

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED RULE)	STATEMENT OF NEED
OF THE DEPARTMENT OF AGRICULTURE)	AND REASONABLENESS
GOVERNING SOIL AND PLANT AMENDMENT LABELS)	
AND LABELING REQUIREMENTS)	
(3 MCAR S 1.0328)		

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture of a new rule governing soil and plant amendment labels and labeling requirements. This rule is proposed for adoption pursuant to Minnesota Statutes section 17.725, subd. 1, which authorizes the Department to establish rules for labels and labeling requirements for soil and plant amendments registered in Minnesota.

Rulemaking on the proposed rule was authorized by the Department on October 28, 1982. The commissioner of the Minnesota Department of Agriculture determined that the proposed adoption of this rule would be noncontroversial in nature due to consultations with representatives of the fertilizer industry and governmental pollution control officials. Further, the Department received no responses to its notice to solicit outside opinion in this matter. However, due to the provisions of Minnesota Statutes section 17.725, subd. 1, a public hearing will be held regarding the adoption of this rule.

The discussion provided in this statement is divided into the following parts:

Part II. General overview

Part III. Need for and reasonableness of the proposed rules

Part IV. Attachments

II. GENERAL OVERVIEW

A. The Need for Regulating Soil and Plant Amendments Labels and Labeling:

In order to understand the need for and reasonableness of this proposed rule, it will be useful to understand the context in which it is proposed. In 1967, the Department of Agriculture adopted rules governing "soil conditioners", and these rules were then amended in 1968. The rules defined products which were supposed to have some beneficial impacts on either the chemical or the physical properties of soils, and the rules covered only a limited number of products.

During the intervening years, a number of advances have been made in the scientific understanding of the value for agricultural uses of both soil conditioners, defined by 1981 statute as "soil amendments", and also plant amendments, also statutorily defined in 1981 (Laws of Minnesota, 1981, chapter 214). In addition to products which changed the chemical and physical properties of soils, technological development has made possible the enhancement of both soils and plants by the introduction of "biologicals", or live organisms. This advanced understanding and these technological developments have rendered the former rules totally inadequate; thus, the present rules are being repealed, and these new, substantially different rules are being proposed.

These rules are necessary because there has been a great influx into the market of these types of products claiming benefit for agricultural crops. While many such products can provide the particular benefit claimed, there are many which are of no value at all for agricultural use. Prior to 1981, the Department had no statutory authority to regulate these types of products. In 1981, the Legislature responded to consumer complaints and suspected instances of fraud in connection with some of these products by passing legislation to define these products, and gave the Department authority to register them and regulate their sale. Thus, this rule is necessary for the Department to carry out its statutory responsibility to regulate these products. Because it is also necessary from the consumer standpoint that the Department identify products that are beneficial, the proposed rule identifies soil and plant amendments which may be guaranteed for some agricultural use and also provides criteria for their labels and labeling. The standards in this proposed rule are reasonable because they have been informally discussed with and agreed to by the representatives of the fertilizer industry, other governmental agencies and fertilizer experts at the University of Minnesota. It is also generally reasonable that the Department propose standards to protect consumers from misleading claims for products with little or no actual value for agricultural use.

Another area covered by this proposed rule is the label and labeling requirement for sewage sludge. While general jurisdiction over

sewage sludge lies with Minnesota Pollution Control Agency, 1982 amendments to the Minnesota Fertilizer Law (Minnesota Statutes sections 17.711 to 17.729; Laws of Minnesota, 1982, chapter 425) gave authority to the Department of Agriculture to create requirements for the labeling of sewage sludge. For approximately 10 years, certain beneficial claims have been made for sewage sludge, which is an intermediate type of product with some characteristics of fertilizers and some characteristics of soil amendments. The proposed rule sets certain requirements for labeling sewage sludge so that those responsible for a landspreading site using the sewage sludge can accurately assess its impact in combination with other products they may be using on the site. The Department of Agriculture and the Minnesota Pollution Control Agency agree on the label and labeling requirements for sewage sludge proposed in this rule.

B. Format of the Proposed Rule:

The proposed rule is set forth in the following manner: Authority and purpose; definitions, label requirements; labeling and labels; and enforcement.

In this statement, for the sake of brevity, the content of the rule has not been repeated, but the numbers of the parts of the rule have been noted for reference.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED RULE

The need for and reasonableness of each part of the proposed rule follows.

3 MCAR S 1.0328 A. Authority and Purpose

This section is necessary and reasonable to clarify for readers and users the purpose of this rule governing soil and plant amendments labels and labeling requirements, and the authority by which the commissioner proposes the adoption of the rule.

3 MCAR S 1.0328 B. Definitions

This part of the rule sets forth the definitions of terms used in the rule which are necessary to clarify meanings for readers and users of the rule. All terms used for the purposes of this rule are defined in Minnesota Statutes section 17.713.

3 MCAR S 1.0328 C. Label Requirements

The first section of this part of the rule regarding label information requirements for soil or plant amendments sold or distributed in Minnesota is necessary to identify required information for those who will be labeling such products, and it is necessary because it is a requirement of Minnesota Statutes section 17.716, subd. 6. It is a reasonable requirement for consumer information and protection. It is further reasonable because it is similar in content, format, and order to label information for fertilizers (proposed 3 MCAR S 1.0327) and thus will not be unfamiliar to members of the industry who are required to label soil or plant amendments.

The second section of this part of this rule contains exemptions from the required labeling of such products as "not a plant food product" in cases when the products, in fact, do contain fertilizer materials. These exemptions are necessary because fertilizer materials are beneficial as plant food. This section provides for two cases. If the soil or plant amendment contains enough fertilizer material to meet the statutory plant food requirement level, the product must be labeled in accordance with proposed rule 3 MCAR S 1.0327. If the soil or plant amendment does not contain enough fertilizer materials to meet the statutory plant food requirement level, the label should warn consumers of the product's fertilizer content because the combination of such materials with other commercial fertilizers could be detrimental rather than beneficial to agricultural crops. The exemptions are reasonable from the standpoint of alerting consumers as to the content of the product being purchased.

The third section of this part of the rule, regarding the information which must be contained in a sewage sludge analysis, is necessary to inform the owner, renter, or lessee of the landspreading site of the components of the sewage sludge to be spread. The information is necessary so that the components can be assessed with respect to their direct impact on agricultural crops as well as for their impact in

combination with other fertilizers. Too much of a heavy metal, for example, is inimical to life processes and may be very detrimental to the growth of agricultural crops. The requirements for labeling the sewage sludge proposed in this section are reasonable because they will inform consumers of all possible ingredients that will have some impact on plant growth or soil micro-organisms. The Minnesota Pollution Control Agency and the Department of Agriculture together developed and agree on these items to be included in sewage sludge analyses in accordance with Minnesota Statutes section 17.713, subd. 17 a. and Laws of Minnesota, 1982, chapter 425, section 17. The Minnesota Pollution Control Agency will include this same list for sewage sludge analysis in its rules to be proposed in the near future.

The fourth and fifth sections of this part of the rule regarding the placement of labels on packages and the information to accompany the bulk delivery of soil or plant amendments or sewage sludge is necessary because they are requirements of Minnesota Statutes section 17.716, subds. 3 and 6. It is reasonable to provide conspicuous labeling for consumer protection and the provisions are also reasonable because they are consistent with another rule currently being proposed by the Department (3 MCAR S 1.0327).

3 MCAR S 1.0328 D. Labeling and Labels

This part of the rule, regarding proposed labels and labeling of soil and plant amendments, is necessary because it is a requirement of Minnesota Statutes section 17.714, subd. 3. It is reasonable that the Department require submission of labels and labeling at the time of request for registration of the product so that the Department can verify any claims made by the company on promotional materials which may accompany the soil or plant amendments. Submission of both labels and labeling will allow the Department to assure that the information provided on the label is consistent with claims made in promotional materials. This is a reasonable requirement for consumer protection in order that consumers will not be confused by conflicting information between labels and promotional statements.

3 MCAR S 1.0328 E. Enforcement

This part of the rule is necessary to inform persons labeling soil or plant amendments or sewage sludge for registration and subsequent sale or distribution in Minnesota of the commissioner's intent to act and procedures for the commissioner's action in instances where provisions of this rule are not met. Further, it is necessary to inform persons labeling soil or plant amendments or sewage sludge of their rights should they fail to meet the requirements of this rule.

This section is also reasonable since persons labeling soil or plant amendments or sewage sludge are entitled to know the consequences of failing to meet the provisions of the rule and are also entitled to know that the commissioner will afford opportunities for hearings before canceling registrations when provisions of this rule are not met.

IV. ATTACHMENTS

The following attachments are relevant to this statement and are appended.

Attachment A - Excerpt from Laws of Minnesota, 1982, chapter 425, section 17, directing the Minnesota Department of Agriculture and the Minnesota Pollution Control Agency to jointly develop labeling requirements for sewage sludge.

Attachment B - Minnesota Pollution Control Agency's currently required analysis for sewage sludge used on landspreading sites, 6 MCAR S 4.6111 A. 5.

The commissioner may apply appropriate, efficient procedures to contain and control fertilizers and soil and plant amendments involved in an emergency incident likely to cause adverse effects on the environment. For purposes of this section "incident" includes a flood, fire, tornado, or motor vehicle accident, which unintentionally releases fertilizers and soil and plant amendments on the environment. Persons involved in or responsible for an incident shall report the incident to the commissioner immediately upon discovering the incident. The department of agriculture shall be the lead government agency for decisions involving the emergency.

Sec. 17. Minnesota Statutes 1981 Supplement, Section 116.07, Subdivision 4, is amended to read:

Subd. 4. **RULES AND STANDARDS.** Pursuant and subject to the provisions of chapter 15, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, Chapter 1046, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.

Pursuant and subject to the provisions of chapter 15, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, Chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. The agency shall adopt such rules and standards for sewage sludge, addressing the intrinsic suitability of land, the volume and rate of application of sewage sludge of various degrees of intrinsic hazard, design of facilities, and operation of facilities and sites. The agency shall promulgate temporary rules for sewage sludge pursuant to section 15.0412, subdivision 5. Notwithstanding the provisions of section 15.0412, subdivision 5, the temporary rules shall be effective until permanent rules are promulgated or March 1, 1982, whichever is earlier. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised

through the control of collection, transportation, processing, and disposal of solid waste and sewage sludge, and the deposit in or on land of any other material that may tend to cause pollution. By January 1, 1983, the rules for the management of sewage sludge shall include an analysis of the sewage sludge determined by the commissioner of agriculture to be necessary to meet the soil amendment labeling requirements of section 17.716.

Pursuant and subject to the provisions of chapter 15, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1971, Chapter 727, for the prevention, abatement, or control of noise pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances or conditions in order to make due allowances for variations therein. Without limitation, rules or standards may relate to sources or emissions of noise or noise pollution, to the quality or composition of noises in the natural environment, or to any other matter relevant to the prevention, abatement, or control of noise pollution.

As to any matters subject to this chapter, local units of government may set emission regulations with respect to stationary sources which are more stringent than those set by the pollution control agency.

Pursuant to chapter 15, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of this chapter for the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and location of hazardous waste facilities. A rule or standard may be of general application throughout the state or may be limited as to time, places, circumstances, or conditions. The public utilities commission, in cooperation with the pollution control agency, shall set standards for the transportation of hazardous waste in accordance with chapter 221. In implementing its hazardous waste rules, the pollution control agency shall give high priority to providing planning and technical assistance to hazardous waste generators. The agency shall assist generators in investigating the availability and feasibility of both interim and long term hazardous waste management methods. The methods shall include waste reduction, waste separation, waste processing, resource recovery, and temporary storage.

The pollution control agency shall give highest priority in the consideration of permits to authorize disposal of diseased shade trees by open burning at designated sites to evidence concerning economic costs of transportation and disposal of diseased shade trees by alternative methods.

Approved March 18, 1982

Pollution Control Agency

6 MCAR § 4.6111

Chapter Six: Landspreading Sites

6 MCAR § 4.6111 Requirements and limitations. The following requirements and limitations apply to the management of landspreading sites.

A. Sewage sludge sampling and analysis.

1. Sewage sludge samples shall be representative of the sewage sludge to be landspread.

2. In the case of digesters and liquid storage tanks, a representative sample shall be composed of at least four grab samples composited over a 24-hour period prior to landspreading.

3. In the case of lagoons, stockpiles, drying beds, and compost piles, a representative sample shall be composed of at least ten grab samples composited from the sewage sludge prior to landspreading.

4. Other recommended sampling and handling procedures are provided in 6 MCAR § 4.6131.

5. Sewage sludge shall be analyzed according to methods set forth in 6 MCAR § 4.6131 for the following parameters:

- a. percentage of total solids;
- b. volatile solids as percentage of total solids;
- c. pH;
- d. nitrogen, including the percentages of kjeldahl, ammonia and, in the case of aerobically digested and composted sewage sludges only, nitrate;
- e. total weight of heavy metals, including milligrams per kilogram of zinc, copper, lead, nickel, cadmium, chromium and mercury; and
- f. polychlorinated biphenyls expressed as milligrams per kilogram.

All analytical values, except pH and total solids, shall be recorded on a dry weight basis.

6. The minimum frequency of sewage sludge sampling and analysis is given in Exhibit 6 MCAR § 4.6111 A.6.-1.