

## Chapter ATCP 33

### PESTICIDE BULK STORAGE

ATCP 33.01	Definitions.
ATCP 33.02	Storage containers and appurtenances; liquid pesticide.
ATCP 33.03	Loading areas.
ATCP 33.04	Secondary containment; liquid pesticide.
ATCP 33.05	Underground liquid storage prohibited; exemption.
ATCP 33.06	Abandoned containers.

ATCP 33.07	Recordkeeping; liquid pesticide storage.
ATCP 33.08	Storage of dry pesticide in bulk quantity.
ATCP 33.09	Preparing to control and recover discharges.
ATCP 33.10	Labeling storage containers.
ATCP 33.11	Exemptions.

**Note:** Chapter Ag 163 was renumbered chapter ATCP 33 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

**Note:** See also the following:

1. Section ATCP 29.40 contains general rules on pesticide storage, including bulk storage.
2. Under ch. ATCP 35, the department may reimburse certain agricultural chemical contamination cleanup costs. This may include partial reimbursement for the cost of a containment structure, required by s. ATCP 33.03 or 33.04, which must be removed in order to clean up contamination beneath the structure. A person may not claim reimbursement for a structure built after January 1, 1998 unless the ground beneath the structure was tested for contamination before the structure was built. See ss. ATCP 35.04 (5) and (6) for more information.
3. Under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC 136 et. seq.), pesticide sellers who repackaging pesticides by delivering them from bulk storage to customers must do the following things, among others:
  - a. Register the seller's facility as a pesticide producing establishment.
  - b. File annual pesticide production reports.
  - c. Maintain books and records.
  - d. Provide labeling to purchasers of bulk pesticides.
  - e. Deliver pesticides from bulk storage only to customers.
  - f. Maintain a formal repackaging agreement with the pesticide product registrant.
4. Chapter ATCP 32 contains rules for fertilizer bulk storage.
5. Chapter ILHR 10 contains rules related to the storage of flammable bulk pesticides.

**ATCP 33.01 Definitions.** As used in this chapter:

(1) "Appurtenances" means all valves, pumps, fittings, pipes, hoses, metering devices, mixing containers, and dispensing devices which are connected to a storage container, or which are used to transfer liquid bulk pesticide into or out of a storage container.

(2) "Bulk pesticide" means liquid pesticide in a container larger than 55 gallons (208 liters) or a solid pesticide in undivided quantities greater than 100 pounds (45 kilograms). It includes mini-bulk pesticide, except as otherwise specified.

(3) "Department" means the department of agriculture, trade and consumer protection.

(4) "Discharge" means a spill, leak, accidental or intentional release, or other emission of bulk pesticide from a container or appurtenance, and includes a discharge into secondary containment. "Discharge" does not include a fully contained transfer of bulk pesticide which is made pursuant to storage, sale or distribution.

(5) "Distribute" means to import, consign, sell, offer for sale, solicit orders for sale or otherwise supply pesticide for sale or use in this state.

(6) "Dry pesticide" means pesticide which is in solid form prior to any application or mixing for application, and includes formulations such as dusts, wettable powders, dry flowable powders, and granules.

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

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

(9) "Liquid pesticide" means pesticide in liquid form, and includes solutions, emulsions, suspensions and slurries.

(10) "Manufacture" means to process, manufacture, formulate, prepare, compound, propagate, package, or label any pesticide.

(11) "Mini-bulk container" means either of the following:

(a) A storage container, designed for ready handling and transport, that holds more than 55 gallons (208 liters) but not more than 300 gallons (1,135 liters) of liquid pesticide.

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

(12) "Mobile container" means any storage container, anchored to a vehicle, trailer or axles, that an operator uses to store liquid bulk pesticide. "Mobile container" includes rail cars, application equipment and nurse tanks.

(13) "Operator" means all of the following persons, and includes their employees and agents:

(a) A person who owns or controls a storage facility, unless both of the following apply:

1. The person is not a pesticide manufacturer or distributor.
2. The person is storing pesticide only for his or her own use.

**Note:** A farmer who stores pesticide solely for the farmer's own use is not an "operator" under par. (a).

(b) A pesticide manufacturer or distributor who contracts with another person to store bulk pesticide for the manufacturer or distributor.

**Note:** If a pesticide manufacturer or distributor contracts with a farmer for on-farm storage of a bulk pesticide owned by the manufacturer or distributor, the manufacturer or distributor is responsible as an "operator" of that storage facility under par. (b).

(14) "Person" means an individual, corporation, partnership, cooperative association, limited liability company, trust, or other organization or entity.

(15) "Pesticide" has the meaning specified under s. 94.67 (25), Stats. For purposes of this rule, the term includes substances or mixtures of substances which are labeled as pesticides for use in further manufacture or formulation of pesticides.

(16) "Storage" means storage of bulk pesticide by a person who manufactures or distributes bulk pesticide.

(17) "Storage container" means a container used to store liquid bulk pesticide at a storage facility.

(18) "Storage facility" means a place where bulk pesticide is held in storage. "Storage facility" does not include a field or other site at which a mobile container is temporarily parked while its pesticide contents are unloaded for a person, other than a pesticide manufacturer or distributor, who owns or controls that site.

(19) "Waters of the state" has the meaning given in s. 281.01 (18), Stats.

**History:** Cr. Register, September, 1985, No. 357, eff. 12-29-85; cr. (2m) and r. and recr. (14), Register, February, 1988, No. 386, eff. 3-1-88; r. (10), (11), (14) and (15), renum. (2m), (4), (5), (7) to (9), (12) and (13) to be (3), (5), (6), (8) to (10), (15) and (16), renum. and am. (3), (6) and (16) to be (4), (7) and (19), cr. (11) to (14), (17) and (18), Register, September, 1998, No. 513, eff. 10-1-98.

**ATCP 33.02 Storage containers and appurtenances; liquid pesticide. (1) GENERAL REQUIREMENTS. (a)**

Storage containers and appurtenances shall be constructed, installed and maintained to prevent the discharge of liquid bulk pesticide.

(b) Storage containers and appurtenances shall be constructed of materials that resist corrosion, puncture and cracking.

(c) Materials used to construct or repair storage containers and appurtenances may not react chemically or electrolytically with stored bulk pesticide in a way that may weaken the storage container or appurtenance, create a risk of discharge, or adulterate the pesticide.

(d) Metals used for storage container valves, fittings or repairs shall be compatible with other metals in the storage container, so that the combination of metals does not cause or increase corrosion that may weaken the storage container or its appurtenances, or create a risk of discharge.

(e) Storage containers and appurtenances shall be designed to handle foreseeable mechanical stresses, including static head and pressure buildup from pumps and compressors.

**(2) APPURTENANCES.** (a) Every storage container connection, except a safety relief connection, shall be equipped with a shutoff valve located on the storage container or at a distance from the storage container dictated by standard engineering practice. Except for a storage container of mini-bulk pesticide, all wetted parts inside shutoff valves, and all connections from the storage container to the shutoff valve, shall be made of stainless steel or other department-approved material. Valves shall be secured to protect against vandalism or accidental valve openings which may result in a discharge.

(b) Pipes and fittings shall be adequately supported to prevent sagging and possible breakage because of gravity and other forces which may be encountered in the ordinary course of operations.

**(3) VENTING OR EXPOSURE MONITORING.** (a) Except as provided in par. (b), each fixed storage container used for liquid bulk pesticide shall be equipped with a conservation vent which opens and closes within the designed pressure limits of the container, so as to relieve excess pressure, prevent evaporative losses, and keep precipitation out of the container.

(b) In place of a conservation vent under par. (a), a company storing bulk pesticides for use as a wood preservative may conduct air sampling capable of determining the presence of the wood preserving compound stored at or above levels regulated by state or federal standards in accordance with acceptable protocol.

**(4) LIQUID LEVEL GAUGING DEVICE.** Every storage container shall be equipped with a liquid level gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level gauging device is not required if the level of liquid in a storage container can be readily and reliably measured by other means. Liquid level gauging devices shall be secured, in a safe manner, to protect against breakage or vandalism which may result in a discharge. External sight gauges are prohibited.

**(5) PROHIBITED MATERIALS.** (a) Storage containers and appurtenances may not be made of polyvinyl chloride.

(b) A storage container may not be made of ferrous metals unless one of the following applies:

1. The container is made of stainless steel.
2. The container has a protective lining which inhibits corrosion and which does not react chemically with the stored pesticide.
3. The department approves the use of ferrous metals based on documentation showing that the storage container is used only to store noncorrosive pesticide labeled for wood preservation.

**(6) ANCHORING STORAGE CONTAINERS.** An operator shall anchor a storage container, as necessary, to prevent flotation or instability that could occur as a result of liquid accumulations within a secondary containment structure.

**(7) SECURITY.** (a) An operator shall keep a storage container and its appurtenances in a locked building, or a locked outdoor enclosure under par. (c), unless one of the following applies:

1. The operator is present at the storage facility.
2. The storage container and its appurtenances are empty and have been triple-rinsed.
3. The storage container is a mobile container whose exterior surfaces are free of visible pesticide residues, and whose valves are secured according to par. (b).

(b) An operator shall lock all valves on an outdoor storage container and its appurtenances unless one of the following applies:

1. The operator is present at the storage facility.
2. The storage container and its appurtenances are empty and have been triple-rinsed.

(c) An outdoor enclosure under par. (a) shall be surrounded by a secure wall or fence. The wall or fence shall be at least 5 feet tall at every point, and shall be free of gaps that would allow unauthorized persons to enter the enclosure.

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

- (a) The storage container is constructed or located to ensure constant temperature control.
- (b) The storage container is a mini-bulk container and is not filled beyond the designed maximum capacity indicated by the uppermost calibration on the container.

**(9) INSPECTION AND MAINTENANCE.** (a) An operator shall routinely inspect and maintain storage facilities, storage containers and appurtenances to minimize the risk of a discharge. An operator shall inspect valves and other appurtenances for leakage at least weekly, and shall inspect vents for proper operation at least monthly.

(b) Except as provided in par. (c), an operator shall measure and record the liquid pesticide level in every storage container at least weekly.

(c) Paragraph (b) does not apply to a storage container if all of the following apply:

1. The storage container is located within a fully enclosed building.
2. The storage container is located within a secondary containment structure that complies with s. ATCP 33.04 and has a concrete liner or is a prefabricated structure.
3. The operator visually inspects the storage container for leakage at least weekly.

(d) On the same day that an operator inspects, measures or performs maintenance under this section, the operator shall make a written record of the inspection, measurement or maintenance. The operator shall keep the record at the storage facility, or at the nearest local office from which the operator administers the storage facility.

**History:** Cr. Register, September, 1985, No. 357, eff. 12-29-85; renum. (3) to be (3) (a) and am., cr. (3) (b) and (5) (b) 3., am. (5) (b) (intro.) and 1., Register, February, 1988, No. 386, eff. 3-1-88; r. and recr. (1), (5) (b) 3. and (6) to (9), am. (5) (b) (intro.), Register, September, 1998, No. 513, eff. 10-1-98.

**ATCP 33.03 Loading areas.** **(1) SPILL CONTAINMENT REQUIRED.** No person may mix or load a bulk pesticide except over a spill containment surface that complies with this section.

**(2) SPILL CONTAINMENT SURFACE; GENERAL.** A spill containment surface under sub. (1) shall comply with all of the following:

(a) It shall be designed to catch and contain all reasonably foreseeable spills of pesticides mixed or loaded over that spill containment surface.

(b) It shall be made of asphalt, concrete or other nonabsorbent materials approved by the department, and shall be durable enough to withstand all foreseeable loading conditions.

**Note:** The department will maintain a list of approved paving and lining materials for various pesticide compounds, and will provide the current list to interested persons upon request. The department may add approved materials to this list if the person requesting approval provides the department with information demonstrating the adequacy of the materials under intended conditions of use. Persons seeking approval should provide information related to chemical compatibility, permeability, physical characteristics and durability. A tarpaulin may be used as a spill containment surface for nonliquid pesticides if it complies with this section.

(c) It shall extend beneath any conveyor used to load or unload pesticides, unless the conveyor is fully enclosed within a housing that is adequate to contain all spillage from the conveyor.

**(3) SPILL CONTAINMENT SURFACE; LIQUID PESTICIDES.** (a) A spill containment surface under sub. (1) shall comply with all of the following if any liquid bulk pesticide is mixed or loaded over that surface:

1. It shall be curbed or sloped to contain spillage, and to prevent liquids from adjacent surfaces from flowing onto it.

2. It shall drain into or form a liquid-tight catch basin that complies with sub. (4).

(b) A tarpaulin may not be used as a spill containment surface for liquid bulk pesticides.

(c) A pesticide mixed with a liquid carrier is considered a liquid pesticide under this subsection. The impregnation of a nonliquid fertilizer with a liquid pesticide does not constitute the mixing or loading of a liquid pesticide under this subsection.

**(4) CATCH BASIN.** (a) Except as provided under par. (b), the catch basin under sub. (3) (a) 2. shall have an available capacity of at least 1,500 gallons (5,680 liters). To attain this required capacity, the catch basin may include a sump equipped with an automatically activated pump that transfers liquids to an above-ground container that complies with s. ATCP 33.02 (1) and is located within a secondary containment structure that complies with s. ATCP 33.04.

(b) If an operator does not load or unload any storage container having a capacity of more than 1,000 gallons, the available capacity of the catch basin under sub. (3) (a) 2. shall be at least 125 percent of the capacity of the largest storage container loaded or unloaded at the storage facility.

**(5) RECOVERING DISCHARGES.** An operator shall promptly recover a pesticide discharged onto a spill containment surface.

**(6) STORING SPILLS AND RINSATE.** A container used to hold liquid pesticide spills or rinsate shall be located within a secondary containment structure that complies with s. ATCP 33.04. No spilled pesticides or spilled materials containing pesticides may be stored below ground level.

**(7) PREVENTING DAMAGE BY MOVING VEHICLES.** Storage containers and appurtenances, including pipes, shall be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles engaged in loading or unloading bulk pesticides.

**History:** Cr. Register, September, 1985, No. 357, eff. 1-1-88; r. and recr., Register, September, 1998, No. 513, eff. 10-1-98.

**ATCP 33.04 Secondary containment; liquid pesticide.** **(1) GENERAL REQUIREMENTS.** Except as provided in sub. (9), storage containers shall be enclosed in a secondary containment structure that is adequate, in the event of a discharge, to prevent the movement of liquid pesticide to groundwater or to other waters of the state. A secondary containment structure shall consist of a wall and liner that comply with subs. (4) and (5), or a prefabricated structure that complies with sub. (6).

**(2) CAPACITY.** The capacity of a secondary containment structure shall equal or exceed the sum of all the following:

(a) The greatest volume of liquid that could be discharged from the largest storage container within the secondary containment structure.

(b) Twenty-five percent of the capacity of the largest storage container located within the secondary containment structure if that structure is not fully covered by a roof, or 10% of the capacity

of the largest storage container located within the secondary containment structure if that structure is fully covered by a roof.

(c) The total volume of discharged liquid that would be displaced by the submerged portions of all other storage containers, fixtures and materials located within the secondary containment structure if the structure were filled to capacity with discharged liquid.

**(3) STORAGE WITH OTHER COMMODITIES.** No commodity, other than liquid pesticide, pesticide diluent, empty pesticide containers, or pesticide discharges recovered under sub. (8) and s. ATCP 33.03 (3), may be stored within a liquid pesticide secondary containment structure.

**Note:** A liquid pesticide secondary containment structure may be located within or may share a wall with a liquid fertilizer secondary containment structure constructed under s. ATCP 32.04, provided that the capacity of the pesticide secondary containment structure is adequate to contain the full amount of any bulk liquid pesticide discharge.

**(4) WALLS.** The walls of a secondary containment structure shall be constructed of steel or concrete, except that solid masonry block may be used for secondary containment of mini-bulk containers inside a building. Walls shall be designed to withstand a full hydrostatic head of any discharged liquid. Cracks and seams shall be sealed to prevent leakage. Walls may not extend more than 6 feet (1.8 meters) above interior grade.

**(5) LINER.** (a) *General requirement.* The base of a secondary containment structure shall be lined with one of the following:

1. An asphalt or concrete liner that complies with par. (b).

2. A synthetic liner that complies with par. (c) and does not use bentonite or other clay material as a hydraulic barrier.

(b) *Asphalt and concrete liners.* Asphalt and concrete liners shall be designed according to good engineering practices to withstand any foreseeable loading conditions, including a full hydrostatic head of discharged liquid. Cracks and seams shall be sealed to prevent leakage. Asphalt liners shall be sealed and well maintained to prevent deterioration.

(c) *Synthetic liners.* Synthetic liners shall be approved by the department. The department may approve a synthetic liner if all of the following apply:

1. The liner is at least 30 mils (0.8 millimeters) thick.

2. The liner manufacturer certifies that the liner is chemically compatible with all pesticides that may be stored within the secondary containment structure.

3. The liner manufacturer provides a written estimate of the liner's effective life. The operator may not use the liner beyond that estimated life except with the department's written approval.

4. The liner is protected by a 6 inch (15 centimeter) protection layer below the liner, and a 12 inch (30 centimeter) protection layer above the liner. Both protection layers shall be composed of soil, sand, or smooth gravel less than 1/2 inch in diameter. The protection layers shall be free of large rocks, angular stones, sticks or other materials that may puncture the liner.

5. A qualified representative of the liner manufacturer is present when the liner is installed, and supervises the installation.

6. Liner seams constructed at the installation site are tested, and repaired as necessary, according to the manufacturer's recommendations.

**(6) PREFABRICATED STRUCTURES.** A prefabricated secondary containment structure shall be composed of a rigid prefabricated basin having a base and walls constructed of steel or synthetic materials that resist corrosion, puncture and cracking. Materials used in the structure shall be chemically compatible with all of the pesticides that may be stored within the structure. An operator shall obtain a written confirmation of compatibility from the basin manufacturer, and shall keep that confirmation on file at the storage facility or at the nearest local office from which the operator administers the storage facility. The prefabricated structure and the foundation on which it is placed shall be designed and installed to withstand all foreseeable loading conditions, including the tank

load and a full hydrostatic head of any discharged liquid. If multiple basins are connected to provide the capacity required under sub. (2), the basins shall be connected in a manner that ensures an unrestricted transfer of discharged liquid between basins.

**(7) INSPECTION AND MAINTENANCE.** (a) *General.* An operator shall inspect every secondary containment structure at least once every 12 months, and shall maintain the structure to comply with this section. The operator shall make a written record of every inspection and maintenance action on the day of the inspection or maintenance. The operator shall keep the record at the storage facility or at the nearest local office from which the operator administers the storage facility.

(b) *Accumulated precipitation.* An operator may not allow precipitation to accumulate in a secondary containment structure to the point where the accumulation may tend to do any of the following:

1. Impair the adequacy of the structure for discharge containment purposes.
2. Cause or increase the corrosion of storage containers or appurtenances.
3. Impair the stability of storage containers.

**(8) DISCHARGE RECOVERY.** An operator shall, to the maximum extent feasible, recover all discharges that occur at a storage facility. An operator shall keep pumps and recovery containers readily available to recover discharges, as provided in s. ATCP 33.09 (3).

**(9) EXEMPTIONS.** The secondary containment requirements under this section do not apply to any of the following:

- (a) A mobile container stored for less than 15 days at a storage facility that has a spill containment surface and catch basin that comply with s. ATCP 33.03 (2) to (4).
- (b) An empty and cleaned storage container. For mini-bulk containers that cannot be opened, the operator shall clean the outside of the container before storing it outside a secondary containment structure.
- (c) An empty railcar.
- (d) An abandoned storage container for which the operator has taken the actions required under s. ATCP 33.06.

**History:** Cr. Register, September, 1985, No. 357, eff. 1-1-88; r. and recr., Register, September, 1998, No. 513, eff. 10-1-98.

**ATCP 33.05 Underground liquid storage prohibited; exemption.** No person may store liquid bulk pesticide in an underground storage container. This prohibition does not apply to a watertight catch basin used for the temporary collection of runoff or rinsate from transfer and loading areas, pursuant to s. ATCP 33.03.

**History:** Cr. Register, September, 1985, No. 357, eff. 12-29-85.

**ATCP 33.06 Abandoned containers. (1) GENERAL.** A storage container or loading area catch basin is abandoned, for purposes of this section, if it is out of service for more than 6 months because of a weakness or leak, or is out of service for more than 2 years for any reason.

**(2) UNDERGROUND CONTAINERS.** (a) An operator shall do one of the following to every abandoned underground storage container or catch basin that the operator owns or controls:

1. Thoroughly clean it and remove it from the ground.
2. Thoroughly clean it, sever and seal all its connections, and fill it with an inert solid.

(b) An operator shall keep a permanent record of every abandoned underground storage container and catch basin that the operator owns or controls. The record shall include all of the following:

1. The size and location of container or catch basin.
2. The actions which the operator has taken under par. (a).

**(3) ABOVE-GROUND CONTAINERS.** An operator shall thoroughly clean every abandoned above-ground storage container,

catch basin or secondary containment structure that the operator owns or controls, and shall sever and seal all of its valves and connections. The operator shall leave open all hatches on the container, basin or structure, but shall screen the hatches to prevent access by wildlife or unauthorized persons.

**Note:** Hatches must be left open for venting and to maintain container integrity.

**History:** Cr. Register, September, 1985, No. 357, eff. 12-29-85; r. and recr., Register, September, 1998, No. 513, eff. 10-1-98.

**ATCP 33.07 Recordkeeping; liquid pesticide storage. (1) RECORDS REQUIRED.** An operator storing liquid bulk pesticide shall make and keep all of the following records:

(a) A record of every discharge from the storage facility, including the date and time of discharge, the type of liquid bulk pesticide discharged, the cause of the discharge, any action taken to control or recover the discharge, and the method used to dispose of any recovered discharge. On the day that the operator discovers the discharge, the operator shall record all of the required information that is available to the operator. Whenever the operator acquires additional information or takes action to control, recover, use or dispose of the discharge, the operator shall immediately update the record to include that additional information or action.

(b) Inspection and maintenance records required under s. ATCP 33.02 (9) (a) and 33.04 (7) (a).

(c) Records of liquid pesticide levels in storage containers, as required under s. ATCP 33.02 (9) (b).

(d) An annual inventory reconciliation, prepared by October 30 of each year, which does all of the following:

1. Compares the amount of liquid pesticide in inventory on September 30 of that calendar year to the amount in inventory on October 1 of the preceding calendar year.
2. Accounts for all liquid pesticide added to or removed from inventory during the intervening one year period, based on the operator's purchase, sales and production records.
3. Identifies any unexplained loss of inventory.

(e) Manufacturers' compatibility statements required under ss. ATCP 33.04 (5) (c) and (6).

(f) Records of abandoned underground storage containers, catch basins and secondary containment facilities, as required under s. ATCP 33.06 (2) (b).

**(2) RECORD RETENTION.** An operator shall keep the records required under sub. (1) for at least 3 years, except that:

- (a) An operator shall keep records under sub. (1) (a) for at least 5 years.
- (b) An operator shall keep permanent records under sub. (1) (e) and (f).

**(3) RECORD LOCATION; INSPECTION AND COPYING.** An operator shall keep the records required under sub. (1) at the storage facility, or at the nearest local office from which the operator administers that facility. The operator shall make the records available to the department for inspection and copying upon request.

**History:** Cr. Register, September, 1985, No. 357, eff. 12-29-85; r. and recr., Register, September, 1998, No. 513, eff. 10-1-98.

**ATCP 33.08 Storage of dry pesticide in bulk quantity. (1) COVERING.** Except during loading or unloading, stored dry bulk pesticide shall be covered by a roof or tarpaulin which will keep precipitation off the pesticide.

**(2) REQUIREMENTS FOR OUTDOOR STORAGE FACILITIES.** Dry bulk pesticide stored outdoors shall be kept in storage containers. Storage containers shall be placed on pallets or on a raised concrete platform which is drained to prevent the accumulation of water in or under the pesticide.

**(3) SECURITY.** Storage facilities shall be secured against entry by unauthorized persons or wildlife.

**(4) DISCHARGE RECORDS.** A record shall be kept of all discharges of dry bulk pesticide, including the date and time of discharge, the type of dry bulk pesticide discharged, the volume of

the discharge, the cause of the discharge, any action taken to control or recover the discharge, and the method of use or disposal of any recovered discharge. The discharge record shall be completed on the day of the discovery of the discharge, and shall be promptly updated to show measures taken to control, recover, use or dispose of the discharge. Records shall be maintained for at least 5 years, and shall be made available for inspection and copying by the department on request.

**History:** Cr. Register, September, 1985, No. 357, eff. 12-29-85.

**ATCP 33.09 Preparing to control and recover discharges. (1) DISCHARGE RESPONSE PLAN.** The operator of a storage facility shall prepare a written discharge response plan for that storage facility. The operator shall:

- (a) Keep the plan current at all times.
- (b) Keep a copy of the plan readily available at the storage facility and at the nearest local office from which the operator administers the storage facility.
- (c) Make the plan available to the department for inspection and copying upon request.
- (d) Notify the local fire department, police department and emergency planning committee of the plan, and any revisions to the plan, and provide them with copies upon request.

**Note:** Federal law under 42 USC 11002 and 11003 also requires response plans for certain chemicals. A single response plan may satisfy requirements under sub. (1) and federal law.

**(2) PLAN CONTENTS.** A discharge response plan under sub. (1) shall include all of the following:

- (a) The identity and telephone number of each person or agency to be contacted in the event of a discharge, including the person responsible for the stored pesticide.
- (b) For each pesticide stored at the facility, the pesticide labeling required under s. 94.70, Stats.
- (c) The location of every storage container at the facility, and the product name of the bulk pesticide stored in that container. A plan need not refer to mini-bulk containers individually, provided that it discloses the collective location and contents of mini-bulk containers.
- (d) Procedures for controlling, recovering and responding to a discharge of bulk pesticide at the facility.
- (e) Procedures for using or disposing of a recovered discharge.

**Note:** The department can help an operator identify options for using, treating or disposing of recovered pesticides.

**(3) EQUIPMENT AND SUPPLIES.** (a) An operator shall have all of the following readily available for any emergency action which may be needed in response to a pesticide discharge:

- 1. Pumps, recovery containers, and personal protective equipment and clothing.
- 2. Persons capable of deploying and operating the equipment under par. (a).

(b) An operator may arrange with a local fire department or other persons to provide the equipment and personnel required

under par. (a) if the operator makes those arrangements in advance as part of the operator's discharge response plan.

(c) The operator of a storage facility shall keep available, at that storage facility, absorbent materials that may be used to control and clean up small discharges of liquid pesticides.

(d) An operator shall promptly decontaminate equipment and supplies used to control and recover pesticide discharges, before using them again.

**(4) TRAINING.** Persons employed at a storage facility shall be trained in discharge response procedures, pursuant to the discharge response plan.

**(5) REPORTING.** The operator of a storage facility shall immediately notify the state of Wisconsin department of natural resources whenever a reportable amount of a hazardous material under ch. NR 706 is discharged at that storage facility.

**Note:** See s. 292.11 (2) (a), Stats. An operator should also report pesticide discharges to the department of agriculture, trade and consumer protection at (608) 224-4518.

**History:** Cr. Register, September, 1985, No. 357, eff. 12-29-85; r. and recr., Register, September, 1998, No. 513, eff. 10-1-98.

**ATCP 33.10 Labeling storage containers. (1) LABEL REQUIRED.** Every storage container shall bear a legible label that complies with the federal insecticide, fungicide and rodenticide act as amended (7 USC 136 et seq.) and regulations issued under that act. The label shall include the identification number of the pesticide producing establishment from which the pesticide in that storage container originated. Pesticides sold in bulk shall be accompanied by labeling showing the net contents of the bulk sale container.

**Note:** A facility at which an operator repackages a pesticide from a storage container to mini-bulk or other containers is considered a "pesticide producing establishment" under the federal act. The operator of that facility must obtain a pesticide producing establishment number from the federal environmental protection agency, and must include that establishment number on every mini-bulk or other container filled at that facility.

**(2) LABEL PLACEMENT.** The label under sub. (1) shall be visible from outside the secondary containment structure in which the storage container is located. The operator shall keep a copy of the label, and any other labeling provided by the pesticide product registrant, with each copy of the discharge response plan required under s. ATCP 33.09 (1).

**Note:** With each sale from a bulk pesticide storage container, the operator must supply the customer with the pesticide labeling required under ss. 94.676 and 94.70, Stats.

**History:** Cr. Register, September, 1985, No. 357, eff. 12-29-85; r. and recr., Register, September, 1998, No. 513, eff. 10-1-98.

**ATCP 33.11 Exemptions.** The department may exempt any person from a requirement under this chapter if the department finds that alternative measures provide substantially similar protection for the waters of the state. A person requesting an exemption shall provide the department with adequate information to show that alternative measures provide substantially similar protection for the waters of the state.

**History:** Cr. Register, September, 1985, No. 357, eff. 12-29-85; am., Register, September, 1998, No. 513, eff. 10-1-98.