

**STATE OF MINNESOTA  
DEPARTMENT OF AGRICULTURE**

In The Matter of the Proposed Rule            )  
of The Department of Agriculture            )     STATEMENT OF NEED AND  
Pertaining to Proposed Permanent Rules    )                 REASONABLENESS  
Relating to Bulk Pesticide Storage        )

INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) required by Minnesota Statutes, Section 18B.14, subd. 2, of a rule governing the regulation and permitting of persons who store bulk pesticides.

These rules contain requirements for the initiation of a fee, a permit system, the installation of secondary containment areas and loading areas, the location of storage sites, safeguards, a schedule for compliance, and other appropriate requirements necessary to minimize potential adverse effects on the environment, groundwater and surface water from the release of pesticides.

BACKGROUND

The protection of groundwater and surface water from point contamination at pesticide storage sites has been and will continue to be of major importance to the citizens of the State of Minnesota.

The potential for point source pesticide contamination from improperly safeguarded and carelessly operated bulk pesticide storage facilities will continue to exist unless the facilities storage, handling, and spill control practices come under closer scrutiny through bulk pesticide storage regulation by the MDA.

IMPACT ON SMALL BUSINESS

Dealers, distributors, and other persons storing, and distributing or repackaging bulk pesticides could be considered to be small businesses and will be the most affected by the rule.

Persons who store bulk pesticides for their own use for 10 consecutive days or less and who do not distribute or repackage bulk pesticides at their site will not be affected by the most costly environmental protection safeguards in the rule. In most cases, these persons are individual farmers or growers.

Persons who operate a bulk pesticide storage facility prior to the effective date of the rule will be granted two years in which to be in compliance with the most costly environmental protection safeguards in the rule.

Inspection, maintenance, training, and permit application information have been simplified to aid in compliance.

The permit application contains the minimum information required by MDA to evaluate the proposed bulk pesticide storage site, the proposed environmental protection safeguards, locations of groundwater, surface water, and other information necessary to grant, modify, or deny permits.

Recordkeeping, inspection, and spill remediation requirements contained in the rule are the minimum necessary to comply with the pesticide use, storage, handling, and disposal requirements of Minnesota Statutes, Chapter 18B.

Alternate technologies and less stringent requirements for certain portions of the rule are included to account for differences in business type and size.

Dealers, distributors, their representatives, and other government agencies, were regularly mailed copies of the draft versions of the rule for comment.

In addition, numerous individual and industry meetings were held to exchange information pertinent to compliance with the rule.

**1505.2010 DEFINITIONS**

The definitions are necessary to assure that the rule is clearly understood.

The inclusion of definitions is reasonable so that MDA may consistently apply the rule to those who must comply with the rule.

The definitions included serve to clarify terms commonly used regarding bulk pesticide storage, handling, distribution, and repackaging.

**1505.2020 NEW FACILITIES****Subpart 1**

It is necessary to indicate to persons who wish to construct or operate a new bulk pesticide storage facility that they must first obtain a bulk pesticide storage permit, because the rule does not allow for a two-year schedule of compliance or siting exceptions as with previously established bulk pesticide storage facilities.

It is reasonable to require this so that the environment, groundwater, and surface water are adequately protected prior to bulk pesticides being stored, distributed, or repackaged at a site.

**Subpart 2**

It is necessary to require information that identifies the persons who will construct, install, or modify the facility as well as to require copies of any permits or letters of authorization required by local units of government so that the commissioner may compare the information contained in the application for a permit with the construction, installation, or modification occurring at the site.

It is reasonable to require this information in order to check compliance with the rule and to reinforce the need to comply with local government siting requirements.

Subpart 3

It is necessary to require compliance with the entire rule within a reasonable amount of time in order to avoid any delay in compliance with the environmental safeguards outlined in the rule.

Ninety days is a reasonable amount of time to comply with the rule given normal delays due to weather problems, equipment or material shortages, or construction schedules.

Subpart 4

It is necessary to incorporate a mechanism for extending the compliance time in Subpart 3 in order to account for abnormal delays in complying with the rule due to weather problems, equipment or material shortages, construction schedules, or the granting of a permit by MDA in late fall or early winter.

It is reasonable for the commissioner to allow an additional 180 days to comply because even with the original 90-day compliance time, some circumstances may be beyond the control of the applicant.

**1505.2030 PREVIOUSLY ESTABLISHED FACILITIES**

It is necessary to indicate to persons who operated a bulk pesticide storage facility prior to July 1, 1989, that they are subject to different compliance time frames for certain portions of the rule than new bulk pesticide storage facilities.

It is reasonable to establish different compliance time frames for previously established facilities vs. new facilities in order to account for safeguards that have already been constructed and to lessen the economic impact of any new construction of safeguards including the loading and bulk pesticide containment areas.

A.

It is necessary to require within one year after the effective date of the rule, that a previously established bulk pesticide storage facility file an application for a bulk pesticide storage permit

and comply with certain minimal environmental protection provisions in the rule.

This is necessary to insure that minimal environmental protection measures are being implemented during the first year of the two year phase-in period, and to allow MDA adequate time to process applications for permits.

A one-year time frame for compliance is reasonable because it allows affected persons adequate time to decide if they wish to store bulk pesticides in the future, or to plan their own bulk pesticide storage facility, and file an application for a bulk pesticide storage permit.

The one-year compliance time frame is also reasonable because it assures that environmental protection measures are implemented that protect groundwater and surface water during the phase-in period.

The one-year compliance time frame is also reasonable because it allows MDA to make a detailed and fair review of bulk pesticide storage permit applications without being pressured by unworkable time schedules.

B.

It is necessary to compel compliance within two years of the effective date of the rule for the construction of the loading and secondary containment areas in order to expedite the implementation of important environmental protection safeguards.

The two-year time frame for compliance is reasonable because it allows adequate time for affected persons to plan, finance, and construct costly environmental protection safeguards.

It is necessary to incorporate a mechanism for extending the compliance time frame in part in order to account for abnormal delays in complying with the rule due to difficulty in obtaining financing, weather problems, material shortages, construction schedules, or the granting of a permit by MDA in late fall or early winter.

It is reasonable for the commissioner to allow an additional one (1) year to comply because even with original two-year

compliance time, some circumstances may be beyond the control of the applicant.

C.

It is necessary to require information that identifies the persons who will construct, install, or modify the facility as well as to require copies of any permits or letters of authorization required by local units of government so that the commissioner may compare the information contained in the application for a permit with the construction, installation, or modification occurring at the site.

It is reasonable to require this information in order to check compliance with the rule and to reinforce the need to comply with local and state government siting requirements.

#### 1505.2040 BULK PESTICIDE STORAGE PERMIT

##### Subpart 1

It is necessary for the commissioner to review the information contained in each application submitted for a bulk pesticide storage permit in order to check for compliance with the rule.

It is reasonable for MDA to check for compliance with the rule as part of MDA's pesticide regulatory program.

A thirty-day review time frame is reasonable because it allows for a detailed review by MDA staff and at the same time expedites compliance by affected persons.

It is also reasonable for the commissioner to notify the applicant in writing if a permit will not be granted so that the applicant may make the changes necessary in order to be in compliance with the rule.

A fifteen-day review time frame is reasonable because a decision by MDA on new information submitted should be relatively easy.

## Subpart 2

It is necessary for a person who wishes to make substantial alterations to a bulk pesticide storage facility to file a new bulk pesticide storage application with the commissioner so that MDA staff may determine if the intended changes are in compliance with the rule.

It is reasonable to for MDA to check compliance with the rule as part of MDA's pesticide regulatory program.

A thirty-day time frame for review by MDA staff is reasonable because it allows for an adequate review of the changes that are intended and, at the same time, does not cause an unworkable delay in the operations of the affected person.

It is reasonable for the commissioner to notify the applicant in writing if a permit will not be granted so that the applicant may make the changes necessary in order to be in compliance.

## Subpart 3

It is necessary to grant the commissioner the authority to deny, revoke, suspend, or modify a bulk pesticide storage permit in order to assure compliance with the rule.

It is reasonable for the commissioner to deny, revoke, suspend, or modify a permit under circumstances where violations of this rule, have occurred that have caused or unreasonable adverse effects on the environment, groundwater, or surface water.

It is also reasonable to deny, revoke, suspend, or modify a permit due to misrepresentation or failure to include pertinent facts because elimination of those facts could present situation that could threaten or contaminate groundwater or surface water.

## Subpart 4

It is necessary for the commissioner to notify an applicant if a permit is to be denied, revoked, or suspended so that the person will cease bulk pesticide storage and activities related to bulk pesticide storage.

At the time of the denial, revocation, or suspension, it is necessary to disclose the reasons for the action in order for the affected person to know what facts the commissioner's decision was based on.

It is reasonable for the commissioner to facilitate the denial, revocation, and suspension process in this manner in order to proceed fairly and without bias.

It is necessary for the commissioner to grant the affected person the right to appeal the commissioner's decision by requesting an administrative hearing within thirty days of the order.

It is reasonable for the commissioner to proceed in this manner in order that the affected person may present pertinent facts which may not have been known by the commissioner at the time of his decision.

The thirty-day time frame to appear at the administrative hearing is reasonable because it allows for adequate preparation of an appeal by the affected person and, at the same time, accounts for problems in scheduling.

It is necessary for the commissioner to make a determination as to the status of the appeal within a reasonable amount of time after the administrative meeting in order to allow the affected person time to make alternative plans for handling, storing, or distributing bulk pesticides.

A fifteen-day communication time frame is reasonable given the seasonality of bulk pesticide storage activities.

#### Subpart 5

It is necessary to allow the transfer of a permit in order to account for changes in ownership of a bulk pesticide storage facility.

It is reasonable to allow a permit transfer under the conditions stipulated in order to assure compliance with the rule and protect groundwater and surface water.



Subpart 6

It is necessary to exempt persons who store less than 500 gallons at a facility site from obtaining a permit in order to be consistent with the legislative intent of Minnesota Statutes, Section 18B.14.

It is reasonable to make this exemption because facilities that store 500 gallons or more present a greater risk of environmental contamination because of the amounts of pesticide that may be present at the time of a release.

It is reasonable to require compliance with other applicable parts of the rule in order to fairly enforce compliance.

**1505.2050 APPLICATION AND PERMIT FEE**Subpart 1

It is necessary for a person who wishes to obtain a bulk pesticide storage permit to provide to the commissioner information that forms the basis for granting, denying, modifying, or suspending a bulk pesticide storage permit by MDA staff.

The information requested is reasonable because it is the minimum information necessary for the commissioner to judge compliance with the rule, the effectiveness of planned safeguards, the suitability of the site for bulk pesticide storage, and the capability of the person to control and recover pesticide discharges.

The information requested is also reasonable because the wording has been simplified to aid in compliance.

Subpart 2

It is necessary for the applicant to include the fee as required in Minnesota Statutes, Section 18B.14, subd. 2, in order for the applicant to fulfill their statutory obligations for being granted a bulk pesticide storage permit.

The fee is reasonable because it is established by Minnesota Statute, Section 18B.14, subd. 2.

1505.2060 GENERAL REQUIREMENTS

Subpart 1

It is necessary to require that persons who repackage bulk pesticides obtain a "Pesticide Producer Establishment Number" from the U.S. Environmental Protection Agency (EPA) in order to comply with the establishment identification and recordkeeping requirements of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA).

It is reasonable to require this so the affected person will be in compliance with federal law, and consumers will be assured that the bulk pesticide storage facility is complying with federal regulations regarding distribution and repackaging of bulk pesticides.

Subpart 2

It is necessary to identify persons who are not required to comply with the establishment identification and recordkeeping requirements of FIFRA because only those persons who repackage bulk pesticides are required to be in compliance.

It is reasonable to make this exception because this rule must be consistent with FIFRA.

Subpart 3

A.

It is necessary to specify design, material, construction, maintenance, and integrity standards for bulk pesticide storage containers and appurtenances to insure that the materials and devices selected, and maintenance practices employed provide the necessary structural integrity.

The standards set forth in the rule are reasonable because they employ engineering and other standards common in industry that result in the structural integrity necessary for the storage of pesticides.

B.

It is necessary to specify allowable material types for bulk pesticide storage containers so that the possibility of tank rupture from inappropriate tank selection is maintained.

The materials listed are reasonable because they are consistent with those types recommended by pesticide manufacturers and industry associations, and those required in pesticide regulations of other states.

C.

It is necessary to require shutoff valves with stainless steel interiors and stainless steel storage container connections so that the possibility of pesticide release from valve and connection failure is minimized.

Stainless steel is an industry and engineering recognized non-reactive material that resists weakening and corrosion from pesticides.

D.

It is necessary to require secure devices which can be employed to routinely ascertain pesticide storage amounts in the event of a pesticide release.

The requirement is reasonable because it allows devices that are currently available in industry and minimizes the possibility of a pesticide release from inadequately protected gauging devices.

E.

It is necessary to require pesticide compatible meters and scales so that a pesticide release does not occur because of inappropriate

equipment.

The requirement is reasonable because it requires equipment currently available and being used in the industry.

F.

It is necessary to require adequate support for pipes and fittings used in conjunction with bulk pesticide storage containers in order to minimize the possibility of pipe or fitting failure.

The requirement is reasonable because it employs design practices currently in use at facility locations.

G.

It is necessary to require locking valves on pesticide storage containers to lessen the possibility of tampering by vandals or misuse of a storage container.

The requirement is reasonable because it employs equipment that is commonly used in industry.

H.

It is necessary to require devices that relieve pressure that may accumulate in a bulk pesticide storage container in order to prevent rupture of the pesticide storage container.

The requirement is reasonable because bulk pesticide storage containers are often manufactured with a vent or can easily be fitted with a venting system to relieve excess pressure.

Subpart 4

It is necessary to require that storage containers be anchored so that the possibility of a pesticide release is minimized in the event of floatation or instability of a pesticide storage container.

Anchors are reasonable protection because they incorporate the

technology most currently available and easily implemented.

Subpart 5

It is necessary to require security for bulk pesticide containers in order to prevent unauthorized or inadvertent access to a bulk pesticide container or appurtenance.

The requirement for fencing or other types of security, and locking valves is reasonable because it is currently being employed in the industry as the minimum security needed to prevent unauthorized or inadvertent access.

Subpart 6

It is necessary to limit filling of bulk pesticide containers to 95% of capacity and only when attended by an owner, manager, or employee of the facility in order to prevent release of pesticides to the environment through thermal expansion of the pesticide product or through inattention by facility personnel.

It is reasonable to limit capacity to 95% because under high temperatures pesticide products may increase in volume and release from the storage container.

It is reasonable to require filling of pesticide containers only when facility personnel are present because MDA's experience is that overfilling of pesticide containers can occur unless facility personnel are present at the time of filling.

Subpart 7

It is necessary to protect bulk pesticide storage containers from moving vehicles in order to prevent the rupture of storage containers from a vehicle impact.

This requirement is reasonable because it is MDA's experience that bulk pesticide containers are often stored adjacent to vehicle traffic areas and, therefore, some type of protection from vehicle impact is needed.

Subpart 8

It is necessary to secure and protect dry bulk pesticides from precipitation in order to prevent damage to the stored product and to prevent the release of pesticide into the environment.

It is reasonable to require a concrete, impervious floor or raised platform and the protection to be a tarp or a roof because this type of protection is common in the industry.

Subpart 9

It is necessary to require specific labelling for bulk pesticide storage containers so that pesticide products are handled, stored, used, and distributed properly and in compliance with all applicable state and federal pesticide regulations.

The labelling requirements given are reasonable because they are consistent with FIFRA.

**1505.2070 LOADING AREAS**Subpart 1

It is necessary to require a means of pesticide containment for areas where liquid bulk pesticides are distributed, repackaged, or transferred in order to contain and recover pesticide releases. The construction specifications and containment designs set forth are reasonable because they incorporate specifications and designs recommended by pesticide manufacturers, industry associations, and other pesticide regulatory programs.

The 1000 gallon containment requirement is reasonable because it is consistent with industry standards, other pesticide regulatory standards, and will contain an amount of pesticide release that MDA anticipates would be common in an incident.

The options for construction materials are reasonable because the options allow for the use of any material provided that the material and design selected (A or B) prevent the release of pesticides to the environment.

Subpart 2

It is necessary to require a means of pesticide containment for areas where bulk pesticide impregnated fertilizer is distributed, repackaged, or transferred in order to contain and recover pesticide releases.

An exact containment amount is not specified and this is reasonable because a specific containment amount is difficult to determine when using pesticide impregnated fertilizers.

The construction specification and containment design set forth are reasonable because they allow for greater flexibility in compliance in order to account for the differences found between impregnated and liquid pesticide loading operations.

The options for construction materials that may be used are reasonable because they allow the use of any material, provided the material and design selected prevent the release of pesticides to the environment.

Subpart 3

A.

It is necessary to allow a lesser required containment amount for some loading areas than required in subpart 1 because storage areas for loading bulk pesticide containers and loading areas for filling mini-bulk containers or application equipment may be separate.

It is reasonable to allow a different containment amount for loading areas that are separate so that compliance for the affected person does not become financially prohibitive.

The 500-gallon containment amount required is reasonable because it is adequate to contain an amount of pesticide release that MDA anticipates would be common in an incident.

B.

It is necessary to allow a lesser containment amount for load areas at bulk pesticide storage facilities at which the storage capacity

of the largest bulk pesticide storage container is less than 500 U.S. gallons in order to account for differences in the amount of pesticide in storage which is available for distribution and repackaging.

It is reasonable to allow lesser containment based on the fact that because lesser amounts of pesticide are being stored that lesser amounts of pesticide would be available to be released.

The 500- and 250-gallon containment amounts are reasonable because they are adequate to contain an amount of pesticide release that MDA anticipates would be common in an incident.

C.

It is necessary to set forth design and construction specifications on underground plumbing because placing plumbing underground may subject it to stresses and or corrosion that may weaken pipes or fittings and any pesticide discharge may consequently go unnoticed because the plumbing can not be readily inspected.

It is reasonable to set forth the specifications given because of the historical problems recently discovered by the Minnesota Pollution Control Agency (MPCA) associated with leaking underground storage tanks.

#### 1505.2080 SECONDARY CONTAINMENT AREAS

##### Subpart 1

It is necessary to require a secondary containment area for bulk pesticide storage containers in order to contain and recover pesticide releases.

It is reasonable to include secondary containment as a requirement because the use of bulk pesticide storage safeguards is consistent with pesticide manufacturer requirements for delivery, bulk pesticide regulatory programs in other states, and minimizes the possibility of pesticide release beyond the secondary containment area.



It is reasonable to allow different types of secondary containment systems as long as the system chosen provides the necessary safeguard against the release of pesticides. Different systems are also reasonable because they give the affected persons the flexibility necessary to manage changes in their business operation.

### Subpart 2

It is necessary to require a specific amount of containment volume so that the containment area will be large enough to completely contain the largest pesticide release that could be expected given the volume of the liquid bulk pesticides, liquid fertilizers or any other products being stored within the pesticide containment area.

The containment volume required is reasonable because it is consistent with pesticide manufacturer requirements for the delivery of bulk pesticides, industry association standards, and bulk pesticide regulatory programs in other states.

The containment volume required is also reasonable because it is the minimum necessary to fully contain the volume of a typical release of pesticide in a bulk pesticide storage area.

### Subpart 3

A.

It is necessary to indicate that bulk pesticides may only be stored with other pesticide related products, devices, containers, etc. and with liquid bulk fertilizer so that affected persons do not store products in the same containment area that due to the nature of a product or the manner or quantity of its storage would have the potential to weaken, damage, or cause to rupture the bulk pesticide storage container

It is reasonable to limit the type of materials that may be stored within a bulk pesticide storage area to those materials which do not present a fire hazard, are not extremely corrosive, incompatible with the stored pesticides, or stored in very large single container quantities because these materials that could easily weaken, damage, or cause to rupture a bulk pesticide container.

B.

It is necessary to limit the storage of liquid bulk fertilizer, and other pesticide related products, devices, containers etc. to the amount originally calculated as displacement so that the total containment amount needed is not jeopardized.

This is reasonable so that the necessary containment amount is always provided to fully contain a pesticide release.

C.

It is necessary to permit a liquid bulk pesticide containment area to be located within the confines of a liquid bulk fertilizer containment area because liquid bulk fertilizer containment areas that contain liquid bulk pesticides have already been permitted by the MDA fertilizer section.

It is reasonable to allow combined storage because construction costs can be reduced by building a single containment area for both liquid bulk pesticides and fertilizers.

The provisions that allow combined storage are reasonable because they provide the minimum physical separation and/or stability necessary to prevent weakening, damage, or a rupture of a liquid bulk pesticide container.

#### Subpart 4

It is necessary to specify material standards and construction specifications for secondary containment walls in order to provide the protection necessary to retain a pesticide release within a secondary containment area.

The materials and construction specifications set forth are reasonable because they are recommended by pesticide manufacturers and industry associations, and are currently being used for the containment of bulk pesticides.

The tank siting requirements are reasonable because they assure that a pesticide release can not be caused by a containment drain valve being open, or contact between a tank and a wall, and also

insure that a tank leak originating at a location high up on a tank wall does not leave the containment area.

More specific construction specifications are necessary for masonry walls because of the porosity and strength of the material and the construction techniques used.

The construction specifications given are reasonable because they are consistent with standard masonry construction techniques for wall construction and they represent a major improvement over the large number of inadequately constructed masonry containment areas that have been observed by MDA staff.

Subpart 5

A.

It is necessary to require that specific types of liners without drains be used in conjunction with walls for a secondary containment system in order to limit the possibility of pesticides leaching into soils or groundwater immediately underlying the bulk pesticide storage containment area.

The liners specified are reasonable because they are recommended by pesticide manufacturers and industry associations and are currently being used for the containment of bulk pesticides.

It is reasonable to prohibit drains or other openings in the liner in order to preclude the inadvertent release of pesticides into the environment.

It is reasonable to prohibit dissimilar liner and wall materials, pending commissioner approval, because construction of containment areas with combinations of dissimilar materials may result in an inadequate joint between a wall and its liner.

B.

It is necessary specify that concrete liners must be engineered, constructed, and maintained for the application intended so that the liner will maintain its integrity in the event of a pesticide release into the secondary containment unit.

**1505.2090 RECOVERY, USE, OR DISPOSAL OF PESTICIDE RELEASES****Subpart 1**

For load and secondary containment areas it is necessary to specify pesticide release notification requirements, required pesticide recovery time frame, and pesticide use and disposal requirements so that affected persons will notify MDA, recover pesticide discharges in an expeditious manner, and use or dispose of those releases in compliance with state and federal regulations.

It is reasonable to set forth the requirements listed because they conform with Minnesota Statutes, Chapter 18B, and rules adopted under Minnesota Statutes, Section 116.07, subd. 4.

**Subpart 2**

It is necessary to specify that precipitation accumulations in load or secondary containment areas must be removed as needed and used accordingly so that the integrity of these areas, and the integrity and stability of any storage container is maintained at all times.

The requirements set forth are reasonable because they are in conformance with industry standards for managing precipitation, and with Minnesota Statutes, Chapter 18B, and rules adopted under Minnesota Statutes, Section 116.07, subd. 4.

The 5%-use rate is reasonable because it is based on Illinois EPA recommendations for the proper use of waters that contain pesticides.

**Subpart 3**

Specific rinsate, sludge, and washwater management practices are necessary because these types of pesticide containing products are commonly generated at bulk pesticide storage facilities.

The requirements set forth are reasonable because they are in conformance with Minnesota Statutes, Chapter 18B, and rules adopted under Minnesota Statutes, Section 116.06, subd 4.

The 5%-use rate is reasonable because it is based on Illinois EPA recommendations for the proper use of pesticide-containing products that result from unused mixtures, sediment traps, and equipment washing.

The sludge removal time frame listed is reasonable because it allows for removal of sludge at a time when pesticide concentrations would be in the proper range for reuse as estimated by Illinois EPA.

**1505.2100 PREPARATION FOR CONTROL AND RECOVERY OF PESTICIDE  
RELEASES**

It is necessary to require persons who store bulk pesticides to develop a plan to abate and recover pesticide releases so that they are prepared to fulfill their obligations under Minnesota Statutes, Section 18B.15.

The requirement is reasonable because it minimizes the potential for environmental contamination as a result of a persons lack of preparedness to immediately take sufficient action to abate, mitigate, and recover a pesticide release.

The requirement is also reasonable because it conforms with the minimum requirements for compliance with the federal Superfund Amendments and Reauthorization Act of 1986 (SARA), TITLE III: the Emergency Planning and Community Right-To-Know Act of 1986.

The required information is reasonable because it is clear and also general enough to allow flexibility in compliance.

**Subpart 2**

It is necessary to require that affected persons have on their premises equipment necessary to abate, recover, and mitigate pesticide releases in order to minimize the extent of environmental contamination resulting from a pesticide release.

The list of required equipment is reasonable because it consists of equipment that is commonly available and practical to mitigate pesticide releases.

### Subpart 3

It is necessary to require employee training in abating, recovering, and mitigating pesticide releases in order to protect the persons employees from unnecessary pesticide exposure, and to minimize the extent of environmental contamination from any lack of expertise in mitigating a pesticide release.

The training frequency given is reasonable because it is the minimum required to adequately train both new and existing employees.

### 1505.2110 INSPECTION AND MAINTENANCE

#### Subpart 1

It is necessary to require storage container, appurtenance, loading area, and secondary containment area inspection and maintenance in order to minimize the possibility of a pesticide release from damaged or weakened safeguards.

An inspection and maintenance program is reasonable because it contains preventative action measures that require only a minimum amount of time to accomplish.

A written record of each inspection is reasonable because it corroborates the fact that an inspection was actually done.

Maintaining a pesticide release history is reasonable because it contains information that is required to be submitted MDA in the event of a pesticide release.

The information required to be kept is reasonable because it is the minimum necessary to investigate a pesticide release incident.

#### Subpart 2

A frequency of inspection schedule is necessary in order to set forth inspection schedules for specific areas that minimize

pesticide releases due to damaged or weakened safeguards. The inspection schedules given are reasonable because they are easily accomplished and are the minimum necessary for protection.

The specific inspection record keeping requirements are reasonable because only the minimum amount of information that is necessary has been required.

Maintenance "as necessary" is reasonable because maintenance is only required for safeguards which are in need of repair.

#### 1505.2120 RECORD KEEPING

A.

A bulk pesticide inventory record keeping system is necessary to determine pesticide amounts present in a bulk pesticide storage container in the event of a pesticide release.

The inventory system set forth for containers is reasonable because it only requires that the inventory be taken at the time a container is filled. In most cases this is amounts to 1-2 times during the use season. Less frequency assures compliance.

B.

It is necessary to record delivery, sales and use amounts because it is the only way to check inventory amounts calculated at the time of filling against sales or use amounts determined through weighing, metering, or other types of measurement.

Tracking this information allows a bulk pesticide storage facility to check for discrepancies. This is reasonable because most persons already use a monthly inventory system, or can readily determine use/sales amounts through their customer invoicing system.

C.

Specifications that detail the names of persons preparing the

inventory information, dates, and gallonage/pounds amounts calculated is necessary to provide evidence that a physical inventory was actually done.

The information requested is reasonable because it is the minimum necessary to provide an accurate and detailed inventory accounting. Requiring that the information be available within 24 hours of the request is reasonable because it allows MDA staff the time necessary to determine if a pesticide release has occurred.

### 1505.2130 UNDERGROUND BULK PESTICIDE STORAGE

#### Subpart 1

It is necessary to prohibit new underground storage of bulk pesticides because of the difficulty in determining if an underground storage container is leaking.

It is also necessary to detail that this prohibition does not apply to certain kinds of temporary collection structures and other specialty pesticide storage and treatment structures in order to assist affected persons in compliance.

The compliance time frame is reasonable because it is consistent with the effective date of the rule, July 1, 1989.

It is reasonable to exempt specialty collection structures that because of the design requirements set forth in this rule are only capable of holding small amounts of pesticide diluent for a short amount of time and can easily be inspected and tested for leakage. In addition, temporary collection structures are already in use and recommended by the agricultural chemical industry and other state pesticide regulatory agencies.

It is reasonable to exempt storage and treatment structures used in the wood preservative industry because the pesticide products used contain large amounts of flammable solvents and therefore underground storage is a safer alternative to protect the public health, welfare, and the environment.

It is also reasonable to allow underground storage of wood preservative pesticides because very sophisticated and effective



leak detection equipment is available and required for use to protect against such a release.

In addition, it is reasonable to allow the wood preservative industry to use underground pesticide storage containers because of the additional stringent regulation of underground tanks by MPCA through their Underground Storage Tank program.

In addition, the prohibition is reasonable because agricultural pesticide manufacturers do not allow the use of underground tanks for the storage of manufacturer owned pesticide products because of the potential liability that exists for environmental contamination.

#### Subpart 2

It is necessary to disclose to affected persons that existing and exempted underground pesticide storage containers are also regulated by the MPCA so that they are knowledgeable of the overlapping regulatory authority that exists between MDA and MPCA.

It is reasonable to notify affected persons of their additional regulatory obligation so that they will take whatever measures are necessary to take underground tanks out of service or comply with both MDA and MPCA regulations.

The requirement for a leak certification test is necessary to increase the effectiveness of MDA's pesticide regulatory program and protect groundwater.

The requirement is reasonable because a leak test is the only way that MDA can be assured that an underground tank is not leaking.

The requirement is also reasonable because the test is not required to be routinely done and thus limits the financial burden of the affected persons.

**1505.2140 ABANDONED CONTAINERS**

**Subpart 1**

Specific rules are necessary for bulk pesticide storage containers that are not serviceable so that pesticides will not be stored in a storage container that because of weakness or damage may rupture or leak and release pesticides to the environment.

The time frames given are reasonable because they take into account the seasonality of pesticide sales or use.

**Subpart 2**

It is necessary to remove and clean abandoned underground bulk pesticide storage containers so that their contents can be determined, any leakage can be detected and stopped, any environmental remediation necessary is completed, and so that they may not be used for future storage of bulk pesticides.

This is reasonable because it prevents a pesticide release incident from occurring.

**Subpart 3**

It is necessary to clean and render unserviceable abandoned above ground bulk pesticide containers so the contents can be determined and so that they may not be used for future storage of bulk pesticides.

This is reasonable because it prevents a pesticide release incident from occurring from pesticide containers that are weakened or damaged and are not suitable for pesticide storage.

**1505.2150 EXEMPTIONS**

**Subpart 1**

It is necessary to exempt short-term (less than 10 days) pesticide storage from the secondary containment section of the rule because long term bulk pesticide storage poses a greater threat for pesticide release because of the amount of time a bulk pesticide may be in storage.

Exempting temporary storage from the secondary containment requirement is reasonable because the longer a bulk pesticide storage container remains in use at a location, the greater the chance that damage or weakness to the container or its appurtenances may occur from vandalism, the elements, corrosion, the weight of the load in the tank, simple failure of parts, etc.

Ten days is a reasonable storage guideline for an exemption because it allows for short term holding of bulk pesticide products pending delivery to a dealer or end user. Short term storage/holding is common due to the nature of the industry, i.e., agriculture.

#### Subpart 2

It is necessary to exempt some affected persons from complying with certain provisions of the rule because of the fact that the environmental protection safeguards or other requirements necessary for the proper storage, distribution, etc. of a particular pesticide product may be substantially different than certain requirements contained in the rule.

The exemption is reasonable because even though exact compliance with portions of the rule may not be possible in some situations for some affected persons, protection of the environment, groundwater, and surface water is assured.

A written request for an exemption is necessary for MDA staff to properly review the proposed change.

The form of the written request is reasonable because the request can be submitted at the time of filing of the original bulk pesticide storage permit application.

The time frame for review by MDA staff is reasonable because it is consistent with the time frame outlined for review of a bulk pesticide storage permit application.

