

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

yes

RULE REVIEW CHECKLIST

File No. 1607 — Docket No. 05.0009.0986

DATE RECEIVED 5-24-89 — ADOPTED W/O HEARING X

REVIEW DATE 6-2-89 — EMERGENCY RULE _____

DUE DATE 6-7-89 — REVISOR APPROVED _____

APPROVED 6/30/1989 EA — REVISOR DISAPPROVED _____

DISAPPROVED _____ — FILED W/SEC. OF STATE _____

WITHDRAWN 6/7/89 — RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
- 8-17-87 Date published in State Register
- _____ Comments

_____ ~~Petition for Adoption of a Rule (if applicable)~~

_____ ~~Board's Authorizing Resolution~~
- _____ ~~Date adopted~~

✓ Proposed Rule
- yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 18B.14(2) Statutory Authority
- yes Small Business Statement
- no Expenditure of public money statement
- yes Signature

✓ Statement of Need and Reasonableness (if applicable)
- yes Small Business Statement
- n/a Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- 3/6/89 Date (30)/25 days before adoption
- ok Notice attached
- _____ ~~Copy of rule or summary attached~~

✓ Publication in State Register
- 3/20/89 Date (30)/25 days before adoption

4 180-day deadline from:
- 8/1/87 Effective date of law requiring rule (14.12) (both rules)
- 4/29/89 end of comment period (§ 14.26) (rules without hearing)
- _____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

_____ ~~Resolution Adopting~~
- _____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
- 5/16/89 Date

✓ Written requests, submissions or comments (32)

✓ Declaration of attorney
- P. Strandberg Name of SAAG representing agency

Certificate of Mailing list

✓ ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

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DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : June 20, 1989

TO : PAUL STRANDBERG
Special Assistant Attorney General

FROM : JACQUELYN E. ALBRIGHT
Special Assistant Attorney General

PHONE : 6-9715

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Bulk Pesticide Storage

The above-referenced rule has been approved as to its legality by the Attorney General on June 20, 1989.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accoradance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

JEA:klk
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

Department of Agriculture

Adopted Permanent Rules Relating to Bulk Pesticide Storage

Rules as Adopted

1505.2010 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 1505.2010 to 1505.2150, the words and terms defined in this part have the meanings given them.

Subp. 2. **Appurtenances.** "Appurtenances" means valves, pumps, fittings, pipes, hoses, and metering devices that are connected to a bulk pesticide container or used for transferring liquid bulk pesticide between containers.

Subp. 3. **Bulk pesticide.** "Bulk pesticide" means a pesticide that is held in an individual container with a pesticide content of 56 U.S. gallons or more, or 100 pounds or more net dry weight, including mini-bulk pesticide unless otherwise specified. Only technical grade, formulated grade, and other similar grades of ~~undiluted~~ bulk pesticide are included in this definition.

Subp. 4. **Bulk pesticide storage facility.** "Bulk pesticide storage facility" means a site at which a bulk pesticide is stored~~,-distributed,-or-repackaged~~ by a person who distributes or repackages the bulk pesticide.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of agriculture or the commissioner's authorized agent.

Subp. 6. **Containment area.** "Containment area" means a facility, device, or system or a combination of these designed to prevent the escape or movement of a pesticide from the place it is stored or kept under conditions that might otherwise result in ~~contamination-of~~ unreasonable adverse effects on the environment.

Subp. 7. **Custom mix.** "Custom mix" means a mixture of registered pesticide or pesticide-fertilizer mixes prepared by a

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dealer in response to a specific request of an end user of those products.

Subp. 8. **Disposal.** "Disposal" means the release, deposit, injection, dumping, spilling, leaking, or placing of pesticide into or on land or water so that the pesticide may enter the environment or be emitted into the air or released into any surface water or groundwater. This definition, however, does not include pesticide use allowable under Minnesota Statutes, chapter 18B or rules adopted under Minnesota Statutes, chapter 18B.

Subp. 9. **Dry pesticide.** "Dry pesticide" means pesticide that is in solid form before application or mixing for application, including formulations such as dusts, wettable powders, dry flowable powders, and granules.

Subp. 10. **Groundwater.** "Groundwater" means the water in the zone of saturation in which all of the pore spaces of the subsurface material are filled with water. The water that supplies springs and wells is groundwater.

Subp. 11. **Inorganic soil.** "Inorganic soil" means a soil that is a silty clay loam or finer with less than six percent organic matter. This definition pertains to the specific type of soil used to construct walls and liners of containment areas.

Subp. 12. **Liquid pesticide.** "Liquid pesticide" means pesticide in liquid form, including solutions, emulsions, suspensions, and slurries.

Subp. 13. **Mini-bulk pesticide.** "Mini-bulk pesticide" means an amount of liquid pesticide greater than 56 U.S. gallons (211 liters) but not greater than 499 U.S. gallons (1,892 liters), or an amount of dry pesticide greater than 100 pounds (45 kilograms) but not greater than 499 pounds (225 kilograms), that is held in a single container designed for ready handling and transport.

Subp. 14. **New bulk pesticide storage facility.** "New bulk pesticide storage facility" means a bulk pesticide storage facility established after July 1, 1989, at a site that was not previously used as a bulk pesticide storage facility. A

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facility is established, for purposes of this subpart, on the date it is first placed in use.

Subp. 15. **Previously established bulk pesticide storage facility.** "Previously established bulk pesticide storage facility" means a bulk pesticide storage facility established before July 1, 1989. A facility is established, for purposes of this subpart, on the date it is first placed in use.

Subp. 16. **Release.** "Release" means a pesticide release incident as defined in Minnesota Statutes, section 18B.01, subdivision 12, including a pesticide released into a secondary containment or loading area.

Subp. 17. **Release response plan.** "Release response plan" means a plan describing procedures employed for the notification of appropriate state agencies, stopping a release, recovering releases, and cleaning up the release area.

Subp. 18. **Repackaging.** "Repackaging" means a registrant's or manufacturer's authorized ~~transferring~~ transfer and subsequent labeling of a registered pesticide from a bulk pesticide container to another pesticide container 56 U.S. gallons or more in an unaltered state in preparation for sale delivery to another dealer or user.

Subp. 19. **Revised bulk pesticide storage permit application.** "Revised bulk pesticide storage permit application" means an application for a bulk pesticide storage permit filed with the commissioner detailing substantial alterations that are to be made to a facility.

Subp. 20. **Storage container.** "Storage container" means a container used for the fixed storage of bulk pesticide, including a rail car, nurse tank, mini-bulk tank, or other mobile container for more than ten consecutive days. This definition does not include a container used solely for emergency storage of leaking pesticide containers that are less than 56 U.S. gallons or pesticide rinsate holding tanks.

Subp. 21. **Substantially altering.** "Substantially altering" includes, but is not limited to, the modification of a bulk pesticide storage facility through the changing, addition, or

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removal of bulk pesticide storage containers, appurtenances, load areas, secondary containment, or any modifications that may result in reducing the effectiveness of safeguards. This definition does not include the routine maintenance of bulk pesticide storage containers, load areas, secondary containment, or appurtenances.

Subp. 22. **Surface water.** "Surface water" means water that rests or flows on the surface of the ground.

~~Subp. 23. Tank mix. "Tank mix" means a mixture of registered pesticides prepared according to label directions for site application.~~

1505.2020 NEW FACILITIES.

Subpart 1. **Permit required.** No person may construct or operate a new bulk pesticide storage facility without first obtaining a permit under parts 1505.2040 and 1505.2050.

Subp. 2. **Information required before construction.** After being granted a permit by the commissioner, and before beginning construction of the bulk pesticide storage facility, an owner or manager shall submit to the commissioner:

A. the name, address, and telephone number of the persons who will construct, install, or modify the facility; and

B. copies of any permits or letters of authorization required by any local unit of government for the construction, installation, or modification of the facility.

Subp. 3. **Compliance within 90 days.** Within 90 days after being granted a permit by the commissioner, a new bulk pesticide storage facility owner or manager shall comply with parts 1505.2010 to 1505.2150.

Subp. 4. **Time extension.** <u>The commissioner shall grant</u> a time extension of up to 180 days for delays due to construction or equipment or material procurement ~~may be granted by the commissioner~~ if requested in writing by the facility owner or manager. The commissioner shall set forth in writing the reasons for granting or denying a requested time extension within 15 days of the request.

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1505.2030 PREVIOUSLY ESTABLISHED FACILITIES.

A person who operates a bulk pesticide storage facility established before July 1, 1989, must comply with items A to C.

A. The person must, by July 1, 1990, file with the commissioner an application for a bulk pesticide storage permit under parts 1505.2040 and 1505.2050 and comply with parts 1505.2010, 1505.2030, 1505.2060, and 1505.2090 to 1505.2150.

B. The person must, by July 1, 1991, comply with parts 1505.2070 and 1505.2080. The commissioner shall grant a time extension of up to one year ~~may be granted by the commissioner~~ for delays due to construction or equipment or material procurement, if requested in writing by the facility owner or manager. The commissioner shall set forth, in writing, the reasons for granting or denying a requested time extension within 15 days of the request.

C. After being granted a bulk pesticide storage permit by the commissioner, and before beginning any construction or ~~modification of~~ substantially altering an existing bulk pesticide storage facility, the person must submit to the commissioner:

(1) the name, address, and telephone number of the persons who will construct, install, or modify the facility; and

(2) copies of any permits or letters of authorization required by any local or state unit of government for the construction, installation, or modification of the facility.

1505.2040 BULK PESTICIDE STORAGE PERMIT.

Subpart 1. **Commissioner's review of application.** The commissioner shall review an initial application as submitted under part 1505.2050 within 30 days of receipt and either issue a bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance. Upon receipt of the additional requested compliance information from a person, the

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commissioner has 15 days in which to issue a bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance.

Subp. 2. **Substantial alterations.** No person may substantially alter any bulk pesticide storage facility without first being granted a revised bulk pesticide storage permit from the commissioner. The person must file a revised bulk pesticide storage permit application detailing the proposed alterations with the commissioner. The commissioner shall review an application for a revised bulk pesticide storage permit within 30 days of receipt and either issue a revised bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance.

Subp. 3. **Denial; revocation; suspension~~,-modification~~.** ~~An initial-or-revised~~ After written notice and a hearing, a bulk pesticide storage permit may be denied, revoked, or suspended~~,-or-modified,-in-whole-or-in-part,~~ for one or more of the following reasons:

A. ~~violation-of-a-term-or-condition-of-the permit~~ failure to fully comply with parts 1505.2010 to 1505.2150;

B. obtaining the permit by misrepresentation or by failure to disclose all relevant facts; or

C. discovery of unreasonable adverse effects to the environment caused by the activities of the permit holder in the conduct of actions undertaken under the permit.

Subp. 4. **Notice.**~~--If-a-permit-is-denied,-revoked,-or suspended,-the-commissioner-shall-send-the-applicant-a-written notice-of-denial,-revocation,-or-suspension.--Details-that formed-the-basis-of-the-decision-must-be-included.--The-owner-or manager-must-be-given-30-days-from-the-date-of-the-notice-to request-an-administrative-meeting-before-the-commissioner-to present-justification-for-an-appeal-of-the-decision.~~

~~Following-the-date-and-time-of-the-administrative-meeting,~~

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~~the commissioner has 15 days in which to analyze the facts presented and grant a permit or advise the owner or manager, in writing, of the commissioner's determination to uphold the original decision not to grant a permit.~~

~~Subp. 5.~~ **Permit transfer.** A bulk pesticide storage permit may be transferred from one person to another if an application for a permit detailing any changes and including the required fee is filed with the commissioner prior to the transfer.

Subp. 6 5. **Permit exceptions.** Persons who store bulk pesticides in a storage container of a rated capacity of less than 500 U.S. gallons or who store bulk pesticides in individual storage containers at a site where the total storage amount of bulk pesticide is less than 500 U.S. gallons, are not required to obtain a bulk pesticide storage permit, but are required to comply with all other applicable provisions of this part.

1505.2050 APPLICATION AND PERMIT FEE.

Subpart 1. **Information required.** Application for a bulk pesticide storage permit must be on forms provided by the commissioner. The application must contain at least, but is not limited to, the following information:

A. a differentiation as to whether the bulk pesticide storage facility should be regarded as new or previously established;

B. the name, address, and telephone number of the person making application;

C. the name, address, and telephone number of the persons that will own and operate the facility;

D. the location of the facility, including its legal description;

E. photographs or a diagram of the current or proposed facility, including all buildings, tanks, fertilizer storage areas, mixing, loading, and rinsate recycling areas, vehicle washing areas, and bulk pesticide storage areas;

F. a geologic report of the facility property and the surrounding area, including maps, photographs, or diagrams of:

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(1) the land use (crop land, residential, or business) within one-quarter mile radius of the facility;

(2) the distance and direction to surface water, drainage ditches, and storm sewers within one-quarter mile radius of the facility;

(3) the distance and direction to any source of a public water supply serving the facility;

(4) the year installed, depth, direction, and distance to any well on or within 150 feet of all existing and proposed loading and secondary containment areas; and

(5) the type of soils to the three foot depth beneath the surface fill such as, but not limited to, gravel, rock, or other soils of all existing and proposed loading and secondary containment areas.

G. the number, age or condition, dimension, capacity, and material description of the liquid bulk pesticide storage containers and a list of pesticides to be stored in them, with United States Environmental Protection Agency registration numbers;

H. a certification that to the best of the owner's or manager's knowledge the loading and containment areas will be built in accordance with construction and plumbing plans submitted and will comply with the design, construction, and containment requirements of parts 1505.2070 and 1505.2080;

I. at least one scale drawing of the loading and ~~bulk pesticide~~ secondary containment areas to include a construction material specification or design guide;

J. a plumbing diagram showing the location, type, and specifications of the appurtenances used in storing or transferring bulk pesticides;

K. a copy of the release response plan as described in part 1505.2100; and

L. the person's federal Environmental Protection Agency establishment number, if required.

Subp. 2. **Fee.** The initial application for a bulk pesticide storage permit must be accompanied by the fee required

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in Minnesota Statutes, section 18B.14 for each bulk pesticide storage facility. No fee is required to apply for a revised bulk pesticide storage permit.

1505.2060 GENERAL REQUIREMENTS.

Subpart 1. **Establishment number.** A facility that repackages ~~or transfers~~ bulk pesticides ~~or custom mixes any quantity of pesticides for application by another person~~ must obtain a pesticide producer establishment number from the United States Environmental Protection Agency.

Subp. 2. **Exception.** A person who ~~tank mixes or~~ custom mixes pesticides for application by the person's firm only, is not required to secure a pesticide producer establishment number from the United States Environmental Protection Agency.

Subp. 3. **Storage containers and appurtenances.**

A. Storage containers and appurtenances must be constructed, installed, and maintained to prevent the release of liquid bulk pesticide. Storage containers and appurtenances must be structurally sound, resistant to changes in temperature extremes, and constructed of materials that are adequately thick to be structurally sound and that are resistant to corrosion, puncture, or cracking. Materials used in the construction or repair of storage containers and appurtenances may not be of a type that reacts chemically or electrolytically with stored bulk pesticide in a way that may weaken the storage container or appurtenance, create a risk of release, or adulterate the pesticide. Metals used for valves, fittings, and repairs on metal containers must be compatible with the metals used in the construction of the storage container, so that the combination of metals does not cause or increase corrosion that may weaken the storage container or its appurtenances, or create a risk of release. Storage containers and appurtenances must be designed to handle all operating stresses taking into account the foreseeable course of operations. Underground appurtenances are prohibited as part of a system designed and constructed for transferring bulk pesticides unless approved by the commissioner.

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B. Storage containers may only be constructed of stainless steel, fiberglass, polyethylene, ferrous metal, cross-linked polyolefin, or other commissioner-approved materials that are suitable for the stored bulk pesticide. Polyvinyl chloride tanks, fittings, and appurtenances are prohibited.

Ferrous metal tanks must have a protective lining that inhibits corrosion and does not react chemically with the stored pesticide.

Unlined ferrous metal tanks may be used only with proof of compatibility from the pesticide manufacturer.

C. Storage container connections, except safety relief connections, must be equipped with a shutoff valve located on the storage container or at a distance from the storage container dictated by standard engineering practice and in compliance with this part. Wetted parts inside shutoff valves and connections from the storage container to the shutoff valve must be made of stainless steel.

D. Storage containers must be equipped with a liquid level gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level gauging device is not required if the level of the liquid in a storage container can be readily and reliably measured by other means. Liquid level gauging devices must be secured, in a safe manner, to protect against breakage or vandalism that may result in release. External sight gauges are permitted only with approval from the commissioner.

E. Meters and scales used for the sale of bulk pesticide must be compatible with the pesticide being metered or weighed.

F. Pipes and fittings must be adequately supported to prevent sagging and possible breakage because of gravity and other forces that may be encountered in the ordinary course of operations.

G. Valves must be secured and of a locking type to protect against vandalism or accidental valve openings that may

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result in a release.

H. Storage containers must be equipped with a vent or other device designed to relieve excess pressure, prevent losses by evaporation, and exclude precipitation.

Subp. 4. **Anchoring of storage containers.** Storage containers must be anchored to prevent flotation or instability that might occur as a result of liquid accumulations within a secondary containment area built under part 1505.2080. Anchoring may be accomplished by guy wires, or other commissioner-approved anchors.

Subp. 5. **Security.** Storage containers must be secured against access by unauthorized persons and provide protection against access by wildlife. Appurtenances must be fenced or otherwise secured to provide reasonable protection against vandalism or unauthorized access that may result in a release. Valves on storage containers must be locked or otherwise secured except when persons responsible for facility security are present at the facility. Valves on rail cars, nurse tanks, and other mobile pesticide containers parked overnight at a storage facility must be locked or secured except when persons responsible for facility security are present at the facility.

Subp. 6. **Filling.** Storage containers must not be filled to more than 95 percent of capacity unless the storage container construction or location provides constant temperature control of the container contents.

Repackaging and delivery of bulk pesticides must be attended and supervised at all times by the owner, manager, or an employee of the facility.

Subp. 7. **Protection against damage by moving vehicles.** Storage containers and appurtenances, including pipes, must be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles and objects.

Subp. 8. **Storage of dry bulk pesticide.** Except during loading, stored dry bulk pesticide must be covered by a roof or tarpaulin that will exclude precipitation from the pesticide. Storage containers must be placed on a concrete or other

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impervious surfaced floor on pallets or on a raised platform to prevent the accumulation of water in or under the pesticide.

Storage facilities must be secured against entry by unauthorized persons or wildlife.

Subp. 9. **Labeling of storage containers.** Every storage container must bear a current pesticide product label as required by the United States Environmental Protection Agency.

For outside storage, the label required under this part must be placed on the storage container so as to be visible from outside of the secondary containment area. The label must be legible at all times. The type size used on the label must be that specified in Code of Federal Regulations, title 40, part 162.

1505.2070 LOADING AREAS.

Subpart 1. **Containment for liquid bulk pesticide loading sites.** An area used for the loading of liquid bulk pesticide into fixed storage containers, mobile containers, or pesticide application equipment at a bulk pesticide storage facility must be provided with a means of containment that is elevated above the surrounding area, constructed of reinforced concrete or other commissioner-approved material, and designed and constructed for the intended purpose. The means of containment must not contain a drain and must comply with either item A or B.

A. A curbed loading area without a sediment trap must comply with subitems (1) and (2).

(1) The perimeter of the area must be curbed a minimum of three inches in height to prevent run-off and the curbed surface must form a liquid-tight containment area.

(2) The curbed surface and containment area must contain a minimum of 1,000 U.S. gallons.

B. A sloped surface that contains a sediment trap must comply with subitems (1) to (3).

(1) The perimeter of the area must be curbed three inches in height to prevent runoff and must form a liquid-tight containment area.

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(2) The area must be sloped to a sediment trap used only for the temporary collection of spilled or released pesticides. The sediment trap may not be greater than two feet deep or hold more than ~~150~~ 109 U.S. gallons.

(3) The area must contain a minimum of 1,000 U.S. gallons.

Subp. 2. **Containment for pesticide-impregnated fertilizer loading sites.** An area used for the loading of pesticide impregnated fertilizer into fixed storage containers, mobile containers, or pesticide application equipment at a bulk pesticide storage facility must be provided with the means of containment in items A to C.

A. The containment area for pesticide-impregnated fertilizer loading must be elevated above the surrounding area, be constructed of reinforced concrete or other commissioner-approved material, and be designed and constructed for the intended purpose. A scale with a liquid-tight containment area is acceptable.

B. The containment area must be of adequate size to fully hold the largest fixed storage container, mobile containers, or commercial pesticide application equipment that will be loaded on the area.

C. The containment area must be protected or managed in a manner that will prevent pesticide-contaminated runoff from leaving the area.

Subp. 3. **Load area exceptions and underground plumbing.**

A. If load areas for fixed storage containers, mobile containers, or pesticide application equipment are physically separated from one another, each separate load area must be of a design, size, and construction to contain a minimum of 500 U.S. gallons.

B. If no bulk pesticide storage container at the storage facility has a rated capacity of more than 500 U.S. gallons, the load area must be of a design, size, and construction to contain a minimum of 500 U.S. gallons.

If no bulk pesticide storage container at the storage

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facility has a rated capacity of more than 250 U.S. gallons, the load area must be of a design, size, and construction to contain a minimum of 250 U.S. gallons.

C. A load area is not required for areas used for loading anhydrous ammonia tanks with pesticides used to control the nitrification process, if:

(1) the bulk pesticide storage container, pump, and associated connections are located within a secondary containment area;

(2) all pesticide delivery hoses are placed in the secondary containment area between uses;

(3) no aluminum components are used; and

(4) all pesticide releases are immediately abated and recovered.

D. Any underground plumbing used for transferring rinsates or sediment from a sediment trap to rinsate tanks must be designed, constructed, installed, and maintained to prevent the release of pesticides to the environment and the backflow of pesticide rinsates to the sediment trap.

1505.2080 SECONDARY CONTAINMENT AREAS.

Subpart 1. **General requirements.** Liquid bulk pesticide storage containers must be confined to a secondary containment area that is adequate, in the event of a release, to prevent the movement of liquid pesticides to surface or ground water. The loading area as specified in part 1505.2070 must not be located, designed, or constructed in such a way so as to compromise the required secondary containment of subpart 2. The secondary containment provisions also apply to liquid bulk pesticides stored in a location covered by a roof. A secondary containment area must consist of:

A. a wall and liner as provided under subparts 4 and 5;

B. a prefabricated secondary containment basin as provided under subpart 6; or

C. other safeguards approved by the commissioner.

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Subp. 2. **Capacity.** The capacity of a secondary containment area for a bulk pesticide storage facility must be at least equal to the sum of all of the following:

A. the greatest volume of liquid bulk pesticide or liquid bulk fertilizer that could be released from the largest storage container within the secondary containment area;

B. 25 percent of the capacity of the largest liquid bulk pesticide or liquid bulk fertilizer storage container located within the secondary containment area for an outdoor storage container, or ten percent of the capacity of the largest liquid bulk pesticide container or liquid bulk fertilizer if stored in a location covered by a roof; and

C. the total volume of released liquid which would be displaced by the portions of all other storage containers within the secondary containment area to the height of the containment wall and all other fixtures and materials located within the secondary containment area (including pesticide or fertilizer diluent, empty pesticide containers, recovered pesticide or fertilizer releases, and liquid pesticide or fertilizer metering equipment).

Subp. 3. **Storage with other commodities or equipment.**

A. Liquid bulk pesticide, liquid bulk fertilizer, pesticide or fertilizer diluent, empty pesticide containers, recovered pesticide or fertilizer releases, or liquid pesticide or fertilizer metering equipment may be stored within the bulk pesticide secondary containment area.

B. The total containment capacity calculated in subpart 2 may not be compromised by storing liquid bulk pesticide or liquid bulk fertilizer, pesticide or fertilizer diluent, pesticide containers, pesticide or fertilizer releases, pesticide or fertilizer metering equipment, or other equipment or products in amounts greater than the amounts which were originally calculated as necessary displacement in subpart 2.

C. A liquid bulk pesticide storage containment area may be located within the boundary of a liquid bulk fertilizer containment area if:

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(1) the containment areas are separated by a wall described in subpart 4;

(2) the bulk pesticide is contained in an anchored prefabricated containment unit as described in subpart 6; or

(3) each bulk pesticide storage container and its appurtenances is effectively protected from corrosion and flotation by liquid bulk fertilizers.

Subp. 4. **Walls.** The walls of a secondary containment area must be made of ferrous metal, inorganic soil, stainless steel, reinforced concrete, or solid reinforced masonry and must be designed to withstand a ~~fully~~ full hydrostatic head of any released liquid. Cracks and seams must be sealed as needed to prevent leakage. Walls constructed of inorganic soil must be lined as provided under subpart 5, item D, be protected from erosion, and have a horizontal to vertical slope of at least three to one, unless a steeper slope is consistent with good engineering practice. Walls may not exceed six feet in height above the interior grade.

A. All bulk pesticide tanks must be placed a minimum of one foot from a secondary containment area wall.

B. Tanks over ten feet high stored outdoors must be located at least three feet from the secondary containment area wall.

C. The walls of a secondary containment area may not contain a drain or other similar opening.

D. Masonry walls must be reinforced, capped with concrete, and parged on the interior.

E. The joint between a masonry wall and any floor or subsurface that it is constructed on must be constructed, sealed, and protected in such a way that it prevents any pesticide leakage from leaving the containment area.

Subp. 5. **Lining.**

A. The base of a secondary containment area and any inorganic soil walls of a secondary containment area must be lined with reinforced concrete, a synthetic liner, an inorganic

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soil liner, ferrous metal, or stainless steel designed to limit the permeability of the base and walls. Liners must meet the requirements of this subpart. The base of a secondary containment area may not contain a drain or other similar opening used to release pesticides or precipitation. Dissimilar materials may not be used together for a wall and liner combination unless approved by the commissioner.

B. Concrete liners must be designed according to good engineering practices to withstand any foreseeable loading conditions, including a full hydrostatic head of released liquid. Cracks and seams must be sealed to prevent leakage.

C. Synthetic liners must have a minimum thickness of 30 mils (0.8 millimeters), be chemically compatible with the materials being stored within the secondary containment area, be photo-resistant, and be puncture resistant. Confirmation of chemical compatibility and an estimate of liner life must be retained by the firm for inspection upon request by the Department of Agriculture. The synthetic liner must be protected by a 12-inch (30-centimeter) layer of inorganic soil or half-inch diameter rounded stone above the liner and a six-inch (15-centimeter) layer of inorganic soil below the liner. Soil layers must be free of large rocks, angular stones, sticks, or other materials that may puncture the liner. Synthetic liners must be installed according to the manufacturer's recommendations and, if necessary, under the supervision of a qualified representative of the manufacturer, and all field-constructed seams must be tested, and repaired if necessary, in accordance with the manufacturer's recommendations. Pesticide releases onto the inorganic soil portion of a synthetic liner containment area must be managed by the removal of contaminated soils. Disposition of contaminated soils is subject to approval from the Department of Agriculture. Integrity of the inorganic soil portion of the synthetic liner containment area must be restored under all circumstances.

D. Soil liners must comply with subitems (1) to (5).

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(1) A liner may be constructed of inorganic soil treated with bentonite clay if the liner meets the requirements of this subitem. The liner must be designed and constructed according to good engineering practices, extend a minimum of six feet beyond the wall, and achieve a coefficient of permeability not to exceed 1 X 10-6 cm/sec, with a thickness of not less than six inches (15 centimeters). The liner must be covered by an inorganic soil layer not less than six inches (15 centimeters) thick. Liners may not be constructed of frost-susceptible soils, which include silts and silty sand.

(2) Bentonite-treated liners must consist of a uniform mixture of inorganic soil and bentonite. The inorganic soil used in the mixture must have a plasticity index of at least 12. At least 30 percent by weight of the inorganic soil must pass a No. 200 sieve, and less than five percent of the inorganic soil must be retained on a No. 4 sieve. Ninety percent of the bentonite by weight must pass a No. 80 sieve, and the inorganic soil-bentonite mixture must contain at least five percent bentonite by weight.

(3) An inorganic soil may not be used as part of a soil liner if less than 50 percent by weight of the soil passes a No. 200 sieve, or if more than five percent by weight of the inorganic soil is retained on a No. 4 sieve.

(4) Soil liners must be maintained to prevent cracking or other conditions that may compromise the integrity of containment. Pesticide releases into an inorganic soil-bentonite liner containment area must be managed by removal of contaminated soils within 48 hours. ~~Disposition of contaminated soils is subject to approval from the Department of Agriculture.~~ Contaminated soils must be used at labeled rates consistent with labeled end uses for the intended crop, or stored and used later at labeled rates consistent with labeled end uses for the intended crop, or disposed of according to local, state, and federal regulations. Integrity of the inorganic soil walls and inorganic soil-bentonite liner after a spill must be restored under all circumstances.

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(5) An owner or manager shall submit to the commissioner, upon request, certification by a registered engineer practicing in the geotechnical field to verify that the coefficient of permeability of the liner does not exceed 1 X 10-6 cm/sec or that the inorganic soil lined containment area will contain released liquid to the height of the containment wall for at least 72 hours.

Subp. 6. **Prefabricated secondary containment basin.** A prefabricated secondary containment basin must be composed of a rigid prefabricated basin having both a base and walls constructed of steel or synthetic materials which are resistant to corrosion, puncture, or cracking. Materials used for the prefabricated basin must be chemically compatible with the products being stored in the bulk pesticide tank. A written confirmation of compatibility from the basin manufacturer must be kept on file at the storage facility or at the nearest local office from which the storage facility is administered. The prefabricated facility must be designed and installed to contain the amounts listed in subpart 2, including the tank load and a full hydrostatic head of any released liquid. Multiple basins connected to provide the capacity required under subpart 2, must be connected in a way that assures an unrestricted transfer of released liquid between basins. A prefabricated containment basin may not be located where fire could damage the containment vessel and compromise the intended containment.

1505.2090 RECOVERY, USE, OR DISPOSAL OF PESTICIDE RELEASES.

Subpart 1. **Loading areas and secondary containment areas.** All pesticide releases occurring in an area confined to loading areas described in part 1505.2070 and secondary containment areas described in part 1505.2080 must be recovered as soon as possible and must either be used, stored, or disposed of. Use and storage must be according to pesticide label instructions. Disposal must be according to local, state, and federal regulations. The Department of Agriculture must be immediately notified of all releases.

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Subp. 2. **Precipitation accumulations.**

A. Precipitation must not be permitted to accumulate in a secondary containment area or loading area to the point where the accumulation may tend to:

(1) compromise the ability of the secondary containment area or loading areas to contain the amounts indicated in part 1505.2070 or 1505.2080;

(2) increase the corrosion of storage containers or appurtenances; or

(3) impair the stability of storage containers.

B. Precipitation, if contaminated with pesticide residues, must be:

(1) removed and used at labeled rates on sites consistent with labeled end uses for the intended target crop;

(2) removed and stored for later use according to subitem (1);

(3) disposed of according to local, state, and federal regulations; or

(4) used at a rate of no more than five percent of the total tank mix <u>for delivery rates of 40 gallons per acre or less and ten percent for delivery rates of more than 40 gallons per acre</u>. Records must be kept indicating amounts, crop to which applied, and dates.

C. Uncontaminated precipitation may be released to a vegetated area allowing for even distribution over the entire area or used as water for mixing.

Subp. 3. **Use of pesticide rinsate, pesticide containing sludge, or pesticide containing washwater accumulations.**

A. Sludge, rinsates, or washwater generated in a pesticide loading or secondary containment area as a result of loading, washing, rinsing, clean-up, or similar practices must be:

(1) removed and used at labeled rates consistent with labeled end uses for the intended target crop;

(2) removed and stored for later use according to subitem (1); or

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(3) disposed of according to local, state, and federal regulations.

B. Sludge must be removed from a sediment trap before the trap is half full.

C. Rinsates and sludges may be used at a rate of no more than five percent of any total tank mix for delivery rates of 40 gallons per acre or less and ten percent for delivery rates of more than 40 gallons per acre. Washwater not contaminated with pesticides may be used undiluted.

D. Records indicating the amount removed (pounds or gallons), the location and acreage treated, and crops to which applied must be kept and made available for review during inspections by the commissioner. Records must be retained for a minimum of five years.

1505.2100 PREPARATION FOR CONTROL AND RECOVERY OF PESTICIDE RELEASES.

Subpart 1. **Release response plan.** The operator of a bulk pesticide storage facility shall prepare a written release response plan for the storage facility. The operator shall keep the plan current at all times. A copy of the plan must be kept at a prominent location at the storage facility and at the nearest local office from which the storage facility is administered, and must be made available for employee use and for inspection by the department. The operator of the storage facility shall provide a current copy of the plan to the local fire and police departments. The plan must include, but is not limited to:

A. the identity and telephone numbers of the persons who are to be contacted in the event of a release;

B. for every bulk pesticide stored at the facility, a complete copy of the storage container label required under part 1505.2060, subpart 9, and Minnesota Statutes, section 18B.26;

C. a complete copy of the material safety data sheet for every bulk pesticide stored at the facility;

D. the procedures and equipment to be used in

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controlling and recovering or otherwise responding to a release; and

E. an identification, by location, of every bulk pesticide storage container located at the facility, and the type of bulk pesticide stored in each storage container.

The plan need not include the specific location of each storage container of mini-bulk pesticide, if the plan includes the general location within the facility at which storage containers of mini-bulk pesticide are held.

Subp. 2. **Equipment and supplies.** Bulk pesticide storage facilities must have on the premises equipment needed to mitigate and recover pesticide releases. The equipment must include and is not limited to pumps, recovery containers, personal protective equipment, absorbent materials, and other materials used to control and recover pesticide releases. A checklist of release response equipment and its location must be posted with the release response plan.

Subp. 3. **Training.** The owner or manager of the storage facility shall conduct release response training for all new and existing employees of the facility annually before the beginning of the pesticide use season. New employees must receive training within 30 days of employment. The owner or manager and employees are responsible for following the firm's release response procedures pursuant to the release response plan to minimize contamination of the environment.

1505.2110 INSPECTION AND MAINTENANCE.

Subpart 1. **Records.** The operator of a bulk pesticide storage facility shall inspect and maintain storage containers, appurtenances, loading areas, and secondary containment areas to minimize the risk of a pesticide release. A written record of all inspections and maintenance must be made on the day of the inspection or maintenance and kept at the storage site or at the nearest local office from which the storage site is administered. A record of all pesticide releases onto the loading area or into the secondary containment area including

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date, time, type of pesticide, volume, cause, actions to contain, and management of the release must be kept for at least five years.

Subp. 2. **Schedule.** A bulk pesticide container and its appurtenances must be inspected for leakage at least weekly during the use season. A secondary containment area must be inspected for condition and leakage of the base, seams, and walls at least monthly while bulk pesticide is in storage. Loading area pads must be inspected for leakage at least monthly during the use season.

Inspection records must contain the name of the person making the inspection, the date of each inspection, conditions noted, and maintenance performed.

Maintenance of the bulk pesticide storage facility must be performed as necessary in order to ensure that the integrity of the bulk pesticide containers, secondary containment areas, and loading areas is maintained.

1505.2120 RECORD KEEPING.

The following records must be prepared and kept on file at the bulk pesticide storage facility while bulk pesticides are being stored in a storage container:

A. the beginning and end amounts in each fixed storage container calculated and recorded at the time of each filling;

B. the amount of bulk pesticide delivered, sold, and used; and

C. the names of the persons preparing the information in items A and B and the dates the information was prepared.

The records must be available and must be submitted to the commissioner within 24 hours of a request. Weighing, metering, or direct measurement are acceptable methods for calculating storage amounts.

1505.2130 UNDERGROUND BULK PESTICIDE STORAGE.

Subpart 1. **New underground bulk pesticide storage prohibited.** After July 1, 1989, no new underground bulk

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pesticide storage is allowed. This prohibition does not apply to catch basins, containment areas, or sediment traps, used for the temporary collection of pesticides from transfer and loading areas under part 1505.2070, or to underground storage, dip, or other tanks used to contain pesticides used in the wood preservatives industry.

Subp. 2. **Existing and exempted underground bulk pesticide storage.** Underground bulk pesticide storage tanks in use as of July 1, 1989, or those tanks exempted from subpart 1 must conform with all applicable statutes and rules enforced by the Minnesota Pollution Control Agency, and must perform and provide to the commissioner upon request a leak certification test for each underground bulk pesticide storage tank.

1505.2140 ABANDONED CONTAINERS.

Subpart 1. **Abandonment.** Storage containers and other containers used at a storage facility to hold bulk pesticide or pesticide rinsate are considered abandoned containers under this part if they have been out of service for more than six months because of a weakness or leak, or have been out of service for any reason for more than one year.

Subp. 2. **Underground containers.** Abandoned underground tanks in place at previously existing facilities must be thoroughly cleaned and removed from the ground.

Subp. 3. **Aboveground containers.** Abandoned aboveground containers must be thoroughly cleaned. All hatches on the containers must be removed and all valves or connections must be removed.

1505.2150 EXEMPTIONS.

Subpart 1. **Mobile containers.** The secondary containment requirements of part 1505.2080 do not apply to rail cars, nurse tanks, other mobile containers, or mini-bulk containers which are located at the bulk pesticide storage facility for less than ten consecutive days incidental to loading <u>fixed</u> bulk pesticide containers.

Subp. 2. **Alternate technology.** The commissioner ~~may~~ <u>shall</u>

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exempt any person from a requirement under this part if compliance is not technically feasible, but only if the commissioner finds that the alternative measures provide substantially similar protection to the ground and surface water of the state. A person requesting an exemption shall submit to the commissioner in writing a request for an exemption detailing the alternative measures proposed. The commissioner has 45 days to analyze the facts presented and grant the exemption or advise the person of an unsatisfactory review and detail all changes necessary to achieve compliance.

~~EFFECTIVE DATE.--Parts 1505.2010 to 1505.2150 are effective July 1, 1989.~~

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 0 1989
Secretary of State

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APPROVED AS TO FORM AND LEGALITY

June 20 19 89

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Jacquelyn E. Albright
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 20 1989

Joan Anderson Growe
Secretary of State

10:25 AM JH

Department of Agriculture

Adopted Permanent Rules Relating to Bulk Pesticide Storage

Rules as Adopted

1505.2010 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 1505.2010 to 1505.2150, the words and terms defined in this part have the meanings given them.

Subp. 2. **Appurtenances.** "Appurtenances" means valves, pumps, fittings, pipes, hoses, and metering devices that are connected to a bulk pesticide container or used for transferring liquid bulk pesticide between containers.

Subp. 3. **Bulk pesticide.** "Bulk pesticide" means a pesticide that is held in an individual container with a pesticide content of 56 U.S. gallons or more, or 100 pounds or more net dry weight, including mini-bulk pesticide unless otherwise specified. Only technical grade, formulated grade, and other similar grades of ~~undiluted~~ bulk pesticide are included in this definition.

Subp. 4. **Bulk pesticide storage facility.** "Bulk pesticide storage facility" means a site at which a bulk pesticide is stored~~,-distributed,-or-repackaged~~ by a person who distributes or repackages the bulk pesticide.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of agriculture or the commissioner's authorized agent.

Subp. 6. **Containment area.** "Containment area" means a facility, device, or system or a combination of these designed to prevent the escape or movement of a pesticide from the place it is stored or kept under conditions that might otherwise result in ~~contamination-of~~ unreasonable adverse effects on the environment.

Subp. 7. **Custom mix.** "Custom mix" means a mixture of registered pesticide or pesticide-fertilizer mixes prepared by a

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dealer in response to a specific request of an end user of those products.

Subp. 8. **Disposal.** "Disposal" means the release, deposit, injection, dumping, spilling, leaking, or placing of pesticide into or on land or water so that the pesticide may enter the environment or be emitted into the air or released into any surface water or groundwater. This definition, however, does not include pesticide use allowable under Minnesota Statutes, chapter 18B or rules adopted under Minnesota Statutes, chapter 18B.

Subp. 9. **Dry pesticide.** "Dry pesticide" means pesticide that is in solid form before application or mixing for application, including formulations such as dusts, wettable powders, dry flowable powders, and granules.

Subp. 10. **Groundwater.** "Groundwater" means the water in the zone of saturation in which all of the pore spaces of the subsurface material are filled with water. The water that supplies springs and wells is groundwater.

Subp. 11. **Inorganic soil.** "Inorganic soil" means a soil that is a silty clay loam or finer with less than six percent organic matter. This definition pertains to the specific type of soil used to construct walls and liners of containment areas.

Subp. 12. **Liquid pesticide.** "Liquid pesticide" means pesticide in liquid form, including solutions, emulsions, suspensions, and slurries.

Subp. 13. **Mini-bulk pesticide.** "Mini-bulk pesticide" means an amount of liquid pesticide greater than 56 U.S. gallons (211 liters) but not greater than 499 U.S. gallons (1,892 liters), or an amount of dry pesticide greater than 100 pounds (45 kilograms) but not greater than 499 pounds (225 kilograms), that is held in a single container designed for ready handling and transport.

Subp. 14. **New bulk pesticide storage facility.** "New bulk pesticide storage facility" means a bulk pesticide storage facility established after July 1, 1989, at a site that was not previously used as a bulk pesticide storage facility. A

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facility is established, for purposes of this subpart, on the date it is first placed in use.

Subp. 15. **Previously established bulk pesticide storage facility.** "Previously established bulk pesticide storage facility" means a bulk pesticide storage facility established before July 1, 1989. A facility is established, for purposes of this subpart, on the date it is first placed in use.

Subp. 16. **Release.** "Release" means a pesticide release incident as defined in Minnesota Statutes, section 18B.01, subdivision 12, including a pesticide released into a secondary containment or loading area.

Subp. 17. **Release response plan.** "Release response plan" means a plan describing procedures employed for the notification of appropriate state agencies, stopping a release, recovering releases, and cleaning up the release area.

Subp. 18. **Repackaging.** "Repackaging" means a registrant's or manufacturer's authorized ~~transferring~~ transfer and subsequent labeling of a registered pesticide from a bulk pesticide container to another pesticide container 56 U.S. gallons or more in an unaltered state in preparation for sale delivery to another dealer or user.

Subp. 19. **Revised bulk pesticide storage permit application.** "Revised bulk pesticide storage permit application" means an application for a bulk pesticide storage permit filed with the commissioner detailing substantial alterations that are to be made to a facility.

Subp. 20. **Storage container.** "Storage container" means a container used for the fixed storage of bulk pesticide, including a rail car, nurse tank, mini-bulk tank, or other mobile container for more than ten consecutive days. This definition does not include a container used solely for emergency storage of leaking pesticide containers that are less than 56 U.S. gallons or pesticide rinsate holding tanks.

Subp. 21. **Substantially altering.** "Substantially altering" includes, but is not limited to, the modification of a bulk pesticide storage facility through the changing, addition, or

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removal of bulk pesticide storage containers, appurtenances, load areas, secondary containment, or any modifications that may result in reducing the effectiveness of safeguards. This definition does not include the routine maintenance of bulk pesticide storage containers, load areas, secondary containment, or appurtenances.

Subp. 22. **Surface water.** "Surface water" means water that rests or flows on the surface of the ground.

~~Subp. 23. Tank mix. "Tank mix" means a mixture of registered pesticides prepared according to label directions for site application.~~

1505.2020 NEW FACILITIES.

Subpart 1. **Permit required.** No person may construct or operate a new bulk pesticide storage facility without first obtaining a permit under parts 1505.2040 and 1505.2050.

Subp. 2. **Information required before construction.** After being granted a permit by the commissioner, and before beginning construction of the bulk pesticide storage facility, an owner or manager shall submit to the commissioner:

A. the name, address, and telephone number of the persons who will construct, install, or modify the facility; and

B. copies of any permits or letters of authorization required by any local unit of government for the construction, installation, or modification of the facility.

Subp. 3. **Compliance within 90 days.** Within 90 days after being granted a permit by the commissioner, a new bulk pesticide storage facility owner or manager shall comply with parts 1505.2010 to 1505.2150.

Subp. 4. **Time extension.** A time extension of up to 180 days for delays due to construction or equipment or material procurement may be granted by the commissioner if requested in writing by the facility owner or manager. The commissioner shall set forth in writing the reasons for granting or denying a requested time extension within 15 days of the request.

1505.2030 PREVIOUSLY ESTABLISHED FACILITIES.

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A person who operates a bulk pesticide storage facility established before July 1, 1989, must comply with items A to C.

A. The person must, by July 1, 1990, file with the commissioner an application for a bulk pesticide storage permit under parts 1505.2040 and 1505.2050 and comply with parts 1505.2010, 1505.2030, 1505.2060, and 1505.2090 to 1505.2150.

B. The person must, by July 1, 1991, comply with parts 1505.2070 and 1505.2080. A time extension of up to one year may be granted by the commissioner for delays due to construction or equipment or material procurement, if requested in writing by the facility owner or manager. The commissioner shall set forth, in writing, the reasons for granting or denying a requested time extension within 15 days of the request.

C. After being granted a bulk pesticide storage permit by the commissioner, and before beginning any construction or ~~modification of~~ substantially altering an existing bulk pesticide storage facility, the person must submit to the commissioner:

(1) the name, address, and telephone number of the persons who will construct, install, or modify the facility; and

(2) copies of any permits or letters of authorization required by any local or state unit of government for the construction, installation, or modification of the facility.

1505.2040 BULK PESTICIDE STORAGE PERMIT.

Subpart 1. **Commissioner's review of application.** The commissioner shall review an initial application as submitted under part 1505.2050 within 30 days of receipt and either issue a bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance. Upon receipt of the additional requested compliance information from a person, the commissioner has 15 days in which to issue a bulk pesticide storage permit or advise the applicant, in writing, of an

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unsatisfactory review and detail all changes necessary in order to achieve compliance.

Subp. 2. **Substantial alterations.** No person may substantially alter any bulk pesticide storage facility without first being granted a revised bulk pesticide storage permit from the commissioner. The person must file a revised bulk pesticide storage permit application detailing the proposed alterations with the commissioner. The commissioner shall review an application for a revised bulk pesticide storage permit within 30 days of receipt and either issue a revised bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance.

Subp. 3. **Denial; revocation; suspension~~; modification~~.** ~~An initial or revised~~ After written notice and a hearing, a bulk pesticide storage permit may be denied, revoked, or suspended~~, or modified, in whole or in part,~~ for one or more of the following reasons:

A. ~~violation of a term or condition of the permit~~ failure to fully comply with parts 1505.2010 to 1505.2150;

B. obtaining the permit by misrepresentation or by failure to disclose all relevant facts; or

C. discovery of unreasonable adverse effects to the environment caused by the activities of the permit holder in the conduct of actions undertaken under the permit.

Subp. 4. **~~Notice.~~** ~~If a permit is denied, revoked, or suspended, the commissioner shall send the applicant a written notice of denial, revocation, or suspension. Details that formed the basis of the decision must be included. The owner or manager must be given 30 days from the date of the notice to request an administrative meeting before the commissioner to present justification for an appeal of the decision.~~

~~Following the date and time of the administrative meeting, the commissioner has 15 days in which to analyze the facts presented and grant a permit or advise the owner or manager, in~~

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~~writing,-of-the-commissioner's-determination-to-uphold-the original-decision-not-to-grant-a-permit.~~

~~Subp.-5.~~ **Permit transfer.** A bulk pesticide storage permit may be transferred from one person to another if an application for a permit detailing any changes and including the required fee is filed with the commissioner prior to the transfer.

Subp. 6 5. **Permit exceptions.** Persons who store bulk pesticides in a storage container of a rated capacity of less than 500 U.S. gallons or who store bulk pesticides in individual storage containers at a site where the total storage amount of bulk pesticide is less than 500 U.S. gallons, are not required to obtain a bulk pesticide storage permit, but are required to comply with all other applicable provisions of this part.

1505.2050 APPLICATION AND PERMIT FEE.

Subpart 1. **Information required.** Application for a bulk pesticide storage permit must be on forms provided by the commissioner. The application must contain at least, but is not limited to, the following information:

A. a differentiation as to whether the bulk pesticide storage facility should be regarded as new or previously established;

B. the name, address, and telephone number of the person making application;

C. the name, address, and telephone number of the persons that will own and operate the facility;

D. the location of the facility, including its legal description;

E. photographs or a diagram of the current or proposed facility, including all buildings, tanks, fertilizer storage areas, mixing, loading, and rinsate recycling areas, vehicle washing areas, and bulk pesticide storage areas;

F. a geologic report of the facility property and the surrounding area, including maps, photographs, or diagrams of:

(1) the land use (crop land, residential, or business) within one-quarter mile radius of the facility;

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(2) the distance and direction to surface water, drainage ditches, and storm sewers within one-quarter mile radius of the facility;

(3) the distance and direction to any source of a public water supply serving the facility;

(4) the year installed, depth, direction, and distance to any well on or within 150 feet of all existing and proposed loading and secondary containment areas; and

(5) the type of soils to the three foot depth beneath the surface fill such as, but not limited to, gravel, rock, or other soils of all existing and proposed loading and secondary containment areas.

G. the number, age or condition, dimension, capacity, and material description of the liquid bulk pesticide storage containers and a list of pesticides to be stored in them, with United States Environmental Protection Agency registration numbers;

H. a certification that to the best of the owner's or manager's knowledge the loading and containment areas will be built in accordance with construction and plumbing plans submitted and will comply with the design, construction, and containment requirements of parts 1505.2070 and 1505.2080;

I. at least one scale drawing of the loading and ~~bulk pesticide~~ secondary containment areas to include a construction material specification or design guide;

J. a plumbing diagram showing the location, type, and specifications of the appurtenances used in storing or transferring bulk pesticides;

K. a copy of the release response plan as described in part 1505.2100; and

L. the person's federal Environmental Protection Agency establishment number, if required.

Subp. 2. **Fee.** The initial application for a bulk pesticide storage permit must be accompanied by the fee required in Minnesota Statutes, section 18B.14 for each bulk pesticide storage facility. No fee is required to apply for a revised

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bulk pesticide storage permit.

1505.2060 GENERAL REQUIREMENTS.

Subpart 1. **Establishment number.** A facility that repackages ~~or transfers~~ bulk pesticides ~~or custom mixes any quantity of pesticides for application by another person~~ must obtain a pesticide producer establishment number from the United States Environmental Protection Agency.

Subp. 2. **Exception.** A person who ~~tank mixes or~~ custom mixes pesticides for application by the person's firm only, is not required to secure a pesticide producer establishment number from the United States Environmental Protection Agency.

Subp. 3. **Storage containers and appurtenances.**

A. Storage containers and appurtenances must be constructed, installed, and maintained to prevent the release of liquid bulk pesticide. Storage containers and appurtenances must be structurally sound, resistant to changes in temperature extremes, and constructed of materials that are adequately thick to be structurally sound and that are resistant to corrosion, puncture, or cracking. Materials used in the construction or repair of storage containers and appurtenances may not be of a type that reacts chemically or electrolytically with stored bulk pesticide in a way that may weaken the storage container or appurtenance, create a risk of release, or adulterate the pesticide. Metals used for valves, fittings, and repairs on metal containers must be compatible with the metals used in the construction of the storage container, so that the combination of metals does not cause or increase corrosion that may weaken the storage container or its appurtenances, or create a risk of release. Storage containers and appurtenances must be designed to handle all operating stresses taking into account the foreseeable course of operations. Underground appurtenances are prohibited as part of a system designed and constructed for transferring bulk pesticides unless approved by the commissioner.

B. Storage containers may only be constructed of stainless steel, fiberglass, polyethylene, ferrous metal,

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cross-linked polyolefin, or other commissioner-approved materials that are suitable for the stored bulk pesticide. Polyvinyl chloride tanks, fittings, and appurtenances are prohibited.

Ferrous metal tanks must have a protective lining that inhibits corrosion and does not react chemically with the stored pesticide.

Unlined ferrous metal tanks may be used only with proof of compatibility from the pesticide manufacturer.

C. Storage container connections, except safety relief connections, must be equipped with a shutoff valve located on the storage container or at a distance from the storage container dictated by standard engineering practice and in compliance with this part. Wetted parts inside shutoff valves and connections from the storage container to the shutoff valve must be made of stainless steel.

D. Storage containers must be equipped with a liquid level gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level gauging device is not required if the level of the liquid in a storage container can be readily and reliably measured by other means. Liquid level gauging devices must be secured, in a safe manner, to protect against breakage or vandalism that may result in release. External sight gauges are permitted only with approval from the commissioner.

E. Meters and scales used for the sale of bulk pesticide must be compatible with the pesticide being metered or weighed.

F. Pipes and fittings must be adequately supported to prevent sagging and possible breakage because of gravity and other forces that may be encountered in the ordinary course of operations.

G. Valves must be secured and of a locking type to protect against vandalism or accidental valve openings that may result in a release.

H. Storage containers must be equipped with a vent or

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other device designed to relieve excess pressure, prevent losses by evaporation, and exclude precipitation.

Subp. 4. **Anchoring of storage containers.** Storage containers must be anchored to prevent flotation or instability that might occur as a result of liquid accumulations within a secondary containment area built under part 1505.2080. Anchoring may be accomplished by guy wires, or other commissioner-approved anchors.

Subp. 5. **Security.** Storage containers must be secured against access by unauthorized persons and provide protection against access by wildlife. Appurtenances must be fenced or otherwise secured to provide reasonable protection against vandalism or unauthorized access that may result in a release. Valves on storage containers must be locked or otherwise secured except when persons responsible for facility security are present at the facility. Valves on rail cars, nurse tanks, and other mobile pesticide containers parked overnight at a storage facility must be locked or secured except when persons responsible for facility security are present at the facility.

Subp. 6. **Filling.** Storage containers must not be filled to more than 95 percent of capacity unless the storage container construction or location provides constant temperature control of the container contents.

Repackaging and delivery of bulk pesticides must be attended and supervised at all times by the owner, manager, or an employee of the facility.

Subp. 7. **Protection against damage by moving vehicles.** Storage containers and appurtenances, including pipes, must be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles and objects.

Subp. 8. **Storage of dry bulk pesticide.** Except during loading, stored dry bulk pesticide must be covered by a roof or tarpaulin that will exclude precipitation from the pesticide. Storage containers must be placed on a concrete or other impervious surfaced floor on pallets or on a raised platform to prevent the accumulation of water in or under the pesticide.

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Storage facilities must be secured against entry by unauthorized persons or wildlife.

Subp. 9. **Labeling of storage containers.** Every storage container must bear a current pesticide product label as required by the United States Environmental Protection Agency.

For outside storage, the label required under this part must be placed on the storage container so as to be visible from outside of the secondary containment area. The label must be legible at all times. The type size used on the label must be that specified in Code of Federal Regulations, title 40, part 162.

1505.2070 LOADING AREAS.

Subpart 1. **Containment for liquid bulk pesticide loading sites.** An area used for the loading of liquid bulk pesticide into fixed storage containers, mobile containers, or pesticide application equipment at a bulk pesticide storage facility must be provided with a means of containment that is elevated above the surrounding area, constructed of reinforced concrete or other commissioner-approved material, and designed and constructed for the intended purpose. The means of containment must not contain a drain and must comply with either item A or B.

A. A curbed loading area without a sediment trap must comply with subitems (1) and (2).

(1) The perimeter of the area must be curbed a minimum of three inches in height to prevent run-off and the curbed surface must form a liquid-tight containment area.

(2) The curbed surface and containment area must contain a minimum of 1,000 U.S. gallons.

B. A sloped surface that contains a sediment trap must comply with subitems (1) to (3).

(1) The perimeter of the area must be curbed three inches in height to prevent runoff and must form a liquid-tight containment area.

(2) The area must be sloped to a sediment trap used only for the temporary collection of spilled or released

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pesticides. The sediment trap may not be greater than two feet deep or hold more than ~~150~~ 109 U.S. gallons.

(3) The area must contain a minimum of 1,000 U.S. gallons.

Subp. 2. **Containment for pesticide-impregnated fertilizer loading sites.** An area used for the loading of pesticide impregnated fertilizer into fixed storage containers, mobile containers, or pesticide application equipment at a bulk pesticide storage facility must be provided with the means of containment in items A to C.

A. The containment area for pesticide-impregnated fertilizer loading must be elevated above the surrounding area, be constructed of reinforced concrete or other commissioner-approved material, and be designed and constructed for the intended purpose. A scale with a liquid-tight containment area is acceptable.

B. The containment area must be of adequate size to fully hold the largest fixed storage container, mobile containers, or commercial pesticide application equipment that will be loaded on the area.

C. The containment area must be protected or managed in a manner that will prevent pesticide-contaminated runoff from leaving the area.

Subp. 3. **Load area exceptions and underground plumbing.**

A. If load areas for fixed storage containers, mobile containers, or pesticide application equipment are physically separated from one another, each separate load area must be of a design, size, and construction to contain a minimum of 500 U.S. gallons.

B. If no bulk pesticide storage container at the storage facility has a rated capacity of more than 500 U.S. gallons, the load area must be of a design, size, and construction to contain a minimum of 500 U.S. gallons.

If no bulk pesticide storage container at the storage facility has a rated capacity of more than 250 U.S. gallons, the load area must be of a design, size, and construction to contain

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a minimum of 250 U.S. gallons.

C. A load area is not required for areas used for loading anhydrous ammonia tanks with pesticides used to control the nitrification process, if:

(1) the bulk pesticide storage container, pump, and associated connections are located within a secondary containment area;

(2) all pesticide delivery hoses are placed in the secondary containment area between uses;

(3) no aluminum components are used; and

(4) all pesticide releases are immediately abated and recovered.

D. Any underground plumbing used for transferring rinsates or sediment from a sediment trap to rinsate tanks must be designed, constructed, installed, and maintained to prevent the release of pesticides to the environment and the backflow of pesticide rinsates to the sediment trap.

1505.2080 SECONDARY CONTAINMENT AREAS.

Subpart 1. **General requirements.** Liquid bulk pesticide storage containers must be confined to a secondary containment area that is adequate, in the event of a release, to prevent the movement of liquid pesticides to surface or ground water. The loading area as specified in part 1505.2070 must not be located, designed, or constructed in such a way so as to compromise the required secondary containment of subpart 2. The secondary containment provisions also apply to liquid bulk pesticides stored in a location covered by a roof. A secondary containment area must consist of:

A. a wall and liner as provided under subparts 4 and 5;

B. a prefabricated secondary containment basin as provided under subpart 6; or

C. other safeguards approved by the commissioner.

Subp. 2. **Capacity.** The capacity of a secondary containment area for a bulk pesticide storage facility must be

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at least equal to the sum of all of the following:

A. the greatest volume of liquid bulk pesticide or liquid bulk fertilizer that could be released from the largest storage container within the secondary containment area;

B. 25 percent of the capacity of the largest liquid bulk pesticide or liquid bulk fertilizer storage container located within the secondary containment area for an outdoor storage container, or ten percent of the capacity of the largest liquid bulk pesticide container or liquid bulk fertilizer if stored in a location covered by a roof; and

C. the total volume of released liquid which would be displaced by the portions of all other storage containers within the secondary containment area to the height of the containment wall and all other fixtures and materials located within the secondary containment area (including pesticide or fertilizer diluent, empty pesticide containers, recovered pesticide or fertilizer releases, and liquid pesticide or fertilizer metering equipment).

Subp. 3. **Storage with other commodities or equipment.**

A. Liquid bulk pesticide, liquid bulk fertilizer, pesticide or fertilizer diluent, empty pesticide containers, recovered pesticide or fertilizer releases, or liquid pesticide or fertilizer metering equipment may be stored within the bulk pesticide secondary containment area.

B. The total containment capacity calculated in subpart 2 may not be compromised by storing liquid bulk pesticide or liquid bulk fertilizer, pesticide or fertilizer diluent, pesticide containers, pesticide or fertilizer releases, pesticide or fertilizer metering equipment, or other equipment or products in amounts greater than the amounts which were originally calculated as necessary displacement in subpart 2.

C. A liquid bulk pesticide storage containment area may be located within the boundary of a liquid bulk fertilizer containment area if:

(1) the containment areas are separated by a wall described in subpart 4;

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(2) the bulk pesticide is contained in an anchored prefabricated containment unit as described in subpart 6; or

(3) each bulk pesticide storage container and its appurtenances is effectively protected from corrosion and flotation by liquid bulk fertilizers.

Subp. 4. **Walls.** The walls of a secondary containment area must be made of ferrous metal, inorganic soil, stainless steel, reinforced concrete, or solid reinforced masonry and must be designed to withstand a ~~fully~~ full hydrostatic head of any released liquid. Cracks and seams must be sealed as needed to prevent leakage. Walls constructed of inorganic soil must be lined as provided under subpart 5, item D, be protected from erosion, and have a horizontal to vertical slope of at least three to one, unless a steeper slope is consistent with good engineering practice. Walls may not exceed six feet in height above the interior grade.

A. All bulk pesticide tanks must be placed a minimum of one foot from a secondary containment area wall.

B. Tanks over ten feet high stored outdoors must be located at least three feet from the secondary containment area wall.

C. The walls of a secondary containment area may not contain a drain or other similar opening.

D. Masonry walls must be reinforced, capped with concrete, and parged on the interior.

E. The joint between a masonry wall and any floor or subsurface that it is constructed on must be constructed, sealed, and protected in such a way that it prevents any pesticide leakage from leaving the containment area.

Subp. 5. **Lining.**

A. The base of a secondary containment area and any inorganic soil walls of a secondary containment area must be lined with reinforced concrete, a synthetic liner, an inorganic soil liner, ferrous metal, or stainless steel designed to limit the permeability of the base and walls. Liners must meet the

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requirements of this subpart. The base of a secondary containment area may not contain a drain or other similar opening used to release pesticides or precipitation. Dissimilar materials may not be used together for a wall and liner combination unless approved by the commissioner.

B. Concrete liners must be designed according to good engineering practices to withstand any foreseeable loading conditions, including a full hydrostatic head of released liquid. Cracks and seams must be sealed to prevent leakage.

C. Synthetic liners must have a minimum thickness of 30 mils (0.8 millimeters), be chemically compatible with the materials being stored within the secondary containment area, be photo-resistant, and be puncture resistant. Confirmation of chemical compatibility and an estimate of liner life must be retained by the firm for inspection upon request by the Department of Agriculture. The synthetic liner must be protected by a 12-inch (30-centimeter) layer of inorganic soil or half-inch diameter rounded stone above the liner and a six-inch (15-centimeter) layer of inorganic soil below the liner. Soil layers must be free of large rocks, angular stones, sticks, or other materials that may puncture the liner. Synthetic liners must be installed according to the manufacturer's recommendations and, if necessary, under the supervision of a qualified representative of the manufacturer, and all field-constructed seams must be tested, and repaired if necessary, in accordance with the manufacturer's recommendations. Pesticide releases onto the inorganic soil portion of a synthetic liner containment area must be managed by the removal of contaminated soils. Disposition of contaminated soils is subject to approval from the Department of Agriculture. Integrity of the inorganic soil portion of the synthetic liner containment area must be restored under all circumstances.

D. Soil liners must comply with subitems (1) to (5).

(1) A liner may be constructed of inorganic soil treated with bentonite clay if the liner meets the requirements

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of this subitem. The liner must be designed and constructed according to good engineering practices, extend a minimum of six feet beyond the wall, and achieve a coefficient of permeability not to exceed 1 X 10-6 cm/sec, with a thickness of not less than six inches (15 centimeters). The liner must be covered by an inorganic soil layer not less than six inches (15 centimeters) thick. Liners may not be constructed of frost-susceptible soils, which include silts and silty sand.

(2) Bentonite-treated liners must consist of a uniform mixture of inorganic soil and bentonite. The inorganic soil used in the mixture must have a plasticity index of at least 12. At least 30 percent by weight of the inorganic soil must pass a No. 200 sieve, and less than five percent of the inorganic soil must be retained on a No. 4 sieve. Ninety percent of the bentonite by weight must pass a No. 80 sieve, and the inorganic soil-bentonite mixture must contain at least five percent bentonite by weight.

(3) An inorganic soil may not be used as part of a soil liner if less than 50 percent by weight of the soil passes a No. 200 sieve, or if more than five percent by weight of the inorganic soil is retained on a No. 4 sieve.

(4) Soil liners must be maintained to prevent cracking or other conditions that may compromise the integrity of containment. Pesticide releases into an inorganic soil-bentonite liner containment area must be managed by removal of contaminated soils within 48 hours. Disposition of contaminated soils is subject to approval from the Department of Agriculture. Integrity of the inorganic soil walls and inorganic soil-bentonite liner after a spill must be restored under all circumstances.

(5) An owner or manager shall submit to the commissioner, upon request, certification by a registered engineer practicing in the geotechnical field to verify that the coefficient <u>of</u> permeability of the liner does not exceed 1 X 10-6 cm/sec or that the inorganic soil lined containment area will contain released liquid to the height of the containment

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wall for at least 72 hours.

Subp. 6. **Prefabricated secondary containment basin.** A prefabricated secondary containment basin must be composed of a rigid prefabricated basin having both a base and walls constructed of steel or synthetic materials which are resistant to corrosion, puncture, or cracking. Materials used for the prefabricated basin must be chemically compatible with the products being stored in the bulk pesticide tank. A written confirmation of compatibility from the basin manufacturer must be kept on file at the storage facility or at the nearest local office from which the storage facility is administered. The prefabricated facility must be designed and installed to contain the amounts listed in subpart 2, including the tank load and a full hydrostatic head of any released liquid. Multiple basins connected to provide the capacity required under subpart 2, must be connected in a way that assures an unrestricted transfer of released liquid between basins. A prefabricated containment basin may not be located where fire could damage the containment vessel and compromise the intended containment.

1505.2090 RECOVERY, USE, OR DISPOSAL OF PESTICIDE RELEASES.

Subpart 1. **Loading areas and secondary containment areas.** All pesticide releases occurring in an area confined to loading areas described in part 1505.2070 and secondary containment areas described in part 1505.2080 must be recovered as soon as possible and must either be used, stored, or disposed of. Use and storage must be according to pesticide label instructions. Disposal must be according to local, state, and federal regulations. The Department of Agriculture must be immediately notified of all releases.

Subp. 2. **Precipitation accumulations.**

A. Precipitation must not be permitted to accumulate in a secondary containment area or loading area to the point where the accumulation may tend to:

(1) compromise the ability of the secondary containment area or loading areas to contain the amounts

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indicated in part 1505.2070 or 1505.2080;

(2) increase the corrosion of storage containers or appurtenances; or

(3) impair the stability of storage containers.

B. Precipitation, if contaminated with pesticide residues, must be:

(1) removed and used at labeled rates on sites consistent with labeled end uses for the intended target crop;

(2) removed and stored for later use according to subitem (1);

(3) disposed of according to local, state, and federal regulations; or

(4) used at a rate of no more than five percent of the total tank mix for delivery rates of 40 gallons per acre or less and ten percent for delivery rates of more than 40 gallons per acre. Records must be kept indicating amounts, crop to which applied, and dates.

C. Uncontaminated precipitation may be released to a vegetated area allowing for even distribution over the entire area or used as water for mixing.

Subp. 3. **Use of pesticide rinsate, pesticide containing sludge, or pesticide containing washwater accumulations.**

A. Sludge, rinsates, or washwater generated in a pesticide loading or secondary containment area as a result of loading, washing, rinsing, clean-up, or similar practices must be:

(1) removed and used at labeled rates consistent with labeled end uses for the intended target crop;

(2) removed and stored for later use according to subitem (1); or

(3) disposed of according to local, state, and federal regulations.

B. Sludge must be removed from a sediment trap before the trap is half full.

C. Rinsates and sludges may be used at a rate of no more than five percent of any total tank mix for delivery rates

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of 40 gallons per acre or less and ten percent for delivery rates of more than 40 gallons per acre. Washwater not contaminated with pesticides may be used undiluted.

D. Records indicating the amount removed (pounds or gallons), the location and acreage treated, and crops to which applied must be kept and made available for review during inspections by the commissioner. Records must be retained for a minimum of five years.

1505.2100 PREPARATION FOR CONTROL AND RECOVERY OF PESTICIDE RELEASES.

Subpart 1. **Release response plan.** The operator of a bulk pesticide storage facility shall prepare a written release response plan for the storage facility. The operator shall keep the plan current at all times. A copy of the plan must be kept at a prominent location at the storage facility and at the nearest local office from which the storage facility is administered, and must be made available for employee use and for inspection by the department. The operator of the storage facility shall provide a current copy of the plan to the local fire and police departments. The plan must include, but is not limited to:

A. the identity and telephone numbers of the persons who are to be contacted in the event of a release;

B. for every bulk pesticide stored at the facility, a complete copy of the storage container label required under part 1505.2060, subpart 9, and Minnesota Statutes, section 18B.26;

C. a complete copy of the material safety data sheet for every bulk pesticide stored at the facility;

D. the procedures and equipment to be used in controlling and recovering or otherwise responding to a release; and

E. an identification, by location, of every bulk pesticide storage container located at the facility, and the type of bulk pesticide stored in each storage container.

The plan need not include the specific location of each

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storage container of mini-bulk pesticide, if the plan includes the general location within the facility at which storage containers of mini-bulk pesticide are held.

Subp. 2. **Equipment and supplies.** Bulk pesticide storage facilities must have on the premises equipment needed to mitigate and recover pesticide releases. The equipment must include and is not limited to pumps, recovery containers, personal protective equipment, absorbent materials, and other materials used to control and recover pesticide releases. A checklist of release response equipment and its location must be posted with the release response plan.

Subp. 3. **Training.** The owner or manager of the storage facility shall conduct release response training for all new and existing employees of the facility annually before the beginning of the pesticide use season. New employees must receive training within 30 days of employment. The owner or manager and employees are responsible for following the firm's release response procedures pursuant to the release response plan to minimize contamination of the environment.

1505.2110 INSPECTION AND MAINTENANCE.

Subpart 1. **Records.** The operator of a bulk pesticide storage facility shall inspect and maintain storage containers, appurtenances, loading areas, and secondary containment areas to minimize the risk of a pesticide release. A written record of all inspections and maintenance must be made on the day of the inspection or maintenance and kept at the storage site or at the nearest local office from which the storage site is administered. A record of all pesticide releases onto the loading area or into the secondary containment area including date, time, type of pesticide, volume, cause, actions to contain, and management of the release must be kept for at least five years.

Subp. 2. **Schedule.** A bulk pesticide container and its appurtenances must be inspected for leakage at least weekly during the use season. A secondary containment area must be

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inspected for condition and leakage of the base, seams, and walls at least monthly while bulk pesticide is in storage. Loading area pads must be inspected for leakage at least monthly during the use season.

Inspection records must contain the name of the person making the inspection, the date of each inspection, conditions noted, and maintenance performed.

Maintenance of the bulk pesticide storage facility must be performed as necessary in order to ensure that the integrity of the bulk pesticide containers, secondary containment areas, and loading areas is maintained.

1505.2120 RECORD KEEPING.

The following records must be prepared and kept on file at the bulk pesticide storage facility while bulk pesticides are being stored in a storage container:

A. the beginning and end amounts in each fixed storage container calculated and recorded at the time of each filling;

B. the amount of bulk pesticide delivered, sold, and used; and

C. the names of the persons preparing the information in items A and B and the dates the information was prepared.

The records must be available and must be submitted to the commissioner within 24 hours of a request. Weighing, metering, or direct measurement are acceptable methods for calculating storage amounts.

1505.2130 UNDERGROUND BULK PESTICIDE STORAGE.

Subpart 1. **New underground bulk pesticide storage prohibited.** After July 1, 1989, no new underground bulk pesticide storage is allowed. This prohibition does not apply to catch basins, containment areas, or sediment traps, used for the temporary collection of pesticides from transfer and loading areas under part 1505.2070, or to underground storage, dip, or other tanks used to contain pesticides used in the wood preservatives industry.

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Subp. 2. **Existing and exempted underground bulk pesticide storage.** Underground bulk pesticide storage tanks in use as of July 1, 1989, or those tanks exempted from subpart 1 must conform with all applicable statutes and rules enforced by the Minnesota Pollution Control Agency, and must perform and provide to the commissioner upon request a leak certification test for each underground bulk pesticide storage tank.

1505.2140 ABANDONED CONTAINERS.

Subpart 1. **Abandonment.** Storage containers and other containers used at a storage facility to hold bulk pesticide or pesticide rinsate are considered abandoned containers under this part if they have been out of service for more than six months because of a weakness or leak, or have been out of service for any reason for more than one year.

Subp. 2. **Underground containers.** Abandoned underground tanks in place at previously existing facilities must be thoroughly cleaned and removed from the ground.

Subp. 3. **Aboveground containers.** Abandoned aboveground containers must be thoroughly cleaned. All hatches on the containers must be removed and all valves or connections must be removed.

1505.2150 EXEMPTIONS.

Subpart 1. **Mobile containers.** The secondary containment requirements of part 1505.2080 do not apply to rail cars, nurse tanks, other mobile containers, or mini-bulk containers which are located at the bulk pesticide storage facility for less than ten consecutive days incidental to loading <u>fixed</u> bulk pesticide containers.

Subp. 2. **Alternate technology.** The commissioner may exempt any person from a requirement under this part if compliance is not technically feasible, but only if the commissioner finds that the alternative measures provide substantially similar protection to the ground and surface water of the state. A person requesting an exemption shall submit to the commissioner in writing a request for an exemption detailing

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the alternative measures proposed. The commissioner has 45 days to analyze the facts presented and grant the exemption or advise the person of an unsatisfactory review and detail all changes necessary to achieve compliance.

~~EFFECTIVE DATE.--Parts 1505.2010 to 1505.2150 are effective July 1, 1989.~~

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Bulk Pesticide Storage

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1505

The attached rules are approved for filing with the Secretary of State

Craig E. Lindeke
Senior Assistant Revisor

Department of Agriculture
Agronomy Services Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Pesticide Bulk Storage.

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing bulk pesticides. The adoption of these rules is authorized by M.S. sec. 18B.14, subd. 2, which permits the agency to develop a program to regulate bulk pesticides including installation of secondary containment devices, storage site security, safeguards, notification of storage sight locations, criteria for permit approval, a schedule for compliance and other necessary requirements.

The department requests information and opinions concerning the subject matter of these rules. Interested persons or groups may submit data or views on the subject matter of concern orally or in writing. Written statements should be addressed to:

Ms. Carol Milligan
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements will be received during regular business hours over the telephone at (612) 296-6906, and in person at the above address.

All statements of information and opinions shall be accepted until September 8, 1987. Any written material received by the Department shall become part of the rulemaking record to be submitted to the Attorney General or the administrative law judge in the event that the rule is adopted.

7-29, 1987

Rollin M Dennistoun
Dep. Com for
Jim Nichols
Commissioner

Rollin M. Dennistoun
Deputy Commissioner

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Dated: 29 July 1987

Jim Nichols
Commissioner

Department of Agriculture

Agronomy Services Division

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Dated: 29 July 1987

Jim Nichols
Commissioner

Department of Commerce

Notice to Solicit Outside Opinion Regarding Proposed Rules and Amendments to Existing Rules Regarding Interstate Banking Including the Impact of the Rules on Small Business

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules and amend existing rules relating to Interstate Banking. The department is primarily concerned with establishing the five point rating scale for evaluating financial institutions owned by interstate bank holding companies required by *Minnesota Statutes*, section 48.97, subd. 3. Promulgation of these rules is authorized by *Minnesota Statutes*, sections 48.93, 48.97, 48.99 and 45.023.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by *Minnesota Statutes* § 14.115, subdivision 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to:

James Miller, Deputy Commissioner
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-2715

Department of Agriculture

Proposed Permanent Rules Relating to Bulk Pesticide Storage

Rules as Proposed (all new material)

1505.2010 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 1505.2010 to 1505.2150, the words and terms defined in this part have the meanings given them.

Subp. 2. **Appurtenances.** "Appurtenances" means valves, pumps, fittings, pipes, hoses, and metering devices that are connected to a bulk pesticide container or used for transferring liquid bulk pesticide between containers.

Subp. 3. **Bulk pesticide.** "Bulk pesticide" means a pesticide that is held in an individual container with a pesticide content of 56 U.S. gallons or more, or 100 pounds or more net dry weight, including mini-bulk pesticide unless otherwise specified. Only technical grade, formulated grade, and other grades of undiluted bulk pesticide are included in this definition.

Subp. 4. **Bulk pesticide storage facility.** "Bulk pesticide storage facility" means a site at which a bulk pesticide is stored, distributed, or repackaged.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of agriculture or the commissioner's authorized agent.

Subp. 6. **Containment area.** "Containment area" means a facility, device, or system or a combination of these designed to prevent the escape or movement of a pesticide from the place it is stored or kept under conditions that might otherwise result in contamination of the environment.

Subp. 7. **Custom mix.** "Custom mix" means a mixture of registered pesticide or pesticide-fertilizer mixes prepared by a dealer in response to a specific request of an end user of those products.

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Subp. 8. **Disposal.** "Disposal" means the release, deposit, injection, dumping, spilling, leaking, or placing of pesticide into or on land or water so that the pesticide may enter the environment or be emitted into the air or released into any surface water or groundwater. This definition, however, does not include pesticide use allowable under Minnesota Statutes, chapter 18B or rules adopted under Minnesota Statutes, chapter 18B.

Subp. 9. **Dry pesticide.** "Dry pesticide" means pesticide that is in solid form before application or mixing for application, including formulations such as dusts, wettable powders, dry flowable powders, and granules.

Subp. 10. **Groundwater.** "Groundwater" means the water in the zone of saturation in which all of the pore spaces of the subsurface material are filled with water. The water that supplies springs and wells is groundwater.

Subp. 11. **Inorganic soil.** "Inorganic soil" means a soil that is a silty clay loam or finer with less than six percent organic matter. This definition pertains to the specific type of soil used to construct walls and liners of containment areas.

Subp. 12. **Liquid pesticide.** "Liquid pesticide" means pesticide in liquid form, including solutions, emulsions, suspensions, and slurries.

Subp. 13. **Mini-bulk pesticide.** "Mini-bulk pesticide" means an amount of liquid pesticide greater than 56 U.S. gallons (211 liters) but not greater than 499 U.S. gallons (1,892 liters), or an amount of dry pesticide greater than 100 pounds (45 kilograms) but not greater than 499 pounds (225 kilograms), that is held in a single container designed for ready handling and transport.

Subp. 14. **New bulk pesticide storage facility.** "New bulk pesticide storage facility" means a bulk pesticide storage facility established after July 1, 1989, at a site that was not previously used as a bulk pesticide storage facility. A facility is established, for purposes of this subpart, on the date it is first placed in use.

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Subp. 15. **Previously established bulk pesticide storage facility.** "Previously established bulk pesticide storage facility" means a bulk pesticide storage facility established before July 1, 1989. A facility is established, for purposes of this subpart, on the date it is first placed in use.

Subp. 16. **Release.** "Release" means a pesticide release incident as defined in Minnesota Statutes, section 18B.01, subdivision 12, including a pesticide released into a secondary containment or loading area.

Subp. 17. **Release response plan.** "Release response plan" means a plan describing procedures employed for the notification of appropriate state agencies, stopping a release, recovering releases, and cleaning up the release area.

Subp. 18. **Repackaging.** "Repackaging" means a registrant's or manufacturer's authorized transferring of a registered pesticide from a bulk pesticide container to another pesticide container 56 U.S. gallons or more in an unaltered state in preparation for sale delivery to another dealer or user.

Subp. 19. **Revised bulk pesticide storage permit application.** "Revised bulk pesticide storage permit application" means an application for a bulk pesticide storage permit filed with the commissioner detailing substantial alterations that are to be made to a facility.

Subp. 20. **Storage container.** "Storage container" means a container used for the fixed storage of bulk pesticide, including a rail car, nurse tank, mini-bulk tank, or other mobile container for more than ten consecutive days. This definition does not include a container used solely for emergency storage of leaking pesticide containers that are less than 56 U.S. gallons or pesticide rinsate holding tanks.

Subp. 21. **Substantially altering.** "Substantially altering" includes, but is not limited to, the modification of a bulk pesticide storage facility through the changing, addition, or removal of bulk pesticide storage containers, appurtenances, load areas, secondary containment, or any modifications that may result in reducing the effectiveness of safeguards. This

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definition does not include the routine maintenance of bulk pesticide storage containers, load areas, secondary containment, or appurtenances.

Subp. 22. **Surface water.** "Surface water" means water that rests or flows on the surface of the ground.

Subp. 23. **Tank mix.** "Tank mix" means a mixture of registered pesticides prepared according to label directions for site application.

1505.2020 NEW FACILITIES.

Subpart 1. **Permit required.** No person may construct or operate a new bulk pesticide storage facility without first obtaining a permit under parts 1505.2040 and 1505.2050.

Subp. 2. **Information required before construction.** After being granted a permit by the commissioner, and before beginning construction of the bulk pesticide storage facility, an owner or manager shall submit to the commissioner:

A. the name, address, and telephone number of the persons who will construct, install, or modify the facility; and

B. copies of any permits or letters of authorization required by any local unit of government for the construction, installation, or modification of the facility.

Subp. 3. **Compliance within 90 days.** Within 90 days after being granted a permit by the commissioner, a new bulk pesticide storage facility owner or manager shall comply with parts 1505.2010 to 1505.2150.

Subp. 4. **Time extension.** A time extension of up to 180 days for delays due to construction or equipment or material procurement may be granted by the commissioner if requested in writing by the facility owner or manager. The commissioner shall set forth in writing the reasons for granting or denying a requested time extension within 15 days of the request.

1505.2030 PREVIOUSLY ESTABLISHED FACILITIES.

A person who operates a bulk pesticide storage facility established before July 1, 1989, must comply with items A to C.

A. The person must, by July 1, 1990, file with the

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commissioner an application for a bulk pesticide storage permit under parts 1505.2040 and 1505.2050 and comply with parts 1505.2010, 1505.2030, 1505.2060, and 1505.2090 to 1505.2150.

B. The person must, by July 1, 1991, comply with parts 1505.2070 and 1505.2080. A time extension of up to one year may be granted by the commissioner for delays due to construction or equipment or material procurement, if requested in writing by the facility owner or manager. The commissioner shall set forth, in writing, the reasons for granting or denying a requested time extension within 15 days of the request.

C. After being granted a bulk pesticide storage permit by the commissioner, and before beginning any construction or modification of an existing bulk pesticide storage facility, the person must submit to the commissioner:

(1) the name, address, and telephone number of the persons who will construct, install, or modify the facility; and

(2) copies of any permits or letters of authorization required by any local or state unit of government for the construction, installation, or modification of the facility.

1505.2040 BULK PESTICIDE STORAGE PERMIT.

Subpart 1. **Commissioner's review of application.** The commissioner shall review an initial application as submitted under part 1505.2050 within 30 days of receipt and either issue a bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance. Upon receipt of the additional requested compliance information from a person, the commissioner has 15 days in which to issue a bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance.

Subp. 2. **Substantial alterations.** No person may substantially alter any bulk pesticide storage facility without

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first being granted a revised bulk pesticide storage permit from the commissioner. The person must file a revised bulk pesticide storage permit application detailing the proposed alterations with the commissioner. The commissioner shall review an application for a revised bulk pesticide storage permit within 30 days of receipt and either issue a revised bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance.

Subp. 3. **Denial; revocation; suspension; modification.** An initial or revised bulk pesticide storage permit may be denied, revoked, suspended, or modified, in whole or in part, for one or more of the following reasons:

A. violation of a term or condition of the permit;

B. obtaining the permit by misrepresentation or by failure to disclose all relevant facts; or

C. discovery of unreasonable adverse effects to the environment caused by the activities of the permit holder in the conduct of actions undertaken under the permit.

Subp. 4. **Notice.** If a permit is denied, revoked, or suspended, the commissioner shall send the applicant a written notice of denial, revocation, or suspension. Details that formed the basis of the decision must be included. The owner or manager must be given 30 days from the date of the notice to request an administrative meeting before the commissioner to present justification for an appeal of the decision.

Following the date and time of the administrative meeting, the commissioner has 15 days in which to analyze the facts presented and grant a permit or advise the owner or manager, in writing, of the commissioner's determination to uphold the original decision not to grant a permit.

Subp. 5. **Permit transfer.** A bulk pesticide storage permit may be transferred from one person to another if an application for a permit detailing any changes and including the required fee is filed with the commissioner prior to the transfer.

Subp. 6. **Permit exceptions.** Persons who store bulk

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pesticides in a storage container of a rated capacity of less than 500 U.S. gallons or who store bulk pesticides in individual storage containers at a site where the total storage amount of bulk pesticide is less than 500 U.S. gallons, are not required to obtain a bulk pesticide storage permit, but are required to comply with all other applicable provisions of this part.

1505.2050 APPLICATION AND PERMIT FEE.

Subpart 1. **Information required.** Application for a bulk pesticide storage permit must be on forms provided by the commissioner. The application must contain at least, but is not limited to, the following information:

A. a differentiation as to whether the bulk pesticide storage facility should be regarded as new or previously established;

B. the name, address, and telephone number of the person making application;

C. the name, address, and telephone number of the persons that will own and operate the facility;

D. the location of the facility, including its legal description;

E. photographs or a diagram of the current or proposed facility, including all buildings, tanks, fertilizer storage areas, mixing, loading, and rinsate recycling areas, vehicle washing areas, and bulk pesticide storage areas;

F. a geologic report of the facility property and the surrounding area, including maps, photographs, or diagrams of:

(1) the land use (crop land, residential, or business) within one-quarter mile radius of the facility;

(2) the distance and direction to surface water, drainage ditches, and storm sewers within one-quarter mile radius of the facility;

(3) the distance and direction to any source of a public water supply serving the facility;

(4) the year installed, depth, direction, and distance to any well on or within 150 feet of all existing and

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proposed loading and secondary containment areas; and

(5) the type of soils to the three foot depth beneath the surface fill such as, but not limited to, gravel, rock, or other soils of all existing and proposed loading and secondary containment areas.

G. the number, age or condition, dimension, capacity, and material description of the liquid bulk pesticide storage containers and a list of pesticides to be stored in them, with United States Environmental Protection Agency registration numbers;

H. a certification that to the best of the owner's or manager's knowledge the loading and containment areas will be built in accordance with construction and plumbing plans submitted and will comply with the design, construction, and containment requirements of parts 1505.2070 and 1505.2080;

I. at least one scale drawing of the loading and bulk pesticide containment areas to include a construction material specification or design guide;

J. a plumbing diagram showing the location, type, and specifications of the appurtenances used in storing or transferring bulk pesticides;

K. a copy of the release response plan as described in part 1505.2100; and

L. the person's federal Environmental Protection Agency establishment number, if required.

Subp. 2. **Fee.** The initial application for a bulk pesticide storage permit must be accompanied by the fee required in Minnesota Statutes, section 18B.14 for each bulk pesticide storage facility. No fee is required to apply for a revised bulk pesticide storage permit.

1505.2060 GENERAL REQUIREMENTS.

Subpart 1. **Establishment number.** A facility that repackages or transfers bulk pesticides or custom mixes any quantity of pesticides for application by another person must obtain a pesticide producer establishment number from the United

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States Environmental Protection Agency.

Subp. 2. **Exception.** A person who tank mixes or custom mixes for application by the person's firm only, is not required to secure a pesticide producer establishment number from the United States Environmental Protection Agency.

Subp. 3. **Storage containers and appurtenances.**

A. Storage containers and appurtenances must be constructed, installed, and maintained to prevent the release of liquid bulk pesticide. Storage containers and appurtenances must be structurally sound, resistant to changes in temperature extremes, and constructed of materials that are adequately thick to be structurally sound and that are resistant to corrosion, puncture, or cracking. Materials used in the construction or repair of storage containers and appurtenances may not be of a type that reacts chemically or electrolytically with stored bulk pesticide in a way that may weaken the storage container or appurtenance, create a risk of release, or adulterate the pesticide. Metals used for valves, fittings, and repairs on metal containers must be compatible with the metals used in the construction of the storage container, so that the combination of metals does not cause or increase corrosion that may weaken the storage container or its appurtenances, or create a risk of release. Storage containers and appurtenances must be designed to handle all operating stresses taking into account the foreseeable course of operations. Underground appurtenances are prohibited as part of a system designed and constructed for transferring bulk pesticides unless approved by the commissioner.

B. Storage containers may only be constructed of stainless steel, fiberglass, polyethylene, ferrous metal, cross-linked polyolefin, or other commissioner-approved materials that are suitable for the stored bulk pesticide. Polyvinyl chloride tanks are prohibited.

Ferrous metal tanks must have a protective lining that inhibits corrosion and does not react chemically with the stored pesticide.

Unlined ferrous metal tanks may be used only with proof of

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compatibility from the pesticide manufacturer.

C. Storage container connections, except safety relief connections, must be equipped with a shutoff valve located on the storage container or at a distance from the storage container dictated by standard engineering practice and in compliance with this part. Wetted parts inside shutoff valves and connections from the storage container to the shutoff valve must be made of stainless steel.

D. Storage containers must be equipped with a liquid level gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level gauging device is not required if the level of the liquid in a storage container can be readily and reliably measured by other means. Liquid level gauging devices must be secured, in a safe manner, to protect against breakage or vandalism that may result in release. External sight gauges are permitted only with approval from the commissioner.

E. Meters and scales used for the sale of bulk pesticide must be compatible with the pesticide being metered or weighed.

F. Pipes and fittings must be adequately supported to prevent sagging and possible breakage because of gravity and other forces that may be encountered in the ordinary course of operations.

G. Valves must be secured and of a locking type to protect against vandalism or accidental valve openings that may result in a release.

H. Storage containers must be equipped with a vent or other device designed to relieve excess pressure, prevent losses by evaporation, and exclude precipitation.

Subp. 4. **Anchoring of storage containers.** Storage containers must be anchored to prevent flotation or instability that might occur as a result of liquid accumulations within a secondary containment area built under part 1505.2080. Anchoring may be accomplished by guy wires, or other commissioner-approved anchors.

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Subp. 5. **Security.** Storage containers must be secured against access by unauthorized persons and provide protection against access by wildlife. Appurtenances must be fenced or otherwise secured to provide reasonable protection against vandalism or unauthorized access that may result in a release. Valves on storage containers must be locked or otherwise secured except when persons responsible for facility security are present at the facility. Valves on rail cars, nurse tanks, and other mobile pesticide containers parked overnight at a storage facility must be locked or secured except when persons responsible for facility security are present at the facility.

Subp. 6. **Filling.** Storage containers must not be filled to more than 95 percent of capacity unless the storage container construction or location provides constant temperature control of the container contents.

Repackaging and delivery of bulk pesticides must be attended and supervised at all times by the owner, manager, or an employee of the facility.

Subp. 7. **Protection against damage by moving vehicles.** Storage containers and appurtenances, including pipes, must be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles and objects.

Subp. 8. **Storage of dry bulk pesticide.** Except during loading, stored dry bulk pesticide must be covered by a roof or tarpaulin that will exclude precipitation from the pesticide. Storage containers must be placed on a concrete or other impervious surfaced floor on pallets or on a raised platform to prevent the accumulation of water in or under the pesticide.

Storage facilities must be secured against entry by unauthorized persons or wildlife.

Subp. 9. **Labeling of storage containers.** Every storage container must bear a current pesticide product label as required by the United States Environmental Protection Agency.

For outside storage, the label required under this part must be placed on the storage container so as to be visible from outside of the secondary containment area. The label must be

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legible at all times. The type size used on the label must be that specified in Code of Federal Regulations, title 40, part 162.

1505.2070 LOADING AREAS.

Subpart 1. **Containment for liquid bulk pesticide loading sites.** An area used for the loading of liquid bulk pesticide into fixed storage containers, mobile containers, or pesticide application equipment at a bulk pesticide storage facility must be provided with a means of containment that is elevated above the surrounding area, constructed of reinforced concrete or other commissioner-approved material, and designed and constructed for the intended purpose. The means of containment must not contain a drain and must comply with either item A or B.

A. A curbed loading area without a sediment trap must comply with subitems (1) and (2).

(1) The perimeter of the area must be curbed a minimum of three inches in height to prevent run-off and the curbed surface must form a liquid-tight containment area.

(2) The curbed surface and containment area must contain a minimum of 1,000 U.S. gallons.

B. A sloped surface that contains a sediment trap must comply with subitems (1) to (3).

(1) The perimeter of the area must be curbed three inches in height to prevent runoff and must form a liquid-tight containment area.

(2) The area must be sloped to a sediment trap used only for the temporary collection of spilled or released pesticides. The sediment trap may not be greater than two feet deep or hold more than 150 U.S. gallons.

(3) The area must contain a minimum of 1,000 U.S. gallons.

Subp. 2. **Containment for pesticide-impregnated fertilizer loading sites.** An area used for the loading of pesticide impregnated fertilizer into fixed storage containers, mobile containers, or pesticide application equipment at a bulk

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pesticide storage facility must be provided with the means of containment in items A to C.

A. The containment area for pesticide-impregnated fertilizer loading must be elevated above the surrounding area, be constructed of reinforced concrete or other commissioner-approved material, and be designed and constructed for the intended purpose. A scale with a liquid-tight containment area is acceptable.

B. The containment area must be of adequate size to fully hold the largest fixed storage container, mobile containers, or commercial pesticide application equipment that will be loaded on the area.

C. The containment area must be protected or managed in a manner that will prevent pesticide-contaminated runoff from leaving the area.

Subp. 3. **Load area exceptions and underground plumbing.**

A. If load areas for fixed storage containers, mobile containers, or pesticide application equipment are physically separated from one another, each separate load area must be of a design, size, and construction to contain a minimum of 500 U.S. gallons.

B. If no bulk pesticide storage container at the storage facility has a rated capacity of more than 500 U.S. gallons, the load area must be of a design, size, and construction to contain a minimum of 500 U.S. gallons.

If no bulk pesticide storage container at the storage facility has a rated capacity of more than 250 U.S. gallons, the load area must be of a design, size, and construction to contain a minimum of 250 U.S. gallons.

C. Any underground plumbing used for transferring rinsates or sediment from a sediment trap to rinsate tanks must be designed, constructed, installed, and maintained to prevent the release of pesticides to the environment and the backflow of pesticide rinsates to the sediment trap.

1505.2080 SECONDARY CONTAINMENT AREAS.

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Subpart 1. **General requirements.** Liquid bulk pesticide storage containers must be confined to a secondary containment area that is adequate, in the event of a release, to prevent the movement of liquid pesticides to surface or ground water. The loading area as specified in part 1505.2070 must not be located, designed, or constructed in such a way so as to compromise the required secondary containment of subpart 2. The secondary containment provisions also apply to liquid bulk pesticides stored in a location covered by a roof. A secondary containment area must consist of:

A. a wall and liner as provided under subparts 4 and 5;

B. a prefabricated secondary containment basin as provided under subpart 6; or

C. other safeguards approved by the commissioner.

Subp. 2. **Capacity.** The capacity of a secondary containment area for a bulk pesticide storage facility must be at least equal to the sum of all of the following:

A. the greatest volume of liquid bulk pesticide or liquid bulk fertilizer that could be released from the largest storage container within the secondary containment area;

B. 25 percent of the capacity of the largest liquid bulk pesticide or liquid bulk fertilizer storage container located within the secondary containment area for an outdoor storage container, or ten percent of the capacity of the largest liquid bulk pesticide container or liquid bulk fertilizer if stored in a location covered by a roof; and

C. the total volume of released liquid which would be displaced by the portions of all other storage containers within the secondary containment area to the height of the containment wall and all other fixtures and materials located within the secondary containment area (including pesticide or fertilizer diluent, empty pesticide containers, recovered pesticide or fertilizer releases, and liquid pesticide or fertilizer metering equipment).

Subp. 3. **Storage with other commodities or equipment.**

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A. Liquid bulk pesticide, liquid bulk fertilizer, pesticide or fertilizer diluent, empty pesticide containers, recovered pesticide or fertilizer releases, or liquid pesticide or fertilizer metering equipment may be stored within the bulk pesticide secondary containment area.

B. The total containment capacity calculated in subpart 2 may not be compromised by storing liquid bulk pesticide or liquid bulk fertilizer, pesticide or fertilizer diluent, pesticide containers, pesticide or fertilizer releases, pesticide or fertilizer metering equipment, or other equipment or products in amounts greater than the amounts which were originally calculated as necessary displacement in subpart 2.

C. A liquid bulk pesticide storage containment area may be located within the boundary of a liquid bulk fertilizer containment area if:

(1) the containment areas are separated by a wall described in subpart 4;

(2) the bulk pesticide is contained in an anchored prefabricated containment unit as described in subpart 6; or

(3) each bulk pesticide storage container and its appurtenances is effectively protected from corrosion and flotation by liquid bulk fertilizers.

Subp. 4. **Walls.** The walls of a secondary containment area must be made of ferrous metal, inorganic soil, stainless steel, reinforced concrete, or solid reinforced masonry and must be designed to withstand a fully hydrostatic head of any released liquid. Cracks and seams must be sealed as needed to prevent leakage. Walls constructed of inorganic soil must be lined as provided under subpart 5, item D, be protected from erosion, and have a horizontal to vertical slope of at least three to one, unless a steeper slope is consistent with good engineering practice. Walls may not exceed six feet in height above the interior grade.

A. All bulk pesticide tanks must be placed a minimum of one foot from a secondary containment area wall.

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B. Tanks over ten feet high stored outdoors must be located at least three feet from the secondary containment area wall.

C. The walls of a secondary containment area may not contain a drain or other similar opening.

D. Masonry walls must be reinforced, capped with concrete, and parged on the interior.

E. The joint between a masonry wall and any floor or subsurface that it is constructed on must be constructed, sealed, and protected in such a way that it prevents any pesticide leakage from leaving the containment area.

Subp. 5. **Lining.**

A. The base of a secondary containment area and any inorganic soil walls of a secondary containment area must be lined with reinforced concrete, a synthetic liner, an inorganic soil liner, ferrous metal, or stainless steel designed to limit the permeability of the base and walls. Liners must meet the requirements of this subpart. The base of a secondary containment area may not contain a drain or other similar opening used to release pesticides or precipitation. Dissimilar materials may not be used together for a wall and liner combination unless approved by the commissioner.

B. Concrete liners must be designed according to good engineering practices to withstand any foreseeable loading conditions, including a full hydrostatic head of released liquid. Cracks and seams must be sealed to prevent leakage.

C. Synthetic liners must have a minimum thickness of 30 mils (0.8 millimeters), be chemically compatible with the materials being stored within the secondary containment area, be photo-resistant, and be puncture resistant. Confirmation of chemical compatibility and an estimate of liner life must be retained by the firm for inspection upon request by the Department of Agriculture. The synthetic liner must be protected by a 12-inch (30-centimeter) layer of inorganic soil or half-inch diameter rounded stone above the liner and a six-inch (15-centimeter) layer of inorganic soil below the

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liner. Soil layers must be free of large rocks, angular stones, sticks, or other materials that may puncture the liner. Synthetic liners must be installed according to the manufacturer's recommendations and, if necessary, under the supervision of a qualified representative of the manufacturer, and all field-constructed seams must be tested, and repaired if necessary, in accordance with the manufacturer's recommendations. Pesticide releases onto the inorganic soil portion of a synthetic liner containment area must be managed by the removal of contaminated soils. Disposition of contaminated soils is subject to approval from the Department of Agriculture. Integrity of the inorganic soil portion of the synthetic liner containment area must be restored under all circumstances.

D. Soil liners must comply with subitems (1) to (5).

(1) A liner may be constructed of inorganic soil treated with bentonite clay if the liner meets the requirements of this subitem. The liner must be designed and constructed according to good engineering practices, extend a minimum of six feet beyond the wall, and achieve a coefficient of permeability not to exceed 1 X 10-6 cm/sec, with a thickness of not less than six inches (15 centimeters). The liner must be covered by an inorganic soil layer not less than six inches (15 centimeters) thick. Liners may not be constructed of frost-susceptible soils, which include silts and silty sand.

(2) Bentonite-treated liners must consist of a uniform mixture of inorganic soil and bentonite. The inorganic soil used in the mixture must have a plasticity index of at least 12. At least 30 percent by weight of the inorganic soil must pass a No. 200 sieve, and less than five percent of the inorganic soil must be retained on a No. 4 sieve. Ninety percent of the bentonite by weight must pass a No. 80 sieve, and the inorganic soil-bentonite mixture must contain at least five percent bentonite by weight.

(3) An inorganic soil may not be used as part of a soil liner if less than 50 percent by weight of the soil

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passes a No. 200 sieve, or if more than five percent by weight of the inorganic soil is retained on a No. 4 sieve.

(4) Soil liners must be maintained to prevent cracking or other conditions that may compromise the integrity of containment. Pesticide releases into an inorganic soil-bentonite liner containment area must be managed by removal of contaminated soils within 48 hours. Disposition of contaminated soils is subject to approval from the Department of Agriculture. Integrity of the inorganic soil walls and inorganic soil-bentonite liner after a spill must be restored under all circumstances.

(5) An owner or manager shall submit to the commissioner, upon request, certification by a registered engineer practicing in the geotechnical field to verify that the coefficient permeability of the liner does not exceed 1 X 10-6 cm/sec or that the inorganic soil lined containment area will contain released liquid to the height of the containment wall for at least 72 hours.

Subp. 6. **Prefabricated secondary containment basin.** A prefabricated secondary containment basin must be composed of a rigid prefabricated basin having both a base and walls constructed of steel or synthetic materials which are resistant to corrosion, puncture, or cracking. Materials used for the prefabricated basin must be chemically compatible with the products being stored in the bulk pesticide tank. A written confirmation of compatibility from the basin manufacturer must be kept on file at the storage facility or at the nearest local office from which the storage facility is administered. The prefabricated facility must be designed and installed to contain the amounts listed in subpart 2, including the tank load and a full hydrostatic head of any released liquid. Multiple basins connected to provide the capacity required under subpart 2, must be connected in a way that assures an unrestricted transfer of released liquid between basins. A prefabricated containment basin may not be located where fire could damage the containment vessel and compromise the intended containment.

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1505.2090 RECOVERY, USE, OR DISPOSAL OF PESTICIDE RELEASES.

Subpart 1. **Loading areas and secondary containment areas.** All pesticide releases occurring in an area confined to loading areas described in part 1505.2070 and secondary containment areas described in part 1505.2080 must be recovered as soon as possible and must either be used, stored, or disposed of. Use and storage must be according to pesticide label instructions. Disposal must be according to local, state, and federal regulations. The Department of Agriculture must be immediately notified of all releases.

Subp. 2. **Precipitation accumulations.**

A. Precipitation must not be permitted to accumulate in a secondary containment area or loading area to the point where the accumulation may tend to:

(1) compromise the ability of the secondary containment area or loading areas to contain the amounts indicated in part 1505.2070 or 1505.2080;

(2) increase the corrosion of storage containers or appurtenances; or

(3) impair the stability of storage containers.

B. Precipitation, if contaminated with pesticide residues, must be:

(1) removed and used at labeled rates on sites consistent with labeled end uses for the intended target crop;

(2) removed and stored for later use according to subitem (1);

(3) disposed of according to local, state, and federal regulations; or

(4) used at a rate of no more than five percent of the total tank mix. Records must be kept indicating amounts, crop to which applied, and dates.

C. Uncontaminated precipitation may be released to a vegetated area allowing for even distribution over the entire area or used as water for mixing.

Subp. 3. **Use of pesticide rinsate, pesticide containing**

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sludge, or pesticide containing washwater accumulations.

A. Sludge, rinsates, or washwater generated in a pesticide loading or secondary containment area as a result of loading, washing, rinsing, clean-up, or similar practices must be:

(1) removed and used at labeled rates consistent with labeled end uses for the intended target crop;

(2) removed and stored for later use according to subitem (1); or

(3) disposed of according to local, state, and federal regulations.

B. Sludge must be removed from a sediment trap before the trap is half full.

C. Rinsates and sludges may be used at a rate of no more than five percent of any total tank mix. Washwater not contaminated with pesticides may be used undiluted.

D. Records indicating the amount removed (pounds or gallons), the location and acreage treated, and crops to which applied must be kept and made available for review during inspections by the commissioner. Records must be retained for a minimum of five years.

1505.2100 PREPARATION FOR CONTROL AND RECOVERY OF PESTICIDE RELEASES.

Subpart 1. **Release response plan.** The operator of a bulk pesticide storage facility shall prepare a written release response plan for the storage facility. The operator shall keep the plan current at all times. A copy of the plan must be kept at a prominent location at the storage facility and at the nearest local office from which the storage facility is administered, and must be made available for employee use and for inspection by the department. The operator of the storage facility shall provide a current copy of the plan to the local fire and police departments. The plan must include, but is not limited to:

A. the identity and telephone numbers of the persons

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who are to be contacted in the event of a release;

B. for every bulk pesticide stored at the facility, a complete copy of the storage container label required under part 1505.2060, subpart 9, and Minnesota Statutes, section 18B.26;

C. a complete copy of the material safety data sheet for every bulk pesticide stored at the facility;

D. the procedures and equipment to be used in controlling and recovering or otherwise responding to a release; and

E. an identification, by location, of every bulk pesticide storage container located at the facility, and the type of bulk pesticide stored in each storage container.

The plan need not include the specific location of each storage container of mini-bulk pesticide, if the plan includes the general location within the facility at which storage containers of mini-bulk pesticide are held.

Subp. 2. **Equipment and supplies.** Bulk pesticide storage facilities must have on the premises equipment needed to mitigate and recover pesticide releases. The equipment must include and is not limited to pumps, recovery containers, personal protective equipment, absorbent materials, and other materials used to control and recover pesticide releases. A checklist of release response equipment and its location must be posted with the release response plan.

Subp. 3. **Training.** The owner or manager of the storage facility shall conduct release response training for all new and existing employees of the facility annually before the beginning of the pesticide use season. New employees must receive training within 30 days of employment. The owner or manager and employees are responsible for following the firm's release response procedures pursuant to the release response plan to minimize contamination of the environment.

1505.2110 INSPECTION AND MAINTENANCE.

Subpart 1. **Records.** The operator of a bulk pesticide storage facility shall inspect and maintain storage containers,

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appurtenances, loading areas, and secondary containment areas to minimize the risk of a pesticide release. A written record of all inspections and maintenance must be made on the day of the inspection or maintenance and kept at the storage site or at the nearest local office from which the storage site is administered. A record of all pesticide releases onto the loading area or into the secondary containment area including date, time, type of pesticide, volume, cause, actions to contain, and management of the release must be kept for at least five years.

Subp. 2. **Schedule.** A bulk pesticide container and its appurtenances must be inspected for leakage at least weekly during the use season. A secondary containment area must be inspected for condition and leakage of the base, seams, and walls at least monthly while bulk pesticide is in storage. Loading area pads must be inspected for leakage at least monthly during the use season.

Inspection records must contain the name of the person making the inspection, the date of each inspection, conditions noted, and maintenance performed.

Maintenance of the bulk pesticide storage facility must be performed as necessary in order to ensure that the integrity of the bulk pesticide containers, secondary containment areas, and loading areas is maintained.

1505.2120 RECORD KEEPING.

The following records must be prepared and kept on file at the bulk pesticide storage facility while bulk pesticides are being stored in a storage container:

A. the beginning and end amounts in each fixed storage container calculated and recorded at the time of each filling;

B. the amount of bulk pesticide delivered, sold, and used; and

C. the names of the persons preparing the information in items A and B and the dates the information was prepared.

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The records must be available and must be submitted to the commissioner within 24 hours of a request. Weighing, metering, or direct measurement are acceptable methods for calculating storage amounts.

1505.2130 UNDERGROUND BULK PESTICIDE STORAGE.

Subpart 1. **New underground bulk pesticide storage prohibited.** After July 1, 1989, no new underground bulk pesticide storage is allowed. This prohibition does not apply to catch basins, containment areas, or sediment traps, used for the temporary collection of pesticides from transfer and loading areas under part 1505.2070, or to underground storage, dip, or other tanks used to contain pesticides used in the wood preservatives industry.

Subp. 2. **Existing and exempted underground bulk pesticide storage.** Underground bulk pesticide storage tanks in use as of July 1, 1989, or those tanks exempted from subpart 1 must conform with all applicable statutes and rules enforced by the Minnesota Pollution Control Agency, and must perform and provide to the commissioner upon request a leak certification test for each underground bulk pesticide storage tank.

1505.2140 ABANDONED CONTAINERS.

Subpart 1. **Abandonment.** Storage containers and other containers used at a storage facility to hold bulk pesticide or pesticide rinsate are considered abandoned containers under this part if they have been out of service for more than six months because of a weakness or leak, or have been out of service for any reason for more than one year.

Subp. 2. **Underground containers.** Abandoned underground tanks in place at previously existing facilities must be thoroughly cleaned and removed from the ground.

Subp. 3. **Aboveground containers.** Abandoned aboveground containers must be thoroughly cleaned. All hatches on the containers must be removed and all valves or connections must be removed.

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1505.2150 EXEMPTIONS.

Subpart 1. **Mobile containers.** The secondary containment requirements of part 1505.2080 do not apply to rail cars, nurse tanks, other mobile containers, or mini-bulk containers which are located at the bulk pesticide storage facility for less than ten consecutive days incidental to loading bulk pesticide containers.

Subp. 2. **Alternate technology.** The commissioner may exempt any person from a requirement under this part if compliance is not technically feasible, but only if the commissioner finds that the alternative measures provide substantially similar protection to the ground and surface water of the state. A person requesting an exemption shall submit to the commissioner in writing a request for an exemption detailing the alternative measures proposed. The commissioner has 45 days to analyze the facts presented and grant the exemption or advise the person of an unsatisfactory review and detail all changes necessary to achieve compliance.

EFFECTIVE DATE. Parts 1505.2010 to 1505.2150 are effective July 1, 1989.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Bulk Pesticide Storage

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1505

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

Department of Agriculture
Agronomy Services Division

In the Matter of the Proposed Adoption of the Rule of the Department of Agriculture Governing Bulk Pesticide Storage

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22-14.28. The statutory authority to adopt these amendments is Minnesota Statutes, Section 18B.14, subd. 2.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to Minnesota Statutes, Sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this Notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

The proposed rule must be applied to all applicable businesses, such as pesticide dealers and distributors and farmers, including those defined as small businesses by Minnesota Statutes, section 14.115.[14]

Persons who operate a bulk pesticide storage facility prior to the effective date of the rule will be granted two years in which to be in compliance with the most costly environmental protection safeguards in the rule.

Inspection, maintenance, training, and permit application information have been simplified to aid in compliance.

The permit application contains the minimum information required by MDA to evaulate the proposed bulk pesticide storage site, the proposed environmental protection safeguards, locations of groundwater, surface water, and other information necessary to grant, modify, or deny permits.

Recordkeeping, inspection, and spill remediation requirements contained in the rule are the minimum necessary to comply with the pesticide use, storage, handling, and disposal requirements of Minnesota Statutes, Chapter 18B.

Alternate technologies and less stringent requirements for certain portions of the rule are included to account for differences in business type and size.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule must submit a written request to Ms. Milligan.

STATE OF MINNESOTA

2-21-89
Date

Jim Nichols
Jim Nichols, Commissioner
Department of Agriculture

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In The Matter of the Proposed Rule	)	
of The Department of Agriculture	)	STATEMENT OF NEED AND
Pertaining to Proposed Permanent Rules	)	REASONABLENESS
Relating to Bulk Pesticide Storage	)	

INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) required by Minnesota Statutes, Section 18B.14, subd. 2, of a rule governing the regulation and permitting of persons who store bulk pesticides.

These rules contain requirements for the initiation of a fee, a permit system, the installation of secondary containment areas and loading areas, the location of storage sites, safeguards, a schedule for compliance, and other appropriate requirements necessary to minimize potential adverse effects on the environment, groundwater and surface water from the release of pesticides.

BACKGROUND

The protection of groundwater and surface water from point contamination at pesticide storage sites has been and will continue to be of major importance to the citizens of the State of Minnesota.

The potential for point source pesticide contamination from improperly safeguarded and carelessly operated bulk pesticide storage facilities will continue to exist unless the facilities storage, handling, and spill control practices come under closer scrutiny through bulk pesticide storage regulation by the MDA.

IMPACT ON SMALL BUSINESS

Dealers, distributors, and other persons storing, and distributing or repackaging bulk pesticides could be considered to be small businesses and will be the most affected by the rule.

Persons who store bulk pesticides for their own use for 10 consecutive days or less and who do not distribute or repackage bulk pesticides at their site will not be affected by the most costly environmental protection safeguards in the rule. In most cases, these persons are individual farmers or growers.

Persons who operate a bulk pesticide storage facility prior to the effective date of the rule will be granted two years in which to be in compliance with the most costly environmental protection safeguards in the rule.

Inspection, maintenance, training, and permit application information have been simplified to aid in compliance.

The permit application contains the minimum information required by MDA to evaluate the proposed bulk pesticide storage site, the proposed environmental protection safeguards, locations of groundwater, surface water, and other information necessary to grant, modify, or deny permits.

Recordkeeping, inspection, and spill remediation requirements contained in the rule are the minimum necessary to comply with the pesticide use, storage, handling, and disposal requirements of Minnesota Statutes, Chapter 18B.

Alternate technologies and less stringent requirements for certain portions of the rule are included to account for differences in business type and size.

Dealers, distributors, their representatives, and other government agencies, were regularly mailed copies of the draft versions of the rule for comment.

In addition, numerous individual and industry meetings were held to exchange information pertinent to compliance with the rule.

1505.2010 DEFINITIONS

The definitions are necessary to assure that the rule is clearly understood.

The inclusion of definitions is reasonable so that MDA may consistently apply the rule to those who must comply with the rule.

The definitions included serve to clarify terms commonly used regarding bulk pesticide storage, handling, distribution, and repackaging.

1505.2020 NEW FACILITIES

Subpart 1

It is necessary to indicate to persons who wish to construct or operate a new bulk pesticide storage facility that they must first obtain a bulk pesticide storage permit, because the rule does not allow for a two-year schedule of compliance or siting exceptions as with previously established bulk pesticide storage facilities.

It is reasonable to require this so that the environment, groundwater, and surface water are adequately protected prior to bulk pesticides being stored, distributed, or repackaged at a site.

Subpart 2

It is necessary to require information that identifies the persons who will construct, install, or modify the facility as well as to require copies of any permits or letters of authorization required by local units of government so that the commissioner may compare the information contained in the application for a permit with the construction, installation, or modification occurring at the site.

It is reasonable to require this information in order to check compliance with the rule and to reinforce the need to comply with local government siting requirements.

Subpart 3

It is necessary to require compliance with the entire rule within a reasonable amount of time in order to avoid any delay in compliance with the environmental safeguards outlined in the rule.

Ninety days is a reasonable amount of time to comply with the rule given normal delays due to weather problems, equipment or material shortages, or construction schedules.

Subpart 4

It is necessary to incorporate a mechanism for extending the compliance time in Subpart 3 in order to account for abnormal delays in complying with the rule due to weather problems, equipment or material shortages, construction schedules, or the granting of a permit by MDA in late fall or early winter.

It is reasonable for the commissioner to allow an additional 180 days to comply because even with the original 90-day compliance time, some circumstances may be beyond the control of the applicant.

1505.2030 PREVIOUSLY ESTABLISHED FACILITIES

It is necessary to indicate to persons who operated a bulk pesticide storage facility prior to July 1, 1989, that they are subject to different compliance time frames for certain portions of the rule than new bulk pesticide storage facilities.

It is reasonable to establish different compliance time frames for previously established facilities vs. new facilities in order to account for safeguards that have already been constructed and to lessen the economic impact of any new construction of safeguards including the loading and bulk pesticide containment areas.

A.

It is necessary to require within one year after the effective date of the rule, that a previously established bulk pesticide storage facility file an application for a bulk pesticide storage permit

and comply with certain minimal environmental protection provisions in the rule.

This is necessary to insure that minimal environmental protection measures are being implemented during the first year of the two year phase-in period, and to allow MDA adequate time to process applications for permits.

A one-year time frame for compliance is reasonable because it allows affected persons adequate time to decide if they wish to store bulk pesticides in the future, or to plan their own bulk pesticide storage facility, and file an application for a bulk pesticide storage permit.

The one-year compliance time frame is also reasonable because it assures that environmental protection measures are implemented that protect groundwater and surface water during the phase-in period.

The one-year compliance time frame is also reasonable because it allows MDA to make a detailed and fair review of bulk pesticide storage permit applications without being pressured by unworkable time schedules.

B.

It is necessary to compel compliance within two years of the effective date of the rule for the construction of the loading and secondary containment areas in order to expedite the implementation of important environmental protection safeguards.

The two-year time frame for compliance is reasonable because it allows adequate time for affected persons to plan, finance, and construct costly environmental protection safeguards.

It is necessary to incorporate a mechanism for extending the compliance time frame in part in order to account for abnormal delays in complying with the rule due to difficulty in obtaining financing, weather problems, material shortages, construction schedules, or the granting of a permit by MDA in late fall or early winter.

It is reasonable for the commissioner to allow an additional one (1) year to comply because even with with original two-year

compliance time, some circumstances may be beyond the control of the applicant.

C.

It is necessary to require information that identifies the persons who will construct, install, or modify the facility as well as to require copies of any permits or letters of authorization required by local units of government so that the commissioner may compare the information contained in the application for a permit with the construction, installation, or modification occurring at the site.

It is reasonable to require this information in order to check compliance with the rule and to reinforce the need to comply with local and state government siting requirements.

1505.2040 BULK PESTICIDE STORAGE PERMIT

Subpart 1

It is necessary for the commissioner to review the information contained in each application submitted for a bulk pesticide storage permit in order to check for compliance with the rule.

It is reasonable for MDA to check for compliance with the rule as part of MDA's pesticide regulatory program.

A thirty-day review time frame is reasonable because it allows for a detailed review by MDA staff and at the same time expedites compliance by affected persons.

It is also reasonable for the commissioner to notify the applicant in writing if a permit will not be granted so that the applicant may make the changes necessary in order to be in compliance with the rule.

A fifteen-day review time frame is reasonable because a decision by MDA on new information submitted should be relatively easy.

Subpart 2

It is necessary for a person who wishes to make substantial alterations to a bulk pesticide storage facility to file a new bulk pesticide storage application with the commissioner so that MDA staff may determine if the intended changes are in compliance with the rule.

It is reasonable to for MDA to check compliance with the rule as part of MDA's pesticide regulatory program.

A thirty-day time frame for review by MDA staff is reasonable because it allows for an adequate review of the changes that are intended and, at the same time, does not cause an unworkable delay in the operations of the affected person.

It is reasonable for the commissioner to notify the applicant in writing if a permit will not be granted so that the applicant may make the changes necessary in order to be in compliance.

Subpart 3

It is necessary to grant the commissioner the authority to deny, revoke, suspend, or modify a bulk pesticide storage permit in order to assure compliance with the rule.

It is reasonable for the commissioner to deny, revoke, suspend, or modify a permit under circumstances where violations of this rule, have occurred that have caused or unreasonable adverse effects on the environment, groundwater, or surface water.

It is also reasonable to deny, revoke, suspend, or modify a permit due to misrepresentation or failure to include pertinent facts because elimination of those facts could present situation that could threaten or contaminate groundwater or surface water.

Subpart 4

It is necessary for the commissioner to notify an applicant if a permit is to be denied, revoked, or suspended so that the person will cease bulk pesticide storage and activities related to bulk pesticide storage.

At the time of the denial, revocation, or suspension, it is necessary to disclose the reasons for the action in order for the affected person to know what facts the commissioner's decision was based on.

It is reasonable for the commissioner to facilitate the denial, revocation, and suspension process in this manner in order to proceed fairly and without bias.

It is necessary for the commissioner to grant the affected person the right to appeal the commissioners decision by requesting an administrative hearing within thirty days of the order.

It is reasonable for the commissioner to proceed in this manner in order that the affected person may present pertinent facts which may not have been known by the commissioner at the time of his decision.

The thirty-day time frame to appear at the administrative hearing is reasonable because it allows for adequate preparation of an appeal by the affected person and, at the same time, accounts for problems in scheduling.

It is necessary for the commissioner to make a determination as to the status of the appeal within a reasonable amount of time after the administrative meeting in order to allow the affected person time to make alternative plans for handling, storing, or distributing bulk pesticides.

A fifteen-day communication time frame is reasonable given the seasonality of bulk pesticide storage activities.

Subpart 5

It is necessary to allow the transfer of a permit in order to account for changes in ownership of a bulk pesticide storage facility.

It is reasonable to allow a permit transfer under the conditions stipulated in order to assure compliance with the rule and protect groundwater and surface water.

Subpart 6

It is necessary to exempt persons who store less than 500 gallons at a facility site from obtaining a permit in order to be consistent with the legislative intent of Minnesota Statutes, Section 18B.14.

It is reasonable to make this exemption because facilities that store 500 gallons or more present a greater risk of environmental contamination because of the amounts of pesticide that may be present at the time of a release.

It is reasonable to require compliance with other applicable parts of the rule in order to fairly enforce compliance.

1505.2050 APPLICATION AND PERMIT FEE

Subpart 1

It is necessary for a person who wishes to obtain a bulk pesticide storage permit to provide to the commissioner information that forms the basis for granting, denying, modifying, or suspending a bulk pesticide storage permit by MDA staff.

The information requested is reasonable because it is the minimum information necessary for the commissioner to judge compliance with the rule, the effectiveness of planned safeguards, the suitability of the site for bulk pesticide storage, and the capability of the person to control and recover pesticide discharges.

The information requested is also reasonable because the wording has been simplified to aid in compliance.

Subpart 2

It is necessary for the applicant to include the fee as required in Minnesota Statutes, Section 18B.14, subd. 2, in order for the applicant to fulfill their statutory obligations for being granted a bulk pesticide storage permit.

The fee is reasonable because it is established by Minnesota Statute, Section 18B.14, subd. 2.

1505.2060 GENERAL REQUIREMENTS

Subpart 1

It is necessary to require that persons who repackage bulk pesticides obtain a "Pesticide Producer Establishment Number" from the U.S. Environmental Protection Agency (EPA) in order to comply with the establishment identification and recordkeeping requirements of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA).

It is reasonable to require this so the affected person will be in compliance with federal law, and consumers will be assured that the bulk pesticide storage facility is complying with federal regulations regarding distribution and repackaging of bulk pesticides.

Subpart 2

It is necessary to identify persons who are not required to comply with the establishment identification and recordkeeping requirements of FIFRA because only those persons who repackage bulk pesticides are required to be in compliance.

It is reasonable to make this exception because this rule must be consistent with FIFRA.

Subpart 3

A.

It is necessary to specify design, material, construction, maintenance, and integrity standards for bulk pesticide storage containers and appurtenances to insure that the materials and devices selected, and maintenance practices employed provide the necessary structural integrity.

The standards set forth in the rule are reasonable because they employ engineering and other standards common in industry that result in the structural integrity necessary for the storage of pesticides.

B.

It is necessary to specify allowable material types for bulk pesticide storage containers so that the possibility of tank rupture from inappropriate tank selection is maintained.

The materials listed are reasonable because they are consistent with those types recommended by pesticide manufacturers and industry associations, and those required in pesticide regulations of other states.

C.

It is necessary to require shutoff valves with stainless steel interiors and stainless steel storage container connections so that the possibility of pesticide release from valve and connection failure is minimized.

Stainless steel is an industry and engineering recognized non-reactive material that resists weakening and corrosion from pesticides.

D.

It is necessary to require secure devices which can be employed to routinely ascertain pesticide storage amounts in the event of a pesticide release.

The requirement is reasonable because it allows devices that are currently available in industry and minimizes the possibility of a pesticide release from inadequately protected gauging devices.

E.

It is necessary to require pesticide compatible meters and scales so that a pesticide release does not occur because of inappropriate

equipment.

The requirement is reasonable because it requires equipment currently available and being used in the industry.

F.

It is necessary to require adequate support for pipes and fittings used in conjunction with bulk pesticide storage containers in order to minimize the possibility of pipe or fitting failure.

The requirement is reasonable because it employs design practices currently in use at facility locations.

G.

It is necessary to require locking valves on pesticide storage containers to lessen the possibility of tampering by vandals or misuse of a storage container.

The requirement is reasonable because it employs equipment that is commonly used in industry.

H.

It is necessary to require devices that relieve pressure that may accumulate in a bulk pesticide storage container in order to prevent rupture of the pesticide storage container.

The requirement is reasonable because bulk pesticide storage containers are often manufactured with a vent or can easily be fitted with a venting system to relieve excess pressure.

Subpart 4

It is necessary to require that storage containers be anchored so that the possibility of a pesticide release is minimized in the event of floatation or instability of a pesticide storage container.
Anchors are reasonable protection because they incorporate the

technology most currently available and easily implemented.

Subpart 5

It is necessary to require security for bulk pesticide containers in order to prevent unauthorized or inadvertent access to a bulk pesticide container or appurtenance.

The requirement for fencing or other types of security, and locking valves is reasonable because it is currently being employed in the industry as the minimum security needed to prevent unauthorized or inadvertent access.

Subpart 6

It is necessary to limit filling of bulk pesticide containers to 95% of capacity and only when attended by an owner, manager, or employee of the facility in order to prevent release of pesticides to the environment through thermal expansion of the pesticide product or through inattention by facility personnel.

It is reasonable to limit capacity to 95% because under high temperatures pesticide products may increase in volume and release from the storage container.

It is reasonable to require filling of pesticide containers only when facility personnel are present because MDA's experience is that overfilling of pesticide containers can occur unless facility personnel are present at the time of filling.

Subpart 7

It is necessary to protect bulk pesticide storage containers from moving vehicles in order to prevent the rupture of storage containers from a vehicle impact.

This requirement is reasonable because it is MDA's experience that bulk pesticide containers are often stored adjacent to vehicle traffic areas and, therefore, some type of protection from vehicle impact is needed.

Subpart 8

It is necessary to secure and protect dry bulk pesticides from precipitation in order to prevent damage to the stored product and to prevent the release of pesticide into the environment.
It is reasonable to require a concrete, impervious floor or raised platform and the protection to be a tarp or a roof because this type of protection is common in the industry.

Subpart 9

It is necessary to require specific labelling for bulk pesticide storage containers so that pesticide products are handled, stored, used, and distributed properly and in compliance with all applicable state and federal pesticide regulations.

The labelling requirements given are reasonable because they are consistent with FIFRA.

1505.2070 LOADING AREAS

Subpart 1

It is necessary to require a means of pesticide containment for areas where liquid bulk pesticides are distributed, repackaged, or transferred in order to contain and recover pesticide releases. The construction specifications and containment designs set forth are reasonable because they incorporate specifications and designs recommended by pesticide manufacturers, industry associations, and other pesticide regulatory programs.

The 1000 gallon containment requirement is reasonable because it is consistent with industry standards, other pesticide regulatory standards, and will contain an amount of pesticide release that MDA anticipates would be common in an incident.

The options for construction materials are reasonable because the options allow for the use of any material provided that the material and design selected (A or B) prevent the release of pesticides to the environment.

Subpart 2

It is necessary to require a means of pesticide containment for areas where bulk pesticide impregnated fertilizer is distributed, repackaged, or transferred in order contain and recover pesticide releases.

An exact containment amount is not specified and this is reasonable because a specific containment amount is difficult to determine when using pesticide impregnated fertilizers.

The construction specification and containment design set forth are reasonable because they allow for greater flexibility in compliance in order to account for the differences found between impregnated and liquid pesticide loading operations.

The options for construction materials that may be used are reasonable because they allow the use of any material, provided the material and design selected prevent the release of pesticides to the environment.

Subpart 3

A.

It is necessary to allow a lesser required containment amount for some loading areas than required in subpart 1 because storage areas for loading bulk pesticide containers and loading areas for filling mini-bulk containers or application equipment may be separate.

It is reasonable to allow a different containment amount for loading areas that are separate so that compliance for the affected person does not become financially prohibitive.

The 500-gallon containment amount required is reasonable because it is adequate to contain an amount of pesticide release that MDA anticipates would be common in an incident.

B.

It is necessary to allow a lesser containment amount for load areas at bulk pesticide storage facilities at which the storage capacity

of the largest bulk pesticide storage container is less than 500 U.S. gallons in order to account for differences in the amount of pesticide in storage which is available for distribution and repackaging.

It is reasonable to allow lesser containment based on the fact that because lesser amounts of pesticide are being stored that lesser amounts of pesticide would be available to be released.

The 500- and 250-gallon containment amounts are reasonable because they are adequate to contain an amount of pesticide release that MDA anticipates would be common in an incident.

C.

It is necessary to set forth design and construction specifications on underground plumbing because placing plumbing underground may subject it to stresses and or corrosion that may weaken pipes or fittings and any pesticide discharge may consequently go unnoticed because the plumbing can not be readily inspected.

It is reasonable to set forth the specifications given because of the historical problems recently discovered by the Minnesota Pollution Control Agency (MPCA) associated with leaking underground storage tanks.

1505.2080 SECONDARY CONTAINMENT AREAS

Subpart 1

It is necessary to require a secondary containment area for bulk pesticide storage containers in order to contain and recover pesticide releases.

It is reasonable to include secondary containment as a requirement because the use of bulk pesticide storage safeguards is consistent with pesticide manufacturer requirements for delivery, bulk pesticide regulatory programs in other states, and minimizes the possibility of pesticide release beyond the secondary containment area.

It is reasonable to allow different types of secondary containment systems as long as the system chosen provides the necessary safeguard against the release of pesticides. Different systems are also reasonable because they give the affected persons the flexibility necessary to manage changes in their business operation.

Subpart 2

It is necessary to require a specific amount of containment volume so that the containment area will be large enough to completely contain the largest pesticide release that could be expected given the volume of the liquid bulk pesticides, liquid fertilizers or any other products being stored within the pesticide containment area.

The containment volume required is reasonable because it is consistent with pesticide manufacturer requirements for the delivery of bulk pesticides, industry association standards, and bulk pesticide regulatory programs in other states.

The containment volume required is also reasonable because it is the minimum necessary to fully contain the volume of a typical release of pesticide in a bulk pesticide storage area.

Subpart 3

A.

It is necessary to indicate that bulk pesticides may only be stored with other pesticide related products, devices, containers, etc. and with liquid bulk fertilizer so that affected persons do not store products in the same containment area that due to the nature of a product or the manner or quantity of its storage would have the potential to weaken, damage, or cause to rupture the bulk pesticide storage container

It is reasonable to limit the type of materials that may be stored within a bulk pesticide storage area to those materials which do not present a fire hazard, are not extremely corrosive, incompatible with the stored pesticides, or stored in very large single container quantities because these materials that could easily weaken, damage, or cause to rupture a bulk pesticide container.

B.

It is necessary to limit the storage of liquid bulk fertilizer, and other pesticide related products, devices, containers etc. to the amount originally calculated as displacement so that the total containment amount needed is not jeopardized.

This is reasonable so that the necessary containment amount is always provided to fully contain a pesticide release.

C.

It is necessary to permit a liquid bulk pesticide containment area to be located within the confines of a liquid bulk fertilizer containment area because liquid bulk fertilizer containment areas that contain liquid bulk pesticides have already been permitted by the MDA fertilizer section.

It is reasonable to allow combined storage because construction costs can be reduced by building a single containment area for both liquid bulk pesticides and fertilizers.

The provisions that allow combined storage are reasonable because they provide the minimum physical separation and/or stability necessary to prevent weakening, damage, or a rupture of a liquid bulk pesticide container.

Subpart 4

It is necessary to specify material standards and construction specifications for secondary containment walls in order to provide the protection necessary to retain a pesticide release within a secondary containment area.

The materials and construction specifications set forth are reasonable because they are recommended by pesticide manufacturers and industry associations, and are currently being used for the containment of bulk pesticides.

The tank siting requirements are reasonable because they assure that a pesticide release can not be caused by a containment drain valve being open, or contact between a tank and a wall, and also

insure that a tank leak originating at a location high up on a tank wall does not leave the containment area.

More specific construction specifications are necessary for masonry walls because of the porosity and strength of the material and the construction techniques used.

The construction specifications given are reasonable because they are consistent with standard masonry construction techniques for wall construction and they represent a major improvement over the large number of inadequately constructed masonry containment areas that have been observed by MDA staff.

Subpart 5

A.

It is necessary to require that specific types of liners without drains be used in conjunction with walls for a secondary containment system in order to limit the possibility of pesticides leaching into soils or groundwater immediately underlying the bulk pesticide storage containment area.

The liners specified are reasonable because they are recommended by pesticide manufacturers and industry associations and are currently being used for the containment of bulk pesticides.

It is reasonable to prohibit drains or other openings in the liner in order to preclude the inadvertent release of pesticides into the environment.

It is reasonable to prohibit dissimilar liner and wall materials, pending commissioner approval, because construction of containment areas with combinations of dissimilar materials may result in an inadequate joint between a wall and its liner.

B.

It is necessary specify that concrete liners must be engineered, constructed, and maintained for the application intended so that the liner will maintain its integrity in the event of a pesticide release into the secondary containment unit.

This is reasonable because standard engineering construction practices are required.

C.

It is necessary to set minimum material specifications and application standards for synthetic liners in order to insure that synthetic liners used are suitable for the purposes intended.

The material specifications given are reasonable because the liners currently available comply with the minimum standards set forth in the rule.

The application standards given are reasonable because they allow for the maximum protection of the liner provided that the liner is initially installed according to the manufacturer's guidelines.

It is necessary to indicate to persons that store bulk pesticides in a synthetic liner containment area, that in the event of a pesticide release into the soil or rock portion of a synthetic liner system, the MDA considers those soils and rocks to be contaminated with pesticides and the soils and rocks must be removed and disposed of, or used, only with MDA approval.

It is also necessary to indicate to those same persons that once soil or rocks are removed from a synthetic liner system that the MDA considers that the synthetic liner system does not possess the integrity necessary to be in compliance until such time as the liner system is restored to the condition as described in this subpart.

This is reasonable so that the person operating the bulk pesticide storage facility will comply with state and federal regulation regarding the use, storage, handling, and disposal of pesticides.

D.

More stringent material and construction specifications are necessary for earthen liners because MDA staff has observed that earthen liners are often constructed without using proper materials or construction techniques.

The materials and construction techniques are reasonable because they are consistent with industry association standards and the requirements of other state liquid bulk pesticide regulatory programs.

It is necessary to indicate to affected persons that in the event of a pesticide release into an earthen liner system that MDA considers the soil cover and liner to be contaminated with pesticides and that the soil cover and liner must be removed and be disposed of only with MDA approval.

It is also necessary to indicate to those affected persons that once the soil cover and liner have been removed for repair that the earthen liner system does not possess the integrity necessary until such time as the liner has been restored to the condition as described in this subpart.

This is reasonable so that the person operating the bulk pesticide storage facility will comply with state and federal regulations regarding the use, storage, handling, and disposal of pesticides.

It is necessary to require an engineers certification of an earthen liner system in order to assure compliance with the rule.

It is reasonable to require an engineer's certification because MDA staff do not possess the necessary qualifications or equipment to check compliance for earthen liner systems.

Subpart 6

It is necessary to specify material, containment amount, design, and siting requirements for prefabricated containment basins in order to insure integrity of the basin for pesticide containment.

The specifications given are reasonable because they are consistent with pesticide manufacturer guidelines, industry association standards, and the requirements of state pesticide regulatory programs for bulk pesticides.

1505.2090 RECOVERY, USE, OR DISPOSAL OF PESTICIDE RELEASES

Subpart 1

For load and secondary containment areas it is necessary to specify pesticide release notification requirements, required pesticide recovery time frame, and pesticide use and disposal requirements so that affected persons will notify MDA, recover pesticide discharges in an expeditious manner, and use or dispose of those releases in compliance with state and federal regulations.

It is reasonable to set forth the requirements listed because they conform with Minnesota Statutes, Chapter 18B, and rules adopted under Minnesota Statutes, Section 116.07, subd. 4.

Subpart 2

It is necessary to specify that precipitation accumulations in load or secondary containment areas must be removed as needed and used accordingly so that the integrity of these areas, and the integrity and stability of any storage container is maintained at all times.

The requirements set forth are reasonable because they are in conformance with industry standards for managing precipitation, and with Minnesota Statutes, Chapter 18B, and rules adopted under Minnesota Statutes, Section 116.07, subd. 4.

The 5%-use rate is reasonable because it is based on Illinois EPA recommendations for the proper use of waters that contain pesticides.

Subpart 3

Specific rinsate, sludge, and washwater management practices are necessary because these types of pesticide containing products are commonly generated at bulk pesticide storage facilities.

The requirements set forth are reasonable because they are in conformance with Minnesota Statutes, Chapter 18B, and rules adopted under Minnesota Statutes, Section 116.06, subd 4.

The 5%-use rate is reasonable because it is based on Illinois EPA recommendations for the proper use of pesticide-containing products that result from unused mixtures, sediment traps, and equipment washing.

The sludge removal time frame listed is reasonable because it allows for removal of sludge at a time when pesticide concentrations would be in the proper range for reuse as estimated by Illinois EPA.

1505.2100 PREPARATION FOR CONTROL AND RECOVERY OF PESTICIDE RELEASES

It is necessary to require persons who store bulk pesticides to develop a plan to abate and recover pesticide releases so that they are prepared to fulfill their obligations under Minnesota Statutes, Section 18B.15.

The requirement is reasonable because it minimizes the potential for environmental contamination as a result of a persons lack of preparedness to immediately take sufficient action to abate, mitigate, and recover a pesticide release.

The requirement is also reasonable because it conforms with the minimum requirements for compliance with the federal Superfund Amendments and Reauthorization Act of 1986 (SARA), TITLE III: the Emergency Planning and Community Right-To-Know Act of 1986.

The required information is reasonable because it is clear and also general enough to allow flexibility in compliance.

Subpart 2

It is necessary to require that affected persons have on their premises equipment necessary to abate, recover, and mitigate pesticide releases in order to minimize the extent of environmental contamination resulting from a pesticide release.

The list of required equipment is reasonable because it consists of equipment that is commonly available and practical to mitigate pesticide releases.

Subpart 3

It is necessary to require employee training in abating, recovering, and mitigating pesticide releases in order to protect the persons employees from unnecessary pesticide exposure, and to minimize the extent of environmental contamination from any lack of expertise in mitigating a pesticide release.

The training frequency given is reasonable because it is the minimum required to adequately train both new and existing employees.

1505.2110 INSPECTION AND MAINTENANCE

Subpart 1

It is necessary to require storage container, appurtenance, loading area, and secondary containment area inspection and maintenance in order to minimize the possibility of a pesticide release from damaged or weakened safeguards.

An inspection and maintenance program is reasonable because it contains preventative action measures that require only a minimum amount of time to accomplish.

A written record of each inspection is reasonable because it corroborates the fact that an inspection was actually done.

Maintaining a pesticide release history is reasonable because it contains information that is required to be submitted MDA in the event of a pesticide release.

The information required to be kept is reasonable because it is the minimum necessary to investigate a pesticide release incident.

Subpart 2

A frequency of inspection schedule is necessary in order to set forth inspection schedules for specific areas that minimize

pesticide releases due to damaged or weakened safeguards. The inspection schedules given are reasonable because they are easily accomplished and are the minimum necessary for protection.

The specific inspection record keeping requirements are reasonable because only the minimum amount of information that is necessary has been required.

Maintenance "as necessary" is reasonable because maintenance is only required for safeguards which are in need of repair.

1505.2120 RECORD KEEPING

A.

A bulk pesticide inventory record keeping system is necessary to determine pesticide amounts present in a bulk pesticide storage container in the event of a pesticide release.

The inventory system set forth for containers is reasonable because it only requires that the inventory be taken at the time a container is filled. In most cases this is amounts to 1-2 times during the use season. Less frequency assures compliance.

B.

It is necessary to record delivery, sales and use amounts because it is the only way to check inventory amounts calculated at the time of filling against sales or use amounts determined through weighing, metering, or other types of measurement.

Tracking this information allows a bulk pesticide storage facility to check for discrepancies. This is reasonable because most persons already use a monthly inventory system, or can readily determine use/sales amounts through their customer invoicing system.

C.

Specifications that detail the names of persons preparing the

inventory information, dates, and gallonage/pounds amounts calculated is necessary to provide evidence that a physical inventory was actually done.

The information requested is reasonable because it is the minimum necessary to provide an accurate and detailed inventory accounting. Requiring that the information be available within 24 hours of the request is reasonable because it allows MDA staff the time necessary to determine if a pesticide release has occurred.

1505.2130 UNDERGROUND BULK PESTICIDE STORAGE

Subpart 1

It is necessary to prohibit new underground storage of bulk pesticides because of the difficulty in determining if an underground storage container is leaking.

It is also necessary to detail that this prohibition does not apply to certain kinds of temporary collection structures and other specialty pesticide storage and treatment structures in order to assist affected persons in compliance.

The compliance time frame is reasonable because it is consistent with the effective date of the rule, July 1, 1989.

It is reasonable to exempt specialty collection structures that because of the design requirements set forth in this rule are only capable of holding small amounts of pesticide diluent for a short amount of time and can easily be inspected and tested for leakage. In addition, temporary collection structures are already in use and recommended by the agricultural chemical industry and other state pesticide regulatory agencies.

It is reasonable to exempt storage and treatment structures used in the wood preservative industry because the pesticide products used contain large amounts of flammable solvents and therefore underground storage is a safer alternative to protect the public health, welfare, and the environment.

It is also reasonable to allow underground storage of wood preservative pesticides because very sophisticated and effective

leak detection equipment is available and required for use to protect against such a release.

In addition, it is reasonable to allow the wood preservative industry to use underground pesticide storage containers because of the additional stringent regulation of underground tanks by MPCA through their Underground Storage Tank program.

In addition, the prohibition is reasonable because agricultural pesticide manufacturers do not allow the use of underground tanks for the storage of manufacturer owned pesticide products because of the potential liability that exists for environmental contamination.

Subpart 2

It is necessary to disclose to affected persons that existing and exempted underground pesticide storage containers are also regulated by the MPCA so that they are knowledgeable of the overlapping regulatory authority that exists between MDA and MPCA.

It is reasonable to notify affected persons of their additional regulatory obligation so that they will take whatever measures are necessary to take underground tanks out of service or comply with both MDA and MPCA regulations.

The requirement for a leak certification test is necessary to increase the effectiveness of MDA's pesticide regulatory program and protect groundwater.

The requirement is reasonable because a leak test is the only way that MDA can be assured that an underground tank is not leaking.

The requirement is also reasonable because the test is not required to be routinely done and thus limits the financial burden of the affected persons.

1505.2140 ABANDONED CONTAINERS

Subpart 1

Specific rules are necessary for bulk pesticide storage containers that are not serviceable so that pesticides will not be stored in a storage container that because of weakness or damage may rupture or leak and release pesticides to the environment.

The time frames given are reasonable because they take into account the seasonality of pesticide sales or use.

Subpart 2

It is necessary to remove and clean abandoned underground bulk pesticide storage containers so that their contents can be determined, any leakage can be detected and stopped, any environmental remediation necessary is completed, and so that they may not be used for future storage of bulk pesticides.

This is reasonable because it prevents a pesticide release incident from occurring.

Subpart 3

It is necessary to clean and render unserviceable abandoned above ground bulk pesticide containers so the contents can be determined and so that they may not be used for future storage of bulk pesticides.

This is reasonable because it prevents a pesticide release incident from occurring from pesticide containers that are weakened or damaged and are not suitable for pesticide storage.

1505.2150 EXEMPTIONS

Subpart 1

It is necessary to exempt short-term (less than 10 days) pesticide storage from the secondary containment section of the rule because long term bulk pesticide storage poses a greater threat for pesticide release because of the amount of time a bulk pesticide may be in storage.

Exempting temporary storage from the secondary containment requirement is reasonable because the longer a bulk pesticide storage container remains in use at a location, the greater the chance that damage or weakness to the container or its appurtenances may occur from vandalism, the elements, corrosion, the weight of the load in the tank, simple failure of parts, etc.

Ten days is a reasonable storage guideline for an exemption because it allows for short term holding of bulk pesticide products pending delivery to a dealer or end user. Short term storage/holding is common due to the nature of the industry, i.e., agriculture.

Subpart 2

It is necessary to exempt some affected persons from complying with certain provisions of the rule because of the fact that the environmental protection safeguards or other requirements necessary for the proper storage, distribution, etc. of a particular pesticide product may be substantially different than certain requirements contained in the rule.

The exemption is reasonable because even though exact compliance with portions of the rule may not be possible in some situations for some affected persons, protection of the environment, groundwater, and surface water is assured.

A written request for an exemption is necessary for MDA staff to properly review the proposed change.

The form of the written request is reasonable because the request can be submitted at the time of filing of the original bulk pesticide storage permit application.

The time frame for review by MDA staff is reasonable because it is consistent with the time frame outlined for review of a bulk pesticide storage permit application.

In the Matter of the Proposed Adoption of the Rule of the Department of Agriculture Governing Bulk Pesticide Storage

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being sworn, says:

That on the 15th day of March, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, persuant to Minnesota Statutes, sections 14.14, subdivision 1.a. and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

Marie Skerbitz
Mail Room Clerk

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Subscribed and sworn to before me this 15th day of March, 1989.

Diane M. Wm

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register.* The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Permanent Rules Relating to Bulk Pesticide Storage

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes,* Sections 14.22-14.28. The statutory authority to adopt these amendments is *Minnesota Statutes,* Section 18B.14, subd. 2.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to *Minnesota Statutes,* Sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this Notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

The proposed rule must be applied to all applicable businesses, such as pesticide dealers and distributors and farmers, including those defined as small businesses by *Minnesota Statutes,* section 14.115.

Persons who operate a bulk pesticide storage facility prior to the effective date of the rule will be granted two years in which to be in compliance with the most costly environmental protection safeguards in the rule.

Inspection, maintenance, training, and permit application information have been simplified to aid in compliance.

The permit application contains the minimum information required by MDA to evaluate the proposed bulk pesticide storage site, the proposed environmental protection safeguards, locations of groundwater, surface water, and other information necessary to grant, modify, or deny permits.

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Recordkeeping, inspection, and spill remediation requirements contained in the rule are the minimum necessary to comply with the pesticide use, storage, handling, and disposal requirements of *Minnesota Statutes*, Chapter 18B.

Alternate technologies and less stringent requirements for certain portions of the rule are included to account for differences in business type and size.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule must submit a written request to Ms. Milligan.

Dated: 21 February 1989

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed (all new material)

1505.2010 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 1505.2010 to 1505.2150, the words and terms defined in this part have the meanings given them.

Subp. 2. **Appurtenances.** "Appurtenances" means valves, pumps, fittings, pipes, hoses, and metering devices that are connected to a bulk pesticide container or used for transferring liquid bulk pesticide between containers.

Subp. 3. **Bulk pesticide.** "Bulk pesticide" means a pesticide that is held in an individual container with a pesticide content of 56 U.S. gallons or more, or 100 pounds or more net dry weight, including mini-bulk pesticide unless otherwise specified. Only technical grade, formulated grade, and other grades of undiluted bulk pesticide are included in this definition.

Subp. 4. **Bulk pesticide storage facility.** "Bulk pesticide storage facility" means a site at which a bulk pesticide is stored, distributed, or repackaged.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of agriculture or the commissioner's authorized agent.

Subp. 6. **Containment area.** "Containment area" means a facility, device, or system or a combination of these designed to prevent the escape or movement of a pesticide from the place it is stored or kept under conditions that might otherwise result in contamination of the environment.

Subp. 7. **Custom mix.** "Custom mix" means a mixture of registered pesticide or pesticide-fertilizer mixes prepared by a dealer in response to a specific request of an end user of those products.

Subp. 8. **Disposal.** "Disposal" means the release, deposit, injection, dumping, spilling, leaking, or placing of pesticide into or on land or water so that the pesticide may enter the environment or be emitted into the air or released into any surface water or groundwater. This definition, however, does not include pesticide use allowable under *Minnesota Statutes*, chapter 18B or rules adopted under *Minnesota Statutes*, chapter 18B.

Subp. 9. **Dry pesticide.** "Dry pesticide" means pesticide that is in solid form before application or mixing for application, including formulations such as dusts, wettable powders, dry flowable powders, and granules.

Subp. 10. **Groundwater.** "Groundwater" means the water in the zone of saturation in which all of the pore spaces of the subsurface material are filled with water. The water that supplies springs and wells is groundwater.

Subp. 11. **Inorganic soil.** "Inorganic soil" means a soil that is a silty clay loam or finer with less than six percent organic matter. This definition pertains to the specific type of soil used to construct walls and liners of containment areas.

Subp. 12. **Liquid pesticide.** "Liquid pesticide" means pesticide in liquid form, including solutions, emulsions, suspensions, and slurries.

Subp. 13. **Mini-bulk pesticide.** "Mini-bulk pesticide" means an amount of liquid pesticide greater than 56 U.S. gallons (211 liters) but not greater than 499 U.S. gallons (1,892 liters), or an amount of dry pesticide greater than 100 pounds (45 kilograms) but not greater than 499 pounds (225 kilograms), that is held in a single container designed for ready handling and transport.

Subp. 14. **New bulk pesticide storage facility.** "New bulk pesticide storage facility" means a bulk pesticide storage facility established after July 1, 1989, at a site that was not previously used as a bulk pesticide storage facility. A facility is established, for purposes of this subpart, on the date it is first placed in use.

Subp. 15. **Previously established bulk pesticide storage facility.** "Previously established bulk pesticide storage facility" means a bulk pesticide storage facility established before July 1, 1989. A facility is established, for purposes of this subpart, on the date it is first placed in use.

Subp. 16. **Release.** "Release" means a pesticide release incident as defined in *Minnesota Statutes*, section 18B.01, subdivision 12, including a pesticide released into a secondary containment or loading area.

Subp. 17. **Release response plan.** "Release response plan" means a plan describing procedures employed for the notification of appropriate state agencies, stopping a release, recovering releases, and cleaning up the release area.

Subp. 18. **Repackaging.** "Repackaging" means a registrant's or manufacturer's authorized transferring of a registered pesticide from a bulk pesticide container to another pesticide container 56 U.S. gallons or more in an unaltered state in preparation for sale delivery to another dealer or user.

Subp. 19. **Revised bulk pesticide storage permit application.** "Revised bulk pesticide storage permit application" means an application for a bulk pesticide storage permit filed with the commissioner detailing substantial alterations that are to be made to a facility.

Subp. 20. **Storage container.** "Storage container" means a container used for the fixed storage of bulk pesticide, including a rail car, nurse tank, mini-bulk tank, or other mobile container for more than ten consecutive days. This definition does not include a container used solely for emergency storage of leaking pesticide containers that are less than 56 U.S. gallons or pesticide rinsate holding tanks.

Subp. 21. **Substantially altering.** "Substantially altering" includes, but is not limited to, the modification of a bulk pesticide storage facility through the changing, addition, or removal of bulk pesticide storage containers, appurtenances, load areas, secondary containment, or any modifications that may result in reducing the effectiveness of safeguards. This definition does not include the routine maintenance of bulk pesticide storage containers, load areas, secondary containment, or appurtenances.

Subp. 22. **Surface water.** "Surface water" means water that rests or flows on the surface of the ground.

Subp. 23. **Tank mix.** "Tank mix" means a mixture of registered pesticides prepared according to label directions for site application.

1505.2020 NEW FACILITIES.

Subpart 1. **Permit required.** No person may construct or operate a new bulk pesticide storage facility without first obtaining a permit under parts 1505.2040 and 1505.2050.

Subp. 2. **Information required before construction.** After being granted a permit by the commissioner, and before beginning construction of the bulk pesticide storage facility, an owner or manager shall submit to the commissioner:

A. the name, address, and telephone number of the persons who will construct, install, or modify the facility; and

B. copies of any permits or letters of authorization required by any local unit of government for the construction, installation, or modification of the facility.

Subp. 3. **Compliance within 90 days.** Within 90 days after being granted a permit by the commissioner, a new bulk pesticide storage facility owner or manager shall comply with parts 1505.2010 to 1505.2150.

Subp. 4. **Time extension.** A time extension of up to 180 days for delays due to construction or equipment or material procurement may be granted by the commissioner if requested in writing by the facility owner or manager. The commissioner shall set forth in writing the reasons for granting or denying a requested time extension within 15 days of the request.

1505.2030 PREVIOUSLY ESTABLISHED FACILITIES.

A person who operates a bulk pesticide storage facility established before July 1, 1989, must comply with items A to C.

A. The person must, by July 1, 1990, file with the commissioner an application for a bulk pesticide storage permit under parts 1505.2040 and 1505.2050 and comply with parts 1505.2010, 1505.2030, 1505.2060, and 1505.2090 to 1505.2150.

B. The person must, by July 1, 1991, comply with parts 1505.2070 and 1505.2080. A time extension of up to one year may be granted by the commissioner for delays due to construction or equipment or material procurement, if requested in writing by the facility owner or manager. The commissioner shall set forth, in writing, the reasons for granting or denying a requested time extension within 15 days of the request.

C. After being granted a bulk pesticide storage permit by the commissioner, and before beginning any construction or modification of an existing bulk pesticide storage facility, the person must submit to the commissioner:

(1) the name, address, and telephone number of the persons who will construct, install, or modify the facility; and

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(2) copies of any permits or letters of authorization required by any local or state unit of government for the construction, installation, or modification of the facility.

1505.2040 BULK PESTICIDE STORAGE PERMIT.

Subpart 1. **Commissioner's review of application.** The commissioner shall review an initial application as submitted under part 1505.2050 within 30 days of receipt and either issue a bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance. Upon receipt of the additional requested compliance information from a person, the commissioner has 15 days in which to issue a bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance.

Subp. 2. **Substantial alterations.** No person may substantially alter any bulk pesticide storage facility without first being granted a revised bulk pesticide storage permit from the commissioner. The person must file a revised bulk pesticide storage permit application detailing the proposed alterations with the commissioner. The commissioner shall review an application for a revised bulk pesticide storage permit within 30 days of receipt and either issue a revised bulk pesticide storage permit or advise the applicant, in writing, of an unsatisfactory review and detail all changes necessary in order to achieve compliance.

Subp. 3. **Denial; revocation; suspension; modification.** An initial or revised bulk pesticide storage permit may be denied, revoked, suspended, or modified, in whole or in part, for one or more of the following reasons:

A. violation of a term or condition of the permit;

B. obtaining the permit by misrepresentation or by failure to disclose all relevant facts; or

C. discovery of unreasonable adverse effects to the environment caused by the activities of the permit holder in the conduct of actions undertaken under the permit.

Subp. 4. **Notice.** If a permit is denied, revoked, or suspended, the commissioner shall send the applicant a written notice of denial, revocation, or suspension. Details that formed the basis of the decision must be included. The owner or manager must be given 30 days from the date of the notice to request an administrative meeting before the commissioner to present justification for an appeal of the decision.

Following the date and time of the administrative meeting, the commissioner has 15 days in which to analyze the facts presented and grant a permit or advise the owner or manager, in writing, of the commissioner's determination to uphold the original decision not to grant a permit.

Subp. 5. **Permit transfer.** A bulk pesticide storage permit may be transferred from one person to another if an application for a permit detailing any changes and including the required fee is filed with the commissioner prior to the transfer.

Subp. 6. **Permit exceptions.** Persons who store bulk pesticides in a storage container of a rated capacity of less than 500 U.S. gallons or who store bulk pesticides in individual storage containers at a site where the total storage amount of bulk pesticide is less than 500 U.S. gallons, are not required to obtain a bulk pesticide storage permit, but are required to comply with all other applicable provisions of this part.

1505.2050 APPLICATION AND PERMIT FEE.

Subpart 1. **Information required.** Application for a bulk pesticide storage permit must be on forms provided by the commissioner. The application must contain at least, but is not limited to, the following information:

A. a differentiation as to whether the bulk pesticide storage facility should be regarded as new or previously established;

B. the name, address, and telephone number of the person making application;

C. the name, address, and telephone number of the persons that will own and operate the facility;

D. the location of the facility, including its legal description;

E. photographs or a diagram of the current or proposed facility, including all buildings, tanks, fertilizer storage areas, mixing, loading, and rinsate recycling areas, vehicle washing areas, and bulk pesticide storage areas;

F. a geologic report of the facility property and the surrounding area, including maps, photographs, or diagrams of:

(1) the land use (crop land, residential, or business) within one-quarter mile radius of the facility;

(2) the distance and direction to surface water, drainage ditches, and storm sewers within one-quarter mile radius of the facility;

(3) the distance and direction to any source of a public water supply serving the facility;

(4) the year installed, depth, direction, and distance to any well on or within 150 feet of all existing and proposed loading and secondary containment areas; and

(5) the type of soils to the three foot depth beneath the surface fill such as, but not limited to, gravel, rock, or other soils of all existing and proposed loading and secondary containment areas.

G. the number, age or condition, dimension, capacity, and material description of the liquid bulk pesticide storage containers and a list of pesticides to be stored in them, with United States Environmental Protection Agency registration numbers;

H. a certification that to the best of the owner's or manager's knowledge the loading and containment areas will be built in accordance with construction and plumbing plans submitted and will comply with the design, construction, and containment requirements of parts 1505.2070 and 1505.2080;

I. at least one scale drawing of the loading and bulk pesticide containment areas to include a construction material specification or design guide;

J. a plumbing diagram showing the location, type, and specifications of the appurtenances used in storing or transferring bulk pesticides;

K. a copy of the release response plan as described in part 1505.2100; and

L. the person's federal Environmental Protection Agency establishment number, if required.

Subp. 2. **Fee.** The initial application for a bulk pesticide storage permit must be accompanied by the fee required in *Minnesota Statutes*, section 18B.14 for each bulk pesticide storage facility. No fee is required to apply for a revised bulk pesticide storage permit.

1505.2060 GENERAL REQUIREMENTS.

Subpart 1. **Establishment number.** A facility that repackages or transfers bulk pesticides or custom mixes any quantity of pesticides for application by another person must obtain a pesticide producer establishment number from the United States Environmental Protection Agency.

Subp. 2. **Exception.** A person who tank mixes or custom mixes for application by the person's firm only, is not required to secure a pesticide producer establishment number from the United States Environmental Protection Agency.

Subp. 3. **Storage containers and appurtenances.**

A. Storage containers and appurtenances must be constructed, installed, and maintained to prevent the release of liquid bulk pesticide. Storage containers and appurtenances must be structurally sound, resistant to changes in temperature extremes, and constructed of materials that are adequately thick to be structurally sound and that are resistant to corrosion, puncture, or cracking. Materials used in the construction or repair of storage containers and appurtenances may not be of a type that reacts chemically or electrolytically with stored bulk pesticide in a way that may weaken the storage container or appurtenance, create a risk of release, or adulterate the pesticide. Metals used for valves, fittings, and repairs on metal containers must be compatible with the metals used in the construction of the storage container, so that the combination of metals does not cause or increase corrosion that may weaken the storage container or its appurtenances, or create a risk of release. Storage containers and appurtenances must be designed to handle all operating stresses taking into account the foreseeable course of operations. Underground appurtenances are prohibited as part of a system designed and constructed for transferring bulk pesticides unless approved by the commissioner.

B. Storage containers may only be constructed of stainless steel, fiberglass, polyethylene, ferrous metal, cross-linked polyolefin, or other commissioner-approved materials that are suitable for the stored bulk pesticide. Polyvinyl chloride tanks are prohibited.

Ferrous metal tanks must have a protective lining that inhibits corrosion and does not react chemically with the stored pesticide.

Unlined ferrous metal tanks may be used only with proof of compatibility from the pesticide manufacturer.

C. Storage container connections, except safety relief connections, must be equipped with a shutoff valve located on the storage container or at a distance from the storage container dictated by standard engineering practice and in compliance with this part. Wetted parts inside shutoff valves and connections from the storage container to the shutoff valve must be made of stainless steel.

D. Storage containers must be equipped with a liquid level gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level gauging device is not required if the level of the liquid in a storage container can be readily and reliably measured by other means. Liquid level gauging devices must be secured, in a safe manner, to protect against breakage or vandalism that may result in release. External sight gauges are permitted only with approval from the commissioner.

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E. Meters and scales used for the sale of bulk pesticide must be compatible with the pesticide being metered or weighed.

F. Pipes and fittings must be adequately supported to prevent sagging and possible breakage because of gravity and other forces that may be encountered in the ordinary course of operations.

G. Valves must be secured and of a locking type to protect against vandalism or accidental valve openings that may result in a release.

H. Storage containers must be equipped with a vent or other device designed to relieve excess pressure, prevent losses by evaporation, and exclude precipitation.

Subp. 4. **Anchoring of storage containers.** Storage containers must be anchored to prevent flotation or instability that might occur as a result of liquid accumulations within a secondary containment area built under part 1505.2080. Anchoring may be accomplished by guy wires, or other commissioner-approved anchors.

Subp. 5. **Security.** Storage containers must be secured against access by unauthorized persons and provide protection against access by wildlife. Appurtenances must be fenced or otherwise secured to provide reasonable protection against vandalism or unauthorized access that may result in a release. Valves on storage containers must be locked or otherwise secured except when persons responsible for facility security are present at the facility. Valves on rail cars, nurse tanks, and other mobile pesticide containers parked overnight at a storage facility must be locked or secured except when persons responsible for facility security are present at the facility.

Subp. 6. **Filling.** Storage containers must not be filled to more than 95 percent of capacity unless the storage container construction or location provides constant temperature control of the container contents.

Repackaging and delivery of bulk pesticides must be attended and supervised at all times by the owner, manager, or an employee of the facility.

Subp. 7. **Protection against damage by moving vehicles.** Storage containers and appurtenances, including pipes, must be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles and objects.

Subp. 8. **Storage of dry bulk pesticide.** Except during loading, stored dry bulk pesticide must be covered by a roof or tarpaulin that will exclude precipitation from the pesticide. Storage containers must be placed on a concrete or other impervious surfaced floor on pallets or on a raised platform to prevent the accumulation of water in or under the pesticide.

Storage facilities must be secured against entry by unauthorized persons or wildlife.

Subp. 9. **Labeling of storage containers.** Every storage container must bear a current pesticide product label as required by the United States Environmental Protection Agency.

For outside storage, the label required under this part must be placed on the storage container so as to be visible from outside of the secondary containment area. The label must be legible at all times. The type size used on the label must be that specified in Code of Federal Regulations, title 40, part 162.

1505.2070 LOADING AREAS.

Subpart 1. **Containment for liquid bulk pesticide loading sites.** An area used for the loading of liquid bulk pesticide into fixed storage containers, mobile containers, or pesticide application equipment at a bulk pesticide storage facility must be provided with a means of containment that is elevated above the surrounding area, constructed of reinforced concrete or other commissioner-approved material, and designed and constructed for the intended purpose. The means of containment must not contain a drain and must comply with either item A or B.

A. A curbed loading area without a sediment trap must comply with subitems (1) and (2).

(1) The perimeter of the area must be curbed a minimum of three inches in height to prevent run-off and the curbed surface must form a liquid-tight containment area.

(2) The curbed surface and containment area must contain a minimum of 1,000 U.S. gallons.

B. A sloped surface that contains a sediment trap must comply with subitems (1) to (3).

(1) The perimeter of the area must be curbed three inches in height to prevent runoff and must form a liquid-tight containment area.

(2) The area must be sloped to a sediment trap used only for the temporary collection of spilled or released pesticides. The sediment trap may not be greater than two feet deep or hold more than 150 U.S. gallons.

(3) The area must contain a minimum of 1,000 U.S. gallons.

Subp. 2. **Containment for pesticide-impregnated fertilizer loading sites.** An area used for the loading of pesticide impregnated fertilizer into fixed storage containers, mobile containers, or pesticide application equipment at a bulk pesticide storage facility must be provided with the means of containment in items A to C.

A. The containment area for pesticide-impregnated fertilizer loading must be elevated above the surrounding area, be constructed of reinforced concrete or other commissioner-approved material, and be designed and constructed for the intended purpose. A scale with a liquid-tight containment area is acceptable.

B. The containment area must be of adequate size to fully hold the largest fixed storage container, mobile containers, or commercial pesticide application equipment that will be loaded on the area.

C. The containment area must be protected or managed in a manner that will prevent pesticide-contaminated runoff from leaving the area.

Subp. 3. **Load area exceptions and underground plumbing.**

A. If load areas for fixed storage containers, mobile containers, or pesticide application equipment are physically separated from one another, each separate load area must be of a design, size, and construction to contain a minimum of 500 U.S. gallons.

B. If no bulk pesticide storage container at the storage facility has a rated capacity of more than 500 U.S. gallons, the load area must be of a design, size, and construction to contain a minimum of 500 U.S. gallons.

If no bulk pesticide storage container at the storage facility has a rated capacity of more than 250 U.S. gallons, the load area must be of a design, size, and construction to contain a minimum of 250 U.S. gallons.

C. Any underground plumbing used for transferring rinsates or sediment from a sediment trap to rinsate tanks must be designed, constructed, installed, and maintained to prevent the release of pesticides to the environment and the backflow of pesticide rinsates to the sediment trap.

1505.2080 SECONDARY CONTAINMENT AREAS.

Subpart 1. **General requirements.** Liquid bulk pesticide storage containers must be confined to a secondary containment area that is adequate, in the event of a release, to prevent the movement of liquid pesticides to surface or ground water. The loading area as specified in part 1505.2070 must not be located, designed, or constructed in such a way so as to compromise the required secondary containment of subpart 2. The secondary containment provisions also apply to liquid bulk pesticides stored in a location covered by a roof. A secondary containment area must consist of:

A. a wall and liner as provided under subparts 4 and 5;

B. a prefabricated secondary containment basin as provided under subpart 6; or

C. other safeguards approved by the commissioner.

Subp. 2. **Capacity.** The capacity of a secondary containment area for a bulk pesticide storage facility must be at least equal to the sum of all of the following:

A. the greatest volume of liquid bulk pesticide or liquid bulk fertilizer that could be released from the largest storage container within the secondary containment area;

B. 25 percent of the capacity of the largest liquid bulk pesticide or liquid bulk fertilizer storage container located within the secondary containment area for an outdoor storage container, or ten percent of the capacity of the largest liquid bulk pesticide container or liquid bulk fertilizer if stored in a location covered by a roof; and

C. the total volume of released liquid which would be displaced by the portions of all other storage containers within the secondary containment area to the height of the containment wall and all other fixtures and materials located within the secondary containment area (including pesticide or fertilizer diluent, empty pesticide containers, recovered pesticide or fertilizer releases, and liquid pesticide or fertilizer metering equipment).

Subp. 3. **Storage with other commodities or equipment.**

A. Liquid bulk pesticide, liquid bulk fertilizer, pesticide or fertilizer diluent, empty pesticide containers, recovered pesticide or fertilizer releases, or liquid pesticide or fertilizer metering equipment may be stored within the bulk pesticide secondary containment area.

B. The total containment capacity calculated in subpart 2 may not be compromised by storing liquid bulk pesticide or liquid bulk fertilizer, pesticide or fertilizer diluent, pesticide containers, pesticide or fertilizer releases, pesticide or fertilizer metering equipment, or other equipment or products in amounts greater than the amounts which were originally calculated as necessary displacement in subpart 2.

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.

C. A liquid bulk pesticide storage containment area may be located within the boundary of a liquid bulk fertilizer containment area if:

(1) the containment areas are separated by a wall described in subpart 4;

(2) the bulk pesticide is contained in an anchored prefabricated containment unit as described in subpart 6; or

(3) each bulk pesticide storage container and its appurtenances is effectively protected from corrosion and flotation by liquid bulk fertilizers.

Subp. 4. **Walls.** The walls of a secondary containment area must be made of ferrous metal, inorganic soil, stainless steel, reinforced concrete, or solid reinforced masonry and must be designed to withstand a fully hydrostatic head of any released liquid. Cracks and seams must be sealed as needed to prevent leakage. Walls constructed of inorganic soil must be lined as provided under subpart 5, item D, be protected from erosion, and have a horizontal to vertical slope of at least three to one, unless a steeper slope is consistent with good engineering practice. Walls may not exceed six feet in height above the interior grade.

A. All bulk pesticide tanks must be placed a minimum of one foot from a secondary containment area wall.

B. Tanks over ten feet high stored outdoors must be located at least three feet from the secondary containment area wall.

C. The walls of a secondary containment area may not contain a drain or other similar opening.

D. Masonry walls must be reinforced, capped with concrete, and parged on the interior.

E. The joint between a masonry wall and any floor or subsurface that it is constructed on must be constructed, sealed, and protected in such a way that it prevents any pesticide leakage from leaving the containment area.

Subp. 5. **Lining.**

A. The base of a secondary containment area and any inorganic soil walls of a secondary containment area must be lined with reinforced concrete, a synthetic liner, an inorganic soil liner, ferrous metal, or stainless steel designed to limit the permeability of the base and walls. Liners must meet the requirements of this subpart. The base of a secondary containment area may not contain a drain or other similar opening used to release pesticides or precipitation. Dissimilar materials may not be used together for a wall and liner combination unless approved by the commissioner.

B. Concrete liners must be designed according to good engineering practices to withstand any foreseeable loading conditions, including a full hydrostatic head of released liquid. Cracks and seams must be sealed to prevent leakage.

C. Synthetic liners must have a minimum thickness of 30 mils (0.8 millimeters), be chemically compatible with the materials being stored within the secondary containment area, be photo-resistant, and be puncture resistant. Confirmation of chemical compatibility and an estimate of liner life must be retained by the firm for inspection upon request by the Department of Agriculture. The synthetic liner must be protected by a 12-inch (30-centimeter) layer of inorganic soil or half-inch diameter rounded stone above the liner and a six-inch (15-centimeter) layer of inorganic soil below the liner. Soil layers must be free of large rocks, angular stones, sticks, or other materials that may puncture the liner. Synthetic liners must be installed according to the manufacturer's recommendations and, if necessary, under the supervision of a qualified representative of the manufacturer, and all field-constructed seams must be tested, and repaired if necessary, in accordance with the manufacturer's recommendations. Pesticide releases onto the inorganic soil portion of a synthetic liner containment area must be managed by the removal of contaminated soils. Disposition of contaminated soils is subject to approval from the Department of Agriculture. Integrity of the inorganic soil portion of the synthetic liner containment area must be restored under all circumstances.

D. Soil liners must comply with subitems (1) to (5).

(1) A liner may be constructed of inorganic soil treated with bentonite clay if the liner meets the requirements of this subitem. The liner must be designed and constructed according to good engineering practices, extend a minimum of six feet beyond the wall, and achieve a coefficient of permeability not to exceed 1 X 10-6 cm/sec, with a thickness of not less than six inches (15 centimeters). The liner must be covered by an inorganic soil layer not less than six inches (15 centimeters) thick. Liners may not be constructed of frost-susceptible soils, which include silts and silty sand.

(2) Bentonite-treated liners must consist of a uniform mixture of inorganic soil and bentonite. The inorganic soil used in the mixture must have a plasticity index of at least 12. At least 30 percent by weight of the inorganic soil must pass a No. 200 sieve, and less than five percent of the inorganic soil must be retained on a No. 4 sieve. Ninety percent of the bentonite by weight must pass a No. 80 sieve, and the inorganic soil-bentonite mixture must contain at least five percent bentonite by weight.

(3) An inorganic soil may not be used as part of a soil liner if less than 50 percent by weight of the soil passes a No. 200 sieve, or if more than five percent by weight of the inorganic soil is retained on a No. 4 sieve.

(4) Soil liners must be maintained to prevent cracking or other conditions that may compromise the integrity of containment. Pesticide releases into an inorganic soil-bentonite liner containment area must be managed by removal of contaminated soils within

48 hours. Disposition of contaminated soils is subject to approval from the Department of Agriculture. Integrity of the inorganic soil walls and inorganic soil-bentonite liner after a spill must be restored under all circumstances.

(5) An owner or manager shall submit to the commissioner, upon request, certification by a registered engineer practicing in the geotechnical field to verify that the coefficient permeability of the liner does not exceed 1 X 10-6 cm/sec or that the inorganic soil lined containment area will contain released liquid to the height of the containment wall for at least 72 hours.

Subp. 6. **Prefabricated secondary containment basin.** A prefabricated secondary containment basin must be composed of a rigid prefabricated basin having both a base and walls constructed of steel or synthetic materials which are resistant to corrosion, puncture, or cracking. Materials used for the prefabricated basin must be chemically compatible with the products being stored in the bulk pesticide tank. A written confirmation of compatibility from the basin manufacturer must be kept on file at the storage facility or at the nearest local office from which the storage facility is administered. The prefabricated facility must be designed and installed to contain the amounts listed in subpart 2, including the tank load and a full hydrostatic head of any released liquid. Multiple basins connected to provide the capacity required under subpart 2, must be connected in a way that assures an unrestricted transfer of released liquid between basins. A prefabricated containment basin may not be located where fire could damage the containment vessel and compromise the intended containment.

1505.2090 RECOVERY, USE, OR DISPOSAL OF PESTICIDE RELEASES.

Subpart 1. **Loading areas and secondary containment areas.** All pesticide releases occurring in an area confined to loading areas described in part 1505.2070 and secondary containment areas described in part 1505.2080 must be recovered as soon as possible and must either be used, stored, or disposed of. Use and storage must be according to pesticide label instructions. Disposal must be according to local, state, and federal regulations. The Department of Agriculture must be immediately notified of all releases.

Subp. 2. **Precipitation accumulations.**

A. Precipitation must not be permitted to accumulate in a secondary containment area or loading area to the point where the accumulation may tend to:

(1) compromise the ability of the secondary containment area or loading areas to contain the amounts indicated in part 1505.2070 or 1505.2080;

(2) increase the corrosion of storage containers or appurtenances; or

(3) impair the stability of storage containers.

B. Precipitation, if contaminated with pesticide residues, must be:

(1) removed and used at labeled rates on sites consistent with labeled end uses for the intended target crop;

(2) removed and stored for later use according to subitem (1);

(3) disposed of according to local, state, and federal regulations; or

(4) used at a rate of no more than five percent of the total tank mix. Records must be kept indicating amounts, crop to which applied, and dates.

C. Uncontaminated precipitation may be released to a vegetated area allowing for even distribution over the entire area or used as water for mixing.

Subp. 3. **Use of pesticide rinsate, pesticide containing sludge, or pesticide containing washwater accumulations.**

A. Sludge, rinsates, or washwater generated in a pesticide loading or secondary containment area as a result of loading, washing, rinsing, clean-up, or similar practices must be:

(1) removed and used at labeled rates consistent with labeled end uses for the intended target crop;

(2) removed and stored for later use according to subitem (1); or

(3) disposed of according to local, state, and federal regulations.

B. Sludge must be removed from a sediment trap before the trap is half full.

C. Rinsates and sludges may be used at a rate of no more than five percent of any total tank mix. Washwater not contaminated with pesticides may be used undiluted.

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D. Records indicating the amount removed (pounds or gallons), the location and acreage treated, and crops to which applied must be kept and made available for review during inspections by the commissioner. Records must be retained for a minimum of five years.

1505.2100 PREPARATION FOR CONTROL AND RECOVERY OF PESTICIDE RELEASES.

Subpart 1. **Release response plan.** The operator of a bulk pesticide storage facility shall prepare a written release response plan for the storage facility. The operator shall keep the plan current at all times. A copy of the plan must be kept at a prominent location at the storage facility and at the nearest local office from which the storage facility is administered, and must be made available for employee use and for inspection by the department. The operator of the storage facility shall provide a current copy of the plan to the local fire and police departments. The plan must include, but is not limited to:

A. the identity and telephone numbers of the persons who are to be contacted in the event of a release;

B. for every bulk pesticide stored at the facility, a complete copy of the storage container label required under part 1505.2060, subpart 9, and *Minnesota Statutes*, section 18B.26;

C. a complete copy of the material safety data sheet for every bulk pesticide stored at the facility;

D. the procedures and equipment to be used in controlling and recovering or otherwise responding to a release; and

E. an identification, by location, of every bulk pesticide storage container located at the facility, and the type of bulk pesticide stored in each storage container.

The plan need not include the specific location of each storage container of mini-bulk pesticide, if the plan includes the general location within the facility at which storage containers of mini-bulk pesticide are held.

Subp. 2. **Equipment and supplies.** Bulk pesticide storage facilities must have on the premises equipment needed to mitigate and recover pesticide releases. The equipment must include and is not limited to pumps, recovery containers, personal protective equipment, absorbent materials, and other materials used to control and recover pesticide releases. A checklist of release response equipment and its location must be posted with the release response plan.

Subp. 3. **Training.** The owner or manager of the storage facility shall conduct release response training for all new and existing employees of the facility annually before the beginning of the pesticide use season. New employees must receive training within 30 days of employment. The owner or manager and employees are responsible for following the firm's release response procedures pursuant to the release response plan to minimize contamination of the environment.

1505.2110 INSPECTION AND MAINTENANCE.

Subpart 1. **Records.** The operator of a bulk pesticide storage facility shall inspect and maintain storage containers, appurtenances, loading areas, and secondary containment areas to minimize the risk of a pesticide release. A written record of all inspections and maintenance must be made on the day of the inspection or maintenance and kept at the storage site or at the nearest local office from which the storage site is administered. A record of all pesticide releases onto the loading area or into the secondary containment area including date, time, type of pesticide, volume, cause, actions to contain, and management of the release must be kept for at least five years.

Subp. 2. **Schedule.** A bulk pesticide container and its appurtenances must be inspected for leakage at least weekly during the use season. A secondary containment area must be inspected for condition and leakage of the base, seams, and walls at least monthly while bulk pesticide is in storage. Loading area pads must be inspected for leakage at least monthly during the use season.

Inspection records must contain the name of the person making the inspection, the date of each inspection, conditions noted, and maintenance performed.

Maintenance of the bulk pesticide storage facility must be performed as necessary in order to ensure that the integrity of the bulk pesticide containers, secondary containment areas, and loading areas is maintained.

1505.2120 RECORD KEEPING.

The following records must be prepared and kept on file at the bulk pesticide storage facility while bulk pesticides are being stored in a storage container:

A. the beginning and end amounts in each fixed storage container calculated and recorded at the time of each filling;

B. the amount of bulk pesticide delivered, sold, and used; and

C. the names of the persons preparing the information in items A and B and the dates the information was prepared.

The records must be available and must be submitted to the commissioner within 24 hours of a request. Weighing, metering, or direct measurement are acceptable methods for calculating storage amounts.

1505.2130 UNDERGROUND BULK PESTICIDE STORAGE.

Subpart 1. **New underground bulk pesticide storage prohibited.** After July 1, 1989, no new underground bulk pesticide storage is allowed. This prohibition does not apply to catch basins, containment areas, or sediment traps, used for the temporary collection of pesticides from transfer and loading areas under part 1505.2070, or to underground storage, dip, or other tanks used to contain pesticides used in the wood preservatives industry.

Subp. 2. **Existing and exempted underground bulk pesticide storage.** Underground bulk pesticide storage tanks in use as of July 1, 1989, or those tanks exempted from subpart 1 must conform with all applicable statutes and rules enforced by the Minnesota Pollution Control Agency, and must perform and provide to the commissioner upon request a leak certification test for each underground bulk pesticide storage tank.

1505.2140 ABANDONED CONTAINERS.

Subpart 1. **Abandonment.** Storage containers and other containers used at a storage facility to hold bulk pesticide or pesticide rinsate are considered abandoned containers under this part if they have been out of service for more than six months because of a weakness or leak, or have been out of service for any reason for more than one year.

Subp. 2. **Underground containers.** Abandoned underground tanks in place at previously existing facilities must be thoroughly cleaned and removed from the ground.

Subp. 3. **Aboveground containers.** Abandoned aboveground containers must be thoroughly cleaned. All hatches on the containers must be removed and all valves or connections must be removed.

1505.2150 EXEMPTIONS.

Subpart 1. **Mobile containers.** The secondary containment requirements of part 1505.2080 do not apply to rail cars, nurse tanks, other mobile containers, or mini-bulk containers which are located at the bulk pesticide storage facility for less than ten consecutive days incidental to loading bulk pesticide containers.

Subp. 2. **Alternate technology.** The commissioner may exempt any person from a requirement under this part if compliance is not technically feasible, but only if the commissioner finds that the alternative measures provide substantially similar protection to the ground and surface water of the state. A person requesting an exemption shall submit to the commissioner in writing a request for an exemption detailing the alternative measures proposed. The commissioner has 45 days to analyze the facts presented and grant the exemption or advise the person of an unsatisfactory review and detail all changes necessary to achieve compliance.

EFFECTIVE DATE. Parts 1505.2010 to 1505.2150 are effective July 1, 1989.

Department of Agriculture

Proposed Permanent Rules Relating to Minnesota Grown Labeling Statements

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, Sections 14.22-14.28. The statutory authority to adopt these amendments is *Minnesota Statutes*, Section 17.102, subd. 6.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, Sections 14.131 to 14.20.

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.

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Bulk Pesticide Storage

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT A PUBLIC HEARING

The above-entitled rule was withdrawn from review by the attorney general on June 7, 1989.

Based on the comments and evidence in the record I find the following:

1505.2020, Subpart 4 & 1505.2030, B.

These changes were made to further specify conditions for receiving a time extension. The changes were necessary to assure that time extensions are not granted arbitrarily.

1505.2080, Subpart 5. D. (4)

Language regarding the disposition of pesticide contaminated soils was changed to clarify the compliance requirements for re-use and disposal of pesticide contaminated soils. The change is consistent with similar language contained in part 1505.2090, Subpart 3. A. 1., 2., and 3.,. This is a technical change meant to clarify the compliance requirements for affected persons.

1505.2150, Subpart 2

The term "May" was changed to "Shall" to insure that exemptions are not granted arbitrarily.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule governing bulk pesticide as modified and resubmitted to the attorney general is adopted this 12th day of June, 1989, pursuant to authority vested in my by Minnesota Statutes, Section 18B.14, Subdivision 2.

Jim Nichols
Commissioner of Agriculture

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULE OF THE MINNESOTA DEPARTMENT OF AGRICULTURE GOVERNING BULK PESTICIDE STORAGE

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on March 20, 1989, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.14, subd. 1a and 14.22 on March 15, 1989. The Statement of Need and Reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The department received ten requests for a public hearing. Therefore the department did not receive request for a public hearing from 25 or more persons.

No requests for notice of submission to the attorney general were received by the department.

Based on the comments and evidence in the record before the department, I find the following:

1505.2010, Subpart 3

The word "undiluted" was removed and the term "similar grades" was substituted in order to provide clearer distinctions between pesticide products that are commonly distributed and repackaged, diluted pesticide mixtures that may occur from rinsates, and those mixtures of registered pesticides which contain only a small percentage of active ingredients. Rinsates are not bulk pesticides. This is a technical change meant to clarify the rule.

Subpart 4

The definition was slightly reworded to provide a clearer distinction between sites that simply store bulk pesticides, and those sites that both store and distribute or repackage bulk pesticides. Sites that distribute or repackage bulk pesticides are required to provide a load area as described in section 1505.2070. This is a technical change meant to clarify the rule.

Subpart 6

"Contamination of the environment" was replaced with language that is consistent with that contained in Minnesota Statutes, Chapter 18B.01, Subdivision 31. This is a technical change meant to clarify the rule.

Subpart 18

Language was added regarding repackaging requirements that are consistent with the Federal Insecticide, Fungicide, and Rodenticide Act. This is a technical change to the rule and adds no new requirements.

Subpart 23

The definition was eliminated because the term is no longer used in the rule.

1505.2030, C.

The word "modification" was replaced with the term "substantially altering" to provide greater consistency of terms throughout the rule. This is a technical change meant to clarify the rule.

1505.2040, Subparts 3 and 4

Subpart 3 was corrected to assure consistency with the procedures and requirements of Minnesota Statutes 18B.21, Subdivision 2 for revocation and suspension of permits, and refusal to grant (denial) permits. This is a technical change to the rule and maintains that the right of appeal is guaranteed for affected persons.

The word "violation" was replaced with language that clarifies the intent of 3.A. The change is a technical change meant to clarify the rule.

The reference to "modifications" was removed because the term is synonymous with "substantial alterations." The procedures for "substantial alterations" are included in Subpart 2. This is a technical change meant to clarify the rule.

Subpart 4 was eliminated for the same reason explained in Subpart 3. This is a technical change to the rule and maintains that the right of appeal is guaranteed for affected persons.

1505.2050, Subpart 1, I.

The words "bulk pesticide" were replaced with the terms used for storage areas in part 1505.2080. The change is a technical change meant to clarify the rule.

1505.2060, Subpart 1

Changes in wording were made to reflect recent Environmental Protection Agency changes in policy regarding certain requirements for custom mixers. This is a technical change and does not add any new requirements.

Subpart 2

The term "tank mixes" was dropped to keep terms throughout the rule consistent. Deleting this term does not alter the rule.

Subpart 3, B.

Additional language was added to clarify the fact that the prohibition against the use of polyvinyl chloride tanks is meant to include any polyvinyl fittings and plumbing that may be used with polyvinyl chloride tanks to transfer and repackage bulk pesticides. Generally, similar materials are used for both tanks, their fittings, and plumbing. The change is not substantial and simply seeks to clarify the original prohibition.

1505.2070, Subpart 1, B. (2)

A change in the size of the sediment trap was made to reflect the "de minimis exclusions" made in the Final Rules for Underground Storage Tanks by the Environmental Protection Agency in the Federal Register, September 23, 1988. The change is not substantial because it results in only a small the reduction in size/capacity of the sediment trap.

Subpart 3, C.

An exception for a load area was added for a specialty pesticide and its delivery (injection) system because of the safeguards added effectively limit the possibility of a pesticide release incident during the loading of the pesticide into anhydrous ammonia tanks.

The change is not significant because the safeguards added provide substantially similar protection to ground and surface water as a load area provides.

1505.2080, Subpart 4

A correction was made consistent with the correct spelling of an engineering term. This is a technical change meant to clarify the rule.

1505.2090, Subpart 2. B. (4)

This change allows affected persons to use larger amounts of less concentrated pesticide contaminated precipitation. The change is not substantial because it is consistent with the intent of the rule and Minnesota Statutes, Chapter 18B to prohibit the use of pesticides in excess of their legally labelled rates.

Subpart 3. C.

This change allows affected persons to use larger amounts of less concentrated pesticide rinsates and sediment trap sludge. The change is not substantial because it is consistent with the intent of the rule and Minnesota Statutes, Chapter 18B to prohibit the use of pesticides in excess of their legally labelled rates.

1505.2150, Subpart 1

The word "fixed" was added to clarify the secondary containment requirement exemption that exists for areas used for the loading of non-mobile containers (fixed storage) from mobile containers. It is important to clarify this exemption so that affected persons do not unnecessarily comply with the most costly provision of the rule, secondary containment. The change is a technical change and adds no new requirements.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the Rule Governing Bulk Pesticide Storage is adopted this 16th day of May 1989, pursuant to authority vested in me by Minnesota Statutes, section 18B.14, subd. 2.

STATE OF MINNESOTA

Jim Nichols

JIM NICHOLS
COMMISSIONER OF AGRICULTURE

In the Matter of the Adoption of the
Rule of the Minnesota Department
of Agriculture Governing Bulk
Pesticide Storage

DECLARATION
OF COUNSEL

I, Paul Strandberg, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, Chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0986.

Paul Strandberg
Special Assistant Attorney General

Date: 5/23/89

In the Matter of the Proposed Adoption
of the Rule of the Department of
Agriculture Governing Bulk Pesticide Storage

CERTIFICATE OF
MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Statutes, sections 14.14, subd. 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 15th day of March, 1989.

Carol Milligan
Management Analyst

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Subscribed and sworn to before me
this 15th day of March, 1989.

Diane M. Windham

Public Comments

~~HH HH HH~~ ~~HH HH HH~~ Comments

11 Request for Hearings

Of the 30 Comments, 8 ~~x~~ indicated that they would hope they have a chance to state their views; at a hrg however they do not specifically request a hearing. However, even if we consider these as requests for hrgs, we would only ~~have~~ have a ~~total~~ of 10 requests, still less than the needed 25.

Authority

18B.14 subd 2 dk

180 days - See 18B.14 subd 2c - law passed in 1987 - Rule not published until 3/20/89.

Comments: Rule

See AG Copy.

14.12

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : OF AGRICULTURE

DATE : June 7, 1989

TO : Jacquelyn Albright, Special Assistant Attorney General
Attorney General's Office

FROM : Jim Nichols
Commissioner

PHONE : 297-3219

SUBJECT : Withdrawal of Rules Governing Bulk Pesticide Storage
M.R. 1505.2010 - 1505.2150

The Department of Agriculture wishes to withdraw the rules governing bulk pesticide storage submitted to your office for approval on May 24, 1989. The department intends to amend and resubmit the rule in accordance with Minnesota Rule part 2010.1300.

CM:dw

SF-00006-05 (4/86)

DEPARTMENT : OF AGRICULTURE

STATE OF MINNESOTA

Office Memorandum

DATE : 6/13/89

rec'd 6/14/89 ok

TO : Rita Desmond
Administration Finance Division
Office of the Attorney General

FROM : Carol Milligan CM
Planning Division

Katie

PHONE : 296-6906

SUBJECT : Resubmission of Proposed Rule Governing Bulk Pesticide Storage

The Department of Agriculture withdrew the above-mentioned rule from Attorney General review on June 7, 1989. Now, in accordance with Minnesota Rule, part 2010.1300, we are resubmitting the rule for review.

Changes have been made to the rule since it was withdrawn, and so four amended copies of the rule as adopted and a Supplemental Findings of Fact, Conclusions and Order Adopting a Rule are enclosed with this memo.

Please call if you have any questions.

Attachment

cc: Jim Nichols, Commissioner
Pat Jensen, Deputy Commissioner
Paul Strandberg, Special Assistant Attorney General
Gerald Heil, Planning Division
Bill Bulger, Agronomy Division
John Peckham, Agronomy Division

qa

RULE REVIEW CHECKLIST
RESUBMITTED RULE

File No. 1609 Docket No. 05-0089

RESUBMISSION DATE 6-14-89
DATE DUE 6-28-89

ADOPTED W/O HEARING X
EMERGENCY RULE _____

APPROVED _____
DISAPPROVED _____
WITHDRAWM _____

REVISOR APPROVED _____
REVISOR DISAPPROVED _____
FILED W/SEC. STATE _____
RETURNED TO AGENCY _____

_____ **Does the revision raise significant new legal issues?**

_____ Review date

_____ Rule as adopted (4 copies)

_____ Supplemental Findings of Fact, Conclusions & Order Adopting

_____ Board's Supplemental Resolution Adopting

_____ Notice of submission to Attorney General

_____ Affidavit of Mailing Notice to Attorney General

SF-00006-05 (4/86)

DEPARTMENT : OF AGRICULTURE

STATE OF MINNESOTA

Office Memorandum

DATE : May 23, 1989

TO : Rita Desmond
Administration – Finance Division
Office of the Attorney General

FROM : Carol Milligan, Management Analyst
Planning Division

OK Reed 3/24/89

PHONE : 296–6906

SUBJECT : Review of Proposed Rule Governing Bulk Pesticide Storage

The Department of Agriculture adopted the above–mentioned rule pursuant to Minnesota Statutes, sections 14.22–14.28 Enclosed with this memorandum are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

If you have questions, please contact me.

CM:cb

Attachment

cc: Jim Nichols, Commissioner
Pat Jensen, Deputy Commissioner
Paul Strandberg, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Planning Division
Bill Bulger, Agronomy Division
John Peckham, Agronomy Division

RECEIVED

MAY 24. 89

ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ATTACHED DOCUMENTS

A. Notice of Solicitation of Outside Opinion

B. State Register Copy of Notice of Solicitation of Outside Opinion

C. Rule as Proposed

D. Notice of Intent to Adopt a Rule Without Public Hearing

E. Statement of Need and Reasonableness

F. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing

G. Certification of Mailing List

H. State Register Photocopy of Notice of Intent

I. Rule as Adopted (Original and three copies)

J. Findings of Fact and Conclusions, and Order Adopting

K. Comments Received

L. Declaration of Counsel