

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

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

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

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

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

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

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

Rules as Proposed

3 MCAR Sec. 1.0326 Dry fertilizers.

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

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

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

1. "Department" means the Department of Agriculture.
2. "Dry commercial fertilizer" means both mixed fertilizer and fertilizer materials distributed in a nonpackage form.
3. "Incident" means a flood, fire, tornado, transportation accident

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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