



Pesticide Management and Disposal; Standards for Pesticide Containers and Containment

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Pesticide Management and Disposal; Standards for Pesticide Containers and Containment

Subpart E--Standards for Pesticide Containment Structures

Sec. 165.80 General provisions.

(a) What is the purpose of the regulations in this subpart? The purpose of the containment regulations in this subpart is to protect human health and the environment from exposure to agricultural pesticides which may spill or leak from stationary pesticide containers. This protection is achieved by the construction of secondary containment units or pads at certain facilities handling agricultural pesticides. These regulations will also reduce waste generation associated with:

- (1) Storage and handling of large quantities of pesticide products.
- (2) Pesticide dispensing and container-refilling operations.

(b) Do I have to comply with the regulations in this subpart? You must comply with the regulations in this subpart if you are an owner or operator of one of the following businesses and if you also have a stationary pesticide container or a pesticide dispensing (including container refilling) area:

- (1) Refilling establishments who repackage agricultural pesticides and whose principal business is retail sale (i.e., more than 50% of total annual revenue comes from retail operations).
- (2) Custom blenders of agricultural pesticides.
- (3) Businesses which apply an agricultural pesticide for compensation (other than trading of personal services between agricultural producers).

(c) When do I have to comply? You must comply with all applicable containment regulations for new and existing structures as of August 17, 2009.

Sec. 165.81 Scope of stationary pesticide containers included.

(a) What is a stationary pesticide container? A stationary pesticide container is a refillable container that is fixed at a single facility or establishment, or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

(b) What stationary pesticide containers are subject to the regulations in this subpart? Stationary pesticide containers designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in this subpart and must have a secondary containment unit that complies with the provisions of this subpart unless any of the following conditions exists:

(1) The container is empty, that is, all pesticide that can be removed by methods such as draining, pumping or aspirating has been removed (whether or not the container has been rinsed or washed).

(2) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.

(3) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.

(4) The container is dedicated to non-pesticide use, and is labeled accordingly.

Sec. 165.82 Scope of pesticide dispensing areas included.

(a) What pesticide dispensing areas are subject to the regulations in this subpart? A pesticide dispensing area is subject to the containment regulations in this subpart and must have a containment pad that complies with the requirements of this subpart if any of the following activities occur:

(1) Refillable containers of agricultural pesticide are emptied, cleaned or rinsed.

(2) Agricultural pesticides are dispensed from a stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide for any purpose, including refilling or emptying for cleaning. This applies when pesticide is dispensed from the container into any vessel, including, but not limited to:

(i) Refillable containers;

(ii) Service containers;

(iii) Transport vehicles;

(iv) Application equipment.

(3) Agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container.

(4) Agricultural pesticides are dispensed from any other container for the purpose of refilling a refillable container for sale or distribution. Containment requirements do not apply if the agricultural pesticide is dispensed from such a container for use, application or purposes other than refilling for sale or distribution.

(b) What pesticide dispensing areas are exempt from the regulations in this subpart? A pesticide dispensing area is exempt from the regulations in this subpart if any of the following conditions exist:

(1) The only pesticides in the dispensing area would be gaseous when released at atmospheric temperature and pressure.

(2) The only pesticide containers refilled or emptied within the dispensing area are stationary pesticide containers which are already protected by a secondary containment unit that complies with the provisions of this subpart.

(3) The pesticide dispensing area is used solely for dispensing pesticide from a rail car which does not remain at a facility long enough to meet the definition of a stationary pesticide container; that is, 30 days.

Sec. 165.83 Definition of new and existing structures.

(a) What is a new containment structure? A new containment structure is one whose installation began after November 16, 2006. Installation is considered to have begun if:

(1) You, as the owner or operator, have obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the containment structure; AND

(2) You have either begun a continuous on-site physical construction or installation program OR you have entered into contractual obligations. The contract must be such that it cannot be canceled or modified without substantial loss, and must be for the physical construction or installation of the containment structure within a specific and reasonable time frame.

(b) What is an existing containment structure? An existing containment structure is defined as one whose installation began on or before November 16, 2006.

Sec. 165.85 Design and capacity requirements for new structures.

(a) For all new containment structures, what construction materials must I use? These are the material specifications for a new containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means able to withstand anticipated exposure to stored or transferred materials and still provide secondary containment of those same or other materials within the containment area.

(b) For all new containment structures, what are the general design requirements? These are the general design requirements for new containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) Appurtenances, discharge outlets or gravity drains must not be configured through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart. Appurtenances must be configured in such a way that spills or leaks are easy to see.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

(c) For new stationary liquid pesticide containment and new containment pads in pesticide dispensing areas, what are the capacity requirements? These are the capacity requirements:

(1) New secondary containment units for stationary liquid pesticide containers, if protected from precipitation, must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(2) New secondary containment units for stationary liquid pesticide containers, if exposed to or unprotected from precipitation, must have a capacity of at least 110 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(3) New containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(4) New containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

(d) For new stationary liquid pesticide containment, what are the specific design requirements? You must either anchor or elevate each new stationary liquid pesticide container protected by a secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

(e) For new containment pads in pesticide dispensing areas, what are the specific design requirements? Each new containment pad in a pesticide dispensing area must:

(1) Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(2) Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container.

For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

(3) Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

(4) Have its surface sloped toward an area where liquids can be collected for removal, such as a liquid-tight sump or a depression, in the case of a single-pour concrete pad.

(f) For new stationary dry pesticide containment, what are the specific design requirements? These are the specific design requirements for new stationary dry pesticide containment:

(1) The stationary dry pesticide containers within the containment unit must be protected from wind and precipitation.

(2) Stationary dry pesticide containers must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

(3) The stationary dry pesticide container storage area must be enclosed by a minimum of a 6-inch high curb that extends at least 2 feet beyond the perimeter of the container.

Sec. 165.87 Design and capacity requirements for existing structures.

(a) For all existing containment structures, what construction materials must I use? These are the material specifications for an existing containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means able to withstand anticipated exposure to stored or transferred materials and still provide secondary containment of those same or other materials within the containment area.

(b) For all existing containment structures, what are the general design requirements? These are the general design requirements for existing containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) You must seal all appurtenances, discharge outlets and gravity drains through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

(c) For existing stationary liquid pesticide containment and existing containment pads in pesticide dispensing areas, what are the capacity requirements? These are the capacity requirements:

(1) Existing secondary containment units for stationary liquid pesticide containers must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(2) Existing containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(3) Existing containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

(d) For existing stationary liquid pesticide containment, what are the specific design requirements? You must either anchor or elevate each existing stationary liquid pesticide container protected by a secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

(e) For existing containment pads in pesticide dispensing areas, what are the specific design requirements? Each existing containment pad in a pesticide dispensing area must:

(1) Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(2) Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container.

For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

(3) Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

(f) For existing stationary dry pesticide containment, what are the specific design requirements? These are the specific design requirements for existing stationary dry pesticide containment:

(1) The stationary dry pesticide containers within the containment unit must be protected from wind and precipitation.

(2) Stationary dry pesticide containers must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

(3) The stationary dry pesticide container storage area must be enclosed by a minimum of a 6-inch high curb that extends at least 2 feet beyond the perimeter of the container.

Sec. 165.90 Operational, inspection and maintenance requirements for all new and existing containment structures.

(a) What are the operating procedures required for all new and existing containment structures? As the owner or operator of a new or existing pesticide containment structure, you must:

(1) Manage the structure in a manner that prevents pesticides or materials containing pesticides from escaping from the containment structure (including, but not limited to, pesticide residues washed off the containment structure by rainfall or cleaning liquids used within the structure.)

(2) Ensure that pesticide spills and leaks on or in any containment structure are collected and recovered in a manner that ensures protection of human health and the environment (including surface water and ground water) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of each day on which pesticides have been spilled or leaked.

(3) Ensure that all materials resulting from spills and leaks and any materials containing pesticide residue are managed according to label instructions and applicable Federal, State and local laws and regulations.

(4) Ensure that transfers of pesticides between containers, or between containers and transport vehicles are attended at all times.

(5) Ensure that each lockable valve on a stationary pesticide container, if it is required by Sec. 165.45(f), is closed and locked whenever the facility is unattended.

(b) What are the inspection and maintenance requirements for all new and existing containment structures? As owner or operator of a new or existing pesticide containment structure, you must:

(1) Inspect each stationary pesticide container and its appurtenances at least monthly during periods when pesticides are being stored or dispensed on the containment structure. Your inspection must look for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage.

(2) Immediately repair any areas showing visible signs of damage and seal any cracks and gaps in the containment structure or appurtenances with material compatible with the pesticide being stored or dispensed.

(3) Not store any pesticide on a containment structure if the structure fails to meet the requirements of this subpart until suitable repairs have been made. Prompt removal of pesticides, including emptying of stationary pesticide containers, in order to effect repairs or recovery of spilled material is acceptable.

Sec. 165.92 What if I need both a containment pad and a secondary containment unit?

You may combine containment pads and secondary containment units as an integrated system provided the requirements set out in this subpart for containment pads and secondary containment units in Sec. Sec. 165.85(a) and (b), 165.87(a) and (b) and Sec. 165.90, and as applicable, Sec. Sec. 165.85(c)-(f) and 165.87(c)-(f) are satisfied separately.

Sec. 165.95 What recordkeeping do I have to do as a facility owner or operator?

As a facility owner or operator subject to the requirements of this subpart, you must maintain the following records, and you must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe:

(a) Records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances must be kept for 3 years and must include the following information:

- (1) Name of the person conducting the inspection or maintenance;
- (2) Date the inspection or maintenance was conducted;
- (3) Conditions noted;
- (4) Specific maintenance performed.

(b) Records for any non-stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide that holds pesticide but is not protected by a secondary containment unit meeting these regulations must be kept for 3 years. Records on these non-stationary pesticide containers must include the time period that the container remains at the same location.

(c) Records of the construction date of the containment structure must be kept for as long as the pesticide containment structure is in use, and for 3 years afterwards.

Sec. 165.97 States with existing containment programs.

(a) What options are available to States that already have containment regulations? States that have promulgated containment regulations effective prior to August 16, 2006, and which also have primary enforcement responsibility and/or certification programs, have the option of continuing to implement their own programs in lieu of these Federal regulations.

(b) How may a State request authority to continue implementing its State containment regulations? A State with pesticide containment regulations may request the authority to continue implementing State containment regulations by August 16, 2007 in the following manner:

(1) The State must submit a letter and any supporting documentation to EPA.

Supporting documentation must demonstrate that the States program is providing environmental protection equivalent to or more protective than that expected to be provided by the Federal regulations in this subpart.

(2) The State must identify any significant changes to State regulations which would be necessary in order to provide environmental protection equivalent to the EPA regulations, and develop an estimated timetable to effect these changes. The letter must be signed by the designated State Lead Agency.

(c) How will EPA notify the State if its request is granted? EPA's Office of Pesticide Programs will review the State's correspondence and determine whether the State program is adequate to provide environmental protection equivalent to or more protective than these Federal regulations for new and existing containment structures. EPA's Office of Pesticide Programs will inform the State of its determination through a letter authorizing or declining to authorize the State to continue implementing its containment regulations and will detail any reasons for declining authorization.

(d) How must a State inform EPA of revisions to its containment regulations? Any state that has received authorization to continue implementing its state containment regulations must inform EPA by letter signed by the designated State Lead Agency within 6 months of any revision to the State's containment regulations. EPA will inform the state by letter if it determines that the State's containment regulations are no longer adequate based on the revisions. The State's containment regulations will remain in effect, unless and until EPA sends the state a letter making this determination.

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