

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 803

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-12-82
DATE FOR REVIEW 4-21-82
DATE DUE 4-26-82

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved _____ Disapproved 4-26-82 Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 4/20/82
disapproved 4.16.82

✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 1.18.82 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 7 18.77 !
SR. 1.21.80 .

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
10.1.82 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
10.5.81 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JON K. MURPHY
Special Assistant
Attorney General

DATE: 6/29/82

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: Adoption of Rules Governing Storage and Handling of Dry Commercial Fertilizer

Thank you for returning my memo on this subject for additional consideration. I have reviewed your arguments made on behalf of your client and, while I find them to be tenable, I nevertheless must maintain my prior position.

It is true, as you point out, that at the time of the enactment of Minn. Stat. § 17.725, the Administrative Procedure Act required a public hearing for the promulgation of all administrative rules. It is also true that Minn. Stat. § 17.725 has not been amended since that time or subsequent to the amendment of Minn. Stat. § 15.0412, Subd. 4, which enabled promulgation of agency rules without a hearing.

As you are aware, it does not necessarily follow that merely because Minn. Stat. § 15.0412 was amended to enable an agency to promulgate rules without a public hearing that previously enacted statutes whose meanings are clear on their face must be interpreted so as to incorporate the amendment to Minn. Stat. § 15.0412. Had that been the intention of the legislature, it could just as easily have either (1) referenced the procedures outlined in Minn. Stat. § 15.0412, Subd. 4, as those to be followed in Minn. Stat. § 17.725, or (2) amended Minn. Stat. § 17.725 to incorporate that change directly.

Furthermore, Minn. Stat. § 17.725, Subd. 1, clearly states that the Commissioner is to promulgate rules "after public hearing." As Minn. Stat. § 645.16 provides, when the words of a statute are clear and free from all ambiguity, the letter of the law should be followed. Only where the words of law are not explicit should the cannons of statutory construction be invoked. Here, the letter of the law is explicit and unambiguous and a hearing is required.

And, even if the cannons of statutory construction were to be invoked, Minn. Stat. § 645.26, Subd. 1 applies directly to this situation and mandates that the more particular provision of law, Minn. Stat. § 17.725, Subd. 1, which requires a public

hearing, govern over the more general provision, Minn. Stat. § 15.0412, Subd. 4, which provides two promulgation routes.

If you would care to discuss this further, please do not hesitate to call.

LDS:drw

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT of Attorney General

Office Memorandum

RECEIVED
MAY 06 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

TO : LARRY D. STARNS
Special Assistant
Attorney General

DATE: May 5, 1982

FROM : JON K. MURPHY
Special Assistant
Attorney General

PHONE: 296-9310

SUBJECT: Adoption of Rules Governing Storage and Handling of Dry Commercial Fertilizer

I am returning your memo on this subject for additional consideration.

As directed in Minn. Stat. § 15.0412,

> Each agency shall adopt, amend, suspend, or repeal its rules in accordance with the procedures specified in sections 15.0411 to 15.052, and only pursuant to authority delegated by law and in full compliance with its duties and obligations.

At the time Minnesota's commercial fertilizer law was adopted, 1971, the requirement of a public hearing contained in Minn. Stat. § 17.725 was consistent with Chapter 15.

Minn. Laws 1981, Ch. 357, sec. 7, however, added subdivision 4h to Minn. Stat. § 15.0412 which authorizes the adoption of rules without a public hearing.

Since all agencies must adopt rules in accordance with Chapter 15, it is my assumption that the options therein accompany the statutory mandate and should be construed as superceding the requirements of Minn. Stat. § 17.725.

If Minn. Stat. § 17.725 is construed as modifying or restricting the utilization of Chapter 15's rule adoption procedures, a similar result could be argued for other rule adoption authority given the department. For example, Minn. Stat. § 25.40, which authorizes the adoption of rules relating to commercial feeds, could be construed as authorizing the adoption of rules without proceeding in accordance with Chapter 15.

I am sure that in the later case, the requisites of Chapter 15 would be read into the provisions of section 25.40. Similarly, they should be deemed equally applicable to rules adopted under section 17.725.

JKM:crc

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO : MARK W. SEETIN
Commissioner of Agriculture

DATE: 4/26/82

ATTN : JON MURPHY, Spec. Ass't. Atty. Gen.

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules Governing Storage and Handling of Dry Commercial Fertilizer

The above-referenced rules have not been approved because the statutory authority cited as authorizing their promulgation (Minn. Stat. § 17.725) required that adoption follow "after public hearing following due public notice" and no hearing has been conducted; therefore, your agency is without the requisite statutory authority to promulgate these rules, having failed to meet the public hearing requirement.

After consideration of the above comments and agency action, if any, these rules may be resubmitted for review. Upon resubmission, please include two copies of a new or supplemental Order Adopting, and the original and two copies of the new Rule as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

Please be advised that pursuant to Minn. Stat. § 15.0412, Subd. 4g effective July 1, 1981, "(n)o rule shall be filed with the Secretary of State or published in the State Register unless approved as to form." Therefore, at the time when you resubmit the new rule to this office, you must submit two copies of the same to the Revisor of Statutes.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

LDS:drw

cc: Ms. Kathy Burek
Ms. Ann Bateson

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

ATTACHMENT A.

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (Original and three copies). Each copy reflects amendments made in the rules since original publication.

B. Order Adopting the Rule (two copies).

C. Notice of Intent to Solicit Outside Opinion (one copy).

D. Order for Notice of Intent to Adopt Rule Without Public Hearing (one copy).

E. Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

F. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

G. Mailing List Certificate (one copy).

H. Rule as Proposed (one copy).

I. Findings of Fact and Conclusions (one copy).

J. Statement of Need and Reasonableness (one copy).

K. Written Comments on the Rule (one copy each).

L. Certificate of Compliance with Rulemaking Procedures (one copy).

M. Affidavit of Mailing Notice of Submission to the Attorney General (one copy).

N. Notice of Submission to the Attorney General (one copy).

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Judith Wehrwein
Special Assistant Attorney General

DATE: 4/9/82

FROM : Gerald Heil, Director GH
Planning Division

PHONE: 6-1486

RECEIVED
APR 12 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SUBJECT: Adoption of Rules Governing the Storage and Handling of Dry Fertilizers

The Department has adopted the above-mentioned rules without a public hearing, pursuant to the provisions of Minn. Stat. 15.0412, Subd. 4h. Enclosed are the documents required to be submitted for review; a list of enclosures is attached.

Written comments were received on the proposed rules; the comments are enclosed. There was one request for notification when the documents were submitted to the Office of the Attorney General.

If you have any questions, please call me.

GH:dw

Enclosures

cc: Craig Lindeke, Assistant Revisor
William Bulger, Director, Agronomy Services Division

Department of Agriculture

Agronomy Services Division

Adopted Rule Governing Storage and Handling of Dry Commercial Fertilizer

Rule as Adopted

3 MCAR S 1.0326 Dry fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. S 17.725 to regulate the storage and handling of dry commercial fertilizer used for agricultural purposes.

B. Definitions. For the purpose of this rule, the terms defined in this part, and the words defined in Minn. Stat. S 17.713, have the meanings given them.

1. "Department" means the Department of Agriculture.

2. "Dry commercial fertilizer" means both mixed fertilizer and fertilizer materials distributed in a ~~nonpackage~~ nonpackaged form.

3. "Incident" means a flood, fire, tornado, transportation accident or other event causing a release of dry fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Incident notification sign" means a sign issued by the department displaying emergency telephone numbers to be called in the case of an incident.

~~4.~~ 5. "Responsible party" means the person who has direct custody or control of the dry fertilizer at the time of an incident.

~~5.~~ 6. "Storage container" means a tank or bin in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

7. "Substantially altering" means modifying a dry fertilizer storage facility by adding additional storage containers, changing existing storage containers, or changing the mixing, blending, weighing, or handling equipment. This

does not include normal routine maintenance of existing storage containers or mixing, blending, weighing, and handling equipment.

C. Approval of facility and equipment. A person beginning construction of a new dry fertilizer storage facility or ~~modifying~~ substantially altering an existing dry fertilizer storage facility shall first obtain the approval of the commissioner ~~of Agriculture or his designee~~. The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application ~~demonstrates~~ demonstrate that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

D. Exceptions. Part G. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary hardship to the requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

F. Equipment. Equipment shall be maintained in good operating order.

G. Operations. Dry commercial fertilizer facilities shall

be operated to allow the unloading, storage, mixing and loading of the bulk materials in a manner which will prevent avoidable amounts of particulate matter from leaving the premises.

H. Storage containers. Storage containers shall be maintained to prevent major cross contamination of various dry commercial fertilizer ingredients and materials. Storage container areas shall be kept free of clutter and ignitible materials including weeds and long dry grass.

I. Markings. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of its contents. The incident notification sign issued by the department shall be posted in a conspicuous place.

J. Outside fertilizer storage. Outside fertilizer storage piles shall not be located in areas subject to floods or where surface water runoff could enter storm sewers, sanitary sewers or other state waters.

K. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

AR0043
4-20-82

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Agriculture
Agronomy Services Division

Rule Numbers:

Rule Title: Adopted Rule Governing Storage and Handling of Dry Commercial Fertilizer

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference: None

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

April 16, 1982
RD43

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

X The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

Page 1, line 5, delete "Sec." and insert "S"

Page 1, line 14, strike "nonpackage" and insert "nonpackaged"

Page 1, line 18, underline "4."

Page 1, line 19, do not capitalize department

Page 2, line 26, delete "the modification of" and insert "modifying"

Page 2, line 28, after ", or", delete "by"

Page 2, line 33, insert "substantially altering" after "~~modifying~~"

Page 2, line 35, do not capitalize "commissioner"

Page 2, line 35, delete the underlined period and reinstate the stricken period

Page 2, line 37, strike "demonstrates" and insert "demonstrate"

Page 2, line 47, check the cross reference to G.

(over)

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

____ The changes requested by the revisor are approved by the agency.

____ The changes requested by the revisor are not approved by the agency

Agency's Representative

____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

Assistant Attorney General

Part G. only talks about facilities; yet your exception is for facilities and equipment. Do you want the reference as it now reads? Or is the exception perhaps written too broadly?

Page 3, line 70, do not capitalize department

Department of Agriculture

Agronomy Services Division

Adopted Rules Governing Storage and Handling of Dry Commercial Fertilizer

Rules as Adopted

3 MCAR Sec. 1.0326 Dry fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. S 17.725 to regulate the storage and handling of dry commercial fertilizer used for agricultural purposes.

B. Definitions. For the purpose of this rule, the terms defined in this part, and the words defined in Minn. Stat. S 17.713, have the meanings given them.

1. "Department" means the Department of Agriculture.

2. "Dry commercial fertilizer" means both mixed fertilizer and fertilizer materials distributed in a nonpackage form.

3. "Incident" means a flood, fire, tornado, transportation accident or other event causing a release of dry fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Incident notification sign" means a sign issued by the Department displaying emergency telephone numbers to be called in the case of an incident.

~~4.~~ 5. "Responsible party" means the person who has direct custody or control of the dry fertilizer at the time of an incident.

~~5.~~ 6. "Storage container" means a tank or bin in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

7. "Substantially altering" means the modification of a dry fertilizer storage facility by adding additional storage containers, changing existing storage containers, or by changing the mixing, blending, weighing or handling equipment. This does not include normal routine maintenance of existing storage containers or mixing, blending, weighing, and handling equipment.

C. Approval of facility and equipment. A person beginning construction of a new dry fertilizer storage facility or substantially altering ~~modifying~~ an existing dry fertilizer storage facility shall first obtain the approval of the commissioner. ~~of Agriculture or his designee~~ The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application demonstrates that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

D. Exceptions. Part G. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary

hardship to the requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

F. Equipment. Equipment shall be maintained in good operating order.

G. Operations. Dry commercial fertilizer facilities shall be operated to allow the unloading, storage, mixing and loading of the bulk materials in a manner which will prevent avoidable amounts of particulate matter from leaving the premises.

H. Storage containers. Storage containers shall be maintained to prevent major cross contamination of various dry commercial fertilizer ingredients and materials. Storage container areas shall be kept free of clutter and ignitable materials including weeds and long dry grass.

I. Markings. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of its contents. The incident notification sign issued by the Department shall be posted in a conspicuous place.

J. Outside fertilizer storage. Outside fertilizer storage piles shall not be located in areas subject to floods or where surface water runoff could enter storm sewers, sanitary sewers or other state waters.

K. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

DEPARTMENT OF AGRICULTURE
AGRONOMY SERVICES DIVISION

In the Matter of the Proposed
Adoption of Rules Governing
Storage and Handling of Dry
Commercial Fertilizer

ORDER ADOPTING
RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on October 5, 1981, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 15.0412, subdivision 4, on October 1st, 1981. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Rules Governing the Storage and Handling of Dry Commercial Fertilizer are adopted this 18th day of January, 1982, pursuant to authority vested in me by Minnesota Statutes, section 17.711 to 17.729, as amended.

STATE OF MINNESOTA

MARK W. SEETIN
COMMISSIONER OF AGRICULTURE

ments, if adopted, would set standards and requirements for labeling, storage, composition, handling and distribution of the above-mentioned fertilizers.

All interested or affected persons or groups are requested to submit information on this subject. Written or oral information, statements or comments should be addressed to:

Gary Braun (612) 296-8379
Agronomy Services Division
Minnesota Department of Agriculture
90 West Plato Boulevard
Saint Paul, Minnesota 55107

All statements of information and comment must be received by May 1, 1980. Any written material received by this date shall become part of the record of any rules hearing held on this subject.

January 21, 1980

William Bulger, Director
Agronomy Services Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Storage, Handling and Distribution of Liquid Fertilizer, Dry Fertilizer and Aqueous Solutions of Nitrogen

Notice is hereby given that the Minnesota Department of Agriculture is considering adoption of rules which would govern the storage, handling and distribution of liquid fertilizer, dry fertilizer and aqueous solutions of nitrogen.

The proposed rules are authorized by Minn. Stat. § 17.725, subd. 1. The rules, if adopted, would set standards for the storage, handling and distribution, including all modes of transport, of liquid fertilizer, dry fertilizer and aqueous solutions of nitrogen.

All interested or affected persons or groups are requested to submit information on this subject. Written or oral information, statements or comments should be addressed to:

Gary Braun (612) 296-8379
Agronomy Services Division
Minnesota Department of Agriculture
90 West Plato Boulevard
Saint Paul, Minnesota 55107

All statements of information and comment must be received by May 1, 1980. Any written material received by this date shall become part of the record on any rules hearing held on this subject.

January 21, 1980

William Bulger, Director
Agronomy Services Division

Environmental Quality Board Power Plant Siting

Notice of Acceptance of Application Amendment to Prairie Island-Eau Claire 345,000 Volt Construction Permit Application to Include Transmission Alternatives from Substation at Allen S. King Generating Plant on St. Croix River to Eau Claire

Note: This notice contains information about the acceptance by the Minnesota Environmental Quality Board (MEQB) of an amendment proposal by Northern States Power Company (NSP) to expand the study area for NSP's Prairie Island-Eau Claire 345 kilovolt (kV) construction permit application. The amended application includes the Minnesota portion of a proposed transmission line extending from the substation at the Allen S. King generating plant to Eau Claire, Wisconsin. This notice also serves to provide notification of public information meetings which will be held to describe the project and public participation procedures used in the transmission line routing process as prescribed by Minnesota law.

On December 20, 1979, the Minnesota Environmental Quality Board (MEQB) formally accepted NSP's proposed amendment to the Prairie Island-Eau Claire construction permit application which had been accepted by the MEQB on September 21, 1978. The Prairie Island-Eau Claire application is for a single circuit 345 kV transmission line route from the substation at the Prairie Island generating plant across the Mississippi River to Eau Claire, Wisconsin. Because the Wisconsin Public Service Commission (WPSC) is considering routing alternatives from Eau Claire to the Allen S. King Plant in Oak Park Heights, Minnesota, NSP proposed that the MEQB review the Minnesota portion of the King-Eau Claire alternatives. MEQB acceptance of NSP's application amendment allows the MEQB to study routing alternatives in Minnesota that would cross the St. Croix River to Wisconsin.

NSP in their amendment application proposed one additional route in Minnesota for this line (see Figure I). A route can be a strip of land up to a mile and a quarter wide in which the right of way of the transmission line could be located; a right of way is the specific area needed for an easement within which the line will be constructed. For the route from the Allen S. King plant, NSP has proposed an alignment immediately adjacent to an existing 115/69 kV double circuit transmission line crossing the St. Croix River.

Department of Transportation Technical Services Division

Notice of Availability of Contract for Power Factor Study, I94 Tunnel, Minneapolis

The electrical loads in the subject tunnel present to Northern States Power Company power factors in the area of 0.3 to 0.5 over the span of a calendar year. This power factor must be at least 0.9 in order to eliminate the penalty charges that have been running an average of $18,000 a year. It has also come to our attention that a large demand charge is also being assessed. It is recommended that the consultant study this problem also and give us recommendations for its reduction. Specifically, the following tasks are recommended:

(1) Consultant to study Power Factor and Demand problems.

(2) Consultant to write report on findings and to orally present solutions to the state.

(3) Consultant to present cost estimate, including consultant fees, to the state.

(4) Upon approval of (2) and (3) above the consultant will prepare complete drawings and specifications for the state. The state will take bids and select the contractor.

(5) The consultant will act as advisor and chief inspector to the state's project manager during the construction period.

The estimated cost for this project is $15,000.

Firms desiring consideration should submit their brochure and/or experience resume such as the federal forms 254 and 255 before January 28, 1980. This is not a request for proposal.

For information relating to the technical aspects of the project please contact:

Mr. Jack W. Tweedale
Assistant Traffic Engineer, Electrical
Room 309
Transportation Building
St. Paul, Minnesota 55155
Telephone: (612) 296-6164

Please direct your response to:

B. E. McCarthy
Consultant Services Engineer
Room 612-B
Transportation Building
St. Paul, Minnesota 55155
Telephone: (612) 296-3051

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture Agronomy Services Division

Notice of Intent to Solicit Outside Opinion Concerning Proposed Amendments to Rules Governing Labeling and Distribution of Soil Conditioners; Labeling and Additional Minerals Permitted of Trace Minerals in Commercial and Specialty Fertilizer; and Storage, Handling and Distribution of Anhydrous Ammonia

Notice is hereby given that the Minnesota Department of Agriculture is considering amending the above-mentioned rules. The department is seeking information or opinions from sources outside the department in regard to the nature and utility of amendments to the rules governing soil conditioners and trace minerals (Agr 319-323). In addition, notice is also given that the Department is continuing consideration of amendments to the rules governing the storage, handling and distribution of anhydrous ammonia (Agr 324). A prior notice to this effect appeared in the July 18, 1977 *State Register* (1 S.R. 109). This notice is a continuation of that solicitation; however, persons or agencies that submitted oral or written comments at that time are asked to resubmit such comments or material.

The rules and amendments to the rules are authorized by Minn. Stat. § 17.725, subd. 1, which allows the commissioner to adopt rules and regulations regarding the manufacture, sale, distribution, labeling, etc. of commercial fertilizers, soil conditioners and soil additives or amendments. The proposed amend-

OFFICIAL NOTICES

Department of Agriculture

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Storage, Handling, and Distribution of Anhydrous Ammonia, Aqueous Solutions of Nitrogen and Dry Fertilizer Materials

Notice is hereby given that the Minnesota Department of Agriculture has begun consideration of proposed rules governing the storage, handling, and distribution of anhydrous ammonia, aqueous solutions of nitrogen and dry fertilizer materials. In order to adequately determine the nature and utility of such rules, the Department of Agriculture hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Mr. John Halvorson
Minnesota Department of Agriculture
604 State Office Building
Saint Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-6121, and in person at the above address.

All statements of information and comment must be received by August 26, 1977. Any written material received by the Department shall become part of the hearing record.

The proposed rules, if adopted, would revise Agr 324 and set standards for the storage, handling, and distribution, including all modes of transport, of anhydrous ammonia, aqueous solutions of nitrogen, and dry fertilizer materials.

John Halvorson
Director
Agronomy Services Division

Department of Education

Notice of Intent to Solicit Outside Opinion Regarding the State Plan for the Operation and Funding of Programs for the Handicapped at the 4-21 Age Levels in Minnesota School Districts

The Department of Education has drafted a State Plan to meet the requirements of Public Law 94-142.

The Department invites interested persons or groups to provide information, comment, and advice on the subject, in writing, or orally either: to Dr. Wilfred Antell, Assistant Commissioner of Education, Minnesota Department of Education, 8th Floor, Capitol Square Building, 500 Cedar Street, St. Paul, MN 55101, or at any of the following meetings:

9:00 a.m.-12:00 p.m. — July 25, 1977
Bemidji Holiday Inn

9:00 a.m.-11:30 a.m. — July 28, 1977
Registry Hotel, Bloomington, MN

9:00 a.m.-12:00 p.m. — August 8, 1977
Mankato Holiday Inn

Copies of the State Plan may be received by calling (612) 296-7020 or by writing Dr. Wilfred Antell at the above address.

Written statements will be made part of the public review record.

Department of Transportation

Resolution of Koochiching County Requesting the Establishment of a Highway Railroad Grade Crossing between Section 31, T. 71N., R. 23W., and Section 6, T. 70N., R. 23W. Which would Traverse the Right of Way and Track of the Duluth, Winnipeg and Pacific Railway Company

Order for Hearing and Notice Thereof

It is hereby ordered, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on July 28, 1977 at 10:00 A.M., in the City Council Chambers, Municipal Building, 3rd Street and 5th Avenue, International Falls, Minnesota.

The hearing will be held before Mr. George Deretich, 1745 University Avenue, Saint Paul, Minnesota 55104, (Telephone: 612-296-8116) a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted

DEPARTMENT OF AGRICULTURE

AGRONOMY SERVICES DIVISION

In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Agriculture Governing Storage and Handling of Liquid and Dry Commercial Fertilizer

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 17th day of September, 1981, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

COMMISSIONER OF AGRICULTURE

Department of Agriculture

Agronomy Services Division

In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Agriculture Governing Storage and Handling of Liquid and Dry Commercial Fertilizer.

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486. If a public hearing is requested, identificaiton of the particular

objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modification is desired.

Authority for the adoption of these rules is contained in the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law, Minn. Stat. Secs. 17.711 to 17.729, as amended by Laws of 1981, ch. 214. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

The purpose of the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law is to regulate the sale and handling of fertilizers and soil conditioners within the State of Minnesota. Presently, no rules exist which govern the storage and handling of liquid and dry commercial fertilizers. Proper storage and handling of liquid and dry commercial fertilizers benefits public health and safety by helping to reduce the number and severity of fertilizer spills which could adversely affect ground and surface water quality.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

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STATE OF MINNESOTA

Dated: 9/17/81

Commissioner of Agriculture

In the Matter of the Proposed Adoption
of Rules of the Minnesota Department of Agriculture
Governing Storage and Handling of Liquid and
Dry Commercial Fertilizer

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Joyce Walkosz, being first duly sworn, deposes and says:

That on the 1st day of October, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

Joyce Walkosz

Subscribed and sworn to before me
this 1st day of October, 1981.

Janet E Gruening

JANET E. GRUENING
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires May 6, 1983.

STATE OF MINNESOTA)

) ss.

COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Storage and Handling of Liquid and Dry Commercial Fertilizer

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes 15.0412, subdivision 4, that their names be placed on file with and maintained by the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 9:00 a.m., this 1st day of October, 1981.

Gerald Heil

Gerald Heil, Director
Planning Division

compensation judge. A copy of the letter of transmittal of the exhibits or documents shall remain in the file as part of the record of the case.

C. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence shall be returned to their source upon the request of the party which introduced the evidence into the record. A request for return of exhibits or documents shall be made in writing to the compensation judge, shall contain the title and appropriate identification number of the case in which they were entered into evidence, and shall identify the exhibits or documents requested. A telephone number of the person making the request shall be included with the request.

Department of Agriculture
Agronomy Services Division

Proposed Rules Governing Storage and Handling of Liquid and Dry Commercial Fertilizer

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modification is desired.

Authority for the adoption of these rules is contained in the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law, Minn. Stat. §§ 17.711 to 17.729, as amended by Laws of 1981, ch. 214. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for a review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

The purpose of the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law is to regulate the sale and handling of fertilizers and soil conditioners within the State of Minnesota. Presently, no rules exist which govern the storage and handling of liquid and dry commercial fertilizers. Proper storage and handling of liquid and dry commercial fertilizers benefits public health and safety by helping to reduce the number and severity of fertilizer spills which could adversely affect ground and surface water quality.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Copies of this notice and the proposed rules are available and may be obtained by contacting Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

September 17, 1981

Mark W. Seetin
Commissioner of Agriculture

Rules as Proposed (all new material)

3 MCAR § 1.0325 Liquid fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. § 17.725, to govern the storage and handling of liquid commercial fertilizer used for agricultural purposes.

B. Definitions. For the purpose of this rule, the terms defined in this rule, and the terms defined in Minn. Stat. § 17.713, have the meanings given them.

1. "Appurtenances" means valves, pumps, fittings and metering or dispensing devices.

2. "Department" means the Department of Agriculture.

3. "Incident" means a flood, fire, tornado, transportation accident, storage container rupture or leak or other release of liquid fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Liquid commercial fertilizer" means mixed fertilizer or fertilizer materials distributed in a nonpackage form.

5. "Responsible party" means the person who has direct custody or control of liquid fertilizer at the time of an incident.

6. "Safeguard" means a facility, device or system or a combination of any of them designed to prevent the escape or movement of a substance or solution from the place it is stored or kept under conditions which might result in the pollution of any state waters.

7. "Storage container" means a tank in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

C. Approval of facility and equipment. A person beginning construction of a new liquid fertilizer storage facility or modifying an existing liquid fertilizer storage facility shall first obtain the approval of the Commissioner of Agriculture or his designee. The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application demonstrates that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

D. Exceptions. Parts F.1. and G.3. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary hardship to the requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

F. Equipment.

1. Adequate provisions shall be made to protect all exposed piping from physical damage that might result from moving machinery, equipment and vehicles.

2. Main valves shall be located as near to the storage container as possible and shall be either closed and made inoperative when the facility is unattended or protected against tampering by adequate fencing.

3. Appurtenances shall be inspected, properly maintained, protected against rust and painted to prevent corrosion or failure.

G. Storage containers.

1. Storage containers shall be inspected, properly maintained, protected against rust and painted to prevent corrosion or failure.

2. Storage container areas shall be kept free of clutter and ignitible materials including weeds and long dry grass.

3. Persons storing liquid fertilizers in storage containers of a rated capacity of 500 gallons or more shall provide safeguards for containment equal to the amount of the largest single storage container.

H. Markings.

1. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of the contents of the storage container.

2. An identification sign shall be displayed in a clearly legible and conspicuous manner stating the name, address and telephone number of the nearest agent, representative or owner of the storage facility.

I. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving the clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

3 MCAR § 1.0326 Dry fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. § 17.725 to regulate the storage and handling of dry commercial fertilizer used for agricultural purposes.

B. Definitions. For the purpose of this rule, the terms defined in this part, and the words defined in Minn. Stat. § 17.713, have the meanings given them.

1. "Department" means the Department of Agriculture.

2. "Dry commercial fertilizer" means both mixed fertilizer and fertilizer materials distributed in a nonpackage form.

3. "Incident" means a flood, fire, tornado, transportation accident or other event causing a release of dry fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Responsible party" means the person who has direct custody or control of the dry fertilizer at the time of an incident.

5. "Storage container" means a tank or bin in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

C. Approval of facility and equipment. A person beginning construction of a new dry fertilizer storage facility or modifying an existing dry fertilizer storage facility shall first obtain the approval of the Commissioner of Agriculture or his designee. The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application demonstrates that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

D. Exceptions. Part G. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary hardship to the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

F. Equipment. Equipment shall be maintained in good operating order.

G. Operations. Dry commercial fertilizer facilities shall be operated to allow the unloading, storage, mixing and loading of the bulk materials in a manner which will prevent avoidable amounts of particulate matter from leaving the premises.

H. Storage containers. Storage containers shall be maintained to prevent major cross contamination of various dry commercial fertilizer ingredients and materials. Storage container areas shall be kept free of clutter and ignitible materials including weeds and long dry grass.

I. Markings. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of its contents.

J. Outside fertilizer storage. Outside fertilizer storage piles shall not be located in areas subject to floods or where surface water runoff could enter storm sewers, sanitary sewers or other state waters.

K. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

Department of Commerce
Securities and Real Estate Division

Proposed Rule SDiv 2030 (Cheap Stock), Relating to the Minnesota Securities Act

Notice of Intent to Amend Rule without a Hearing

Notice is hereby given that, pursuant to her authority under Minn. Stat. § 80A.25 (1980), the Commissioner of Securities and Real Estate intends to amend Rule SDiv 2030 (Cheap Stock), relating to the Minnesota Securities Act (Minn. Stat. ch. 80A). The commissioner desires that the proposed rule be amended without a public hearing in accordance with Minn. Stat. § 15.0412, subd. 4h (1980).

A free copy of the proposed rule may be obtained from the commissioner's office. Those interested in submitting comment pertaining to the proposed rule may do so within 30 days of publication of this notice in the *State Register*. Additionally, if during the 30-day comment period, seven or more persons make a written request for a hearing on the proposed rule, the commissioner will hold a public hearing in accordance with Minn. Stat. § 15.0412, subdivisions 4 to 4g (1980). A request for a copy of the proposed rule, all comments, any requests for a hearing and all questions regarding the proposed rule should be directed to:

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
Department of Commerce
500 Metro Square Building
Saint Paul, Minnesota 55101
Telephone: (612) 296-5689

The proposed rule may be modified by the commissioner if the modifications are supported by the data and views submitted during the 30-day comment period, provided the modifications do not result in substantial change.

The commissioner has prepared a statement of need and reasonableness which contains a summary of the evidence justifying both the need for, and the reasonableness of, the proposed rule. The statement of need and reasonableness is available for inspection by the public, during regular business hours, at the above address.

If no hearing is required, the commissioner will submit to the Attorney General the proposed rule and notice as published in the *State Register*, the rule as proposed for adoption, any written comments received by the commissioner during the 30-day comment period, and the statement of need and reasonableness for the rule. On the same day these materials are submitted to the Attorney General the commissioner will notify any person who has requested that the commissioner inform him or her of when these materials have been submitted to the Attorney General. Any person wishing to be so notified should contact Mr. Hardy at the address listed above.

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed
Adoption of Rules Governing
the Storage and Handling of
Dry Commercial Fertilizer

FINDINGS OF FACT
AND CONCLUSIONS

The Department of Agriculture (MDA) proposes to adopt the above-entitled rules. The adoption of these rules was determined to be noncontroversial and the procedures set forth in Minnesota Statutes, Section 15.0412, Subdivision 4h (1980) were followed. On October 5th, 1981, the Department published notice in the State Register of the intent to adopt these rules without public hearing. For 30 days, persons interested in the rules had the opportunity to submit oral or written comments. No written requests were received for a public hearing on the proposed rules. However, written comments were received from several respondents suggesting changes or other considerations for Departmental review.

Respondents raised the issue of dual jurisdiction of these rules with those already in effect and administered by other state and federal agencies regarding the granting of permits, the inspection of facilities and the reporting of incidents. More specifically, it was alleged that the rules would duplicate inspections by both the Minnesota Pollution Control Agency (MPCA) and the Minnesota Occupational Safety and Health Administration (MOSHA) regarding review for possible hazards to the environment and human safety; would require duplicate permit applications to the MPCA and MDA before constructing a new dry fertilizer storage facility or substantially altering

an existing facility; would establish emission standards for particulate matter in duplication of APC 6, the existing rule of the MPCA governing air-borne particulate matter; would require duplicate notification of agencies in case of an incident causing a release of dry fertilizer likely to cause adverse effects on the environment; were insufficiently specific regarding the definition of what constitutes "modifying" an existing dry fertilizer storage facility; and did not set standards of sufficient clarity to guide regulated industries.

After affording interested persons an opportunity to present written and oral data, arguments, having considered the evidence submitted in regard to said rules, and having confirmed the need for the rules and the reasonableness thereof, the Department makes the following:

FINDINGS

1. The Department has found the written comments to be reasonable and helpful. In response to those comments, the Department is amending sections 3 MCAR 1.0326 (B); 3 MCAR 1.0326 (C); and 3 MCAR 1.0326 (I).

2. The issue of duplicate notification of agencies was raised in regard to incident reporting. The Department currently has a Memorandum of Agreement with all appropriate agencies and departments which specifies the Department as the lead agency in incidents of this nature. The Memorandum includes the Department of Public Safety, Division of Emergency Services. To implement the objectives of this Memorandum as well as to avoid confusion and duplication, the proposed rule is being amended to require the posting of

incident notification signs which will display emergency numbers to be called in case of an incident (3 MCAR 1.0326 (I) and (B) 4). The posting of these signs at each facility will prevent confusion and burdensome duplication in this matter, assuring prompt and accurate reporting of incidents.

Section 1.0326 (I) is amended as follows:

I. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of its contents. The incident notification sign issued by the Department shall be posted in a conspicuous place.

3. One respondent was particularly concerned about the reporting of transportation incidents. It is the Department's intent to notify local and state law enforcement agencies, which would be first to respond in such cases, of proper reporting procedures. This notification, along with the Memorandum that exists among state agencies, should prevent confusion and duplication of transportation incident reporting.

4. The issue of what constitutes the modification of a facility was also raised. The Department has amended 3 MCAR 1.0326 (C) to clarify the intent of this section. The new language "substantially altering" excludes normal maintenance and signifies the intent that substantial modifications need approval prior to construction.

Section 1.0326 (C) is amended as follows:

C. Approval of facility and equipment. A person beginning construction of a new dry fertilizer storage facility or substantially altering ~~modifying~~ an existing dry fertilizer storage facility shall first obtain the approval of the Commissioner ~~of Agriculture or his designee.~~

5. New definitions are added to the rules subsequent to the amendments that were made to 3 MCAR 1.0326 (C) and 3 MCAR 1.0326 (I). Definitions 4 and 5 are subsequently renumbered 5 and 6.

Section 1.0326 (B) is amended as follows:

4. "Incident notification sign" means a sign issued by the Department displaying emergency telephone numbers to be called in case of an incident.

7. "Substantially altering" means the modification of a dry fertilizer storage facility by adding additional storage containers, changing existing storage containers, or by changing the mixing, blending, weighing, or handling equipment. This does not include normal routine maintenance of existing storage containers or mixing, blending, weighing, and handling equipment.

6. The lack of specificity regarding the definition of liquid fertilizer is not germane to these rules.

7. The Department finds the following regarding the other issues raised by the respondents:

A. In the matter of the general allegation of dual jurisdiction, the Department is unaware of other state or federal rules regarding the granting of permits and the inspection of facilities involved in the storage and handling of dry fertilizers. Moreover, Minnesota Statutes Section 17.725 grants the Commissioner of Agriculture the authority to regulate the storage and handling of dry commercial fertilizer facilities.

B. The potential for duplicate inspections by both the MDA and the MOSHA is not germane to these rules. 3 MCAR 1.0326 governs equipment and operating procedures; MOSHA rules govern occupational safety, or the safeguards to the health and safety of workers. The two rules are distinctly different in purpose and application.

C. There are no duplicate permit requirements by the MDA and MPCA prior to the construction of a new facility or the substantial alteration of an existing one. The Department makes this conclusion since no other rules were cited in the written comments or found by the Department that require the issuance of permits prior to the construction or substantial alteration of existing dry commercial fertilizer facilities. Of the rules cited in the written comments, MPCA Rule APC 29 establishes air quality standards for grain handling facilities. However, the definition of "grain handling facility" does not include dry fertilizer facilities. MPCA Rule APC 6 is also an air quality rule. Neither rule has requirements regarding the granting of permits prior to the construction or modification of dry fertilizer storage and handling facilities.

In regard to inspections, MPCA Rule APC 29 applies only to grain handling facilities. APC 6 is vague and does not define the extent of its applicability. Moreover, it does not contain any reference to statutory authority. Therefore, its the Department's conclusion that the MPCA does not have rules which govern facilities that store and handle dry commercial fertilizer. Moreover, the MPCA has reviewed these rules and has not raised the issue of duplication of either the

issuance of permits or the inspection of facilities. In the absence of evidence to the contrary, the Department concludes the proposed rules are not duplicative or redundant.

D. The provisions of subsection G neither duplicate existing MPCA air quality rules nor establish specific standards regarding emissions of particulate matter. The existing MPCA rule (APC 6) cited in the comments does not have specific performance standards, has no statutory citation as to authority, is vague and does not define the limits of applicability. Moreover, the rule governing grain handling facilities (APC 29), which does have specific performance standards, does not apply to dry commercial fertilizer facilities. The Department has concluded that the proposed rules will not duplicate APC 6 and APC 29.

The Department did not attempt to establish standards of performance in this matter because: 1) it is not aware of specific standards that exist elsewhere outside of Minnesota which could be used as models; 2) it is unaware of research or data that could be used as the basis of such standards; and 3) the number, diversity, and geographic dispersion of facilities make it almost impossible to establish and enforce reasonable standards.

The proposed rule does grant the Department administrative discretion. In the absence of adequate models or standards and research, the Department concludes the proposed rule is adequate and reasonable until such time as administrative experience demonstrates that more definitive standards are needed and can be reasonably established and enforced.

CONCLUSIONS

1. That the Department has fulfilled all substantive and procedural requirements of law and rule in this matter.

2. That the Department has demonstrated its statutory authority to adopt the proposed rules.

3. That the Department has demonstrated the need for and the reasonableness of the rules as proposed, with the aforementioned amendments.

4. That the Department has adequately considered the written comments submitted regarding these rules.

NOW, THEREFORE, THE DEPARTMENT will proceed to adopt these rules as proposed, with the aforestated amendments.

STATE OF MINNESOTA

COMMISSIONER OF AGRICULTURE

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the matter of the proposed adoption of rules of the Minnesota Department of Agriculture governing the storage and handling of dry commercial fertilizer.	)	Statement of Need and Reasonableness

The authority to adopt these rules is contained in the Fertilizer, Soil Amendment and Plant Amendment Law, Minnesota Statutes, 1980, Sec. 17.725.

The Commissioner of the Minnesota Department of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Laws 1980, Ch. 615, Sec. 7, codified as Minnesota Statutes Sec. 15.0412, Subd. 4(h), (1980). The department received no responses to its notice to solicit outside opinion in this matter. Furthermore, the department has consulted with representatives of industry and government. Because of these procedures, the department feels these rules will be noncontroversial in nature.

The purpose of the Fertilizer, Soil Amendment and Plant Amendment Law is to regulate the sale and handling of dry commerical fertilizer within the State of Minnesota. Presently, no rules exist which govern the storage and handling

of dry commercial fertilizers. The department wishes to promulgate administrative procedures to govern this activity since proper storage and handling of dry commercial fertilizer benefits public health and safety by helping to reduce the number and severity of spills. In the past, some spills have adversely effected ground and surface water quality. With the promulgation of these rules, the department wishes to reduce the potential for such spills from occurring in the future by setting standards for maintenance of facilities and equipment.

The rules are presented in sections and portions of sections followed by explanations of the reasons and justifications of proposed language.

Rules as Proposed

3 MCAR Sec. 1.0326 Dry fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. S 17.725 to regulate the storage and handling of dry commercial fertilizer used for agricultural purposes.

> ...This section sets forth the authority under the provision of the Fertilizer, Soil Amendment and Plant Amendment Law through which these rules may be promulgated. The reason for these rules are stated for reference by authorities and readers of the rules.

B. Definitions. For the purpose of this rule, the terms defined in this part, and the words defined in Minn. Stat. S 17.713, have the meanings given them.

1. "Department" means the Department of Agriculture.

2. "Dry commercial fertilizer" means both mixed fertilizer and fertilizer materials distributed in a nonpackage form.

3. "Incident" means a flood, fire, tornado, transportation accident

or other event causing a release of dry fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Responsible party" means the person who has direct custody or control of the dry fertilizer at the time of an incident.

5. "Storage container" means a tank or bin in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

> ...This section presents the definitions of terms as used in these rules. The definitions are necessary to clarify the meaning and terms as well as the operational portions of the rules.

C. Approval of facility and equipment. A person beginning construction of a new dry fertilizer storage facility or modifying an existing dry fertilizer storage facility shall first obtain the approval of the Commissioner of Agriculture or his designee. The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application demonstrates that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

> ...Provides the department authority to require the approval of new or modified facilities and equipment for all Dry Fertilizer operations. The approval will be based on inspections to ascertain if adequate safeguards exist to protect people's lives, adjoining property and the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

...This provision of the rule gives the department the general authority to inspect facilities and equipment to insure continuing compliance with the standards contained in these rules. The rule also gives the department the authority to require actions necessary to mitigate the problems that exist.

D. Exceptions. Part G. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

...Unless a serious hazard exists, this language relieves presently operating facilities from making costly modifications in order to comply with the rules. This section does not exempt existing facilities from the routine maintenance requirements stated in the rules. After adoption of the rules, any new facility or new equipment added to an existing facility would be required to comply with part G.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary hardship to the requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

...Provides the department some flexibility in enforcement of the rule. In some instances it may be appropriate to grant variances in order to avoid causing unreasonable hardship on members of the fertilizer industry.

F. Equipment. Equipment shall be maintained in good operating order.

...This is necessary to prevent unnecessary spillage and to allow for the accurate mixing of bulk materials.

G. Operations. Dry commercial fertilizer facilities shall be operated to allow the unloading, storage, mixing and loading of the bulk materials in a manner which will prevent avoidable amounts of particulate matter from leaving the premises.

...Certain amounts of particulate matter are produced at bulk fertilizer facilities as a result of normal operations. This language allows the department some flexibility in enforcement relating to particulate matter emissions.

H. Storage containers. Storage containers shall be maintained to prevent major cross contamination of various dry commercial fertilizer ingredients and materials. Storage container areas shall be kept free of clutter and ignitable materials including weeds and long dry grass.

...In order to provide a uniform product to the consumer and to maintain the accuracy of the blending process, major cross contamination must be avoided. An uncluttered storage container area promotes personal safety and allows for easy access for inspection and maintenance.

I. Markings. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of its contents.

...This is a requirement of the Fertilizer, Soil Amendment and Plant Amendment Law, Minn. Stat. 1980 Sec. 17.716.

J. Outside fertilizer storage. Outside fertilizer storage piles shall not be located in areas subject to floods or where surface water runoff could enter storm sewers, sanitary sewers or other state waters.

...These precautions are necessary to reduce the potential movement of significant amounts of dry fertilizer into the waters of the state.

K. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

...This language clarifies the duties of the department and the responsible party should an incident occur. Notification of an incident is necessary so the department is aware of the incident and can respond to it. Notification to other appropriate state agencies is necessary because they may also need to become involved. The responsibility to contain and/or clean up the incident falls on the responsible party in all cases. If the responsible party refuses to contain and/or clean up the incident, the department can proceed but the responsible party will be liable for the costs involved.

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STATEMENT OF COMPLIANCE WITH

RULEMAKING PROCEDURES

I, Special Assistant Attorney General Jon Murphy, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Special Assistant Attorney General

Date: 4/9/82

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Storage and Handling of Dry Commercial Fertilizer

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Diane M. Windham, being first duly sworn, deposes and says:

That on the 9th day of April, 19 82, in the City of St. Paul, County of Ramsey, State of Minnesota, she/~~he~~ served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Diane M. Windham

Subscribed and sworn to before me
this 9th day of April, 19 82.

Christine Canaday

Christine Canaday
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires June 25, 1986

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Storage and Handling of Dry Commercial Fertilizer

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, April 19th, 1982, for review as to form and legality. Pursuant to 1 MCAR, § 1.206 B., the Attorney General will not approve the rules for at least eight calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Gerald J Heil

Gerald Heil
Director of Planning