Title 198
Rules And Regulations Pertaining To Agricultural Chemical Containment

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Title 198 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 1 - DEFINITION OF TERMS

001 "Appurtenances" means all valves, pumps, fittings, pipes, hoses, and metering devices which are connected to a container, or which are used to transfer a material into or out of such container.

002 "Bulk Dry Pesticide" means any pesticide, once formulated, that is in dry or solid form in an individual container of undivided quantities equal to or greater than 4,000 pounds, and that has not been combined with liquids; this includes formulations such as dusts, wettable powders, dry flowables, water-soluble powders, granules, and dry baits.

003~~2~~ "Bulk Fertilizer" means any liquid fertilizer held in an individual container of undivided capacity greater than 55 U.S. gallons liquid measure.

004~~3~~ "Bulk Liquid Pesticide" means any liquid pesticide held in an individual container of undivided capacity greater than 55 U.S. gallons liquid measure.

005~~4~~ "Container" means any device, excluding a lagoon or pit, in which a material is stored, mixed, treated, disposed of, or otherwise handled.

006~~5~~ "Custom Applicator" means any person who uses or supervises the use of pesticides or fertilizers on property other than their own or which they rent or lease and bills, charges or assesses the cost of such work.

007~~6~~ "Department" means the Department of Environmental Quality.

008~~7~~ "Fertilizer" means any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication. Anhydrous ammonia~~, dry fertilizer~~, and unmanipulated animal and vegetable manures shall not be included in this definition for the purposes of these regulations.

009~~8~~ "Flood Plain" means the area adjoining a watercourse or drainage which has been or may be covered by flood waters from a 100-year flood.

010~~09~~ "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Title 128 or whose act first causes a hazardous waste to become subject to regulation.

011~~0~~ "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

011~~0~~.01 Cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness;

011~~0~~.01 Pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; and as more fully defined in Title 128.

012~~1~~ "Loadout Facility" means a location, other than the field of application, used for the loading, unloading, handling or mixing of pesticides or fertilizers or a location used for the rinsing or washing of delivery or application equipment which is designed, constructed, and maintained to hold or confine a release of a liquid pesticide or liquid fertilizer.

013~~2~~ "Operator" means the person responsible for the overall operation of a storage facility or loadout facility.

014~~3~~ "Owner" means the person who owns all or part of a storage facility or loadout facility.

015~~4~~ "Person" means any individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality or other governmental subdivision, public agency, officer or governing or managing body of any municipality, governmental subdivision, or public agency, or any other legal entity except the Department.

016~~5~~ "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant or ~~dessicant~~desiccant.

017~~6~~ "Release" means, but is not limited to, any discharging, spilling, leaking, pumping, emitting, emptying, or dumping of pesticide, fertilizer, or materials containing pesticide or fertilizer, upon land, beneath the surface of the land, or into waters of the State, either by accident or otherwise, except that this definition shall not apply to normal field applications or to the normal rinsing and washing activities on the loadout facility.

018~~7~~ "Secondary Containment" means a device or structure designed, constructed, and maintained to hold or confine a release of a liquid pesticide or liquid fertilizer from a storage facility.

019~~8~~ "Storage Facility" means a location where bulk pesticide, bulk liquid pesticide, or bulk fertilizer is stored. A storage facility shall include the entire contiguous tract of land upon which bulk pesticide or bulk fertilizer is loaded, unloaded, mixed, blended, or stored.

020~~19~~ "Sump" means any pit or reservoir open to visual inspection, designed to temporarily collect and contain an accumulation of rinsed or washed off material or spilled liquids, structurally sound, and compatible with the materials contained.

021~~0~~ "Title 117" means the Department's Title 117 - Nebraska Surface Water Quality Standards.

022~~1~~ "Title 118" means the Department's Title 118 - Ground Water Quality Standards and Use Classification.

023~~2~~ "Title 126" means the Department's Title 126 - Rules and Regulations Pertaining to the Management of Wastes.

024~~3~~ "Title 128" means the Department's Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska.

025~~4~~ "Totally Covered or Enclosed" means protected from precipitation and any subsequent drainage so that unwanted moisture does not enter the structure.

026~~5~~ "Underground Storage" means any container, combination of containers, surface impoundment, pit, pond, or lagoon, including underground pipes connected to such storage, which is used to store an accumulation of pesticide, fertilizer, fertilizer or pesticide solution, or related material and the volume of which is ten percent or more beneath the surface of the ground.

027~~6~~ "Waters of the State" means all waters within the jurisdiction of this State including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the State.

Legal Citation: Title 198, Ch. 1, Nebraska Department of Environmental Quality

Title 198 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 2 - SECONDARY CONTAINMENT FACILITY; WHEN REQUIRED

001 A secondary containment facility is required when bulk liquid pesticide is stored in aggregate quantities with capacity greater than 500 U.S. gallons, or when bulk dry pesticide is stored.

002 A secondary containment facility is required when bulk liquid fertilizer is stored:

002.01 in a container with capacity greater than 2,000 U.S. gallons;

002.02 in containers with an aggregate capacity greater than 3,000 U.S. gallons at any location; or

002.03 in quantities exceeding 25 percent of the container capacity for containers larger than 500 U.S. gallons anytime during the period November 1 through March 15.

003 A container designed and used for the storage of ammonium nitrate fertilizer shall not be included in the requirements stipulated in 001 and 002 above provided the concentration of the ammonium nitrate is such that the temperature at which it freezes is 120 degrees Fahrenheit or higher, the container was in use prior to November 14, 1992, and a monitoring or leak detection system approved by the Department is in place prior to January 1, 1999.

004 The Department may consider, on a case-by-case basis, the need for secondary containment directly under a container having a capacity of 100,000 U.S. gallons or more and in use prior to November 14, 1992. In such cases, the owner or operator of the container shall conduct an environmental evaluation and economic assessment of compliance with these regulations and identify possible alternatives to be considered by the Department. When compliance with the regulations produces serious hardship without equal or greater benefits to the public, the Department may approve an alternative which demonstrates technical practicability and economic reasonableness.

005 A container designed and used for transportation of a ~~bulk pesticide~~bulk liquid pesticide or bulk fertilizer shall not be included in the requirements stipulated in 001 or 002 above as long as any storage is solely incidental to the loading or unloading of the container and the container is not connected to a chemigation system. A container with a capacity of 275 U.S. gallons or less which is sealed, and remains sealed at the facility, may be excluded from the aggregate capacities stipulated in 001 or 002 above provided any storage is solely incidental to the transfer of the container.

006 A container or containers with an aggregate capacity of 6,000 U.S. gallons or less which is used at the application site as part of the normal application associated with activities in that field any time during the period March 15 through October 1 may be excluded from the aggregate capacities stipulated in 002 above. For a container to be excluded from the aggregate capacities, the container and appurtenances must be:

006.01 located a minimum of 500 feet from surface waters of the state;

006.02 located a minimum of 100 feet from any well;

006.03 located in that field for a period not to exceed 21 consecutive days;

006.04 positioned on relatively level terrain to maintain tank stability;

006.05 inspected for leakage and soundness immediately prior to the initial use each year; and

006.06 structurally sound, free of any obvious defects, and compatible with the fertilizer placed in the container. Leaky or faulty containers and appurtenances shall be repaired or replaced at the time of detection.

Provided, however, that a container used in the application of a ~~bulk pesticide~~bulk liquid pesticide or bulk fertilizer through a chemigation system shall be part of the aggregate capacity stipulated in 002 above for the purposes of these regulations.

007 A secondary containment facility required pursuant to 001 or 002 above shall be constructed according to the following schedule:

007.01 Any person with existing ~~bulk pesticide~~bulk liquid pesticide storage as of November 14, 1992 has until January 1, 1995 to comply.

007.02 Any person with bulk fertilizer storage in existence as of July 1, 1994 has until January 1, 1999 to comply.

007.03 New ~~bulk pesticide~~bulk liquid pesticide storage or expansion of existing ~~bulk pesticide~~bulk liquid pesticide storage constructed after November 14, 1992 shall have secondary containment prior to use.

007.04 New bulk fertilizer storage or expansion of existing bulk fertilizer storage constructed after July 1, 1994 shall have secondary containment prior to use.

008 Storage and handling of anhydrous ammonia, dry fertilizer~~ or pesticide formulations,~~ and unmanipulated animal and vegetable manures is exempt from the requirements of these regulations. Storage of anhydrous ammonia is regulated by the State Fire Marshal, Title 153 - Nebraska State Fire Code Regulations.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

Legal Citation: Title 198, Ch. 2, Nebraska Department of Environmental Quality

Title 198 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 3 - LOADOUT FACILITY; WHEN REQUIRED

001 All mixing, loading and unloading of ~~bulk pesticide~~bulk liquid pesticides or bulk fertilizers at a ~~bulk pesticide~~bulk liquid pesticide or bulk fertilizer storage facility and all draining, rinsing and washing of applicator and transportation equipment shall be performed within the loadout facility. A loadout facility is required under the following conditions:

001.01 When secondary containment is required pursuant to Chapter 2 for bulk liquid pesticide stored in aggregate quantities greater than 500 U.S. gallons;

001.02 When secondary containment is required pursuant to Chapter 2 for bulk liquid fertilizer stored in aggregate quantities greater than 5,000 U.S. gallons;

001.03 When a custom applicator uses pesticides from original containers greater than three U.S. gallons in capacity;

001.04 When a custom applicator uses pesticide or fertilizer mixtures in individual quantities greater than 100 U.S. gallons; or

001.05 When bulk fertilizer or ~~bulk pesticide~~bulk liquid pesticide is loaded or unloaded from a rail car.

002 A loadout facility required pursuant to 001 above shall be constructed according to the following schedule:

002.01 A custom applicator of pesticide, person with existing ~~bulk pesticide~~bulk liquid pesticide storage, or person using rail car transfer of ~~bulk pesticide~~bulk liquid pesticide as of November 14, 1992 has until January 1, 1995 to comply.

002.02 A custom applicator of fertilizer, person with existing bulk fertilizer storage, or person using rail car transfer of bulk fertilizer as of July 1, 1994 has until January 1, 1999 to comply.

002.03 A ~~bulk pesticide~~bulk liquid pesticide storage facility, a person with rail car transfer of ~~bulk pesticide~~bulk liquid pesticide or a custom applicator of pesticide that commences operation after November 14, 1992 shall have a loadout facility constructed prior to operation.

002.04 A bulk fertilizer storage facility, a person with rail car transfer of bulk fertilizer, or a custom applicator of fertilizer that commences operation after July 1, 1994 shall have a loadout facility constructed prior to operation.

003 A loadout facility is not required under the following conditions:

003.01 When loadout activities are conducted at the application site as part of the normal application; or

003.02 When custom applicator loadout activities are conducted no more than fourteen days in a calendar year at any one location, the custom applicator has a loadout facility at a primary operating location, and all other requirements are met. This fourteen day allowance does not apply to loadout facilities required in conjunction with secondary containment specified in 001.01 and 001.02 above or to loadout facilities specified in 001.05 above.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

Legal Citation: Title 198, Ch. 3, Nebraska Department of Environmental Quality

Title 198 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 4 - SECONDARY CONTAINMENT FACILITY, LOADOUT FACILITY; LOCATION

001 A new secondary containment facility or loadout facility, except at an operation in existence prior to November 14, 1992, shall not be located:

001.01 Within 100 feet of a well used for domestic purposes;

001.02 Within a Class GA area as defined in Title 118; or

001.03 In an area or in such a manner that there is a substantial threat of beneficial use impairment to waters of the State as defined in Title 117 and Title 118.

002 Other locational requirements may be contained in the Water Well Standards and Contractors' Licensing Act and rules and regulations adopted pursuant to that act.

003 Construction or improvements in a designated 100-year flood plain shall comply with existing federal, state and local flood plain management regulations.

004 The facility shall comply with local governmental zoning regulations. It is the responsibility of the owner or operator to determine whether any such zoning regulations exist.

005 Underground storage of ~~bulk pesticide~~bulk liquid pesticide and bulk fertilizer is prohibited. Temporary underground containment of pesticide or fertilizer rinsed or washed off material, runoff, or other accumulations is allowed with the following:

005.01 A sump open to visual inspection; or

005.02 A container situated in a concrete or solid masonry lined vault open to visual inspection. The container must be on or above the surface of the floor such that any leak from the container or appurtenances may be readily detected.

006 If plumbing within a secondary containment or loadout facility is directly connected to a public water supply pipeline servicing the facility, the operator must comply with the Department of Health, Title 179 - Regulations Governing Public Water Supply Systems.

007 If plumbing within a secondary containment or loadout facility is directly connected to a water well, other than a public water supply pipeline, servicing the facility, a backflow prevention device shall be installed to protect the water source. Local plumbing codes or regulations shall apply if more restrictive. All equipment shall be installed, operated and maintained in accordance with the manufacturer's recommendations. The minimum safety equipment shall be one of the following:

007.01 A reduced pressure principle device which meets the American Water Works Association (AWWA) Standard C506-78 for backflow prevention devices; or

007.02 Air gap separation. Air gap is a physical separation between the discharge end of a water pipeline and an open or nonpressurized receiving vessel. To have an acceptable air gap, the discharge end of the pipe must be at least two pipe diameters above the top rim of the receiving vessel. If the discharge pipe is in a secondary containment facility or loadout facility, the discharge end must be at least two pipe diameters above either the topmost rim of the receiving vessel or the highest liquid holding capacity of the containment facility, whichever is higher.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

Legal Citation: Title 198, Chapter 4, Nebraska Department of Environmental Quality

Title 198 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 5 - SECONDARY CONTAINMENT FACILITY; DESIGN REQUIREMENTS

001 The walls and base of the secondary containment must be designed and constructed to be watertight, to be compatible with the pesticide or fertilizer being stored within the facility, to withstand loading conditions, and to withstand the maximum discharge from the largest container considering the full hydrostatic head of the discharged liquid.

002 Secondary containment of ~~bulk pesticide~~bulk liquid pesticides constructed prior to November 14, 1992 and secondary containment of bulk fertilizers constructed on or before July 1, 1994 shall include one or more of the following:

002.01 Concrete or solid masonry;

002.02 A synthetic, metal, or prefabricated bentonite liner, except that a prefabricated bentonite liner shall not be considered adequate for secondary containment of pesticides. The liner shall be installed in accordance with the manufacturer's recommendations;

002.03 A soil liner, except that a soil liner shall not be considered adequate for secondary containment of pesticides. The soil liner may be natural soil treated with bentonite clay or other comparable material. The seepage rate of the soil liner shall not exceed 1/8 inch per day, as determined by independent laboratory or insitu testing. The soil liner shall be a minimum of six inches thick and covered with a minimum of six inches of aggregate or soil cover; or

002.04 Tank in a tank.

003 Secondary containment of ~~bulk pesticide~~bulk liquid pesticides constructed after November 14, 1992 and secondary containment of bulk fertilizers constructed after July 1, 1994 shall include one or more of the following:

003.01 Concrete;

003.02 Metal liner;

003.03 A synthetic liner. A synthetic liner must be installed according~~-~~ to the manufacturer's specifications and used only for applications specifically approved by the manufacturer;

003.04 Tank in a tank; or

003.05 Prefabricated bentonite liner, except that a prefabricated bentonite liner shall not be considered adequate for secondary containment of bulk liquid pesticides.

004 Secondary containment for bulk liquid pesticides and bulk fertilizers in a totally covered or enclosed structure shall be constructed with a volume sufficient to contain at a minimum the sum of the maximum possible discharge from the largest container plus ten percent of the capacity of the largest container plus the containment volume displaced by all other structures, containers and equipment inside the secondary containment area.

005 Secondary containment not totally covered or enclosed shall be constructed with the volume specified in 004 above plus sufficient volume to contain the precipitation from a 25-year, 24-hour storm event (See Appendix A) on the containment area.

006 Pesticides shall not be stored in the same secondary containment area as fertilizers.

007 Storage containers shall be anchored or secured to prevent flotation or instability in the event of a release into the containment structure. Only pesticides, associated products, and equipment shall be stored or maintained in the pesticide containment area. Empty containers shall not be stored in the containment area unless included in the capacity calculations for the containment facility and anchored or secured to prevent flotation or instability.

008 The containment area shall slope to a collection point or sump that allows liquids to be easily removed. The volume of the sump shall not be considered part of the containment volume of the secondary containment facility. Any pump used for material removal shall be manually activated.

009 The secondary containment area shall not have a relief outlet or valve. Sanitary and storm sewer drains shall not be located within the secondary containment facility.

010 Secondary containment facilities for bulk dry pesticides shall be:

010.01 Constructed of steel, reinforced concrete or other rigid materials compatible with the pesticides stored;

010.02 Capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation or other substances, equipment and appurtenances.

011 Stationary containers of bulk dry pesticides shall be:

011.01 Protected from wind and precipitation;

011.02 Placed on pallets or raised concrete platforms;

011.03 On a floor extending completely beneath the pallets or platforms; and

011.04 Enclosed by a curb a minimum of six inches high that extends at least two feet beyond the perimeter of the container.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

Legal Citation: Title 198, Ch. 5, Nebraska Department of Environmental Quality

Title 198 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 6 - LOADOUT FACILITY; DESIGN REQUIREMENTS

001 A loadout facility shall be designed and constructed to contain fertilizer, pesticides and associated contaminated material spilled or deposited during mixing, loading, unloading, draining, rinsing and washing.

002 The loadout facility shall be designed and constructed pursuant to the following minimum requirements:

002.01 Constructed of concrete, asphalt or other impermeable material. After the effective date of these regulations, the loadout facility may not be constructed of asphalt;

002.02 Constructed to withstand the weight of vehicles which will be on the loadout facility; ~~and~~

002.03 Sized to contain a minimum of 1,800 gallons or 1.5 times the largest container, whichever is smaller. The loadout facility shall be constructed with sufficient surface area, using curbs or other means, to prevent a release from the facility;and~~.~~

002.04 After the effective date of these regulation new, or modified, loadout facilities must be constructed to have curbs or berms to prevent external stormwater from draining into the loadout facility.

003 The loadout area shall slope to a collection point or sump that allows spilled or deposited material to be easily recovered. The volume of the sump shall not be considered part of the containment volume of the loadout facility unless specifically approved by the Department. Any pump used for material removal shall be manually activated.

004 The loadout facility shall not have a relief outlet or valve. Sanitary and storm sewer drains shall not be located within the loadout facility unless specifically approved by the Department.

005 The placement of spill pans or other spill collection methods under the rail car, which divert released pesticides or fertilizers into a loadout facility meeting all other design requirements, shall be considered in compliance with this chapter.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

Legal Citation: Title 198, Ch. 6, Nebraska Department of Environmental Quality