,915,717	\$ 2,488,076

Sources of Funding
Fiscal Year 2001



Agricultural Chemical Response Compensation Board

Board Members

- ◆ **Roger Strand, Board Chair**
Representing agricultural chemical dealers
Owner/Operator MN Agricultural Chemical Dealer Facility
- ◆ **June Varner, Board Vice-Chair**
Representing Minnesota farmers
Owner/Operator 400 acre farm
- ◆ **Sandra Gardner, Board Member**
Representing agricultural chemical registrants and manufacturers
Syngenta Crop Protection, Inc.
- ◆ **James Pearson, Executive Director, PetroFund Program, Department of Commerce**
Delegate for James C. Bernstein, Minnesota Commissioner of Commerce
- ◆ **Tom Masso, MDA Assistant Commissioner**
Delegate for Gene Hugoson, Minnesota Commissioner of Agriculture

Board Member Changes

Paul Rhein's last term as ACRRRA Board Chair, ended effective January 1, 2001. Mr. Rhein was instrumental in the passage of the 1989 Minnesota Comprehensive Groundwater Protection Act, which created the Board and he served on the Board for over ten years. Mr. Rhein was presented with a Certificate of Recognition signed by Governor Ventura, and a Certificate of Appreciation plaque from the Department of Agriculture. All who worked with him will miss his insight and dedication to the agricultural industry.



Governor Ventura appointed Sandra Gardner to the Board on January 26, 2001. Ms. Gardner has worked for Syngenta Crop Protection, Inc. (and its predecessors) since 1981 in the areas of human resources, environmental project management and sales.

Program Activities

Board Facility Tour, August 7, 2000

Board members, Board staff, Department of Agriculture Incident Response staff and regional field staff participated in a tour of six sites in central Minnesota. Sites included: a retail facility with permitted bulk fertilizer and pesticide sales; a large chemical storage facility under construction; a comprehensive investigation site at a municipal airport; a facility using an experimental bio-remediation pile to remediate contamination; and an old facility that experienced surface water runoff contamination. A consultant also gave a demonstration of groundwater sampling using a geoprobe. Participants felt that the tour was very educational and were impressed with the wide range of activities demonstrated.

Board Retreat, March 7, 2001

An all-day retreat was held for the Board at the Minnesota Valley Wildlife Refuge in Bloomington, Minnesota. Board members and staff, MDA staff, industry representatives and consultants attended. Agenda topics included: 1) a review of roles and responsibilities of Board members and staff; 2) a presentation entitled "Life of a Spill" developed by Incident Response and ACRRA staff; 3) a presentation of the enforcement process by Enforcement staff; 4) a briefing by Special Assistant Attorney General Craig Engwall on interpreting culpability; 5) a round-table discussion of regulatory issues and how they apply to reimbursement requests; and 6) a discussion of administrative and legislative issues.

Brownfields Coordination Study Group

ACRRA and Incident Response staff continues to participate in a multi-agency group to share information on contamination remediation programs. Representatives from five state agencies (Agriculture, Commerce, Health Trade and Economic Development and Pollution Control), the Metropolitan Council, the League of Minnesota Cities and others meet quarterly. Program changes, interface and education activities are some of the topics discussed.

Outreach Activities

ACRRA Board and Incident Response Unit staff attended and participated in many activities and events during fiscal year 2001.

◆ Life of A Spill Presentations

Department of Agriculture Incident Response and ACRRA staff developed a new presentation for use in multiple training settings. The presentation gives a comprehensive overview of Facility Investigation, Incident Response and ACRRA programs through case study examples. The 40-minute presentation has been well received by many audiences. Some of the training sessions and workshops where it was presented included:

- *2001 Agricultural Workshops*, Thief River Falls, Detroit Lakes and Mounds View
- *Soils, Fertilizer and Agricultural Pesticides Short Course and Exposition*, Minneapolis
- *Minnesota Aerial Applicators Association Workshop*, St. Cloud

♦ **Grant Funding Workshops for Cleanup of Contaminated Land**

The Metropolitan Council and the Minnesota Department of Trade and Economic Development sponsor these ongoing workshops jointly. They highlight funding opportunities for agricultural chemical, hazardous materials and petroleum cleanups. ACRRA and Incident Response staff presented information on both programs at three locations (Woodbury, Golden Valley and Little Falls) in Minnesota.

♦ **Board Member Outreach Materials** Two presentations were updated or developed for Board Members' use during the year.

- *ACRRA Overview* is a basic ten-minute presentation that has been used at the grant funding workshops to provide a general program overview. This presentation was updated and provided to Board members for their use.
- *ACRRA Program Highlights* was a ten-minute presentation developed for Board Chair, Roger Strand, for the Minnesota Crop Production Retailers Annual Meeting.

Program Legislation

2001 Legislative Session

Minnesota Statutes § 18E.04, subdivisions 2, 4 and 5, were changed during the 2001 Legislative Session (House File 10, 2001 Special Session). Changes included: 1) a reduction of the reimbursement percentage from 100% to 90% for eligible costs between \$100,000 and \$200,000; 2) a requirement that all eligible costs are submitted within three years after cost incurrence or corrective action report approval, whichever is later (any costs incurred over three years prior to July 1, 2001, must be submitted by June 1, 2004); and 3) procedures for requesting a hearing before the ACRRA Board when a decision on a reimbursement or payment has an adverse effect on the eligible person. These changes went into effect as of July 1, 2001. All costs incurred by eligible persons after the effective date will be subject to the changes.

These statutory changes will have an effect on ACRRA's financial status. The reduction of the maximum reimbursement percentage will reduce costs an estimated ten percent (10%). The requirement for submission of eligible costs within three years will, in the short-term, add an estimated \$800,000 financial burden per year for the next three years. This change will not increase costs overall, but requires eligible persons to catch up on their submission of eligible costs.

One legislative initiative was not passed during the session. This cost containment initiative would have placed a limit on eligible clean-up costs per site or location. The change was attempted to limit the program's financial liability for multiple incident clean-ups.

2000 Legislative Session

Minnesota Statutes § 18E.04, subdivision 4, was changed during the 2000 Legislative Session (House File 3312, Chapter 477) at the request of industry representatives. The maximum eligible costs of corrective actions for incident cleanups increased from \$200,000 to \$350,000 and provide a potential program cost increase of up to \$110,000 per incident site.

It was estimated that the additional costs to the ACRRA program from these changes would total over \$1,740,000 over the next four years. Based on incident case file information, ACRRA program staff still believes that the total estimate is accurate; however, in fiscal year 2001, only an additional \$63,000 was reimbursed due to this change.

Future Program Initiatives

The ACRRA program has been very successful in fulfilling its mission to promote the cleanup of agricultural chemical contamination. It was originally created because environmental liability insurance to cover environmental cleanup costs was either not available or prohibitively expensive for agricultural chemical facilities and other businesses that handle these products.

The continued need for ACRRA is evident in the number of sites that are currently managed by the MDA Incident Response Program.³ This need can also be illustrated by the creation of ACRRA-like programs in three other states (Wisconsin, Iowa and Kansas) within the last five years. In addition, increased requests for funding from the account are still outpacing revenues.

The environmental benefit to Minnesota, especially in regard to water quality protection around rural communities is evident. Twelve years after its creation, re-evaluation of the program is warranted. Some cost containment measures have been instituted, but the effects of these changes will not be sufficient to avert another fee increase in calendar year 2002. Additional cost containment measures and other program modifications will continue to be discussed with interested and affected parties over the next year as part of future program planning.

Report Costs

The costs to produce the *ACRRA Annual Report for Fiscal Year 2001* are summarized below.

ITEM	COST
Labor (3 staff, 22 hours total)	\$650.00
Copying and Distribution	\$150.00
TOTAL	\$800.00

Attachment

- ◆ **Administrative Costs for fiscal years 1991 through 2001**
- ◆ **Disbursements ordered by the ACRRA Board for Fiscal years 1991 through 2001**

³ Number of Incident Response Unit cases as of 10/2000 - Emergency Response (Spills Team) = 200 cases reported annually, Comprehensive Facility Investigation = 83 active sites and Agricultural Voluntary Investigation and Cleanup = 90 active sites.

PROGRAM HISTORY

1991 - 2001

ACRRA Administrative Costs

Disbursements Ordered by ACRRA

FISCAL YEAR	TOTAL AMOUNT		FISCAL YEAR	APPLICATIONS	TOTAL
1991	87,696		1991	5	35,951
1992	132,408		1992	22	289,283
1993	130,740		1993	49	1,272,361
1994	144,292		1994	57	980,919
1995	147,030		1995	40	1,054,913
1996	138,163		1996	65	1,405,496
1997	110,589		1997	59	1,750,688
1998	115,171		1998	59	1,630,344
1999	116,393		1999	68	2,069,881
2000	153,942		2000	57	1,437,823
2001	172,262		2001	79	2,452,523
TOTAL	\$1,448,686		TOTAL	560	\$14,380,182