

Rulemaking Report

Updated: December 21, 2015

Affected Rule: 10 CSR 20-8.500, Secondary Containment for Agrichemical Facilities

1. What is the purpose of this rulemaking?

The purpose of this rule is to remove the requirement that agrichemical facilities without earthen basins obtain construction permits. Agrichemical facilities are sites where bulk agrichemicals are stored in non-mobile containers or dedicated containers and are being mixed, applied, repackaged or transferred between containers. Agrichemicals include any pesticides or fertilizers but do not include anhydrous ammonia fertilizer.

Although a construction permit will no longer be required for Agrichemical facilities, they must continue to be constructed according to the design criteria detailed in this rule. Examples of these design criteria include discharge valves that are lockable, bulk storage must be designed with secondary containment to prevent discharge of spilled product, selection of appropriate materials of construction, among many others.

2. Why is the rulemaking being proposed now?

This rulemaking amendment is being undertaken at this time to address changes to the Clean Water Law resulting from House Bill 28 (2013). This legislation eliminated the need for applicants to obtain construction permits for agrichemical facilities without earthen basins.

3. Will the rulemaking incorporate any document by reference, rather than state the language within the rulemaking?

No. There are no documents to be incorporated by reference in this rulemaking.

4. Does this rulemaking prescribe environmental standards, limits or conditions and is a Regulatory Impact Report required for this rulemaking?

Yes. Pursuant to Section 640.015 RSMo, "all rulemakings that prescribe environmental conditions or standards promulgated by the Department of Natural Resources...shall... be based on the Regulatory Impact Report. This rulemaking does result in new environmental conditions or standard.

The primary purpose of this rulemaking is to remove the requirement for a construction permit for some agrichemical facilities. The amendment will also clarify and reorganize certain portions of the rule. Almost all of these proposed changes do not prescribe standards related to environmental conditions; they only serve to improve language. The one exception is the clarification that catchment basins and mixing or loading pads need to be constructed beneath all material transfer operations so that spillage can be dealt with, dry materials can be swept up, and any liquid spills can be more easily contained. While this is a new requirement in the rule, it has been the standard practice when designing these systems.

5. What authority does DNR have to carry out this rulemaking?

The rulemaking authority is found in RSMo 644.026, Powers and duties of commission-rules, procedure, RSMo 644.036 Public hearings--rules and regulations, how promulgated--listings under Clean Water Act, requirements, procedures, and RSMo 644.051.1, Prohibited acts--permits required, when, fee--bond required of permit holders, when--permit application procedures--rulemaking--limitation on use of permit fee moneys--permit shield provisions, amended 2013.

6. What does the rulemaking require and how does it produce benefits?

The design requirements in the rule will no longer require review and construction permits by the Department. The rulemaking will not relieve agrichemical facilities from having to meet current design requirements. The most significant design requirements include construction of secondary containment for tanks that store agrichemicals. Secondary containment provides a method to temporarily store materials in the event that the primary container fails.

7. Who is most likely affected by the rulemaking?

Businesses that are planning to construct agrichemical facilities will be affected in that they may no longer be required to obtain a construction permit prior to construction. Existing facilities will not be affected unless they are expanding.

8. What impact will the rulemaking have on small businesses? (A small business is defined by statute as a for-profit enterprise with fewer than 100 full or part-time employees.)

Although large businesses own and operate agrichemical facilities, a large number of agrichemical facilities are owned by small businesses. This rule is expected to relieve some small businesses from the requirement to obtain construction permits from the Department prior to construction of agrichemical facilities.

For small businesses that are planning to construct new or expand existing agrichemical facilities, the rule will require the construction of mixing or loading pads beneath all material transfer operations. The cost of a five-hundred square foot pad can range from \$2,000 to \$2,700 depending on local labor and delivered concrete costs. Most facilities would choose to construct these elements even if they were not required by regulation because it facilitates clean-up of spillage and a permanent, solid access area for uploading to fertilizer vehicles.

9. What are the probable costs for the department or any other public agency in the implementation and enforcement of the rulemaking?

The Department does not expect additional costs to the agency for implementation over and above the current costs of inspection of agrichemical facilities.

10. What is the anticipated effect of the rulemaking on state revenue?

The reduction in construction permitting will reduce the amount of fees collected by the Department. Based on historic data, the department estimates that as many as 13 construction permit applications were issued for agrichemical facilities each year. The fees associated with these projects (\$750) will not

be collected resulting in an estimated fee loss of \$11,200. This loss in collected fees, however, is offset by the fact that the department no longer has to issue these permits or review these applications.

11. Who was/will be involved in developing the rulemaking?

Department staff will work closely with representatives from the agricultural facilities.

12. How has/will the development of the rulemaking been/be shared with interested parties and the public at large?

The Department held a stakeholder meeting on April 15, 2014 and will also place the rule on public notice. These activities will meet the requirements of public participation within the rulemaking process.

13. Who may I contact to either ask questions or provide input on this rulemaking?

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14. What are the expected dates for the comment period and public hearing?

Depending on administrative processes, the comment period for the Regulatory Impact Report is scheduled to begin later in the year (2015). A public hearing is expected to be scheduled for the July 13 or October 5 2016 meeting of the Missouri Clean Water Commission.