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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)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution)
 - Miscellaneous ... **Misc**
- (**ajr** = Assembly Joint Resolution)
(**sjr** = Senate Joint Resolution)



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: July 10, 2006

TO: The Honorable Alan J. Lasee
President, Wisconsin State Senate
Room 220, South, State Capitol
PO Box 7882
Madison WI 53707-7882

The Honorable John Gard
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
PO Box 8952
Madison WI 53708-8952

FROM: Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Fertilizer and Pesticide Bulk Storage
(Clearinghouse Rule #05-108)

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

SUMMARY:

Background

The Department of Agriculture, Trade and Consumer Protection (DATCP) led the nation in regulating fertilizer and pesticide bulk storage, to prevent spills to surface water and groundwater. Current rules, which first took effect in 1985, are contained in chs. ATCP 32 (Fertilizer) and ATCP 33 (Pesticides), Wis. Adm. Code. Surrounding states have adopted similar, but not identical rules.

This rule updates current rules, and consolidates them into a single chapter (ATCP 33). This rule accommodates changes in the bulk storage industry, and reflects 20 years of regulatory experience under the current rules. The rule consolidation will make the rules easier to read and understand.

DATCP investigations have found leaking containment systems at many bulk storage facilities. This rule improves current spill protection. Improved construction standards will help eliminate

Agriculture generates \$51.5 billion for Wisconsin

leaks, and minimize cleanup costs (cleanup costs greatly exceed preventive construction costs). However, this rule also eliminates some unnecessary regulations that have been shown to provide no real environmental protection.

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. This consolidation will eliminate unnecessary repetition, and make it easier for 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. The new standards address problems (such as leaking structures) found in current storage facilities. But the new standards apply only to structures that are *constructed or substantially altered* after the rule effective date.

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 a professional engineer or by DATCP. Under this rule:

- An operator who constructs or substantially alters a storage facility must file plans (design specifications) with DATCP.
- A professional engineer must certify that the plans comply with this rule.
- DATCP may review and comment on the plans (it is not required to do so). An operator is not required to obtain DATCP approval.
- DATCP may grant a variance for a nonconforming feature that provides substantially equivalent spill protection.
- The operator or a person chosen by the operator must inspect the construction of *new concrete structures* (mixing and loading pads or secondary containment structures) to ensure that construction conforms to plans filed with DATCP. The operator must file an inspection report with DATCP.

Storage Facility Siting

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 affect the use, reconstruction, expansion or alteration of an existing structure.

Storage Containers and Appurtenances

This rule updates and clarifies current standards related to:

- Construction of storage containers and appurtenances.
- Storage container security.
- Filling, labeling and venting storage containers.
- Underground storage restrictions.
- Storage container inspection and maintenance.
- Abandoned storage containers.
- Dry product storage.

This rule incorporates American Petroleum Institute construction and inspection standards for field-erected tanks (which are typically over 50,000 gallons). Since 1985, the number of fertilizer storage tanks with a capacity over 50,000 gallons has more than doubled, and some new

tanks have a capacity of up to 2 million gallons. Recently, 2 of these tanks have developed significant leaks. In other Midwest states, 4 large fertilizer tanks (each containing more than one million gallons) have ruptured since 1997. This rule will help protect against these types of incidents.

Mixing and Loading Pads

Current rules require mixing and loading pads, to catch spills from mixing and loading operations. This rule clarifies construction requirements, to prevent leaks. A mixing and loading pad must comply with the following requirements (there are limited exceptions):

- It must be liquid-tight.
- It must have adequate capacity (per this rule).
- It must be constructed of concrete, according to standards specified in this rule.
- It must be served by a pump and storage container that can be used to recover and store spilled liquid.
- 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.

Secondary Containment Structures; General

Under current rules, liquid storage containers must be located within a secondary containment structure that can contain discharges from the storage containers (there are limited exceptions). This rule clarifies construction requirements for secondary containment facilities, to prevent leaks. This rule permits any of the following types of secondary containment structures (the rule specifies construction standards for each type):

- A portland cement concrete structure.
- A block wall structure (this rule allows continued use of preexisting facilities for one year only).
- A secondary containment system that uses a synthetic membrane as the spill containment liner.
- One or more prefabricated basins.
- A steel structure constructed in place.
- An earthen structure with an earthen liner.
- A building floor (secondary containment for mobile and mini-bulk containers only).
- A mixing and loading pad that complies with this rule (see above).
- A bladder tank.
- A tank-in-tank.

Sumps

If a mixing and loading pad or secondary containment structure drains to a sump, the sump must comply with standards under this rule (DATCP has found many leaking and inoperable sumps). The sump must be liquid-tight, and must be served by a pump and storage container. New sumps must be constructed of concrete, according to standards in this rule. Sumps must be periodically inspected, and maintained as necessary.

Discharge Response

This rule updates discharge response procedures, including spill reporting requirements (no spill report is required if a discharge is fully contained by a mixing and loading pad or secondary containment structure). This rule also updates current discharge response plan requirements.

Disposal of Discharges, Rinsate and Collected Precipitation

An operator must safely use or dispose of discharges, rinsate and precipitation recovered from a mixing and loading pad or secondary containment structure. This rule spells out practical use and disposal options.

Transporting Bulk Fertilizer or Pesticide

This rule establishes basic standards for safe transportation of bulk fertilizer and pesticides by storage facility operators.

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. The operator must conduct preliminary soil and groundwater tests, as necessary, and must report the results to DATCP.

Recordkeeping

Under current rules, an operator must keep records related to a storage facility. This rule adds some record keeping requirements, but eliminates others. An operator must keep records for at least 3 years, or for as long as the operator owns the facility (depending on the type of record).

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.

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.

Public Hearings

DATCP held 3 public hearings on this rule. DATCP held the hearings in Madison on January 24, Eau Claire on January 25 and Oshkosh on January 26, 2006. A total of 7 people attended the hearings. Four attendees provided oral testimony and 3 attended for informational purposes only. Fourteen people submitted written testimony. No one opposed the rule as such, but many of those who testified or submitted written testimony requested changes to portions of the rule. DATCP modified the final draft rule in response to many of the requests (see below). A hearing summary is attached.

Changes from Hearing Draft

DATCP made the following changes to the final draft rule following public hearings, in consultation with an industry advisory committee:

- Provided more flexible options for managing precipitation that collects in fertilizer secondary containment structures.
- Expanded the exemption for unloading rail cars without a mixing and loading pad (operator may use a 75 gallon containment pan, rather than a 150 gallon pan as required in the hearing draft).
- Clarified requirements related to piping runs and off-season drains in secondary containment structures.
- Clarified the inspection requirements for synthetic liners that have exceeded their guaranteed effective life.
- Clarified, by note, that storage container anchors located outside a secondary containment structure place no stress on the structure.
- Added a note recommending that construction inspections be performed by qualified persons.

This rule exempts facilities (temporary and permanent) in which farmers store fertilizer or pesticides for their own use. It also exempts *temporary* facilities (not *permanent* facilities) in which farmers store bulk fertilizer or pesticides for custom application to other farms (up to 3 farms and 500 acres). DATCP rejected a proposal to expand the current on-farm storage exemption, so that it would also exempt *permanent* facilities used to store bulk fertilizer or pesticides for custom applications to other farms. DATCP believes that an expanded exemption may discriminate against other custom applicators, and could undermine the public health, safety, welfare and environmental objectives of this rule.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made a several minor editorial comments on the proposed rule. DATCP incorporated the Clearinghouse suggestions in the final draft rule except for the following two items.

- The Legislative Council Rules Clearinghouse suggested that DATCP consider whether standards that are incorporated by reference should be included in a separate section following the definitions, as a means of contributing clarity to the rule. DATCP did not create a separate section because there were only two standards incorporated by reference, and these standards were identified in the definitions. DATCP did not feel that adding a separate section would contribute to the clarity of the rule.
- The Legislative Council Rules Clearinghouse questioned whether the title of the rule should include the word “transportation”, since the chapter includes regulations on transportation of bulk fertilizer and pesticides. DATCP did not add the word “transportation” to the rule title because the transportation part of the rule is a small element of the overall regulation of the storage of bulk fertilizer and pesticides.

Fiscal Impact

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 business impact analysis, including a small business impact analysis, is attached. The business impact analysis has been updated from the preliminary analysis. Cost estimates have been updated, and DATCP’s previous estimate of the percentage of businesses affected that are small businesses was corrected to 55% from the previous estimate of 10 to 15%.

DATCP presented the updated information (up to 55% of affected business may be small businesses) at the public hearings. In addition, DATCP staff met with the Small Business

Regulatory Review Board on February 23, 2006 to discuss the preliminary small business analysis and the revised data.

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.

Summary of Testimony on ATCP 33

Public hearings on ATCP 33 were held on January 24, 25, and 26, 2006 in Madison, Eau Claire and Oshkosh, respectively. Written comments were accepted through February 15, 2006. 21 people either attended the hearing or provided written comments on the proposed rule. A summary of the testimony follows:

January 24, 2006, Madison

Randy Hartung, representing Hartung Brothers, Inc.

- The requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.
- The minimum 150 gallon catch basin or tub under a rail-car valve during unloading is excessive and would lead to employee safety issues and a lack of environmental protection, once employees, who are ensuring their own safety, stop using the large tubs.
- The requirements for inspecting synthetic liners that are older than their guaranteed life of effectiveness are vague.
- The siting requirement that prohibits construction of new facilities within 300 feet of a navigable stream will cause businesses who wish to build terminal facilities on the Mississippi River to build their facilities in other states.
- DATCP should consider restoring some of the removed recordkeeping requirements.

January 25, 2006, Eau Claire

No person provided oral testimony at the Eau Claire hearing.

Mr. Matt Potocnik, employed by Heartland Cooperative Services, filled out an appearance card in support of the rule but recommending adding standards or options for sealing existing sumps and secondary containment structures.

Mr. Doug Joseph, of the Wisconsin Department of Natural Resources, filled out an appearance card in support of the rule.

January 26, 2006, Oshkosh

Three people testified at the Oshkosh hearing.

Mr. Stan Buenzow, representing the Wisconsin Fertilizer & Chemical Association, testified that the requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.

Mr. Greg Becker, representing Olsen's Mill, Inc., testified that the requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.

Mr. Andrew Walsh, representing Kettle Lakes Cooperative, testified that the requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.

Written Testimony

Fourteen people submitted written comments during the comment period:

Mr. Tim Clay, representing Wisconsin Federation of Cooperatives.

- A delayed effective date specific to the requirement that dry fertilizer stored outdoors be located on a concrete or asphalt slab should be added.
- The prohibition of unsealed openings in containment structure walls will unfairly impact those facilities with such structures that already have adequate containment capacity below the level of the opening.
- The minimum 150 gallon catch basin or tub under a rail-car valve during unloading is excessive and would lead to employee safety issues and a lack of environmental protection, once employees, who are ensuring their own safety, stop using the large tubs. Mr. Clay recommended lowering the minimum capacity to 50 gallons.
- The requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.

Mr. Mike Mleziva, representing AgVentures.

- The requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.
- The maximum allowable sump volume (50 gallons, applicable only to sumps constructed after the effective date) would limit the possibilities of design of pads to adequately deal with rinsate and sediment/sludge.
- The prohibition of locating storage container anchor embedments in secondary containment structure walls may cause them to be located in structure floors, possibly leading to more leaks in the structures.
- The rule should be applicable to anyone who stores bulk fertilizer or bulk pesticide, not just manufacturers and distributors.

Mr. Russ Konkel, representing AgVentures.

- The requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.
- The maximum allowable sump volume (50 gallons, applicable only to sumps constructed after the effective date) would limit the possibilities of design of pads to adequately deal with rinsate and sediment/sludge.
- The prohibition of locating storage container anchor embedments in secondary containment structure walls may cause them to be located in structure floors, possibly leading to more leaks in the structures.

Mr. Jamie Wetzel, representing AgVentures.

- The requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.
- The maximum allowable sump volume (50 gallons, applicable only to sumps constructed after the effective date) would limit the possibilities of design of pads to adequately deal with rinsate and sediment/sludge.

- The prohibition of locating storage container anchor embedments in secondary containment structure walls may cause them to be located in structure floors, possibly leading to more leaks in the structures.

Mr. Roy Liebergen, representing AgVentures.

- The requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.
- The maximum allowable sump volume (50 gallons, applicable only to sumps constructed after the effective date) would limit the possibilities of design of pads to adequately deal with rinsate and sediment/sludge.
- The prohibition of locating storage container anchor embedments in secondary containment structure walls may cause them to be located in structure floors, possibly leading to more leaks in the structures.

Mr. Frank Masters, representing Twin States, Inc.:

- The requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with. Further, the rule should allow leaving rainwater in *fertilizer* secondary containment structures provided the water does not affect the available versus required capacity of the structure and the water does not contribute to the corrosion or instability of containers in the structure. The rule should not mandate maximum concentrations of nitrogen in water in a secondary containment structure.
- The rule draft allows DATCP to require removal of mix/load pads that can not be maintained to be in compliance with the rule, and allows DATCP to require removal of *liquid* mix/load pads that can not be maintained as liquid-tight for two years from the date of repair. The rule should add the “two-year” language to the requirements for *dry* mix/load pads.

Mr. Tom Culp, representing BT², Inc., commented that the rule should require that a *qualified* person perform and report on the construction inspection of structural steel and waterstop, prior to pouring concrete, as opposed to the operator or any person the operator chooses.

Mr. Wayne Casper, representing MSA Professional Services, Inc., commented that the rule should require that a *qualified* person perform and report on the construction inspection of structural steel and waterstop, prior to pouring concrete, as opposed to the operator or any person the operator chooses.

Mr. Ron Smith, representing Smith & Spidahl Enterprises, Inc. (dba Ag-Tech), commented that the requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.

Mr. Tim Stelter, representing Federated Co-ops, Inc., commented that the requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.

Mr. Jim Shelton, representing Landmark Services Cooperative, commented that the requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.

Mr. Keith Gunderson, representing Precision Ag Services, commented that the requirements suggested by the rule for managing precipitation collected in a fertilizer secondary containment structure are infeasible or technically impossible to comply with.

Mr. Jeffrey Miller, representing the Treated Wood Council, requested that wood treating facilities be exempted from the entire rule.

Mr. Jeff Lyon, representing the Wisconsin Farm Bureau Federation, requested that the definition of "distribute" not include farmers who do custom application of bulk fertilizer or pesticide for 3 people or less and on 500 acres of land or less.

Wisconsin Department of Agriculture, Trade and Consumer Protection

**Environmental Assessment of
Proposed Rule**

Rule Subject: Fertilizer and Pesticide Bulk Storage
Administrative Code Reference: ATCP 32 and 33 (consolidated into ATCP 33)
Rules Clearinghouse #: 05-108
DATCP Docket #: 02-R-11

Purpose and Content of Proposed Rule

This rule consolidates and updates current rules related to commercial bulk storage of fertilizer and pesticides. Bulk storage rules are designed to prevent spills that can injure persons, property and the environment. Spill prevention also saves costly environmental cleanups. The Department of Agriculture, Trade and Consumer Protection (DATCP) developed this rule in consultation with an industry advisory committee.

The primary purpose of this rule is to prevent fertilizer and pesticide spills that may contaminate the environment, including waters of the state. This rule strengthens protection in areas where the current rules are inadequate. This rule also consolidates and clarifies current rules, to facilitate understanding and compliance. Finally, this rule eliminates some unnecessary requirements that provide little or no environmental benefit.

This rule will improve environmental quality by improving design and construction requirements for new spill containment structures -- primarily mixing and loading pads, sumps and secondary containment structures. Many of these structures are constructed of concrete and have been in use for more than 15 years, and many are leaking. For example, a recent DATCP inspection survey of 155 facilities found that 44 facilities had leaking sumps (the low point to which a mixing and loading pad drains). Better construction can prevent leaks of this sort.

This rule includes the following key provisions:

Construction Plans

- An operator who constructs or substantially alters a storage facility must file plans (design specifications) with DATCP.
- A professional engineer must certify that the plans comply with this rule.
- DATCP may review and comment on the plans (it is not required to do so). An operator is not required to obtain DATCP approval.
- DATCP may grant a variance for a nonconforming feature that provides substantially equivalent spill protection.

- The operator or a person of the operator's choosing must inspect the construction of new concrete structures (mixing and loading pads or secondary containment structures), to ensure that construction conforms to plans.

Storage Facility Siting

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 affect the use, reconstruction, expansion or alteration of an existing structure.

Storage Containers and Appurtenances

This rule updates and clarifies current standards related to:

- Construction of storage containers and appurtenances.
- Storage container security.
- Filling, labeling and venting storage containers.
- Underground storage restrictions.
- Storage container inspection and maintenance.
- Abandoned storage containers.
- Dry product storage.

This rule incorporates American Petroleum Institute construction and inspection standards for field-erected tanks (which are typically over 50,000 gallons). Since 1985, the number of fertilizer storage tanks with a capacity over 50,000 gallons has more than doubled, and some new tanks have a capacity of up to 2 million gallons. In other Midwest states, at least 4 large fertilizer tanks (each containing more than one million gallons) have ruptured since 1997. This rule will help protect against these types of incidents.

Mixing and Loading Pads

Current rules require mixing and loading pads, to catch spills from mixing and loading operations. This rule clarifies construction requirements, to prevent leaks. A mixing and loading pad must comply with the following requirements (there are limited exceptions):

- It must be liquid-tight.
- It must have adequate capacity (per this rule).
- It must be constructed of concrete, according to standards specified in this rule.
- It must be served by a pump and storage container that can be used to recover and store spilled liquid.
- 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.

Secondary Containment Structures; General

Under current rules, liquid storage containers must be located within a secondary containment structure that can contain discharges from the storage containers (there are limited exceptions). This rule clarifies construction requirements for secondary containment facilities, to prevent leaks. This rule permits any of the following types of secondary containment structures (the rule specifies construction standards for each type):

- A portland cement concrete structure.
- A block wall structure (this rule allows continued use of preexisting facilities for one year only).
- A secondary containment system that uses a synthetic liner.
- One or more prefabricated basins.
- A steel structure constructed in place.
- An earthen structure with an appropriate earthen liner.
- A building floor (secondary containment for mobile and mini-bulk containers only).
- A mixing and loading pad that complies with this rule (see above).
- A bladder tank.
- A tank-in-tank.

Sumps

If a mixing and loading pad or secondary containment structure drains to a sump, the sump must comply with standards under this rule (DATCP has found many leaking and inoperable sumps). The sump must be liquid-tight, and must be served by a pump and storage container. New sumps must be constructed of concrete, according to standards in this rule. Sumps must be periodically inspected, and maintained as necessary.

Discharge Response

This rule updates discharge response procedures, including spill reporting requirements (no spill report is required if discharge is fully contained by a mixing and loading pad or secondary containment structure). This rule also updates current discharge response plan requirements.

Disposal of Discharges, Rinsate and Collected Precipitation

An operator must safely use or dispose of discharges, rinsate and precipitation recovered from a mixing and loading pad or secondary containment structure. This rule spells out practical use and disposal options.

Transporting Bulk Fertilizer or Pesticide

This rule establishes basic standards for safe transportation of bulk fertilizer and pesticides by storage facility operators.

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. The operator must conduct preliminary soil and groundwater tests, as necessary, and must report the results to DATCP.

Recordkeeping

Under current rules, an operator must keep records related to a storage facility. This rule adds some record keeping requirements, but eliminates others. An operator must keep records for at least 3 years, or for as long as the operator owns the facility (depending on the type of record).

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.

Who is Affected, and How?

Storage Facility Operators

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.

Cost Savings

The rule will save environmental cleanup costs for affected businesses. The design and construction standards in this rule will help to prevent leaks, structural failures and other spills. Environmental investigation and cleanup costs are many times larger than preventive design and construction costs.

DATCP estimates that Wisconsin bulk storage facilities will incur spill cleanup costs of \$918,600 per year over the next 5 years (see Business Impact Analysis accompanying this rule). DATCP expects to reimburse a portion of this cleanup cost, under the Agricultural Chemical

Cleanup Program. The cleanup fund is financed by license fee surcharges paid by the entire industry. This rule is designed to prevent such cleanup costs in the future, by improving construction of storage containers and spill containment structures.

This rule does not require retrofits to existing facilities, but does improve standards for the construction of new or substantially altered facilities. Over time, these new standards will prevent many of the leakage problems that now occur. Based on cleanup cost projections above, this rule will eventually save the industry approximately \$500,000 to \$1 million per year.

This rule will also eliminate some current construction, inspection and recordkeeping requirements that have produced little or no environmental benefit. These changes will save some costs for affected businesses.

Costs to Comply

This rule will add costs for some affected businesses. Affected businesses may incur increased costs related to:

- Professional design of containment structures.
- More rigorous construction standards for new mixing and loading pads, sumps and secondary containment structures.
- More rigorous construction and inspection requirements for new field-constructed storage tanks (typically over 50,000 gallons). However, most facilities are already meeting the American Petroleum Institute standards required by this rule.

DATCP estimates that this rule will cost the industry an additional \$90,000 to \$117,000 per year, beginning immediately (see Business Impact Analysis attached to this rule). This compares to a long-term cost savings of \$500,000 to \$1 million per year (see above).

Small Business Impact

Approximately 55% of the businesses affected by this rule are small businesses. These businesses typically operate smaller storage facilities, with smaller structures. Therefore, their compliance costs will typically be lower than for other affected businesses. DATCP estimates that small businesses will incur compliance costs of \$30,000 per year (total for all small businesses), but will realize long-term cleanup savings of \$200,000 to \$400,000 per year (total for all small businesses).

Farmers

Farmers who do not distribute bulk fertilizer or bulk pesticide are not directly affected by this rule. However, compliance costs (and cleanup cost savings) to storage facility operators may be passed on to farmers in the form of higher (or lower) prices for fertilizer and pesticides. DATCP estimates that these secondary price effects will be negligible overall.

General Public

This rule will benefit the general public, particularly in areas near fertilizer and pesticide bulk storage facilities. This rule will help to prevent bulk fertilizer and pesticide spills that may contaminate the environment, including surface water and groundwater, and cause health and safety hazards.

Environmental Impact

This rule will help prevent spills from storage containers at fertilizer and pesticide bulk storage facilities. It will also help ensure that spills from storage containers, and from mixing and loading operations, are effectively contained and recovered before they contaminate the environment.

This rule may increase the cost of commercial fertilizer and pesticide storage, compared to on-farm storage. This cost increase, if any, may encourage more on-farm storage relative to commercial storage. Because on-farm storage is not regulated to the same degree, there may be some increased risk of environmental contamination from on-farm spills. However, DATCP does not anticipate a major change in relative costs, or a major shift to on-farm storage. In the long term, this rule may reduce commercial storage costs by reducing spill cleanup costs.

Economic Effects

This rule will result in short-term cost increases, and larger long-term cost savings, for affected businesses (see above). However, this rule will not have a significant effect on local markets or on the sale or distribution of fertilizer or pesticides. Nor will it have a significant effect on the overall economy of this state.

Social and Cultural Effects

This rule will not have significant social or cultural effects, except that it will help to prevent the disruption of local communities that can result from large fertilizer or pesticide spills.

Alternatives to this Rule

No Action

This rule is designed to prevent future spills of fertilizer or pesticides from bulk storage facilities. If DATCP does not adopt this rule, spills will likely continue at the current rate. Those spills will cost the industry an additional \$500,000 to \$1 million per year (preventable costs) over the long term. There will also be increased contamination of the environment. Bulk storage facilities may realize some short-term savings (because they do not have to meet the improved construction standards in this rule), but those savings will be greatly outweighed by the increase in long-term costs (for spill cleanups). Storage facilities that voluntarily build to higher standards will share the cleanup cost burden for those who do not, because industry license fee surcharges (paid by all license holders) reimburse a large share of cleanup costs at individual facilities.

Modify Rule Provisions

DATCP developed this rule in consultation with an industry advisory committee. The committee generally endorsed the provisions of this rule, which are designed to provide much better environmental protection at reasonable cost. Major changes may increase costs or reduce environmental protection.

Controversial Public Issues

DATCP does not anticipate major public controversy related to this rule. However, some industry members may express concern about possible increased costs, which may affect prices to farmers. They may also be concerned that cost increases for commercial storage could result in more (unregulated) on-farm storage, which could increase environmental risks.

This rule will improve protection for the public at large.

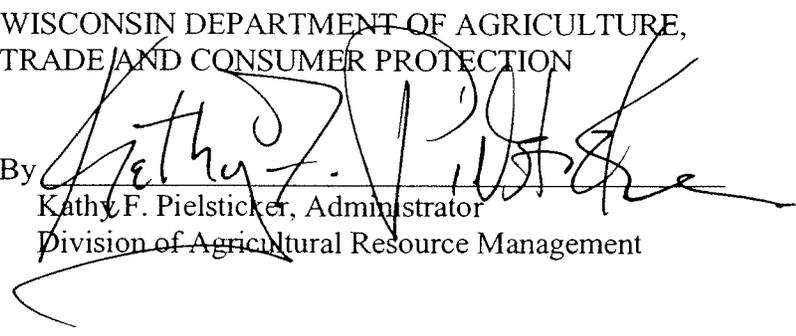
Conclusion

This rule will have a positive effect on the environment, and will not have any significant negative effects. This rule may increase costs for some bulk storage facilities, but cost increases (if any) will be modest and will be greatly outweighed by long-term cost savings. There are no preferable alternatives to this rule. This rule is not a "major action significantly affecting the quality of the environment," for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats. or ch. ATCP 3, Wis. Adm. Code.

Signed this 12 day of June, 2006.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By


Kathy F. Pielsticker, Administrator
Division of Agricultural Resource Management

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Fertilizer and Pesticide Bulk Storage
Adm. Code Reference: ATCP 32 and 33 (consolidated into ATCP 33)
Rules Clearinghouse #: 05-108
DATCP Docket #: 02-R-11

Rule Description

This rule consolidates and updates current rules related to commercial bulk storage of fertilizer and pesticides. Bulk storage rules are designed to prevent spills that can injure persons, property and the environment. Spill prevention also saves costly environmental cleanups. The Department of Agriculture, Trade and Consumer Protection (DATCP) developed this rule in consultation with an industry advisory committee.

Businesses Affected

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.

DATCP estimates that 55% of the businesses affected by this rule are “small businesses.” Although farmers are not directly affected by this rule, compliance costs (and cleanup cost savings) may be passed on to farmers in the form of higher (or lower) prices for fertilizer and pesticides. DATCP estimates that these secondary price effects will be negligible overall.

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. This consolidation will eliminate unnecessary repetition, and make it easier for operators to understand and comply with the rules.

¹ This analysis includes, but is not limited to, a small business analysis (“regulatory flexibility analysis”) under s. 227.114, Stats..

Key Rule Provisions

This rule includes the following key provisions:

Construction Plans

- An operator who constructs or substantially alters a storage facility must file plans (design specifications) with DATCP.
- A professional engineer must certify that the plans comply with this rule.
- DATCP may review and comment on the plans (it is not required to do so). An operator is not required to obtain DATCP approval.
- DATCP may grant a variance for a nonconforming feature that provides substantially equivalent spill protection.
- The operator or a person of the operator's choosing must inspect the construction of *new concrete structures* (mixing and loading pads or secondary containment structures), to ensure that construction conforms to plans.

Storage Facility Siting

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* affect the use, reconstruction, expansion or alteration of an existing structure.

Storage Containers and Appurtenances

This rule updates and clarifies current standards related to:

- Construction of storage containers and appurtenances.
- Storage container security.
- Filling, labeling and venting storage containers.
- Underground storage restrictions.
- Storage container inspection and maintenance.
- Abandoned storage containers.
- Dry product storage.

This rule incorporates American Petroleum Institute construction and inspection standards for field-erected tanks (which are typically over 50,000 gallons). Since 1985, the number of fertilizer storage tanks with a capacity over 50,000 gallons has more than doubled, and some new tanks have a capacity of up to 2 million gallons. In other Midwest states, at least 4 large fertilizer tanks (each containing more than one million gallons) have ruptured since 1997. This rule will help protect against these types of incidents.

Mixing and Loading Pads

Current rules require mixing and loading pads, to catch spills from mixing and loading operations. This rule clarifies construction requirements, to prevent leaks. A mixing and loading pad must comply with the following requirements (there are limited exceptions):

- It must be liquid-tight.
- It must have adequate capacity (per this rule).
- It must be constructed of concrete, according to standards specified in this rule.
- It must be served by a pump and storage container that can be used to recover and store spilled liquid.
- 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.

Secondary Containment Structures; General

Under current rules, liquid storage containers must be located within a secondary containment structure that can contain discharges from the storage containers (there are limited exceptions). This rule clarifies construction requirements for secondary containment facilities, to prevent leaks. This rule permits any of the following types of secondary containment structures (the rule specifies construction standards for each type):

- A portland cement concrete structure.
- A block wall structure (this rule allows continued use of preexisting facilities for one year only).
- A secondary containment system that uses a synthetic liner.
- One or more prefabricated basins.
- A steel structure constructed in place.
- An earthen structure with an appropriate earthen liner.
- A building floor (secondary containment for mobile and mini-bulk containers only).
- A mixing and loading pad that complies with this rule (see above).
- A bladder tank.
- A tank-in-tank.

Sumps

If a mixing and loading pad or secondary containment structure drains to a sump, the sump must comply with standards under this rule (DATCP has found many leaking and inoperable sumps). The sump must be liquid-tight, and must be served by a pump and storage container. New sumps must be constructed of concrete, according to standards in this rule. Sumps must be periodically inspected, and maintained as necessary.

Discharge Response

This rule updates discharge response procedures, including spill reporting requirements (no spill report is required if discharge is fully contained by a mixing and loading pad or secondary containment structure). This rule also updates current discharge response plan requirements.

Disposal of Discharges, Rinsate and Collected Precipitation

An operator must safely use or dispose of discharges, rinsate and precipitation recovered from a mixing and loading pad or secondary containment structure. This rule spells out practical use and disposal options.

Transporting Bulk Fertilizer or Pesticide

This rule establishes basic standards for safe transportation of bulk fertilizer and pesticides by storage facility operators.

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. The operator must conduct preliminary soil and groundwater tests, as necessary, and must report the results to DATCP.

Recordkeeping

Under current rules, an operator must keep records related to a storage facility. This rule adds some record keeping requirements, but eliminates others. An operator must keep records for at least 3 years, or for as long as the operator owns the facility (depending on the type of record).

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.

Effect on Existing Facilities

This rule establishes some new construction standards for fertilizer and pesticide storage facilities (see above). The new standards address problems (such as leaking structures) found in current storage facilities. But the new standards apply only to structures that are *constructed or substantially altered* after the rule effective date.

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.

Effects on Businesses

Cost Savings

The rule will save environmental cleanup costs for affected businesses. DATCP has found that a large number of current facilities have leaking containment facilities (for example, DATCP has found leaking sumps at nearly a third of mixing and loading facilities where sumps were tested). The design and construction standards in this rule will help to prevent leaks, structural failures and other spills. Environmental investigation and cleanup costs are many times larger than preventive design and construction costs.

DATCP projects that, over the next 5 years, it will investigate 60 facilities with leaking containment structures. DATCP estimates that, of these facilities:

- 10% will need to investigate the leak (at a cost of about \$5,500 per facility), but will not need to conduct an environmental cleanup. Total industry cost for these facilities will be about \$33,000 over 5 years, or \$6,600 per year.
- 30% will need to investigate and conduct a small cleanup (at a cost of about \$20,000 per facility). Total industry cost for these facilities will be about \$360,000 over 5 years, or \$72,000 per year.
- 50% will need a larger cleanup and groundwater monitoring (at a cost of about \$100,000 per facility). Total industry cost for these facilities will be about \$3 million over 5 years, or \$600,000 per year.

- 10% percent of facilities will need large soil and groundwater cleanups (at a cost of at least \$200,000 per facility. Total industry cost for these facilities will be about 1.2 million over 5 years, or \$240,000 per year.

Total annual cleanup costs to the industry are therefore projected at \$918,600 per year. DATCP expects to reimburse a portion of this cleanup cost, under the Agricultural Chemical Cleanup Program. But the cleanup fund is financed by license fee surcharges paid by the entire industry.

This rule does not require retrofits to existing facilities, but does improve standards for the construction of new or substantially altered facilities. Over time, these new standards will prevent many of the leakage problems that now occur. Based on cleanup cost projections above, this rule will eventually save the industry approximately \$500,000 to \$1 million per year.

This rule will also eliminate some current construction, inspection and recordkeeping requirements that have produced little or no environmental benefit. These changes will save some costs for affected businesses.

Costs to Comply

This rule will add costs for some affected businesses. Affected businesses may incur increased costs related to:

- Professional design of containment structures.
- More rigorous construction standards for new mixing and loading pads, sumps and secondary containment structures.
- More rigorous construction and inspection requirements for new field-constructed storage tanks (typically over 50,000 gallons). However, most facilities are already meeting the American Petroleum Institute standards required by this rule.

This rule may add design and construction costs for concrete structures as follows:

- \$2,500 to \$3,000 for a concrete mixing and loading pad (including sump), depending on the size of the pad.
- \$3,000 to \$4,500 for a concrete secondary containment structure used for storing bulk pesticides.

DATCP projects the construction of 10 new mixing and loading pads and 5 new concrete secondary containment structures used for storing bulk pesticides each year. The total additional cost for these new structures may amount to \$40,000 to \$52,500 per year (for the entire industry).

Most new *fertilizer* secondary containment structures will use synthetic liners (not concrete). Synthetic liner systems constructed according to this rule will be cheaper than new concrete structures built according to this rule, but will be \$4,000 to \$7,000 more expensive than concrete structures built under current rules (depending on system size).

DATCP estimates that 5 synthetic liner systems will be installed each year for the next 10 years because of this rule. Construction standards under this rule will increase annual industry-wide costs by \$20,000 to \$35,000 per year for these new structures.

Under this rule, large field-erected storage tanks (typically over 50,000 gallons) must be constructed and inspected according to American Petroleum Institute (API) standards. Most tanks of this size are already being constructed to API standards, so this rule is not expected to add construction costs. API inspection will cost about \$5,000 per storage tank every 5 years (or \$1,000 per year). Wisconsin currently has fewer than 30 field-erected storage tanks, and many operators are already having API inspections performed on their tanks. DATCP therefore estimates that the total net increase in inspection costs, for the entire industry, will be less than \$30,000 per year.

This rule modifies current inspection and recordkeeping requirements, adding some new requirements and eliminating others. DATCP estimates that these changes will, on balance, neither increase nor decrease industry costs.

Based on the above assumptions, DATCP estimates that this rule will cost the industry an additional \$90,000 to \$117,000 per year, beginning immediately. This compares to a long-term cost savings of \$500,000 to \$1 million per year (see above).

Small Business Impact

Approximately 55% of the businesses affected by this rule are small businesses. These businesses typically operate smaller storage facilities, with smaller structures. Therefore, their compliance costs will typically be lower than for other affected businesses. DATCP estimates that small businesses will incur compliance costs of \$30,000 per year (total for all small businesses), but will realize long-term cleanup savings of \$200,000 to \$400,000 per year (total for all small businesses). The added costs for a single small business that needs to fully recreate its facility or a small business starting a new facility for bulk pesticide and bulk fertilizer are approximately \$9,500.

Hearing Comments by Affected Businesses

Issues raised by business representatives at the hearings or in writing include:

- Requirements for managing precipitation collected in a fertilizer secondary containment structure are not possible to comply with.
- Prohibiting storage container anchors from being embedded in secondary containment structure walls will cause them to be located in structure floors, possible leading to more leaks in the structures.

- The maximum allowable sump volume (50 gallons, applicable only to sumps constructed after the effective date) would limit the design of pads adequate to deal with rinsate and sediment/sludge.
- The rule should require that a *qualified* person perform construction inspection of structural steel and waterstop, prior to pouring concrete, as opposed to the operator or any person the operator chooses.
- The minimum 150 gallon catch basin or tub under a rail-car valve during unloading is excessive and would lead to employee safety issues and a lack of environmental protection.
- Requirements for inspecting synthetic liners that are older than their guaranteed life of effectiveness are vague.
- The definition of “distribute” should have an exception to exclude farmers who do custom application of bulk fertilizer or pesticide for 3 people or less and on 500 acres of land or less.

Changes Made in Response to Business Comments

DATCP modified the final draft rule in response to business comments. Changes include:

- Creation of 6 specific options for managing precipitation collected within a fertilizer secondary containment structure.
- Reduction of the minimum required catch basin size from 150 to 75 gallons, for unloading railroad cars of liquid fertilizer or pesticide.
- Clarification of the requirements for piping that extends through secondary containment structure walls.
- Identification of specific requirements for inspection of synthetic liners used for secondary containment.
- Addition of a note to the rule explaining that anchors located in soil *outside* the secondary containment structure do not place *any* added stress on the structure or its construction.
- Addition of a note recommending that inspection of laying of structural steel and waterstop material for concrete construction be performed by a *qualified* person.

This rule exempts facilities (temporary and permanent) in which farmers store fertilizer or pesticides for their own use. It also exempts *temporary* facilities (not *permanent* facilities) in which farmers store bulk fertilizer or pesticides for custom application to other farms (up to 3 farms and 500 acres). DATCP rejected a proposal to expand the current on-farm storage exemption, so that it would also exempt *permanent* facilities used to store bulk fertilizer or pesticides for custom applications to other farms. DATCP believes that an expanded exemption may discriminate against other custom applicators, and could undermine the public health, safety, welfare and environmental objectives of this rule.

Special Accommodations to Reduce Small Business Impact

- This rule streamlines and simplifies recordkeeping and reporting requirements for all affected businesses, including small businesses. This rule eliminates a number of current recordkeeping and reporting requirements that provide little, if any, environmental protection.
- Fertilizer and pesticide bulk storage facilities operated by small businesses must comply with the same environmental safeguards as those operated by large businesses, because the environmental risks are essentially the same.

Steps to Assist Small Business

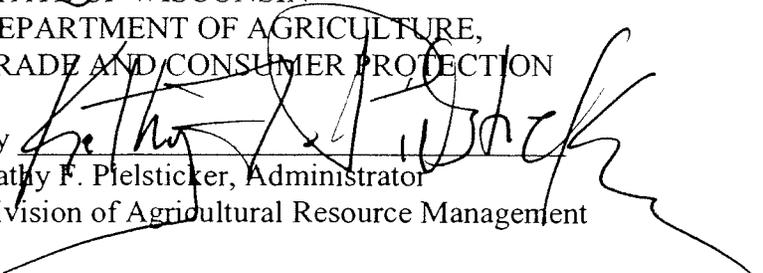
- DATCP has worked with University of Wisconsin - Extension to spell out minimum design standards for concrete structures (including mixing and loading pads and secondary containment structures), so that engineering firms will not have to design these structures from scratch. The rule also provides a mechanism by which DATCP can review plans and provide constructive suggestions. This will minimize design costs for small businesses.
- This rule consolidates and redrafts current rules, so they will be easier to read and understand. This rule eliminates obsolete and unnecessary requirements, and clarifies current requirements.
- This rule will help small businesses by preventing spills that may require costly environmental cleanups. Compliance costs are far less than cleanup costs.

Conclusion

This rule will impose additional costs on some businesses, including small businesses. However, overall industry costs are far outweighed by long-term cost savings.

Dated this 12 day of June, 2006

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Kathy F. Pielsticker, Administrator
Division of Agricultural Resource Management

FISCAL ESTIMATE

DOA-2048 N(R10/98)

 ORIGIN UPDATED
 CORRECTED SUPPLEMENTAL

LRB No. / Bill/Adm. Rule No.

ch. ATCP 33

Amendment No. If Applicable

Subject

Fertilizer and Pesticide Bulk Storage

Fiscal Effect**State:** No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain appropriation

 Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

 Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs**Local:** No Local Government Costs
1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

 Towns Villages Cities Counties Others School Districts WTCS Districts**Fund Sources Affected**
 GPR FED PRO PRS SEG SEG-S
Affected Ch. 20 Appropriations

20.115(7)(r)

Assumptions Used in Arriving at Fiscal Estimate

This rule consolidates and updates current rules related to commercial bulk storage of fertilizer and pesticides. Bulk storage rules are designed to prevent spills that can injure persons, property and the environment. Spill prevention also saves costly environmental cleanups.

This rule creates new construction standards for fertilizer and pesticide storage facilities and require an operator of a bulk storage facility who constructs or substantially alters the storage facility to file plans (design specifications) with DATCP. DATCP may review and comment on the plans but is not required to do so.

These aspects of the rule will result in an estimated annual increased expense of \$24,400 for DATCP. The increase is based upon an estimate of the additional staff time needed to review and comment on construction plans, conduct on-site construction inspections and conduct on-site determinations of the effectiveness of existing structures. The increased expense will be absorbed in the agency budget.

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. Reduction of spills and spill cleanup costs will help to control costs under the agricultural chemical cleanup program.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Dept of Agriculture, Trade & Consumer Protection

Authorized Signature/Telephone No.

Barbara Knapp

Date

Duane Klein (608) 224-4519

Barbara Knapp (608) 224-4746

10/11/2005

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect	<input checked="" type="checkbox"/> ORIGINAL	<input type="checkbox"/> UPDATED	LRB No. and Bill Adm. Rule No.	Amendment No.
DOA-2047 (R10/98)	<input type="checkbox"/> CORRECTED	<input type="checkbox"/> SUPPLEMENTAL	Ch. ATCP 33	

Subject
Fertilizer and Pesticide Bulk Storage

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$24,400	
(FTE Position Changes) FTE	0.33	
State Operations - Other Costs		
Local Assistance		
Aids to Individuals and Organizations		
TOTAL State Costs by Category	\$24,400	
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR		
FED		
PRO/PRS		
SEG/SEG-S	\$24,400	
III. State Revenues	Increased Rev.	Decreased Rev.
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes		
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues		

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$24,400	
NET CHANGE IN REVENUES		

Dept. of Agriculture, Trade & Consumer Protection	Authorized Signature/Telephone No.	Date
Duane Klein (608)224-4519	<i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	10/11/20