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Details:

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**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

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

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
- 2 order to repeal ch. ATCP 32 and to repeal and recreate ch. ATCP 33; relating to fertilizer and
- 3 pesticide bulk storage and affecting small business.

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) currently regulates fertilizer and pesticide bulk storage facilities. DATCP regulates to ensure safe storage of fertilizer and pesticides, and to prevent spills that may harm persons, property and the environment.

This rule consolidates, reorganizes and modifies current rules. This rule regulates the construction, operation and maintenance of fertilizer and pesticide bulk storage facilities. This rule requires operators to file construction plans with DATCP before constructing certain bulk storage structures. This rule also creates new construction standards for some facilities.

Statutory Authority

Statutory Authority: ss. 93.07(1) and 94.645(3), Stats.
Statute Interpreted: s. 94.645, Stats.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules to implement laws under its jurisdiction. DATCP has specific authority to regulate fertilizer and pesticide bulk storage under s. 94.645, Stats., and has rule making authority for that purpose under s. 94.645(3), Stats.

Rule Coverage

This rule applies to commercial facilities that store unpackaged *bulk* fertilizer or pesticides. This rule does *not* apply to any of the following:

- Manure storage.
- On-farm storage, mixing or loading of fertilizer or pesticides for on-farm use (not for sale or distribution).
- Facilities that store only packaged fertilizer or pesticides.

Rule Consolidation

DATCP currently administers separate bulk storage rules for fertilizer and pesticides. Since many facilities store fertilizer *and* pesticides, this rule consolidates fertilizer and pesticide bulk storage rules in a single rule chapter. This consolidation will make it easier for storage facility operators to understand and comply with the rules.

Effect on Existing Facilities

This rule establishes some new construction standards for fertilizer and pesticide storage facilities. But the new standards apply only to structures that are constructed *or substantially altered* on or after the effective date of this rule. Routine maintenance and repair is not considered a *substantial alteration*.

Spill Prevention and Cleanup Costs

DATCP currently administers an agricultural chemical cleanup program, funded by fertilizer and pesticide license fees. Under that program, DATCP compensates facility operators for fertilizer and pesticide spill cleanup costs. Proper construction and maintenance of storage facilities can reduce spills and spill cleanup costs.

This rule does not change the agricultural chemical cleanup program. But by improving storage facility construction and maintenance, this rule will help minimize spills and spill cleanup costs. That will help to control costs under the agricultural chemical cleanup program.

Rule Contents

Construction Plans

Under current rules, fertilizer and pesticide bulk storage facilities must be constructed to certain standards. A professional engineer is often involved. However, current rules do not *require* plan review by DATCP or a professional engineer.

Under this rule, at least 21 days before an operator constructs or substantially alters a storage facility, the operator must file all of the following with DATCP:

- Plans for the construction or alteration (design specifications).
- A signed written statement by a professional engineer, certifying that the plans comply with this rule.
- The approximate date on which the operator plans to start construction.

DATCP may review and comment on plans filed under this rule, but is not required to do so. A failure to comment does not signify approval. An operator is not required to obtain DATCP approval, but construction must conform to this rule and to the plans filed with DATCP.

An operator may not deviate from the plans without prior written notice to DATCP. DATCP may, in its discretion, inspect the construction (DATCP is not required to inspect). The operator or a person chosen by the operator must inspect the construction of new concrete structures to ensure that the construction conforms to plans filed with DATCP. The operator must file a copy of the inspection report with DATCP.

Under this rule, as under current rules, DATCP may grant a variance from applicable requirements if DATCP finds that a nonconforming feature will provide substantially equivalent protection for waters of the state. This rule clarifies that an operator must submit a variance request in writing. The request must clearly identify the proposed nonconforming feature. If the nonconforming feature affects a secondary containment structure or a mixing and loading pad, a professional engineer must certify that it will provide substantially equivalent protection for waters of the state. DATCP must grant or deny the request within 30 days, but may extend the response deadline for good cause.

Storage Facility Siting

Under this rule, as under current rules, storage and handling operations must be conducted over a mixing and loading pad or secondary containment structure designed to contain spills. Under this rule, new mixing and loading pads, secondary containment structures and bulk dry fertilizer buildings must be located at least 5 feet above bedrock and groundwater, at least 1,000 feet from any navigable lake, at least 300 feet from any navigable stream, and outside any 100-year floodplain. These siting limitations do not apply to the reconstruction, expansion or alteration of a mixing and loading pad, secondary containment structure or storage building that was in use prior to the effective date of this rule.

Water Supply Protection

Under this rule, storage facilities must comply with well setback requirements contained in chs. NR 811 and 812, Wis. Adm. Code (the state well code). All water supplies to a storage facility must be protected against back flow. Protection may include an air gap at each water supply outlet, or a back flow protection device that complies with ch. Comm 82, Wis. Adm. Code (the state plumbing code).

Storage Containers for Liquid Fertilizer or Pesticide

Under this rule, as under current rules, storage containers must be designed and constructed to prevent discharges, and must be located within a secondary containment structure. Storage containers must resist corrosion, puncture and cracking, and must be constructed of materials that do not react with stored products. Storage containers must be strong enough to hold the largest volume of product that may be stored in them.

This rule establishes new requirements related to bladder tanks, tank-in-tanks and field-erected storage containers constructed or substantially altered after the effective date of this rule. The storage containers must comply with construction standards in American Petroleum Institute standard API 650. An inspector certified under American Petroleum Institute Standard API 653 must inspect the storage containers at least once every 5 years, using inspection procedures specified by API 653.

This rule, like the current rules, requires an operator to anchor storage containers. Under this rule, anchor plates may not be embedded in the floor of a secondary containment structure unless the structure is specifically designed to handle the resulting stresses. Anchor plates may not be embedded in walls of a secondary containment structure.

Storage Container Appurtenances

This rule, like the current rule, establishes standards for storage container appurtenances such as valves, pipes, pumps, fittings, hoses and metering devices. Under this rule, as under the current rule, storage container connections must be equipped with shutoff valves. Appurtenances must be made of suitable materials, and must be designed to prevent discharges. Pipes and other appurtenances must be properly supported to prevent sagging and breakage.

Under current rules, storage containers must have gauging devices that show the volume of liquid in the containers. Liquid level gauging devices are no longer required under this rule. But *if* a storage container has a liquid level gauging device, the device must meet standards under this rule (the standards are similar to current rules). Under this rule, if a storage container has an external sight gauge, the site gauge must be anchored to the container at intervals of no more than 10 feet. This rule, like the current rules, prohibits external sight gauges on pesticide containers.

This rule establishes some new standards for appurtenances. Under this rule:

- Piping connections must be threaded, welded, fused, permanently band-clamped, or located over a mixing and loading pad or secondary containment structure (to prevent uncontained discharges from insecure connections).
- Piping or appurtenances constructed or substantially altered after the effective date of this rule may not be placed below ground, in concrete, or through any mixing and loading pad or secondary containment structure.
- An operator must annually inspect and pressure test any pipe or appurtenance installed below ground, in concrete (to ensure that there is no hidden discharge to the environment).
- An operator must annually inspect and test the joint between an appurtenance and any containment structure wall through which the appurtenance extends.

Storage Container Security

Under this rule, as under current rules, an operator must keep storage containers individually locked, or in a secure building or outdoor enclosure. Unlike current rules, this rule does not require individual locking of pesticide storage containers kept in a secure outdoor enclosure. This rule clarifies fencing requirements for outdoor enclosures.

Filling, Labeling and Venting Storage Containers

Current rules prohibit an operator from filling a storage container beyond capacity. This rule prohibits an operator from filling a storage container beyond 95% of capacity (except mini-bulk containers or containers kept at constant temperature). This rule, like current rules, requires proper labeling and venting of storage containers.

Underground Storage Prohibited

This rule, like current rules, prohibits underground storage of bulk liquid fertilizer, bulk liquid pesticide, or recovered discharges. Sumps constructed after the effective date of this rule may not be more than 2 feet deep, and may not have a capacity of more than 50 gallons (see below).

Storage Containers; Inspection and Maintenance

Current rules require weekly inspections of liquid levels and appurtenances, and monthly inspections of vents. Under this rule, an operator is no longer required to make these specific inspections (or keep records of them), but must inspect and maintain storage containers to minimize discharge risks.

Abandoned Storage Containers

Under this rule, as under the current rules, an operator must clean and rinse any abandoned storage container, and remove all appurtenances from the abandoned container. The operator must remove any underground storage container (including any sump that has a capacity of more than 50 gallons) that is abandoned.

Storage Structures; Dry Fertilizer or Pesticide

This rule expands and clarifies current requirements related to storage of dry bulk fertilizer or pesticide. Under this rule, dry bulk products must be stored in a fully enclosed building. However, an operator may store the following products outdoors:

- Packaged products that are fully enclosed in durable weatherproof packages or containers.
- Potassium chloride, or other products specifically approved by DATCP, if covered by a waterproof cover and kept on an asphalt concrete or portland cement concrete surface.

Storage structures must be constructed, inspected and maintained to withstand the pressure of stored products, to prevent discharges, and to prevent precipitation from contacting stored product. Stored product must be removed from abandoned storage facilities, and from facilities that fail to meet standards under this rule. Storage bins must be properly labeled to show fertilizer or pesticide contents.

Mixing and Loading Pads; General

Under this rule, as under current rules, fertilizer and pesticide mixing and loading must be done over a mixing and loading pad designed to catch and contain spills. This rule expands and clarifies current requirements for mixing and loading pads. Under this rule, a mixing and loading pad used for mixing and loading liquid products must comply with all of the following requirements (less rigorous requirements apply if the pad is used only for dry products):

- It must be liquid-tight.
- If constructed after the effective date of this rule, it must have a capacity of at least 1,000 gallons or 125 percent of the capacity of the largest storage container loaded or unloaded at the storage facility, whichever is less.
- It must be constructed of concrete, according to standards specified in this rule. A mixing and loading pad that was in use prior to the effective date of this rule may be constructed of asphalt concrete, but it must be replaced by a portland cement concrete pad on or before December 31, 2009.
- It must be served by a pump and storage container that can be used to recover and store spilled liquid. The pump must be self-activating or easily activated in response to a spill. The storage container must have an *available* capacity of at least 200 gallons at all times.
- It must be designed and constructed to withstand foreseeable load conditions.
- It must be protected from precipitation runoff from surrounding surfaces.
- It may not have a precipitation drain (existing drains must be permanently plugged within 6 months after the effective date of this rule).
- It must be inspected at the time of construction (if constructed on or after the effective date of this rule), to ensure that construction conforms to plans filed with DATCP.
- It must be inspected and maintained on an ongoing basis. An operator must remove a leaking mixing and loading pad unless the pad is repaired and remains liquid-tight for at least 2 years after the repair.

A mixing and loading pad is not required for rail car unloading, or for loading fertilizer or pesticide into anhydrous ammonia nurse tanks, provided that those operations comply with alternative requirements under this rule.

Sumps

This rule expands and clarifies current rules related to sumps. Under this rule, if a mixing and loading pad or secondary containment structure drains to a sump, the sump must be all of the following:

- Liquid-tight.
- Served by a pump and storage container that can be used to recover and store spilled liquid. The pump must be self-activating or easily activated. The storage container must have an *available* capacity of at least 200 gallons at all times.
- Inspected at the time of construction (if constructed on or after the effective date of this rule), to ensure that construction conforms to plans filed with DATCP.
- Inspected and maintained on an ongoing basis. An operator must remove a leaking sump unless the sump is repaired and remains liquid-tight.

A sump constructed after the effective date of this rule must:

- Be constructed of concrete, if constructed as part of a mixing and loading pad or a concrete secondary containment structure.
- Have a capacity of not more than 50 gallons.
- Be no more than 2 feet deep. The sump depth may not exceed the shortest sump width.
- Have walls and floor at least as thick, at every point, as the mixing and loading pad or secondary containment structure floor that drains to the sump.
- Form part of a continuous surface, having an area of at least 15 ft. by 15 ft. and a capacity of 250 gallons, which is free of construction and control joints. If a sump is constructed as part of a concrete mixing and loading pad or secondary containment structure, it must be constructed in a continuous concrete pour with that pad or structure.

Secondary Containment Structures; General

Under this rule, as under current rules, liquid fertilizer and pesticide storage containers must be located within a secondary containment structure. There are limited exemptions for mobile, mini-bulk and empty storage containers. This rule does not exempt ordinary double-bottom storage containers.

Under this rule, as under current rules, a secondary containment structure must be designed, constructed and maintained to contain potential discharges of liquid fertilizer or pesticide from storage containers. Under this rule, as under current rules, the capacity of the secondary containment structure must be at least equal to the sum of the following:

- 125% of the capacity of the largest storage container located within the structure, or 110% if the structure is fully covered by a roof.
- The total volume of discharged liquid that would be displaced by the submerged portions of all other storage containers, equipment or fixtures located within the structure if the structure were filled to capacity with discharged liquid.

Under this rule, a secondary containment structure must be designed to withstand the full hydrostatic head of any liquid that may be discharged to the structure. The structure must have a coefficient of permeability of not more than 1×10^{-6} cm/sec. Structure walls may not be taller than 4 feet (there are limited exceptions).

This rule, like current rules, prohibits liquid bulk pesticide storage in an outdoor secondary containment structure that also holds bulk fertilizer. Under this rule, all storage containers must be located at least 24 inches from the walls of the secondary containment structure and at least 24 inches from each other (there are some limited exceptions).

Secondary Containment Structures; Construction Alternatives

This rule expands and clarifies construction standards for secondary containment structures. Under this rule, a secondary containment structure may consist of one of the following:

- **Portland cement concrete structure.** A secondary containment structure may be made of portland cement concrete. A portland cement concrete structure constructed after the effective date of this rule must be constructed according to standards specified in this rule. The operator or a person chosen by the operator must inspect the construction to ensure that construction conforms to plans filed with DATCP.
- **Block wall structure.** A secondary containment structure may have concrete block walls if all of the following apply:
 - The floor is made of poured portland cement concrete.
 - The wall blocks are filled with portland cement concrete and joined with mortar.
 - The structure was in use prior to the effective date of this rule.
 - The structure is not used for more than one year after the effective date of this rule.
- **Synthetic liner.** A secondary containment structure may be constructed of earth or other materials, and lined with a synthetic liner, if all of the following apply:
 - The liner meets standards specified in this rule, and is installed to manufacturer specifications. A manufacturer's representative must supervise the installation.

- The liner manufacturer certifies that the liner is chemically compatible with all products stored within the structure, and guarantees liner effectiveness until a specified date. The operator must remove and inspect the liner by that date, and at least once every 5 years thereafter.
 - The operator repairs and maintains the liner as necessary, according to manufacturer specifications.
 - The liner rests on a proper base and is protected from potential damage above and below, as prescribed by this rule.
- ***Prefabricated basin.*** A secondary containment structure may consist of one or more prefabricated basins constructed of steel or rigid synthetic material if the basins meet standards specified in this rule.
 - ***Steel structure constructed in place.*** A secondary containment structure may be constructed of steel if the structure meets standards specified in this rule. Structures built after the effective date of this rule must be at least 1/8 inch thick at every point.
 - ***Earthen structure with earthen liner.*** A secondary containment structure may consist of an earthen structure with an earthen liner if all of the following apply:
 - The liner contains only fertilizer (not pesticide) storage containers and, if the structure is built after the effective date of this rule, all of the storage containers were constructed on-site.
 - The liner meets specific rule requirements. The liner must be constructed of specified materials, must be at least 6 inches thick, must have a coefficient of permeability of not more than 1×10^{-6} cm/sec., and must be covered by an inorganic soil layer at least 6 inches thick. It must be maintained to prevent cracking and must be reconstructed at least once every 15 years.
 - ***Building floor; mobile and mini-bulk containers.*** A building floor may serve as a secondary containment structure for mini-bulk containers, and for mobile containers stored on the floor for less than 7 days, if the building is capable of containing a discharge from those containers.
 - ***Mixing and loading pad.*** A mixing and loading pad may serve as a secondary containment structure if it meets all of the requirements under this rule for a mixing and loading pad and secondary containment structure.
 - ***Tank-in-tank.*** A tank-in-tank system may serve as a secondary containment structure if all of the following apply:
 - The tanks are designed to meet the API 650 standards.
 - A liquid level monitoring device is installed to prevent overfilling.
 - The tank-in-tank is equipped with an effective leak detection system.
 - The leak detection system is inspected at least monthly.

- If a leak were to occur, the leak must be reported to the department, and the tank be emptied and cleaned in agreement with the department conditions and inspected and repaired in compliance with API 653.
- **Bladder Tank.** A bladder tank system may serve as a secondary containment structure if all of the following apply:
 - The tank is designed to meet the API 650 standard
 - The bladder within the tank is at least 40 mils thick and chemically compatible with the products it is used to store.
 - A qualified installer installs the bladder tank.
 - A specially-designed shut-off valve and system is used.
 - A liquid level monitoring device is installed to prevent overfilling.
 - The bladder is protected with a soft liner.
 - The tank-in-tank is equipped with an effective leak detection system.
 - The leak detection system is inspected at least monthly.
 - If a leak occurs in the bladder, the leak is reported to the department, the tank is emptied and cleaned in agreement with the department conditions and the bladder repaired by a qualified person.

Secondary Containment Structures; Inspection and Maintenance

Under this rule, an operator must routinely inspect and maintain each secondary containment structure to ensure that the structure complies with this rule and does not leak. An operator must remove a leaking secondary containment structure unless the structure is repaired and remains liquid-tight.

Discharge Response

Under this rule, an operator must do all of the following whenever there is a discharge of fertilizer or pesticide at a storage facility:

- Take immediate and appropriate action to contain and recover the discharge, and to mitigate risks to public health and the environment.
- Report the discharge to the department of natural resources if a report is required under NR 706 (a report is not required if the discharge is fully contained in a mixing and loading pad, sump or secondary containment structure).

If a discharge is fully contained within a mixing and loading pad, sump or secondary containment structure, the operator must ordinarily recover the discharge at any time before the end of the business day, except that:

- The operator must recover discharged material from a mixing and loading pad, and rinse the pad, before allowing vehicles to drive through the discharge.

- The operator must recover liquid (including discharges, rinse water or precipitation runoff) from a mixing and loading pad, sump or secondary containment structure whenever necessary to mitigate health or environmental risks, maintain available discharge containment capacity, or prevent corrosion or instability of storage containers.
- The operator may use alternative methods, provided in this rule, to manage precipitation that has collected in a fertilizer secondary containment structure.

Storage, Use and Disposal of Recovered Material

Under this rule, an operator must safely use or dispose of discharges, rinsate and precipitation runoff recovered from a mixing and loading pad, sump or secondary containment structure. Use and disposal must comply with applicable federal, state and local regulations. Under this rule:

- Recovered liquid, if held by the operator pending use or disposal, must be held in a storage container that complies with this rule.
- Recovered liquid may be used as fertilizer or pesticide mix water if the resulting product complies with ATCP 40 (fertilizer) or ATCP 29 (pesticide).
- Recovered fertilizer material may be applied to land free of charge, or distributed free of charge for application to land (the operator must disclose fertilizer or pesticide contents to the landowner). However, any other sale or distribution of the recovered material, as a fertilizer or pesticide, must comply with ATCP 40 (fertilizer) or ATCP 29 (pesticide).

Under current rules (ATCP 35), an operator needs a DATCP permit to landspread material recovered from the environment, as part of an environmental cleanup. But this requirement does not apply to material recovered from a mixing and loading pad, sump or secondary containment structure.

Discharge Response Preparedness

Under this rule, as under current rules, an operator must have a written discharge response plan for a storage facility. The operator must keep a copy of the plan at the storage facility (and nearest local office), and must make the plan available to the department and local emergency responders upon request. The operator must keep the plan current at all times.

Under this rule, as under current rules, a discharge response plan must include all of the following:

- The name and telephone number of a responsible individual.
- A site map showing the location of each storage container or bin, and the type of fertilizer or pesticide stored in that container or bin.
- Procedures for responding to discharges at the facility.
- Procedures for using or disposing of recovered discharges.

Under this rule, a discharge response plan must also include all of the following:

- The Wisconsin spill reporting number (1-800-943-0003).
- A DATCP contact number.
- The names and telephone numbers of 2 local excavation contractors and 2 local earth hauling contractors.
- Procedures for responding to discharges from mobile containers shipped from the facility.

Under this rule, as under current rules, an operator must have personnel, equipment and supplies available for discharge responses. Equipment must include pumps, recovery containers and personal protective equipment. Personnel must be trained in emergency response procedures.

Transporting Bulk Fertilizer or Pesticide

This rule creates new requirements related to the transportation of bulk fertilizer and pesticides by a storage facility operator. Under this rule:

- An operator must transport bulk fertilizer and pesticides in a manner that prevents reasonably foreseeable and preventable hazards to persons, property and the environment.
- Mobile containers must be securely anchored to transport vehicles. Other equipment on the transport vehicle that could come in contact with the mobile container must also be securely anchored to the vehicle.
- Mobile containers must be protected from damage and unauthorized access.
- An operator may not transport bulk fertilizer or pesticides in visibly broken, damaged or improperly sealed containers.

Environmental Assessments

Under this rule, an operator must check for possible environmental contamination whenever a mixing and loading pad, sump or secondary containment structure leaks, is removed, or remains out of service for over 5 years:

As part of the environmental assessment, the operator must sample and analyze soils, groundwater and other media, as necessary, to determine the existence, nature and scope of possible contamination. The operator must report the results of the environmental assessment to DATCP.

Recordkeeping

Under this rule, as under current rules, an operator must keep records related to a storage facility. This rule modifies current record keeping requirements. Under this rule, an operator must keep records related to all of the following:

- Required API 653 inspections of bladder tanks, tank-in-tanks, and large storage containers constructed on-site (inspections, by a certified inspector, are required during construction and every 5 years after construction).
- Required pressure tests of buried or embedded piping.
- Required inspection and maintenance of storage containers and structures (this rule requires an operator to inspect and maintain storage containers and structures, as necessary, to maintain compliance with this rule).

This rule eliminates current record keeping requirements related to the following activities:

- Annual inventory reconciliation (this rule repeals annual inventory reconciliation requirement).
- Weekly inspections of liquid levels and appurtenances (this rule repeals weekly inspection requirements).
- Discharges to the environment (an operator must report discharges to DNR per DNR rules, and must provide DATCP with the operator's environmental assessment related to any leaking storage container).

Under this rule, an operator must:

- Keep API 653 inspection records for as long as the operator owns or operates the storage facility.
- Keep records of pressure tests, inspections and maintenance for at least 3 years.
- Keep the records at the storage facility or nearest local office.
- Make the records available to DATCP for inspection and copying upon request.

Real Estate Sale or Lease; Disclosure

Under this rule, an operator must do all of the following before the operator sells or leases storage facility real estate for a different use (this rule does not limit other disclosures that may be required under other applicable law):

- Notify DATCP of the impending sale or lease.
- Disclose to the purchaser or lessee that the real estate has been used as a storage facility.

Inspection and Enforcement

DATCP may inspect a storage facility for compliance with this rule, and may take enforcement action as necessary. Under current state statutes, DATCP is authorized to do all of the following as necessary:

- Conduct investigations and issue warning notices.
- Inspect facilities, and collect product and environmental samples for testing.
- Inspect and copy records.
- Issue subpoenas and investigative demands.

- Issue orders to correct violations of this rule. DATCP may issue orders on a summary basis, without prior notice or hearing, if necessary to protect public health or the environment.
- Seek court action to enforce this rule or a DATCP order. This may include actions for injunction, or for a civil forfeiture of up to \$1,000 per violation (each day of violation constitutes a separate offense). DATCP may also seek criminal penalties if appropriate (fine of up to \$200 and 6 months in jail, or both).
- Deny, suspend, revoke the operator's license as a fertilizer manufacturer or distributor or pesticide application business.
- Order an operator to investigate and clean up environmental contamination resulting from a discharge. DATCP may order removal of structures, as necessary, for the environmental cleanup.
- Deny reimbursement of environmental cleanup costs for which the operator would otherwise be eligible (for example, if a discharge occurs because of an intentional or grossly negligent violation of storage rules).

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP will request permission from the attorney general and revisor of statutes to incorporate the following standards by reference in this rule, without reproducing the complete standards in this rule:

- American Petroleum Institute standard 650, *Welded Steel Tanks for Oil Storage*, 10th edition (September 1, 2003).
- American Petroleum Institute standard 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 3rd edition (December 1, 2001).
- *Wisconsin Minimum Design Standards for Concrete Agrichemical Containment* (February, 2005), written by Professor David W. Kammel, Department of Biological Systems Engineering, University of Wisconsin-Extension.

Copies of these standards will be kept on file with DATCP, the secretary of state and the revisor of statutes. Copies are not reproduced in this rule.

Fiscal Estimate

This rule will increase DATCP costs by approximately \$24,400 per year. Additional staff time will be needed to train storage facility operators, review and comment on storage facility construction plans, and monitor compliance with construction standards and other requirements. This rule will not generate any new revenue to cover the increased costs, so DATCP will need to absorb the increase at the expense of other program activities. A complete fiscal estimate is attached.

This rule does not increase industry fees. By minimizing agrichemical discharges to the environment, this rule may limit the long-term growth of reimbursement claims under the agricultural chemical cleanup program. That would have a positive effect on DATCP's agricultural chemical cleanup fund, which is financed by industry fees. However, DATCP cannot accurately estimate the impact at this time.

Business Impact

This rule applies to commercial operators who store unpackaged bulk fertilizer or pesticides for sale or distribution. Many of these operators are “small businesses.” A complete small business analysis (“initial regulatory flexibility analysis”) is attached.

This rule does *not* apply to any of the following:

- Manure storage.
- On-farm storage of fertilizer or pesticide for on-farm use (not for sale or distribution).
- Facilities that store only packaged fertilizer or pesticides.

This rule establishes some new construction standards for fertilizer and pesticide storage facilities. These new standards apply to structures that are constructed *or substantially altered* after the effective date of this rule. This rule will not have a significant impact on an existing facility unless the operator *substantially alters* structures in that facility. Routine maintenance and repair is not considered a *substantial alteration*.

Under this rule, an operator must have construction plans reviewed by a professional engineer, and must submit the construction plans for discretionary review by DATCP. This may entail some additional costs for some operators, but will help prevent much more costly design and construction errors. This rule does *not* require DATCP pre-approval of new construction or alterations. This rule allows design flexibility, consistent with minimum standards.

Improved design and construction of storage facilities will minimize environmental contamination and costly cleanups that pose a large financial risk to storage facility operators. Environmental cleanup costs are typically much higher than preventive design and construction costs. Reduction of cleanup costs will also minimize financial demands on the industry-funded agricultural chemical cleanup program.

This rule reduces the overall recordkeeping burden for affected businesses (it adds some recordkeeping requirements but eliminates others). Consolidation of current fertilizer and pesticide bulk storage rules will make the rules easier to read, understand and implement.

DATCP has worked with University of Wisconsin-Extension to spell out basic design standards for concrete structures, so that engineering firms will not have to design those structures from scratch. That will reduce design costs for facility operators.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Environmental Impact

This rule will help prevent environmental damage from fertilizer and pesticide spills at bulk storage facilities. This rule will have no significant adverse environmental impact. An environmental assessment is attached.

Federal and Surrounding State Programs

Federal Programs

There are no comparable federal programs to regulate the storage of bulk fertilizer or pesticides (Wisconsin is a national leader).

Michigan

Michigan's bulk fertilizer and pesticide storage rules are similar to Wisconsin's. Michigan requires mixing and loading pads and secondary containment structures, but does not have minimum design or construction standards for those structures (nor does it require professional engineering review of design specifications).

Minnesota

Minnesota's bulk *pesticide* storage rules are similar, in many respects, to Wisconsin's. Minnesota has not promulgated bulk *fertilizer* storage rules, but has been enforcing proposed rules that are similar to Wisconsin's. Minnesota requires mixing and loading pads and secondary containment structures and has minimum design and construction standards for those structures. However, Minnesota does not require professional engineering review of design specifications.

Indiana & Iowa

Indiana and Iowa have rules that are similar to each other, and somewhat similar to Wisconsin's. They require mixing and loading pads and secondary containment structures, but they do not set minimum design or construction standards or require professional engineering review of design specifications.

Illinois

Illinois has rules that are somewhat similar to Wisconsin's. Illinois requires mixing and loading pads and secondary containment structures, and Illinois also sets minimum design or construction standards or requires professional engineering review of design specifications.

- Maintain a formal repackaging agreement with the pesticide product registrant.

SUBCHAPTER I
DEFINITIONS AND GENERAL PROVISIONS

ATCP 33.01 Definitions. In this chapter:

(1) "API 650" means the American Petroleum Institute standard 650, *Welded Steel Tanks for Oil Storage*, 10th edition.

NOTE: Copies of API 650 are on file with the department and the revisor of statutes. Copies may be purchased from the American Petroleum Institute at 1220 L Street NW, Washington DC 20005-4070, telephone (202) 682-8000.

(2) "API 653" means the American Petroleum Institute standard 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 3rd edition.

NOTE: Copies of API 653 are on file with the department and the revisor of statutes. Copies may be purchased from the American Petroleum Institute at 1220 L Street NW, Washington DC 20005-4070, telephone (202) 682-8000.

(3) "API 653-certified inspector" means an inspector certified by the American Petroleum Institute, according to API 653, to inspect facilities for compliance with API 653.

(4) "Appurtenances" means all valves, pumps, fittings, pipes, hoses, gauges, metering devices, mixing containers, and dispensing devices that are connected to a storage container, or through which liquid bulk fertilizer or liquid bulk pesticide is transferred into or out of a storage container.

(5) "Bedrock" means the solid rock underlying any loose surficial material such as soil, alluvium or glacial drift. Bedrock includes but is not limited to limestone, dolomite, sandstone, shale and igneous and metamorphic rock.

(6) "Bladder tank" means a covered liquid-tight steel tank containing a flexible liquid-tight bladder that holds the contents of the tank.

1 fertilizers and all other fertilizers or mixtures of fertilizers, regardless of type or
2 form.

3 (15) "Groundwater" means any waters of the state occurring in a saturated subsurface
4 geological formation of rock or soil.

5 (16) "Handling" means the transfer, loading, unloading, mixing or repackaging of bulk
6 fertilizer or bulk pesticide, or the cleaning of containers or equipment to remove fertilizer or
7 pesticide residues. "Handling" includes transferring water into a container that contains
8 pesticide or fertilizer residues.

9 (17) "Inorganic soil" means a soil composed of less than 30% organic matter, measured
10 as less than 15% organic carbon by weight.

11 (18) "Liquid fertilizer" means fertilizer in liquid form. "Liquid fertilizer" includes
12 fertilizer solutions, fertilizer suspensions, fertilizer slurries and dilute fertilizers intended for
13 distribution as fertilizer.

14 (19) "Liquid pesticide" means pesticide in liquid form. "Liquid pesticide" includes
15 pesticide solutions, pesticide emulsions, pesticide suspensions, pesticide slurries and dilute
16 pesticides intended for distribution as pesticides.

17 (20) "Manufacture" means to do any of the following, as applicable:

18 (a) Process, granulate, compound, produce, mix, blend or alter the composition of
19 fertilizer.

20 (b) Process, formulate, prepare, compound, propagate, package or label any pesticide.

21 (21) "Mini-bulk container" means any of the following:

22 (a) A storage container, designed for ready handling and transport, which holds more
23 than 55 gallons (208 liters) but not more than 350 gallons (1,325 liters) of liquid fertilizer or
24 liquid pesticide.

1 (b) A container that holds more than 100 pounds (45 kilograms) but not more than 2,500
2 pounds (1,136 kilograms) of dry fertilizer.

3 (c) A container that holds more than 100 pounds (45 kilograms) but not more than 1,000
4 pounds (454 kilograms) of dry pesticide.

5 (22) "Mixing and loading pad" means a surface that complies with subchapter IV.

6 (23) "Mobile container" means a bulk fertilizer or bulk pesticide storage container that is
7 anchored to a vehicle, trailer or axles, and that can be readily transported when full. "Mobile
8 container" includes a rail car, a nurse tank, or a supply container on application equipment.

9 (24) "Operator" means a person who owns, operates or legally controls a storage facility,
10 either directly or through an employee or agent, and includes employees and agents of an
11 operator.

12 (25) "Person" means an individual, corporation, partnership, cooperative, limited
13 liability company, trust or other legal entity.

14 (26) "Pesticide" has the meaning given in s. 94.67(25), Stats. "Pesticide" includes all of
15 the following:

16 (a) A fertilizer-pesticide mixture.

17 (b) A substance that is labeled as a pesticide for use in further manufacture or
18 formulation of pesticides.

19 **NOTE:** Under s. 94.67(25), Stats., "pesticide" means any substance or mixture of
20 substances labeled or designed or intended for use in preventing, destroying,
21 repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant.

22 (27) "Professional engineer" means an individual licensed as a professional engineer by
23 the Wisconsin department of regulation and licensing.

24 (28) "Rinsate" means water or other liquid containing fertilizer or pesticide residue.

25 "Rinsate" includes liquid produced by the rinsing of fertilizer or pesticide containers.

1 (29) “Secondary containment structure” means a structure that is designed to contain a
2 discharge from a storage container or appurtenance.

3 (30) “Storage bin” means a stationary receptacle used to store an undivided quantity of
4 dry bulk fertilizer or dry bulk pesticide.

5 (31) “Storage container” means a container used to store liquid bulk fertilizer or liquid
6 bulk pesticide at a storage facility. “Storage container” includes a mobile container.

7 (32) “Storage facility” means a place where bulk fertilizer or bulk pesticide is or has
8 been stored for distribution, or for the manufacture of fertilizer or pesticide. “Storage facility”
9 does not include a place where a mobile container is parked for unloading if all of the following
10 apply:

11 (a) No person who owns or controls the parking location, or receives the unloaded
12 fertilizer or pesticide, is engaged in the manufacture or distribution of fertilizer or pesticide.

13 (b) The fertilizer or pesticide is unloaded with the consent of a person who owns or
14 controls the parking location.

15 (c) The fertilizer or pesticide is unloaded at the parking location for no more than 3 other
16 persons, for application to a total of no more than 500 acres, in any calendar year.

17 (d) The mobile container, if unloaded for any person other than the person who owns or
18 controls the parking location, has a capacity of no more than 500 gallons.

19 (e) The mobile container is parked at the location for no longer than 7 days.

20 (33) “Structure” means a storage building, storage container, mixing and loading pad,
21 sump, secondary containment structure, or rail car unloading area.

1 (34) “Substantially alter” means to reconstruct, replace, structurally modify or change
2 the capacity of a structure, or make any other change that may affect the containment of bulk
3 fertilizer or bulk pesticide or the containment or recovery of discharges. “Substantially alter”
4 does not include routine repair or maintenance, or routine replacement of parts with like parts.

5 (35) “Sump” means a pit or receptacle that receives and collects liquid runoff from a
6 mixing and loading pad or secondary containment structure.

7 (36) “Tank-in-tank” means a steel storage container enclosed within a liquid-tight steel
8 tank with which it shares a common roof but no common walls or floor. “Tank-in-tank” does not
9 include a storage container with a double bottom.

10 **NOTE:** A “tank-in-tank” is both a “secondary containment structure” under sub. (29)
11 and a “storage container” under sub. (31).

12
13 (37) “Waters of the state” means those portions of Lake Michigan and Lake Superior
14 within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells,
15 impounding reservoirs, marshes, watercourses, drainage systems and other surface water or
16 groundwater, natural or artificial, public or private, within this state or its jurisdiction.

17 **ATCP 33.02 Variances. (1) VARIANCE REQUEST.** An operator may request a variance
18 from a standard or requirement under this chapter. The operator shall make the request in
19 writing , and may include the request as part of a filing under s. ATCP 33.10(1). A request shall
20 include all of the following:

21 (a) A clear description of the proposed nonconforming feature for which the operator
22 seeks the variance.

23 (b) A statement describing how the proposed nonconforming feature will provide
24 equivalent protection for waters of the state.

1 (c) A statement by a professional engineer, certifying that the proposed nonconforming
2 feature will provide equivalent protection for waters of the state, if the proposed feature affects
3 any of the following:

- 4 1. The containment of bulk fertilizer or bulk pesticide.
- 5 2. The containment or recovery of discharges.

6 (2) ACTION ON VARIANCE REQUEST. The department may grant a variance request under
7 sub. (1) if the department finds that the proposed nonconforming feature will provide equivalent
8 protection for waters of the state. The department shall grant or deny a request within 30 days
9 after the department receives a complete request, except that the department may for good cause
10 extend the action deadline if the department gives written notice of the extension within the
11 initial 30-day period. The extension notice shall include the extended deadline.

12
13 **SUBCHAPTER II**
14 **CONSTRUCTION PLANS AND SITING**

15
16 **ATCP 33.10 Construction plans. (1) FILING REQUIRED.** At least 21 days before an
17 operator constructs or substantially alters a structure at a storage facility, the operator shall file
18 all of the following with the department:

- 19 (a) Design specifications for the construction or alteration.
- 20 (b) A signed written statement by a professional engineer, certifying that the design
21 specifications comply with applicable requirements under this chapter.

22 (c) The approximate date on which the operator plans to start the construction or
23 alteration. The operator may not start the construction or alteration before that date unless the
24 operator gives the department prior notice of the new start date. The department may request
25 additional schedule information, as necessary, in order to schedule an inspection under sub. (3).

1 **NOTE:** Subsection (1) does not apply to the routine repair or maintenance of an existing
2 structure. *See* s. ATCP 33.01(34). This chapter does not require an operator to
3 take soil samples before the operator constructs or substantially alters a structure.
4 However, an operator may wish to do so in order to maintain cost reimbursement
5 eligibility under s. ATCP 35.04.

6 (2) **DISCRETIONARY REVIEW.** The department may review and comment on the design
7 specifications filed under sub. (1). The department is not required to review, approve or
8 comment on the design specifications. A failure to comment does not signify approval. An
9 operator is not required to obtain the department's approval for a proposed construction or
10 alteration, but is required to comply with this chapter.

11 (3) **DISCRETIONARY INSPECTION.** The department may inspect a construction or
12 alteration under sub. (1).

13 (4) **CONSTRUCTION CONFORMING TO PLAN.** An operator may not, without prior written
14 notice to the department, deviate from design specifications filed under sub. (1).

15 **ATCP 33.12 Storage facility siting. (1) REQUIREMENTS.** Except as provided in sub.
16 (2), the base of each mixing and loading pad, the base of each secondary containment structure,
17 and the floor of each building used to store bulk fertilizer or bulk pesticide shall be all of the
18 following:

19 (a) At least 5 feet above bedrock.

20 (b) At least 5 feet above the seasonal high groundwater level. A determination of
21 seasonal high groundwater level, by an independent soils tester licensed by the Wisconsin
22 department of regulation and licensing, is presumptively valid for purposes of this paragraph.

23 (c) At least 1,000 feet from the ordinary high water mark of any navigable lake and 300
24 feet from the ordinary high water mark of any navigable stream.

25 (d) Located outside of any 100-year flood plain.

1 (2) EXEMPTION. Subsection (1) does not apply to the reconstruction, expansion or
2 alteration of a mixing and loading pad, secondary containment structure or storage building that
3 was in use prior to *[revisor inserts effective date of this rule]*.

4 **NOTE:** The exemption under sub. (2) applies only to sub. (1). It does not exempt a
5 storage facility from any other federal, state or local regulations that may apply.

6 **ATCP 33.14 Water supply protection. (1) GENERAL.** Wells at a storage facility shall
7 comply with applicable requirements in chs. NR 811 and 812.

8 **NOTE:** Chapters NR 811 and 812 comprise the state well code.

9 (2) BACKFLOW PREVENTION. (a) All water supply outlets at the storage facility shall be
10 protected against backflow caused by backpressure or backsiphonage. Protection may include
11 any of the following:

12 1. A vertical air gap between each water supply outlet and any container or equipment
13 filled from that outlet. The air gap distance shall be at least one inch, or twice the effective
14 opening of the supply outlet, whichever is greater.

15 2. A backflow prevention device that complies with s. Comm 82.41.

16 **NOTE:** Comm 82 is part of the state plumbing code.

17 (b) An operator shall notify the department at least 7 business days prior to installing or
18 modifying a backflow protection device or system, unless the operator is merely re-installing
19 backflow prevention devices that the operator has temporarily removed to protect them from
20 frost damage.

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1 1. Designed and constructed according to API 650, and certified for compliance by the
2 manufacturer, if the structure is installed, constructed or substantially altered after *[revisor*
3 *inserts effective date of this rule]*. API 650 calculations shall be based on the highest specific
4 gravity of fertilizer or pesticide that may be stored in the container.

5 2. Inspected before use, and at least once every 5 years during use, by an API 653-
6 certified inspector for compliance with API 653. The storage container shall be inspected more
7 frequently if recommended by an API 653-certified inspector. API 653 calculations shall be
8 based on the highest specific gravity of fertilizer or pesticide that may be stored in the container.

9 3. Repaired, when necessary, according to API 653 and the recommendations of an API
10 653-certified inspector.

11 **NOTE:** Copies of API 650 and 653 are on file with the department and the revisor of
12 statutes. Copies may be purchased from the American Petroleum Institute at 1220
13 L Street NW, Washington DC 20005-4070, telephone (202) 682-8000.

14 (2) APPURTENANCES. (a) Every storage container connection, except a safety relief
15 connection, shall be equipped with a shutoff valve located on the storage container or at a
16 distance from the storage container dictated by standard engineering practice.

17 (b) On pesticide storage containers other than mini-bulk containers or containers used to
18 store sodium hypochlorite, all wetted parts inside shutoff valves and all connections between
19 storage containers and shutoff valves shall be made of stainless steel.

20 **NOTE:** The department may grant a variance authorizing alternative materials that
21 provide equivalent protection for waters of the state. *See s. ATCP 33.02.*

22 (c) Pipes, fittings and other appurtenances shall be permanently supported to prevent
23 sagging and breakage that may be caused by gravity, vibration or other forces that may be
24 encountered in the ordinary course of operations. To prevent sagging and breakage, piping and
25 its supports shall be able to support 250 pounds.
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1 (d) An operator shall do all of the following at least annually:

2 1. Inspect and pressure test appurtenances installed below ground, within or beneath a
3 mixing and loading pad, or within or beneath a secondary containment structure. The operator
4 shall maintain the appurtenances as necessary, to keep them pressure-tight, and shall keep a
5 written record of the pressure test results.

6 2. Inspect and test, for liquid-tightness, every joint through which a pipe extends through
7 a secondary containment structure.

8 (e) An appurtenance may not be installed below ground, within or beneath a mixing and
9 loading pad, within or beneath a secondary containment structure, or through any wall or floor of
10 a secondary containment structure, on or after *[revisor inserts effective date of this rule]*.

11 (f) Piping connections shall be one of the following:

12 1. Threaded, welded, fused or permanently band-clamped.

13 2. Located over a mixing and loading pad that complies with s. ATCP 33.30.

14 3. Located within a secondary containment structure that complies with s. ATCP 33.42.

15 **(3) LIQUID LEVEL GAUGING DEVICES.** (a) If a storage container is equipped with a liquid
16 level gauging device, the device shall be designed for safe and reliable use.

17 (b) An external sight gauge may not be used on a pesticide storage container, other than
18 on a mobile container mounted on pesticide application equipment.

19 (c) If an external sight gauge is used on a fertilizer storage container, the sight gauge
20 shall comply with the all of the following:

21 1. The sight gauge shall be equipped with a valve that can stop the flow of liquid
22 fertilizer from the storage container to the sight gauge. The valve shall be closed when the sight
23 gauge is not in use.

1 2. The sight gauge tube shall be secured to the storage container at intervals of no more
2 than 10 feet.

3 **(4) PROHIBITED MATERIALS; FERTILIZER STORAGE CONTAINERS.** Fertilizer storage
4 containers shall comply with all of the following:

5 (a) Storage containers and appurtenances used to store nitrogen solutions may not be
6 constructed of copper, brass, zinc, or copper base alloys.

7 (b) Storage containers and appurtenances used to store liquid fertilizers containing
8 phosphates or chlorides may not be constructed of aluminum or aluminum alloys.

9 (c) Storage containers and appurtenances used to store low pH liquid fertilizers may not
10 be constructed of ferrous materials other than stainless steel, unless the materials are coated or
11 treated with protective substances that effectively inhibit corrosion.

12 (d) Storage containers and appurtenances used to store phosphoric acid may not be
13 constructed of ferrous materials other than 316 or 317 stainless steel unless the container is lined
14 with a substance to prevent corrosion.

15 (e) Storage containers and appurtenances used to store liquid fertilizers containing
16 potassium chloride (potash) may not be constructed of ferrous materials other than stainless steel
17 unless one of the following applies:

18 1. The storage containers and appurtenances are lined, coated or treated with protective
19 substances that effectively inhibit corrosion.

20 2. The storage containers and appurtenances are used for storage periods of not more
21 than 6 months each, and are completely emptied, cleaned and inspected for leaks and corrosion
22 before being refilled for any subsequent storage period.

1 (5) PROHIBITED MATERIALS; PESTICIDE STORAGE CONTAINERS. (a) Pesticide storage
2 containers and appurtenances may not be made of polyvinyl chloride unless they are used only to
3 store sodium hypochlorite.

4 (b) Pesticide storage containers and appurtenances may not be made of ferrous metals
5 unless one of the following applies:

6 1. The storage containers and appurtenances are made of stainless steel.

7 2. The storage containers and appurtenances have a protective lining that prevents
8 corrosion and does not react chemically with the stored pesticide.

9 3. The storage containers and appurtenances are used only to store non-corrosive wood
10 preservatives.

11 (6) ANCHORING STORAGE CONTAINERS. (a) Except as provided in par. (b), storage
12 containers shall be anchored to prevent flotation or instability that may result from liquid
13 accumulation within a secondary containment structure. Anchors shall be independent of
14 secondary containment structures and mixing and loading pads, except that anchor plates may be
15 embedded in portland cement concrete floors of secondary containment structures if the anchor
16 plates and the concrete floors are designed to withstand the flotation and wind stresses placed on
17 them.

18 **NOTE:** Anchors located in soil *outside* the secondary containment structure do not place
19 any added stress on the structure or its construction. It is possible to design
20 anchor plates for the floors of a portland cement concrete secondary containment
21 structure to withstand anchor stresses, but similar designs for walls are usually
22 inadequate or cost-prohibitive.

23 (b) Paragraph (a) does not apply to any of the following:

24 1. A storage container located in a secondary containment structure that complies with s.
25 ATCP 33.42, if it is the only storage container located in that secondary containment structure.
26

1 2. A tank-in-tank that complies with s. ATCP 33.44(9) or a bladder tank that complies
2 with s. ATCP 33.44(10), unless located in a secondary containment structure with other storage
3 containers.

4 (7) SECURITY. (a) Except as provided in par. (b), an operator shall secure each storage
5 container and its appurtenances by doing at least one of the following:

- 6 1. Keeping the storage container and appurtenances in a locked building.
- 7 2. Locking all valves on the storage container and appurtenances.
- 8 3. Keeping the storage container and appurtenances in a locked outdoor enclosure that
9 complies with par. (c).

10 (b) Paragraph (a) does not apply if any of the following apply:

- 11 1. The operator or employees are present at the storage facility.
- 12 2. The storage container and its appurtenances are empty and thoroughly cleaned.

13 Thorough cleaning, in the case of a pesticide storage container and its appurtenances, means
14 removal of pesticide residues from exterior surfaces and triple rinsing of interior surfaces. Triple
15 rinsing of interior surfaces is not required if a manufacturer-installed device prevents the
16 container from being opened.

17 (c) An enclosure under par. (a)3. shall consist of a secure wall or fence that is at least 5
18 feet tall at every point, and free of gaps that could allow unauthorized persons to enter. Security
19 fencing installed on a concrete secondary containment structure wall shall comply with chapter 2
20 of the *Wisconsin minimum design standards for concrete agrichemical containment (February,*
21 *2005)*, if the secondary containment structure is constructed after *[revisor inserts effective date*
22 *of this rule]*.

1 **NOTE:** The *Wisconsin minimum design standards for concrete agricultural*
2 *containment (February, 2005)*, written by Professor David W. Kammel,
3 department of biological systems engineering, university of Wisconsin-extension,
4 is on file with the department and the revisor of statutes. Copies are available
5 from the department, free of charge, at the following address:
6

7 Department of Agriculture, Trade and Consumer Protection
8 Agricultural Resource Management Division
9 P.O. Box 8911
10 Madison, WI 53708-8911
11 Phone: (608) 224-4500
12 Web: <http://www.datcp.state.wi.us>
13

14 **(8) STORAGE CONTAINERS PROTECTED FROM MOVING VEHICLES.** An operator shall protect
15 storage containers and appurtenances against damage that may be caused by moving vehicles.

16 **(9) FILLING STORAGE CONTAINERS.** An operator may not fill a storage container to more
17 than 95% of capacity unless the storage container is one of the following:

18 (a) Kept at a constant temperature.

19 (b) A mini-bulk container that is not filled beyond the maximum capacity shown on the
20 container.

21 **(10) LABELING STORAGE CONTAINERS.** (a) An operator shall label each fertilizer storage
22 container, other than a mobile container, with the name or grade of fertilizer that it contains.
23 Label contents shall be visible from outside the secondary containment structure in which the
24 storage container is located.

25 (b) An operator shall label each pesticide storage container in compliance with the
26 federal insecticide, fungicide and rodenticide act as amended (7 USC 136 to 136y) and
27 regulations issued under that act. Label contents shall be visible from outside the secondary
28 containment structure in which the storage container is located. The label on each pesticide
29 storage container shall include the federal pesticide producing establishment number of the

1 establishment that produced the pesticide. The label on a pesticide bulk sale container shall
2 show the net contents of the container.

3 **NOTE:** A storage facility at which an operator repackages pesticide from a storage
4 container to mini-bulk or other containers is considered a “pesticide producing
5 establishment” under the federal act. The operator of that storage facility must
6 obtain a pesticide producing establishment number from the federal
7 environmental protection agency, and must include that establishment number on
8 every mini-bulk or other container filled at that storage facility. Mini-bulk
9 containers must be properly labeled, regardless of whether they are mobile
10 containers.

11 Whenever an operator sells pesticide from a storage container, the operator must
12 supply the purchaser with the pesticide labeling required under ss. 94.676 and
13 94.70, Stats.

14 **(11) VENTING PESTICIDE STORAGE CONTAINERS.** Every pesticide storage container, other
15 than a mobile container or a container used only to store wood preservative, shall have a
16 conservation vent that opens and closes within the designed pressure limits of the container to
17 relieve excess pressure, prevent evaporative losses, and keep precipitation out of the container.

18 **(12) UNDERGROUND STORAGE PROHIBITED.** No person may store bulk liquid fertilizer,
19 bulk liquid pesticide, or any material recovered under s. ATCP 33.52, below ground level, except
20 in a storage container that is located in a secondary containment structure.

21 **(13) INSPECTING AND MAINTAINING STORAGE CONTAINERS.** An operator shall, at least
22 semi-annually, inspect and maintain each storage container and its appurtenances to minimize
23 the risk of a discharge. Whenever an operator repairs a storage container, the operator shall
24 make the repair according to good engineering practice and manufacturer specifications. An
25 operator shall remove a storage container from service if it cannot be adequately maintained.

26 **(14) ABANDONING STORAGE CONTAINERS.** (a) An operator shall do all of the following
27 to an abandoned storage container:

28 1. Thoroughly clean and rinse the storage container.

1 2. Remove any storage container appurtenances.

2 3. Remove the storage container if the storage container is an underground storage
3 container. A sump that has a capacity of more than 50 gallons is considered an underground
4 storage container for this purpose. The operator shall notify the department at least 3 business
5 days before the operator removes an underground storage container, and shall permit the
6 department to take soil samples upon request.

7 (b) An operator shall comply with par. (a) within 2 years after a storage container is
8 abandoned, except that:

9 1. If the storage container was abandoned prior to *[revisor inserts effective date of this*
10 *rule]*, the operator shall comply with par. (a) within 2 years of *[revisor inserts effective date of*
11 *this rule]*.

12 2. If the storage container is abandoned under par. (c)4., the operator shall comply with
13 par. (a) before the closing date for the sale of the storage container site unless the purchaser
14 agrees to comply with par. (a) within 2 years after the abandonment date under par. (c)4.

15 (c) A storage container is abandoned, for purposes of this subsection, if any of the
16 following apply:

17 1. The operator removes the storage container from service, with the intent of doing so
18 permanently.

19 2. The storage container is out of service for more than 6 months because of a weakness
20 or leak.

21 3. The storage container is out of service for more than 2 years for any reason.

22 4. The operator contracts to sell the storage container site to a person who is not an
23 operator.