

000126

LEGISLATIVE REFERENCE LIBRARY
TD427.A35 I87 2000
- Issues of liability and regulation



3 0307 00062 5114



Issues of Liability and Regulation Aerial Applicators – Municipal Airports Legislative Report

January 15, 2000

By

The Minnesota Department of Agriculture

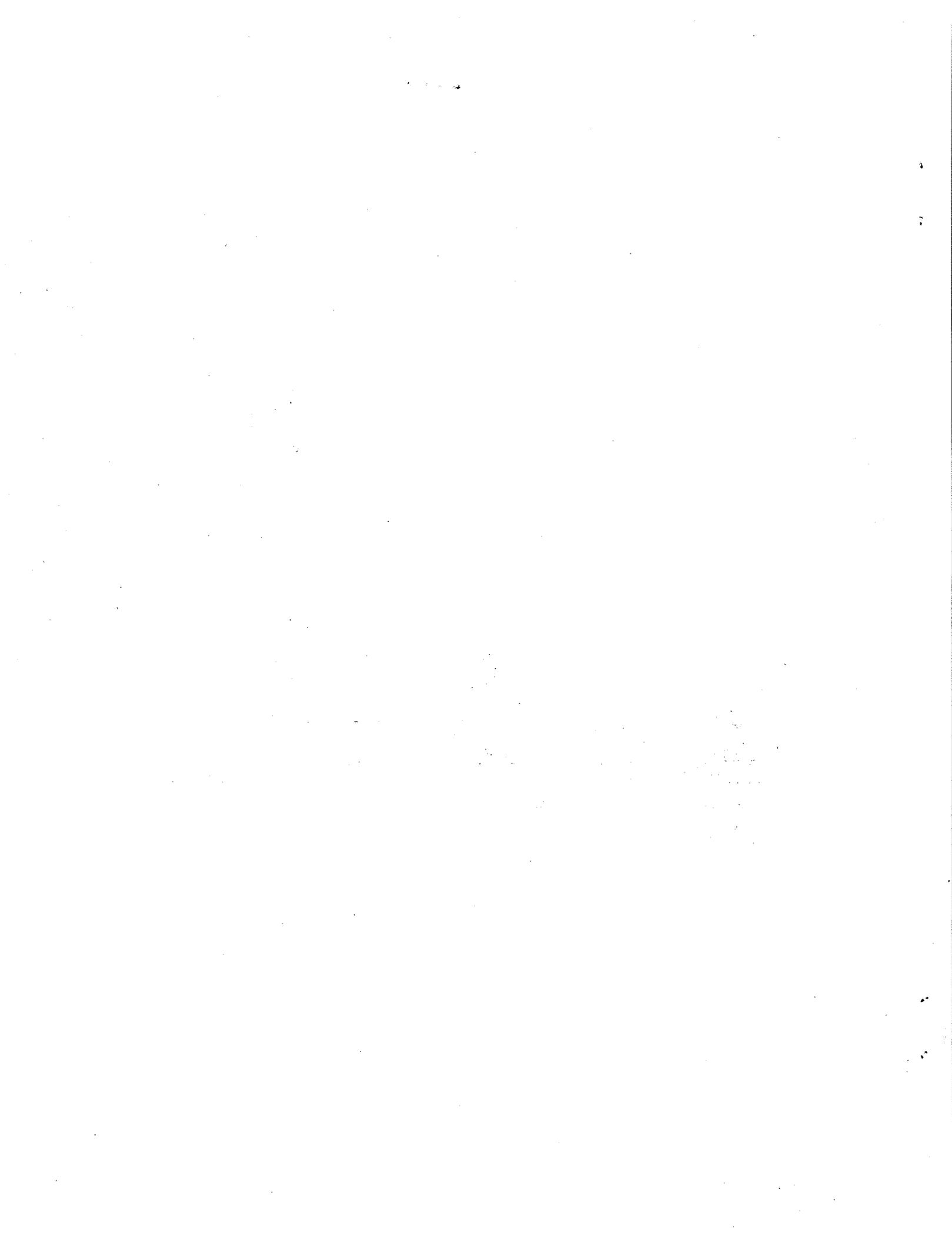
to the

Senate Committee on Agriculture and Rural Development

Senate Committee on Environment and Natural Resources

House Agricultural Policy Committee

House Committee on Agriculture and Rural Development



Minnesota Department of Agriculture Report Authors:

Victoria Cook
Greg Harding
Paul Liemandt
Teresa McDill

REPORT PREPARATION COSTS

ITEMS	RATE/COMMENTS	COSTS
MDA Staff Salary & Fringe Benefits	436 Hours (8 staff)	\$13,572.73
Meeting Room, Supplies, Food & Beverages	For October 28 th Meeting	\$100.00
Copying & Mailing		\$294.20
TOTAL		\$13,996.93

*An estimation of time for other state, federal and local government staff was not available for this report.

AERIAL APPLICATOR LIABILITY STUDY

Table of Contents

Executive Summary	Page 1
Introduction	Page 3
Background	Page 3
Study Methods and Participants	Page 5
Study Findings	Page 5
Environmental Contamination at Municipal Airports	Page 5
Financial Opportunities for Incident Cleanup at Municipal Airport Sites	Page 7
Regulatory Responsibilities	Page 10
Federal Aviation Administration	Page 10
MN Department of Transportation – Aeronautics	Page 10
MN Department of Agriculture	Page 11
Municipal and Industry Concerns	Page 13
Municipal Airports	Page 13
Access to Municipal Airports	Page 14
Aerial Applicators	Page 15
Agricultural Chemical Industry	Page 17
Liability and Operations	Page 18
Statutory Liabilities	Page 18
Recent Legislation	Page 19
Airport Safeguards	Page 20
Accountability	Page 21
Recommendations	Page 23
Minnesota Department of Agriculture Recommendations	Page 23
Minnesota Agricultural Aircraft Association Recommendations	Page 25
Conclusions	Page 25
APPENDICES	Page 26

AERIAL APPLICATOR LIABILITY STUDY REPORT

Executive Summary

This report examines issues of liability and regulation in regard to the use of municipal airports by aerial applicators of agricultural chemicals. The 1999 State Legislature directed the commissioner of the Minnesota Department of Agriculture (MDA) to study, in consultation with affected parties, and report on these issues. Under statute, the MDA regulates the use, storage, handling, distribution and disposal of agricultural chemicals (pesticides and fertilizers) in Minnesota. The MDA licenses persons who apply these chemicals for hire, including aerial applicators.

Over the last several decades, an unknown number of agricultural chemical incidents (spills) have occurred where these products have been mixed, loaded or stored. Some of these incidents have occurred at municipal airports where aerial applicators have been or currently operate. These incidents include accidental spills as well as chronic small spills that go unnoticed or unreported. Both can result in adverse environmental contamination. Based on potential liabilities associated with these incidents, some municipalities have been reluctant to allow aerial applicators to operate from their airports, fearing that the applicator(s) may cause an incident and leave the city with the responsibility for any cleanup. "Home-based aerial applicators" appear more likely and available to take responsibility for such cleanups than "transient" applicators working in Minnesota during times of emergency pest infestations or wet weather conditions.

MDA staff separately interviewed affected parties, and subsequently brought the same parties together as a group. These meetings and interviews found:

- **Statutory Regulations and Liabilities:** MDA has regulatory, environmental safeguarding and cleanup authority for agricultural chemicals. Other state and federal agencies regulate airports and aircraft flight operations. Local municipalities also regulate airport usage through airport ownership and land use authorities. Municipal airport owners may have legal and financial responsibility for agricultural chemical cleanup if the responsible person(s) who owned and/or (mis-)handled the products cannot be identified or are unable to pay.
- **Accountability:** To limit liability uncertainties, most of the participants believed that increased record keeping would be a simple, effective and reasonable method for assuring greater accountability. Aerial applicators and the municipal airport owners would memorialize mixing, handling, and storage activities involving agricultural chemicals. Concerns were raised regarding the increased regulatory burden of additional record keeping, as well as questions regarding record keeping compliance of transient applicators.
- **Access to Municipal Airports:** By law, municipalities may not discriminate between established businesses at publicly funded airports. However, municipal property rights, land use and zoning regulations may offer municipal airport owners opportunity and latitude for certain use restrictions.

- **Airport Safeguard Requirements:** Current environmental regulatory safeguards are not universally required at all municipal airports. If they were required they may not be practical or adaptable to all aerial applicator operations. Recommendations for roofed structures, use of new failsafe equipment handling technologies and diligent attention to safeguard construction and maintenance promise significant future incident prevention.

- **Assistance:** MDA technical assistance, education and outreach should be increased. Dissemination of current information on regulatory requirements, modern safeguards and available financing to municipalities, airport officials and regulatory agencies would aid discussions between aerial applicators and owners of municipal airports.

Introduction

Background

The 1999 Minnesota Legislature directed the Commissioner of Agriculture to “conduct a study concerning the issues of liability and regulations of aerial applicators and municipal airports when aerial applicators use municipal airports.” The Commissioner was directed to consult with representatives of aerial applicators, municipal airports, the Minnesota Department of Transportation, and other affected parties. Findings and recommendations are to be reported by January 15, 2000, to the legislative committees of both houses having jurisdiction over agricultural policy issues.¹

This study and report only addresses issues distinctly associated with Aerial Applicators and their use of municipal airports for the mixing, loading, handling, storage and distribution of agricultural chemicals. It does not address other types of current issues affecting Aerial Applicators or owners of municipal airports. Such issues include but are not limited to air traffic patterns, air traffic congestion, aircraft noise and other possible concerns of local residents and municipalities.

The Commissioner of Agriculture is authorized to regulate the use, storage, handling, distribution and disposal of agricultural chemicals.² Pesticides and fertilizers are defined as agricultural chemicals in Minnesota. The Commissioner and his agents are authorized to inspect and investigate proper handling and safeguarding of agricultural chemicals in order to prevent adverse effects on public health, safety or the environment. This includes taking appropriate enforcement actions for failures to report and remedy environmental releases (“incidents”) of agricultural chemicals.³ Financial reimbursement of corrective action costs incurred for such incident remedies for persons properly reporting and responding is available under the Minnesota Agricultural Chemical Response and Reimbursement Law (ACRRA).⁴ (See Appendix A to this report.)

The Minnesota Department of Agriculture (MDA) licenses persons who apply pesticides for hire, including persons who apply pesticides by airplane and/or helicopter. These licensees are “Minnesota Licensed Aerial Pesticide Applicators” (“Aerial Applicators”). They perform pesticide applications throughout Minnesota and are employed by many commodity sectors of agriculture in addition to other functions. Aerial Applicators pay annual license fees that include surcharges. Surcharges on agricultural chemical applicator licenses and others go into the Agricultural Chemical Response and Reimbursement Account (ACRRA) to cover the costs of incident remedies.

Aerial Applicators base their Minnesota operations at various locations: municipal airports, private airports, private properties, and occasionally, mobile stations for helicopters. According to the Minnesota Agricultural Aircraft Association (MAAA), there are approximately 60 municipal airports in

¹ Minnesota Session Laws 1999, chapter 231, section 199.

² Minnesota Statutes chapters 18B, 18C and 18D

³ Minnesota Statutes chapter 18D

⁴ Minnesota Statutes chapter 18E

the state where agricultural Aerial Applicator activities occur. Some Aerial Applicators work out of one airport exclusively; many rely on the availability of several municipal and/or private airports in order to conduct their assorted application operations. Transient Aerial Applicators from other states visit Minnesota municipal airports routinely, especially during periods of extreme pest infestations or during a wet spring when field conditions prohibit the use of ground application equipment. The Commissioner of Agriculture, as noted above, has both general and specific regulatory oversight over the agricultural chemical aspects of these activities. Other state and federal agencies provide regulatory oversight over other aspects.

Over the last several decades, an unknown number of agricultural chemical incidents have occurred at many locations in Minnesota where pesticides and fertilizers have been stored, mixed, loaded or otherwise handled by farmers, pesticide dealers, aerial and ground applicators. Some incidents have occurred at Aerial Applicator bases of operation. Incidents included instantaneous/accidental or weather related catastrophic types of spills, as well as past and present chronic small spills that often received little notice. Both types of spills can result in adverse environmental contamination of the involved sites.

Anxiety has developed on the part of some municipalities in regard to the responsibilities and liabilities for such spills or incidents. No matter who takes responsibility for and cleans up such contaminated sites, it is usually at significant cost. The ACRRA fund and the MDA Incident Response/ACRRA Program have assisted many in financing and managing the necessary work. Unfortunately, municipalities (including municipal airport owners) were defined as "ineligible" for ACRRA financing under the program's enabling legislation.⁵ This lack of eligibility increased concerns about liability on the part of municipalities regarding the use of their airports by Aerial Applicators.

Municipalities in some areas began to consider passing local ordinances to regulate Aerial Applicator use of their airports. Some of these requirements have been perceived by Aerial Applicators as being excessively restrictive, so as to actually ban applicator's use of these airports. A few municipalities have considered requiring Aerial Applicators to install safeguards over and above what is required by state regulations in order to protect their property, the public health and the environment. This occurred despite the fact that in many locations Aerial Applicators had operated for years without contaminating airport sites and voluntarily installed safeguards over and above what was required. The fact that agriculture in these local communities depended on the seasonal availability of Aerial Applicators for production of agricultural commodities did not seem to be considered as important..

MDA staff has successfully worked with the communities of Dodge Center and Fergus Falls to reach reasonable accommodations between the municipalities and the Aerial Applicators operating out of their airports. A draft ordinance developed by the municipalities has since been used as a model that other municipalities may follow in developing their own ordinances. The Minnesota Agricultural Aircraft Association, representing Aerial Applicators, has promoted this model ordinance.

In 1999, legislation was passed making owners of municipal airports eligible for ACRRA.⁶ In view of this change, and in order to better understand the liability and regulatory issues associated with the Aerial Applicators' use of municipal airports, this study and report were directed.

⁵ 1989 Minnesota Comprehensive Groundwater Protection Act

⁶ Minnesota Session Laws 1999, chapter 231, section 41.

Study Methods and Participants

Interested and affected parties knowledgeable about aerial applicator liability issues were identified and contacted by MDA staff. Five (5) meetings were held during the months of September and October where participants were interviewed individually or in separate small group sessions.

The following were identified as participants and interviewed for this study:

- **Minnesota Department of Agriculture** - administers state pesticide, fertilizer, incident response, and ACRRRA laws;
- **Minnesota Department of Transportation, Office of Aeronautics** - regulates airport operations;
- **Federal Aviation Administration, Minneapolis/St. Paul office** - regulates flight operations;
- **Insurance industry**- aircraft and Aerial Applicator specialties;
- **Aerial Applicators** – members of the Minnesota Agricultural Aircraft Association (MAAA) and the National Agricultural Aviation Association (NAAA), including one helicopter applicator, two fixed-wing applicators; and the MAAA Executive Director
- **Minnesota Municipal Officials** – representatives of municipal airports, the Minnesota Coalition of Airports (MCOA) and municipalities; and
- **Other Affected/Interested Parties** -
 - ACRRRA Board Chair
 - American Crop Protection Association local representative

[See Appendix B for a roster of individual participants.]

By initially meeting with individuals and small groups, MDA staff sought to get maximum input, a clear picture of the various issues involved and clarification of the differing sides to those issues and a free flow of ideas. A group session was held on October 28, 1999, where all the interested and affected parties met to discuss the substantive issues raised in the small group meetings.

Study Findings

Environmental Contamination at Municipal Airports

The following are publicly owned airports in Minnesota where the MDA has determined that agricultural chemical environmental contamination has occurred and where cleanup or additional investigation is needed. Of the 139 publicly owned airports in Minnesota⁷, approximately five (5) airports have documented contamination. (See Appendix C for a map of Minnesota Public Use airports.)

Lac Qui Parle Airport, Madison (MDA Case File FY88R093)

In the late 1980's a public well that served the airport staff and the public consistently tested above the current Recommended Allowable Limit (RAL), as established by the Minnesota Department of Health, for atrazine herbicide at the Lac Qui Parle Airport. An atrazine incident reportedly had occurred on the site ten years prior. Information and evidence were insufficient to determine a viable responsible party. The city of Madison agreed to oversee an investigation and cleanup when a

⁷ According to a September 27, 1999 letter from the Mn/DOT Aeronautics, there are 139 publicly owned airports and an additional six private airports that are open to the public.

statutory amendment gave Madison and two other cities access to ACRRA as "eligible persons" for reimbursement.

Madison began the investigation of the airport site during the summer of 1993. A remedial investigation was completed. Remedies consisted of a limited soil removal and a well upgrade. While Madison is eligible for reimbursement through ACRRA, it has not submitted a reimbursement application to date.

Perham Municipal Airport (MDA Case File FY90F138)

Seven (7) different responsible parties were identified for the contamination at the Perham Municipal Airport, including both Aerial Applicators and past property owners. The Aerial Applicator currently using this airport volunteered to lead an investigation and cleanup. Under his project management, a remedial investigation was completed in 1996, and approximately 450- 500 cubic yards of contaminated soil were excavated and land treated in 1997. Ground water monitoring is continuing at this site to monitor success of the source removal. The city of Perham, the property owner, will not be leading this response as long as the other "earlier" responsible parties continue the work as requested by MDA.

Hector Municipal Airport (MDA Case File FY88R090)

Before building a rinse pad, soil was sampled in the load area in 1988 and sampling documented contamination of herbicides and one insecticide. Additional sampling 1993 documented one herbicide. Based on geology, and levels and types of pesticides found, the Hector Municipal Airport is an MDA low priority site in regard to environmental risk. Additional sampling by MDA will be completed to determine if further investigation and cleanup is needed. Should a comprehensive investigation and cleanup become necessary, the airport manager, an Aerial Applicator working out of this airport, may be a viable responsible party. It currently appears unlikely that the City of Hector will be involved in financing the cleanup.

Graceville Municipal Airport (MDA Case File No. 94-0756)

In 1994, soil samples were taken in areas of stressed vegetation during a routine inspection. Low levels of herbicides were documented. Based on geology and levels of pesticides found, this site is considered at low risk for environmental harm. The case file indicates that although there was no aerial applicator based at the airport at the time of sampling, the City is aware of an operator who had done business at the airport in the recent past. Because this case file is low on the priority list, MDA has not completed a responsible party search and the viability or identities of any responsible parties is not known.

Benson Municipal Airport (MDA Case File No. 92-0186)

In 1992, rinsate storage tanks overflowed when an unusually heavy rainfall collected on the outside concrete load pad and was then automatically pumped into the tanks. MDA requested that Bonanza Valley Aviation, who operated from the airport and who owned the storage facility, begin a cleanup. Sampling and review of a 1987 cleanup at the site by the Minnesota Pollution Control Agency was performed. MDA issued a follow up request for cleanup in 1996. Due to delays in completing MDA approved work, a Corrective Action Order was issued in July 1997. A remedial investigation was completed in August 1997; three monitoring wells and soil borings were completed to determine the extent of contamination. Soil excavations were finished in July 1998, and the soil was land spread.

West Central Environmental Consultants (WCEC) terminated their contract with Bonanza Valley Aviation in June 1, 1999, due to non-payment. On October 20, 1999, the ACRRA Board concurred with MDA's finding that Bonanza Valley Aviation was unable to continue work at the municipal airport site, thereby (under the ACRRA law) making Benson eligible for ACRRA incident cost financing. The city subsequently hired WCEC and groundwater monitoring is continuing. Additional soil excavation may also be needed.

Based on admittedly limited MDA Incident Response Program experience, it is likely that viable responsible parties may not be identifiable at some municipal airports. Multiple Aerial Applicators using particular airports over a period of time makes it difficult to ascertain who did what and when. Despite this dilemma, the MDA has to date been very encouraged by the number of currently operating Aerial Applicators who voluntarily step forward to assume some responsibility and lead investigation and cleanup projects. As a result, owners of municipal airports are not necessarily going to have to assume responsibility and/or liability for past problems. Allowing cities and other public airport owners to be ACRRA eligible should provide an additional opportunity to have municipalities lead such work when necessary. This work should not cause a significant negative impact on the ACRRA, since the expenditures would have been the same had a private eligible person(s) been identified or volunteered.

Financial Opportunities for Incident Cleanup at Municipal Airport Sites

A primary motivation for the creation of the ACRRA program was the lack of financial ability and opportunity for responsible parties to address contamination problems. The following describes opportunities that currently exist. ACRRA money is available for reimbursement of cleanup costs up to \$200,000. (See Appendix A)

Agricultural Chemical Response & Reimbursement Account (ACRRA)

ACRRA funds the cleanup of agricultural chemical incidents by eligible parties. There is a maximum reimbursement or "cap" on funding of \$200,000 per incident. In a few cases, the cost of cleanup has exceeded this maximum. Proposals to raise the cap on have been discussed. According to input from municipalities received during this study, a cap increase would not directly lessen their liability anxiety in regard to Aerial Applicator use of their airports.

ACRRA receives surcharges from commercial pesticide applicator licenses, including aerial applicators. The fund must maintain a balance between \$1,000,000 and \$5,000,000. To maintain this balance, surcharges are periodically adjusted. Individual Aerial Applicators have paid either \$40.00 (1991-1995) or \$20.00 (1990, and 1996-2000) in surcharges annually. Based upon projections of future reimbursements, the ACRRA surcharge will increase again to \$40.00 per Aerial Applicator license beginning year 2001.

The amount of ACRRA surcharge contributed by Aerial Applicators varies between \$4,000 and \$10,000 (depending on the current surcharge amount). For example, in Fiscal Year 1999 (July 1 – June 30), 232 Aerial Applicators paid a \$20 license surcharge fee for a total contribution to ACRRA of \$4,640.00.

Reimbursements from ACRRRA vary depending on the number and extent of cleanups for any given year. (See Appendix D for a full statement of ACRRRA revenues and expenditures from all sources.)

Table 1. Revenues from Aerial Applicator Surcharges and Municipal Airport Site Reimbursements from ACRRRA*

	FY 1999	FY 1998	FY 1997
AERIAL APPLICATORS:			
INCOME SOURCES:			
ACRRRA Surcharges on Licenses	\$4,640.00	\$5,080.00	\$4,700.00
AIRPORT CLEAN UPS:			
ACRRRA REIMBURSEMENTS:			
(Cleanup Costs from two airport sites)	\$134,524.98	\$29,474.46	\$0.00

*The majority of revenues to ACRRRA are from surcharges on agricultural chemical sales. No state data exists on the breakdown of these sales by type of purchaser; however, Aerial Applicator purchases may represent a significant portion of this revenue in addition to the license surcharge fees above.

Minnesota Department of Trade and Economic Development

The Department of Trade and Economic Development (DTED) offers a Contaminated Cleanup and Investigation Grant Program. The program provides grants for contamination investigations and the development of a Response Action plan (RAP), or for the cleanup of contamination on sites that will be redeveloped. DTED grants can pay up to seventy-five percent (75%) of costs of petroleum contamination cleanup, as well as other contamination, as defined under Minnesota Statutes chapter 115C.01.⁸ Approximately \$250,000 is available per year for all fundable projects.

Cities, port authorities, housing and development authorities, economic development authorities or counties are eligible to apply. Both publicly and privately owned sites qualify for the program.

Insurance

Insurance companies offering policies to Aerial Applicators do not include environmental pollution coverage. This type of coverage is specifically excluded from all policies. Additionally, despite recent attempts to make "bonding" a requirement for Aerial Applicator operations at municipal airports, there is no bonding of this type and for this purpose available in the United States.

Interviews with one of the largest insurers of aviation, aircraft and Aerial Applicators in the country, (and the largest in Minnesota), found the following:

- There are four (4) companies worldwide that sell insurance coverage to Aerial Applicators.
- Aerial Applicators licensed in Minnesota need to show "financial responsibility" as part of obtaining the license, however, this may also be accomplished without insurance via a "net assets statement."
- Insurance coverage is available only for property damage to farm sites treated by Aerial Applicators, for drift to adjacent sites, and for sudden and accidental releases. Most policies are limited to

⁸ Chapter 115C.01 is also known as the state Superfund Law.

\$100,000 for sudden and accidental releases. On occasion, coverage has been offered to \$500,000 or \$ 1,000,000, but only for "one time" contracts and for one pilot only.

- The insurance industry thinks the ACRRA Program and benefits are "terrific," particularly because there is essentially little or no insurance of this type available. The industry is also unaware of any "umbrella" policies that would work as well in conjunction with benefits available via the ACRRA program. (SEE, Appendix A.)
- At times the insurance industry has been contacted by Minnesota corporate growers about higher liability coverage, but because the premiums are set so high these policies are effectively unavailable.
- In coordination with and under the auspices of the National Agricultural Aviation Association (NAAA), a special insurance policy has become available. However, this policy only covers property damage for sudden and accidental type incidents; it does not cover personal injury damages, it does not cover environmental pollution, and it has a \$25,000 deductible. According to the Minnesota insurance industry representative, who worked on making this policy available to Aerial Applicators, the coverage has not been well received and is not widely purchased.
- A few other policies are available to Minnesota Aerial Applicators, but none cover historical releases of agricultural chemicals. In fact, this type of coverage is specifically excluded.
- The industry believes little effect would occur on the availability of pollution insurance coverage if the MDA would support stricter environmental safeguards for Aerial Applicators operating at municipal airports. It was stated that there is too much risk to insurance companies in regard to chemical liability exposure for them to write this type of coverage. This has apparently little to do with the actual or potential negligence of Aerial Applicators and everything to do with limiting liability in an area that is perceived as out of the control of the insurance industry. Additionally, the low numbers of potential customers wanting this type of coverage further compounds the high risk.
- There have been very few claims made by aircraft operators, including Aerial Applicators, for accidents at municipal airports.
- The Minnesota insurance industry is well aware that some Aerial Applicators have installed environmental, regulatory and optional safeguards at Minnesota municipal airports. This is seen as proactive and fully endorsed by the insurance companies.
- The industry recommends that Aerial Applicators and owners of municipal airports consider delineating liabilities by means of a lease. Other businesses regularly enter into lease agreements with airports that set forth specific requirements and obligations for all parties. Additionally, it's recommended that transient businesses agree to some type of lease agreement, to further protect the property owners and specifically define responsibilities.

Regulatory Responsibilities

Aerial Applicators are responsible for complying with many state and federal requirements that are administered by a variety of agencies. The following details the applicable agency requirements and responsibilities.

Federal Aviation Administration

The Federal Aviation Administration (FAA) regulates flight operations of airplanes, including the flight operations of Aerial Applicators.⁹ "Certificates" are required from the FAA prior to operating as an Aerial Applicator. Requirements include standards of skill and knowledge, precautions to be used during application of agricultural chemicals, performance capabilities and operating limitations of specific aircraft used and safe flight and chemical application procedures. Testing for certification includes checking on airworthiness of the airplane, good condition of application equipment, demonstration of "emergency chemical dumping" procedure and safe agricultural aircraft operation. Annual inspections of engine and airframe are required. Certificates are valid until surrendered, suspended or revoked.

Nationwide, FAA must perform mandatory surveillance and inspection of Aerial Applicators. Applicators are randomly chosen each year; however, all applicators are scrutinized under these surveillance and inspection requirements at least once within a five-year period.

The FAA investigates complaints and accidents. Three (3) accidents in Minnesota involving agricultural operations were reported to the FAA in 1999. Common complaints related to agricultural operations often involve low flying and chemical drift. If accidents involving agricultural chemicals occur, the state "Duty Officer" should be notified by the pilot/Aerial Applicator, the FAA or both.

In the experience of the FAA District Representative, due to rigorous Minnesota laws and enforcement, few problems with agricultural operations have been seen in Minnesota compared to other states.

Minnesota Department Of Transportation (Mn/DOT), Division Of Aeronautics

This office regulates aviation and aviation safety, and specifically airport operations in Minnesota.¹⁰ Mn/DOT's Aeronautics Division issues "Commercial Operator" licenses to Aerial Applicators. This license is required to use small, municipal airports.

According to Mn/DOT, of the 139 publicly owned airports in Minnesota, nine (9) have agricultural spray/wash/load pad facilities installed, and three (3) of these received state cost share grants from Mn/DOT Aeronautics to construct. Mn/DOT is not aware of any such facilities on the six (6) private, open-to-the-public airports.

⁹ The regulations concerning aerial applicators are found in the Code of Federal Regulations, 14 CFR 137.

¹⁰ Minnesota Statutes Chapter 360

For many years Mn/DOT has offered a "cost share" program that provides financing for municipal public airport improvements, including construction and installation of environmental safeguards used by Aerial Applicators in their storage, mixing and loading of agricultural chemicals. Although the MDA and the Minnesota Technical Assistance Program (MnTAP) believed the Mn/DOT cost share program was highly sought after, available information does not support this view.

Some Aerial Applicators have voluntarily installed, at their own expense, safeguards at municipal and private airport locations. The responsibility for construction and maintenance of the safeguard (load pad, storage containers, etc.) has been included as a term in a lease between a property owner and an applicator. The Mn/DOT program has also provided partial funding (60%) for eligible construction costs of some containment and other chemical safeguards inside and outside of hangars.

In the past, Mn/DOT had funded pesticide containment facilities, but after review of current policy requiring that all funding must benefit the flying public, they are at the present time reconsidering such funding. However, hangars and other buildings do qualify for funding, concrete floors included. For example, if the floor costs \$10,000 and additional curbing for a safeguard costs \$5000, then the \$10,000 would qualify for funding, while the additional work for the safeguard would have to be covered by another party. Nonetheless, the cost-share approach is still effective as a financial incentive.

Under the law, Mn/DOT, in dispensing both state and federal funds for airport operations, cannot allow public airports to discriminate against any particular type of aviation activity or business. Local airports can manage individually any "congestion" or other flight operation issues that might occur as a result of landings/take offs, but cannot discriminate for or against any particular type of aircraft activity, such as aerial application of pesticides.

Mn/DOT supported guidance information published by the Minnesota Agricultural Aircraft Association (MAAA) and the Minnesota Coalition of Airports (MCOA).¹¹ The Mn/DOT Aeronautics program also supported the legislation in 1999 making owners of municipal airports eligible for ACRRA financing.

Minnesota Department of Agriculture (MDA)

Pesticide Containment & Storage

General requirements pertaining to aerial applicators for the mixing, loading and storage of pesticides¹² are outlined below.

Mixing & Loading

- ❑ Current regulations state that a person may not use, store, handle, distribute, or dispose of a pesticide, rinsate, pesticide container, or pesticide application equipment in a manner that will cause unreasonable adverse effects on the environment.
- ❑ Requirements for containment at mixing and loading sites are different for small packaged pesticides (55 gallons or less) than for minibulk pesticides (56 to 499 gallons).

¹¹ *Agricultural Aircraft Operations at Municipal Airports, A Guidebook for Municipal Airport Managers*, March 1995

¹² Minnesota Statutes Chapter 18B (Pesticide Control Law) and Minnesota Rules Parts 1505.3010 – 1505.3150 (Pesticide Storage Rules).

Small Packaged Pesticides

- Current rules and regulations do not require a curbed load pad that provides containment for the airplane, pesticide containers, and the inductor (a pre-application mixing tank) when mixing and loading with small packaged pesticides unless it is required on the pesticide label. A safeguard such as drip pans, dry disconnects, and curbed load pads would be strongly recommended to help prevent the chance of an incident occurring.

Minibulk Pesticides

- Current rules and regulation require the following during the mixing and loading operation with minibulk pesticide containers:
 - Containment for minibulk pesticides containers;
 - Containment for the inductor if one is used;and
 - Either a curbed load pad that provides adequate containment for the airplane during the mixing and loading operation or use of a dry disconnect on the hoses used for filling the airplane (under the alternative technology provision).

Rinsate Management

- Rinsate means a diluted mixture of a pesticide or pesticides with water, solvents, oils, commercial rinsing agents, or other substances, resulting from the cleaning of pesticide application equipment or pesticide containers.
- All rinsate generated from mixing and loading operations must be used or disposed of in accordance to Minnesota Statutes Chapter 18B and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The manner of use and/or disposal must not cause unreasonable adverse effects on the environment.
- Best use for rinsate is to apply to the target crop according to label directions.

Storage

- Small packaged pesticides must be secure (locked fence or building) and stored a minimum of 150 feet from a well.
- Minibulk pesticides must be stored in a secure area such as a locked fence area or building with adequate containment (110% of largest container if roofed, and 125% of largest container if unroofed). If properly contained the following well setbacks apply: 100 feet for unroofed containment areas and 50 feet for roofed containment areas.

Inspection and Incident Response

MDA has the authority for entry, inspection, and sampling at agricultural chemical facilities, including sites where Aerial Applicators operate¹³. These inspections would be conducted by one of ten Agricultural Chemical Inspectors located regionally throughout the state.

These inspections can be either routine or complaint driven, and evaluate the use, storage, handling, and disposal of agricultural chemicals used by the Aerial Applicators. For spills and contamination, Chapter

¹³ This authority is found in Minnesota Statutes, Chapter 18D.201, and FIFRA Sections 9(a) and 20(c).

18D requires that all spills must be immediately reported and abated. If evidence of a spill is found during an inspection, the facility may be cited in violation for failure to immediately report and abate it.

If an inspection documents noncompliance with any applicable Minnesota Statutes and/or Rules, the firm will be required to correct all areas of noncompliance noted. Depending on the gravity of the violation and the history of the facility, MDA may initiate further enforcement action, including but not limited to the issuance of orders and assessment of financial penalties.

Municipal and Industry Concerns

Municipal Airports

Property Rights, Local Airport Land Use, and Other Concerns

Aerial Applicators are home based at many municipal airports in Minnesota and conduct seasonal operations from many others. The MDA has learned that there are constructive, trusting, and environmentally protective relationships between many municipalities and the Aerial Applicators operating from their airports. One airport commissioner described the Aerial Applicator working out of his airport as "an excellent operator." This commissioner described the applicator/municipality relationship as one based on nothing more than a handshake. This trust had developed over many years of good performance and environmental stewardship. He added that no contract could afford his airport adequate protection if he was dealing with a "bad" applicator, one who was careless with chemicals and who would not install or maintain necessary environmental safeguards.

Other municipalities do not have the good communications or relationships as described above. These municipalities express fears about negligent Aerial Applicators contaminating their city property. They worry that identification of responsible parties is problematic due to multiple applicators working from a given airport over several years. They also offer concerns about transient Aerial Applicators using their fields. Home based Applicators are often well known at the airport, in the community, and employed by local agricultural growers. Transients come and go without much notice and are viewed as having little personal stake in safeguarding airport property. Some municipalities consider home-based applicator(s) responsible for any transients also operating from the municipal airport.

Transients as well as home-based Applicators need to use municipal airports. The long, well maintained runways and substantial aviation services (fuel, repair, weather information, etc.) provided by the comparatively larger municipal airports make it easier and safer to operate from them, as well as cause less wear and tear on agricultural airplanes.

Municipalities are very concerned about any assumption of liability and costs for agricultural chemical incidents that occur on their airport property. Under the Minnesota Environmental Response Liability Act (MERLA/State Superfund)¹⁴, the property owner may be considered a responsible party. In the case of one city, the municipal official/airport commissioner stressed that property use was significant in determining whether or not Aerial Applicators should or could operate at the airport. All aircraft by law can land at and take off from public airports. However, the differentiation of airport property used for flight operations from that used for other purposes was highlighted. The FAA and Mn/DOT regulate the

¹⁴ Minnesota Statutes 115B.01 to 115B.24

operations and behavior of Aerial Applicators and their aircraft on the core flight operations property. However, municipalities can assert legal zoning authorities over business conducted on the remaining non-flight operations property.

Basically, municipalities are concerned about protecting their property. Their risk assessments in regard to agricultural chemical operations of any kind, Aerial Applicator or otherwise, raise serious questions of responsibility and liability, which they believe cannot be ignored. Financial responsibility for incident clean up costs is of paramount concern to municipalities operating airports used, or proposed for use, by Aerial Applicators.

Alexandria Airport Case Study

When an Aerial Applicator recently requested to operate from the city of Alexandria municipal airport, the city insisted that the applicator provide substantial safeguards prior to operation. The MDA would not have required the applicator to provide such safeguards under existing regulations. Additionally the city asked that the Aerial Applicator provide an indemnity bond prior to obtaining permission to operate at the airport, as well as pay for an observer of the city's choosing who would be present at all times the applicator is using city property. According to a local official, such physical safeguards and bonding and the observer presence would have been asked from each and every Aerial Applicator who wished to operate at the city airport, regardless of whether the applicators were intending on using the Alexandria airport as a home base of operation or as one of many airports.

The Aerial Applicator and the MAAA, believed these requirements were excessive and were prohibited by a preemption clause in the Minnesota Pesticide Law, which reads,

*“Except as specifically provided in this chapter, the provisions of this chapter preempt ordinances by local governments that prohibit or regulate any matter relating to the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides. It not the intent of this section to preempt local responsibilities for zoning, fire codes, or hazardous waste disposal.”*¹⁵

Litigation was subsequently initiated by the MAAA but was placed on suspended status until February 1, 2000, on stipulation of the parties pending the 1999 legislative initiative to include owners of municipal airports as eligible parties under ACRRA, and pending the release of the study and findings contained in this report.

An Alexandria Airport Commissioner interviewed emphasized that the city was not attempting to regulate or affect the Aerial Applicator's flight operations, but rather the use and protection of property located beyond the flight operations regulated area. They stated their belief that this was not an extraordinary request, but one that simply afforded the city some confidence and assurance that its property would be adequately safeguarded from environmental risk or harm.

Access to Municipal Airports

Businesses usually found on airports can include fuel services, charter operations, flight schools and Aerial Applicators. Mn/DOT representatives explained that airport administrators may have rules for

¹⁵ Minnesota Statutes 18B.02. Preemption Of Other Law. (1998).

particular businesses, but they cannot discriminate between businesses. This rule applies to airports because they receive state and federal funding. MAAA noted that additional requirements for Aerial Applicators beyond MDA regulations might conflict with the MDA pre-emption clause. The group discussed whether land use or zoning may give the right to an airport to require additional safeguards for Aerial Applicators. Generally, all agreed that with improved equipment and regulations, environmental contamination was not as big an issue as it might have been in the past.

The city of Alexandria had set forth requirements for the Aerial Applicator that had requested airport access. This information led to a discussion of how much of a risk was involved. Alexandria seemed to be trying to determine how toxic certain pesticides were before allowing airport use. For example, spraying for forest tent caterpillars was perceived as safe, but other agricultural chemicals sprayed were perceived as not safe. MAAA noted that with EPA registration and MDA licensing, risks should be manageable for all pesticides. MAAA felt that if cities do not believe these risks are manageable with existing regulation, then any additional regulation should be made at the state level. MDA commented that with regard to agricultural chemical incidents and liability, quantity is more of a factor than toxicity.

The Aerial Applicators explained that regulation at the state level is important. Pesticide business activities often cross several political boundaries. Keeping track of differing requirements at every boundary would be unduly burdensome, and would make applications nearly impossible. In addition, MDA, Mn/DOT and FAA already regulate Aerial Applicators. There was some agreement that additional record keeping such as who had operated at an airport; location of mix/load areas, etc. would be acceptable.

Another aspect of airport access discussed was lease arrangements on airport property. Cities routinely lease land for private building construction, or will lease publicly funded buildings for private use. Mn/DOT noted that leases vary, running from 1 to 99 years. Alexandria's lease terms were usually for three years, and may be affected by enforcement actions issued by the MDA for pesticide law violations.

Aerial Applicators

There are approximately 200-250 Aerial Applicators routinely operating in Minnesota. The Minnesota Agricultural Aircraft Association (MAAA), which represents the industry, pointed out that Aerial Applicators provide a wide variety of essential services, including: agricultural commodity pest control and protection; lake reclamation; forestry site preparation and release; mosquito control; fire suppression; and power and pipeline rights-of-way maintenance. Many Aerial Applicators routinely use municipal airports as bases of operations. In times of wet weather, disease or insect infestation, the availability of these airports is critical to the protection of Minnesota's agricultural commodities, public and private lands and public health.

Aerial Applicators emphasized that they pay aircraft registration fees and aviation fuel taxes as a regular part of their business. These taxes are used by the Mn/DOT to build, support, and improve Minnesota's municipal airport system, which is used by the entire aviation community, including agricultural aviation. Aerial Applicators feel that prohibiting their use of municipal airfields is unfair and would be no different than a municipality banning tractors or ground application equipment from using public roads.

Aerial Applicators state that over the years they have become concerned about the escalating number of municipal airports attempting to ban or restrict agricultural aircraft operations. In the majority of the cases, applicators point to heightened public awareness and concern regarding the use of pesticides, rather than actual chemical spills or incidents, as the reason for these restrictive activities.

Increased public awareness has also raised the issue of liability for agricultural chemical spills at a municipal airport. The MAAA states Aerial Applicators have no desire to hold municipal airports responsible if an incident occurs on municipal property. Aerial Applicators say they understand and appreciate the municipalities' position that there is no way to be 100% sure a responsible party can be positively identified if multiple operations have used the same airport facilities.

To address these concerns, the MAAA sought legislation in 1999 that would allow municipal airports to have access to the ACRRRA fund. In addition, the MAAA has worked with the Mn/DOT to author a guidebook to help municipal airport managers understand agricultural aircraft operations and alert them on to how to spot illegal operations and pesticide handling practices.

Aerial Applicators have three (3) main concerns regarding the issue of continuing access to municipal airports. They are:

1. Uniform Regulation. Aerial Applicators are concerned about individual municipal airports enacting regulations over the use and handling of agricultural chemicals, including banning some products while allowing the use of others. They point out that agricultural lands often cross county and township borders. In their opinion, these lands require a uniform set of guidelines to ensure public health and safety and provide adequate protection for Minnesota's agricultural resources.
2. Economics. The struggling farm economy affects not only farmers but related businesses as well. In these difficult financial times, Aerial Applicators question the economics of construction of permanent storage and handling facilities at municipal airports. According to the MAAA, covered, hangar-type facilities can cost anywhere from \$100,000 to \$250,000. Because the hangar is located on municipal property, the applicator can invest the funds but does not ultimately "own" the facility. When the applicator's lease expires, this investment is lost. The cost savings which might be realized from having an airport construct a "multi-purpose" load pad are not available as other general aviation-type aircraft are unable to use such a facility because of concerns regarding cross-contamination, aircraft weight specifications and potential for human exposure. It was suggested that multiple agricultural operators could use one load pad, but Aerial Applicators responded that again, cross-contamination, human exposure and proper maintenance concerns would likely prohibit such an arrangement.
3. Changing Technology. Aerial Applicators noted that they felt changing technology, such as: "Dry-Disconnect" hoses; portable load pads; stainless steel induction and mixing trailers were all examples of new technology which were equally, or more effective at containing /preventing agricultural chemical spills and incidents compared to permanent unroofed load pads. Applicators felt that promoting new technology should be emphasized.

Agricultural Chemical Industry

The study included an interview with a representative of the American Crop Protection Association (ACPA), whose members are the "registrants" of pesticides distributed and used in Minnesota. Registrants contribute the majority of annual revenues to the ACRRA fund. They are concerned that ACRRA monies be spent for specific, legislatively mandated purposes. The industry was concerned about extending eligibility to owners of municipal airports, particularly because local units of government have other means of generating financing for environmental responses. Their position is that landfills and other sites where agricultural chemicals may have contributed to environmental contamination were not intended to be addressed by ACRRA.

With the increased eligibility of municipal airports in the 1999 legislation, the registrants and dealers continue to be concerned that ACRRA be used only for its primary and original intention; assisting the agricultural community in cleaning up historical problems and addressing emergency releases. They do not want it to be used for governmental responses to municipal property sites. However, the registrants/dealers do want the ACRRA to continue to be a viable means for addressing agricultural chemical incident issues, including contamination problems at municipal airports.

The registrants believe that increased accountability on the part of Aerial Applicators would provide a means of establishing responsibility for any incidents caused by Aerial Applicators at municipal airports. They view this as a simple extension of environmental stewardship, which the industry endorses. However, they do not believe that safeguards at municipal airports should be any different than what is will be or required in the future, for other agricultural chemical dealers/handlers at non-airport sites.

Statements were made that airport and Aerial Applicator operations at those airports should be sited differently and better, so as to prevent contamination of any surface waters. New technologies to prevent environmental releases, improved construction of currently required safeguards, and diligent maintenance of both old and new facilities is absolutely necessary and fully supported by the registrant community. The dealers and registrants support "field" mixing and loading of agricultural chemicals and believe this practice - which takes high risk handling activities to decentralized, less vulnerable locations - should be strongly encouraged by both the agricultural industry and state regulators.

ACPA considers Aerial Applicators a vital and essential tool for profitable and sustainable agriculture in Minnesota. It is their position that enforcement of existing regulations to prevent further environmental releases be consistently applied across the applicator industry, including the Aerial Applicator sector.

The ACRRA Board chair also repeated and supported the positions and objectives expressed by ACPA on behalf of registrants. Promoting newer technologies in regard to safeguarding facilities storing and handling agricultural chemicals, including airport agricultural chemical operations, was emphasized. Keeping in mind the burden on businesses with regard to record keeping, the Board chair indicated that increased record keeping held significant promise for ensuring better regulatory compliance as well as better establishing individual and personal accountability for spill prevention and response. Losing airport access privileges for failure to comply with applicable regulations, or failure to keep required records, was suggested for those occasions when MDA found unsatisfactory compliance.

Additional comments were offered in regard to greater industry stewardship via a “voluntary certification” program. This was envisioned to be additional training and record keeping in return for easier access to airport sites. A comment was offered that this sort of certification program - over and above the applicator certification/licensing program currently administered by MDA - might be necessary to preserve the Aerial Applicator industry, an industry niche that again was viewed as essential to a vital and prosperous Minnesota agriculture.

Industry representatives emphasized that regulatory oversight of airport agricultural chemical activities, like all other non-airport similar applicator/dealer activities, should continue to be the exclusive domain and responsibility of the MDA, and not be delegated or apportioned via ordinance to local units of government. In regard to increasing the “financial responsibility” requirements as part of licensing for Aerial and other pesticide applicators, all expressed concerns that raising the dollar levels would immediately impose an undesirable financial hardship on young and small business people in Minnesota’s agricultural industry.

Finally, industry representatives stressed that proper current and future siting of all facilities must be done with more planning and thought to geographic location, soil and groundwater vulnerability, wellheads, and practical environmental protection. It was offered that siting decisions could be a shared local/state responsibility. In the that regard they commented that Aerial Applicators operating at municipal airports should be treated no differently, and certainly not more stringently, than any other pesticide applicator business located elsewhere. To the extent these representatives spoke for their industry, all emphasized that the industry would benefit from strict enforcement against “bad actor” Aerial Applicators that failed to comply with regulations intended to prevent agricultural chemical incidents at municipal airports.

Although the positions of the industry representatives contacted for this study strongly support the work of Aerial Applicators, there appears to be a lack of advocacy by the agricultural community (growers, dealers, other agriculture business) in representing the absolute need for localized Aerial Applicator services and availability. These “partners” to Aerial Applicators have apparently not contacted any of the municipal officials interviewed. The Minnesota Department of Natural Resources has made previous and multiple contacts with various municipal officials in regard to the of programs for gypsy moth and tent caterpillar pest control and the importance of Aerial Applicator participation in these programs.

Liability and Operations

Statutory Liabilities

The MDA has the authority to oversee cleanups under Minnesota Statutes Chapter 18D¹⁶ and Minnesota Statutes Chapter 115B¹⁷. MDA has the discretion of enforcing either statute, but prefers to manage agricultural chemical incident under 18D, which is considered a more “user-friendly” law. Under Chapter 18D, cleanups are first requested, not ordered, and legal representation or litigation is usually not needed. If a person complies with such requests or order they may be eligible for ACRRA financing.

¹⁶ aka: The Agricultural Chemical Liability, Incidents, and Enforcement Law (the Agricultural Chemical Law).

¹⁷ aka: The Minnesota Environmental Response and Liability Act (MERLA, also known as State Superfund).

Under Chapter 115B, cleanups are ordered, attorneys are often required and/or advised, and no reimbursement is available.

The definition of responsible parties is also different for the two laws. A "responsible party" under 18D is anyone who has custody or control of the agricultural chemical, or in other words, persons who own, handle or use the product. The Minnesota Superfund law reaches further to also include landowners who had knowledge of the operations on the site. Under 18D, if more than one person is responsible for the incident, they may let a court apportion the costs. Under Superfund, all responsible parties are jointly and severally liable, which means that each could be held responsible for the entire cost of an incident response if the others are unidentifiable, unavailable, or unable to pay.

Once agricultural chemical contamination is documented on a public airport site, MDA routinely researches the current and past owners, handlers and users of pesticides that have operated at the airport. MDA also negotiates with current operators to lead the cleanup. If the responsible parties cannot be identified or are not able to pay, MDA may request the city, as landowner, to take over the cleanup. If the city refuses, MDA using state Superfund authority, may order the city to perform the cleanup as a responsible party.

Recent Legislation

During the 1999 Legislative Session language addressing the liability of owners of municipal airports and aerial applicators regarding agricultural chemical incidents was inserted into the ACRRA law, Chapter 18E.¹⁸ The language reads,

"As a condition for the use of space or facilities for the storage, handling, or distribution of agricultural chemicals on the grounds of a municipal airport, a licensed aerial pesticide applicator shall hold the owner of the airport harmless for any expenses to cover necessary corrective actions caused by the applicator."

In the opinion of the attorney involved with the Alexandria Airport case, this hold harmless provision provides liability from the Aerial Applicator to the owner of a municipal airport without the owner having to prove "fault". In addition, it eliminates any claim that other remedies provided in Chapter 18E are exclusive.

The MDA has no knowledge of any litigation or other municipal transaction where this new provision has been used for discussion or determination of issues concerning liability or responsibility. Informal consultation between the MDA ACRRA Program, Incident Response staff and the Office of Attorney General, indicated that little effect on the MDA authorities, which hold persons responsible for agricultural chemical incidents, would occur as a result of this statutory provision. What affect this language will have in regard to relationships between Aerial Applicators and municipal airport owners/operators is unknown at this time.

¹⁸ 1999 Minnesota Session Laws, chapter 231, section 43.

Airport Safeguards

The following includes siting and containment safeguards that were discussed and recommended as part of this study:

Roofed vs. Unroofed, Rinsate Management

- Unroofed curbed load pads can be a liability due to the amount of precipitation rinsate that is generated every time it rains. These types of load pads must have precipitation rinsate tanks on site large enough to store accumulated precipitation. Do not assume that precipitation accumulated on an unroofed curbed load pad is ever clean enough to discharge into the environment. All accumulated precipitation should be used as make-up according to label directions.
- Roofed facilities (curbed or uncurbed) offer the best solution in preventing contaminated precipitation rinsate. Roofed facilities with a curbed load pad and use of a dry disconnect offers the best possible safeguarding for Aerial Applicator mixing and loading sites. Roofed facilities with no curbed containment for the airplane but with metal containment for the minibulk and inductor, and use of the dry disconnect when loading the airplane offers the second best safeguarding for Aerial Applicator mixing and loading sites
- All load pads should be kept clean with spills being immediately cleaned up to reduce contaminants in the rinsate and reduce chance of tracking off the pad. Management of the load pad requires keeping the pad clean and minimizing the rinsate that is generated.

Load Pad Design and Location

- Curbed load pads used by Aerial Applicators should be allowed to have longer sloped entrance and exit ramps (> than 1.0 foot of length per inch drop) than what is typically allowed with load pads used by ground applicators. Due to size of the pad the 3-inch curb requirement may also want to be reevaluated for Aerial Applicator load pad designs.
- A sump(s) should be installed to accommodate all rinsate that would be generated during normal mixing and loading. Sumps would protect rinsate from being blown outside that load area when an airplane exits the load pad.
- All floor joints and curb/floor joints must be constructed with compatible waterstop materials and be leak proof.
- There is an additional cost associated with construction of curbed hangars that that are designed to be leak proof and meet all the requirements in the bulk pesticide rules.
- Well setbacks for pesticide mixing loading areas are the same as pesticide storage areas. 150 feet if no curbed load pad is used, 100 feet if an unroofed curbed load pad is used, 50 feet if a roofed curbed load pad is used.

Load Pad Use

- A shared load pad by more than one Aerial Applicator can increase the liability if spilled materials on the pad are not immediately and completely cleaned up. A contaminated load pad that is unroofed

only magnifies this problem when rainfall increases the amount of contaminated precipitation rinsate that is generated. Aerial Applicator's should be hesitant to use any rinsate where unknown contaminants from another Applicator are present.

- Exclusive use of a roofed permanent load pad should be encouraged for those Aerial Applicators that work predominantly out of one airport facility.
- Use of a dry disconnect (with drip pans and a portable containment for pesticides and inductor) would be the most economical way for Aerial Applicators that work out of more than one airport facility to safeguard their mixing loading operation.

Accountability

Several of the participants in this study brought up the subject of "accountability" of Aerial Applicators operating at municipal airports. Although the concept of accountability may be viewed slightly differently by the different participants, generally the MDA took it to mean record keeping and or some other means of memorializing activities associated with the storage, mixing, loading, handling and distribution of agricultural chemicals at municipal airports, and in particular, activities involving pesticides. Attorneys representing municipal airports and registrants were strong advocates for record keeping as an accountability mechanism to manage liability. Both indicated that the simple act of recording information can serve to make a person mindful of compliance and performance obligations, and that records can remain while people and companies move on and away. This applies to a municipal airport, where multiple Aerial Applicators may conduct operations at the same time or over a period of years. Establishing who did what and when can be in many cases impossible to determine particularly if no records exist.

In regard to Aerial Application businesses at a municipal airport, the Minnesota Pesticide Law currently requires record keeping for certain activities:

For a Minnesota Licensed **Commercial Pesticide Applicator**, records must be kept for all applications performed. This includes:

- The date of pesticide use and the time use was completed;
- The brand name and U.S. Environmental Protection Agency registration number of the product(s) used and the dosages applied;
- The "units" (acreage, etc.) treated;
- The temperature/wind speed/wind direction at time of application;
- The location of the site treated; and
- The names and addresses of the customer, the applicator, company; and
- Applicator license number.
- The commissioner also may require "any other information ..."; the applicator must retain records for five (5) years.¹⁹

For a Minnesota Licensed **Non-Commercial Pesticide Applicator** (a company employee doing work for the company on company property, or a government employee doing work on public property), the same

¹⁹ Minnesota Statutes Chapter 18B.37(1998).

record requirements apply as noted above, except records only need to be kept for use of Restricted Use Pesticides.¹⁷

For an Aerial Applicator that sells Restricted Use Pesticides, a **Pesticide Dealer License** is required. Pesticide Dealers must keep records of :

- ❑ The name, address and certification number of buyers;
- ❑ The kind and amount of product purchased; and
- ❑ The date of purchase.²⁰

For a person operating a bulk storage facility (ie. bulk, mini-bulk containers), inspection and maintenance records must also be kept, including “releases onto the loading area or into the secondary containment area, including the date, time, type of pesticide, volume, cause, actions to contain, and management of the release.”²¹

Generally, all of the above records must be kept for a period of five (5) years.

Proposals from the study participants for increased accountability via record keeping were essentially a combination of the above requirements and a need to additionally record airport pesticide mixing and loading activities. Importantly, because many Aerial Applicators use only small volume packaged (1 quart, 1 gallon, 2 ½ gallon) containers, none of the above regulations regarding bulk or mini-bulk pesticides are applicable. Regardless, some of the participants indicated that storage, mixing, loading, and sales of pesticides at municipal airport should be subject to record keeping.

This was not a universally shared view. Several of the Aerial Applicators interviewed stated that they are already required to keep substantial records and increasing record keeping requirements would be a undeserved and unproductive regulatory hardship. Additionally, they added that this would be a particular burden for home-based applicators and would be ignored as bothersome and avoidable by Aerial Applicators, who move from one location to another or who are out of state transients.

Comments were offered that record keeping requirements regarding storage, mixing and loading should be no different for Aerial or ground Applicators since both are responsible for preventing incidents. Existing MDA regulations for small package handling sites, including most Aerial Applicator operations, are the same as required for agricultural chemical facilities storing bulk and mini-bulk products.

Discussion also highlighted issues associated with responsibility, preservation, and enforcement of increased record keeping at municipal airports, if it were to be required. Due to limited or absent municipal supervision at many airports, it was generally agreed that (if required) each Aerial Applicator should be responsible for performing the record keeping. One participant suggested that the municipality be required to keep the original record and the applicator a copy. Another suggested that records currently required of commercial and non-commercial pesticide applicators be modified to also include the mixing/loading/storage information of value. Nearly all participants recommended that an applicator’s failure to perform record keeping should result in enforcement response by the MDA, and

²⁰ Minnesota Statutes Chapter 18B.37 and MDA program policy

²¹ Minnesota Rule Chapter 1505.3110.

not the municipality. It was also suggested that losing airport access could be imposed for serious or chronic record keeping failures.

Recommendations

Minnesota Department of Agriculture (MDA) Recommendations

MDA Outreach

MDA outreach focused on the multitude of interested and affected parties should be increased. One of the first steps will be to make sure information about these issues reaches the people who need to know. Written information included in this study to will be provided to the following organizations and their members.

- The Minnesota Aerial Applicators Association
- Other Minnesota Licensed Aerial Pesticide Applicators
- The Minnesota Coalition of Airports
- The Association of Minnesota Counties
- The League of Minnesota Cities
- Nationair Insurance Company and Other Aerial Insurance Companies
- The Minnesota Department of Transportation, Division of Aeronautics
- The Federal Aviation Administration Local District Office
- The American Crop Protection Association
- Minnesota Crop Production Retailers

Other outreach activities include:

- Providing names and contact numbers of MDA Agricultural Chemical Investigators to all owners/operators of municipal airports.
- Minnesota Duty Officer Numbers for Agricultural Chemical Incident Reporting will be provided to airport owners/operators.
- Municipal airport managers will be provided with a calendar of monthly ACRRRA Board meetings and invited to attend the meetings to see how this process works.
- Distributing more information to cities and airports regarding incident reporting and the ACRRRA program.

MDA Access and Assistance

In order to create continuity and facilitate communication between the MDA, Aerial Applicators and other affected parties on these issues, we recommend that the MDA designate a point person in the department to coordinate this work. Tasks would include acting as a representative for future meetings, coordinating the distribution of educational information, providing referral services and maintaining up-to-date and historical information on issues. Related tasks include:

- Providing additional staff and program assistance to Licensed Aerial Pesticide Applicators at Workshops, Meetings, etc.
- Coordinating with Mn/DOT Aeronautics
 - Providing input into municipal airport requests for Grants in Aid, hangar construction, chemical safeguards purchases/construction and mobile safeguards
 - Enlisting Mn/DOT staff in MDA Aerial Applicator training

- Land Use & Operational Contracts
 - Assist in Development of Standardized Local Ordinances and Contracts (leases, business licenses) between Municipal Airports and Aerial Applicators
 - Construction & Maintenance of Environmental Safeguards

Record Keeping

Two approaches to record keeping have been suggested. MDA staff believes that there are merits in both approaches. Suggestions for these approaches include:

Voluntary Approach

- Encourage all Minnesota Licensed Aerial Pesticide Applicators working at municipal airports to keeping the following records:
 - Dates of Mixing/Loading/Storage of Pesticides and Fertilizers
 - Name of Pesticides/Fertilizers Handled, inc. EPA Registration Numbers
 - Amount of Products Mixed, Loaded and Stored
 - Name and License Numbers (MDA and FAA) of Aerial Applicator
 A copy of this record will be given to the airport owner/municipality. The record should be retained for ten (10) years.

Regulatory Approach

- All Information above will be newly required record keeping for Aerial Applicators operating at any Minnesota airport/property (public or private).
- MDA will perform strict compliance monitoring and enforcement for record keeping currently required under Minnesota Pesticide Storage Rule.

Aerial Applicator and Airport Operations

The following recommendations cover structural and operational safeguards for both applicators and airports.

- Siting and Construction for Aerial Applicator Operations at Municipal Airports
 - Construction of proposed hangar and/or environmental safeguards (storage, containment, load pads, etc.) could be pre-evaluated by local authorities for environmental risk. Building permits should be issued only for sites having low and/or easily manageable risk.
 - Mixing and loading should be permitted only under roofed structures with concrete or other suitable load pads installed to capture and collect spills.
 - Mixing and loading done w/o roofed structures should require dry disconnects on all hose connections and drip pans for capture and collection of spills.
 - Construction of any and all safeguards for Aerial Applicator operations at municipal airports shall be done to standards found in Minn. Rules 1505.3010-1505.3150, Minnesota Pesticide Storage Rules.
- Municipal Airport Operations
 - MDA can be requested to inspect aerial applicator operations by such owners/operators.

Minnesota Agricultural Aircraft Association (MAAA) Recommendations

Aerial Applicators indicated that they support a greater exchange of information between Aviation-related businesses and Municipal Airport Managers. The MAAA has in the past supported uniform ordinances that apply to all businesses operating off a municipal airport (this includes everything from Aerial Applicators to charter operators, flight schools, etc.) Such ordinances would require all business operators to purchase a business license from the city and provide the city with: the name and address of the principal business owner; a copy of the pilot's FAA medical and pilot certificate; a copy of the pilot's MDA commercial pesticide applicator's license (if applicable); and verbal or written notice of termination of business operations (for itinerant-type business operations). This basic information, if retained by the municipality, would create an excellent historic record of airport businesses should concerns arise at a later date.

CONCLUSIONS

The Minnesota Department of Agriculture (MDA) in cooperation with affected parties conducted this study according to legislative directives. In doing so, a forum was created that gave all parties the opportunity to discuss key issues surrounding the use of municipal airports by Aerial Applicators. The participants were given several opportunities to offer candid, focused remarks and debate these issues. Participants reviewed drafts of this report and were asked to provide comments and recommendations. Additionally, the MDA believes that this report is sufficiently comprehensive to serve as a strong base of information on the current state of the industry.

The study illustrated the need for increased coordination and cooperation of all parties. Report recommendations encourage continued contact and communication; with MDA and other regulatory agencies providing facilitation and a continuing forum for further discussions. The need for multi-agency, local government and industry involvement is obvious due to the multiple regulatory forces and local jurisdictional issues. Recommendations focus on this need and the report will serve as a catalyst for future action. Additional legislative, regulatory or industry initiatives will be assessed by the MDA and the affected industry, following distribution and discussion of the report and its recommendation.

The MDA believes that all parties have benefited from this study and that the meetings and information exchanges resulted in a much greater understanding between the participants. MDA is committed to pursuing stronger relationships with those involved. We wish to thank all participants in this study for the time offered in meetings and presenting information for this report.

APPENDICES

- A. Reimbursement of Costs for Agricultural Chemical Incident Cleanups**
Agricultural Chemical Response and Reimbursement Account (ACRRA) Program Fact Sheet

- B. Aerial Applicators / Municipal Airports Study Roster**
Listing of Participants

- C. Minnesota Public Use Airports**
April 14, 1998 Minnesota Department of Transportation Map of Airports

- D. Minnesota Department of Agriculture Agricultural Chemical Response and Reimbursement Account Statement of Revenues and Fund Balance**
For the 1997, 1998 and 1999 State Fiscal Years Ending June 30

Reimbursement of Costs For Agricultural Chemical Incident Cleanups

Agricultural Chemical Response and Reimbursement Account (ACRRA)



THE AGRICULTURAL CHEMICAL Response and Reimbursement Account (ACRRA) was created by the 1989 Minnesota Ground Water

Protection Act. The ACRRA fund was established primarily to reimburse persons for costs incurred after July 1, 1989, in cleaning up agricultural chemical (pesticide and fertilizer) incidents.

The account is funded by annual surcharges on pesticide and fertilizer manufacturers, distributors, applicators and dealers. The amount of surcharges levied will largely be determined by the current ACRRA fund balance. The account has a required statutory minimum balance of \$1,000,000 and a maximum balance of \$5,000,000. It is the Commissioner of Agriculture who determines if the surcharge must be increased or decreased.

1999 ACRRA Surcharges*

COMMERCIAL APPLICATOR LICENSE	\$20
NON-COMMERCIAL APPLICATOR LICENSE (Non-Government)	\$20
STRUCTURAL PEST CONTROL LICENSE Company License	\$50
AQUATIC PEST CONTROL LICENSE	\$20
AGRICULTURAL FERTILIZER LICENSE	\$75
LAWN SERVICE - FERTILIZER	\$75
PESTICIDE DEALER LICENSE (RUP/BULK) (each licensed site)	\$75
FERTILIZER TONNAGE	\$.10/ton
PESTICIDE REGISTRATION annual gross sales	0.1%
OUT of STATE PESTICIDE DISTRIBUTORS	\$1000

*ACRRA Surcharges will double in 2000

Moneys from the ACRRA fund can be used for reimbursement of costs resulting from cleanup of sudden incidents, such as fire or transportation accidents, or can be used to reimburse persons for cleaning up sites contaminated with agricultural chemicals.

ACRRA Administered By Board

THE ACRRA FUND IS administered by the Agricultural Chemical Compensation Board (ACRRA Board). The ACRRA Board will determine and order reimbursements or payments from the fund to eligible persons. An eligible person is defined as a responsible person or an owner of real property, but does not include the state, a state agency, a political subdivision of the state, the federal government or an agency of the federal government.

The membership of the Board changed during Fiscal Year 1999. The following persons serve:

- ❖ **Paul Rhein, Board Chair**
Representing agricultural chemical registrants and manufacturers
- ❖ **Harlan More, Board Vice-Chair**
Representing agricultural chemical dealers
- ❖ **June Varner**
Representing farmers
- ❖ **James Pearson, Ex. Director, Petrofund**
Delegate for David Jennings, Minnesota Commissioner of Commerce
- ❖ **Tom Masso, Assistant Commissioner**
Delegate for Gene Hugoson, Minnesota Commissioner of Agriculture

Reimbursement of Corrective Action Costs

BEFORE ANY REIMBURSEMENT can be made, the Board must determine the following:

- The Minnesota Department of Agriculture (MDA) was given proper notice of the incident as required under Minnesota Statutes, Chapter 18D;
- The costs of investigation and cleanup were reasonable and necessary; and
- The eligible person complied with corrective action requests or orders issued by MDA or the eligible person took all reasonable action necessary to minimize and abate the incident (emergencies), and the corrective action was subsequently approved by MDA.

If the conditions listed are met, the Board may reimburse an eligible person for:

- Ninety percent (90%) of the total reasonable and necessary corrective action costs greater than \$1,000 and less than \$100,000; and
- One-hundred percent (100%) of the costs equal to or greater than \$100,000 and less than \$200,000.

The Board will not provide reimbursement until it has determined that costs on the reimbursement request were actually incurred and were reasonable. The Board has authority to reduce reimbursement if the incident was caused by a violation of Minnesota Statutes, Chapters 18B, 18C, or 18D.

How to Participate in the Program

1. Send A Written Request for an application and instructions to: ACRRA Program, Agronomy and Plant Protection Division, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107-2094.
2. Fill out the application completely, attach appropriate documents, and submit these materials to the ACRRA Program. The completed application must be received at least 30 days prior to the next board meeting to be considered for reimbursement at that meeting.
3. The Board reviews the application, decides whether to order payment, and determines the amount to be reimbursed.

ACRRA Financial Information

ACRRA Revenues

Fiscal Year 1999 ACRRA surcharge revenue was \$1,292,813. Fiscal Year 1998 surcharge revenue was \$1,301,863.

Administrative Expenses

Board and board staff administrative expenses for Fiscal Year 1999 was \$107,865; for Fiscal Year 1998 was \$115,171.

Reimbursements

In Fiscal Year 1999 the ACRRA Board ordered payments of \$2,069,881 to 68 persons for reimbursement or payment of corrective action costs. The amount of individual reimbursement ranged widely, from \$2,000 to \$189,100. Reasons for this range were type of incident (emergency or comprehensive clean up), type(s) and amount(s) of involved agricultural chemical products, technologies available for investigation and remedy, and other factors.

REIMBURSEMENTS ORDERED BY ACRRA BOARD

FY	Applications	Total Reimbursed
1991	5	\$35,951
1992	22	\$289,283
1993	49	\$1,272,361
1994	57	\$980,919
1995	40	\$1,054,913
1996	65	\$1,405,496
1997	59	\$1,750,688
1998	59	\$1,630,451
1999	68	\$2,069,881
	424	\$10,489,943

4. The Commissioner of Agriculture releases the reimbursement payment. The shortest anticipated turn-around time is approximately 60 days.
5. Requests for reimbursement may be considered by the Board no more than once every 12 months if the additional costs incurred are \$5,000 or less.

Requests for reimbursement of additional costs incurred of \$5,000 or more may be considered by the Board at every other regular board meeting. The Board or the Board's staff shall notify an eligible person requesting additional payments when the next regular board meeting is to be held at which requests will be considered.

Requests for direct payment (under proven financial hardship conditions) may be made at every other board meeting.

For further information, contact the ACRRA Program at:
(651) 297-3490

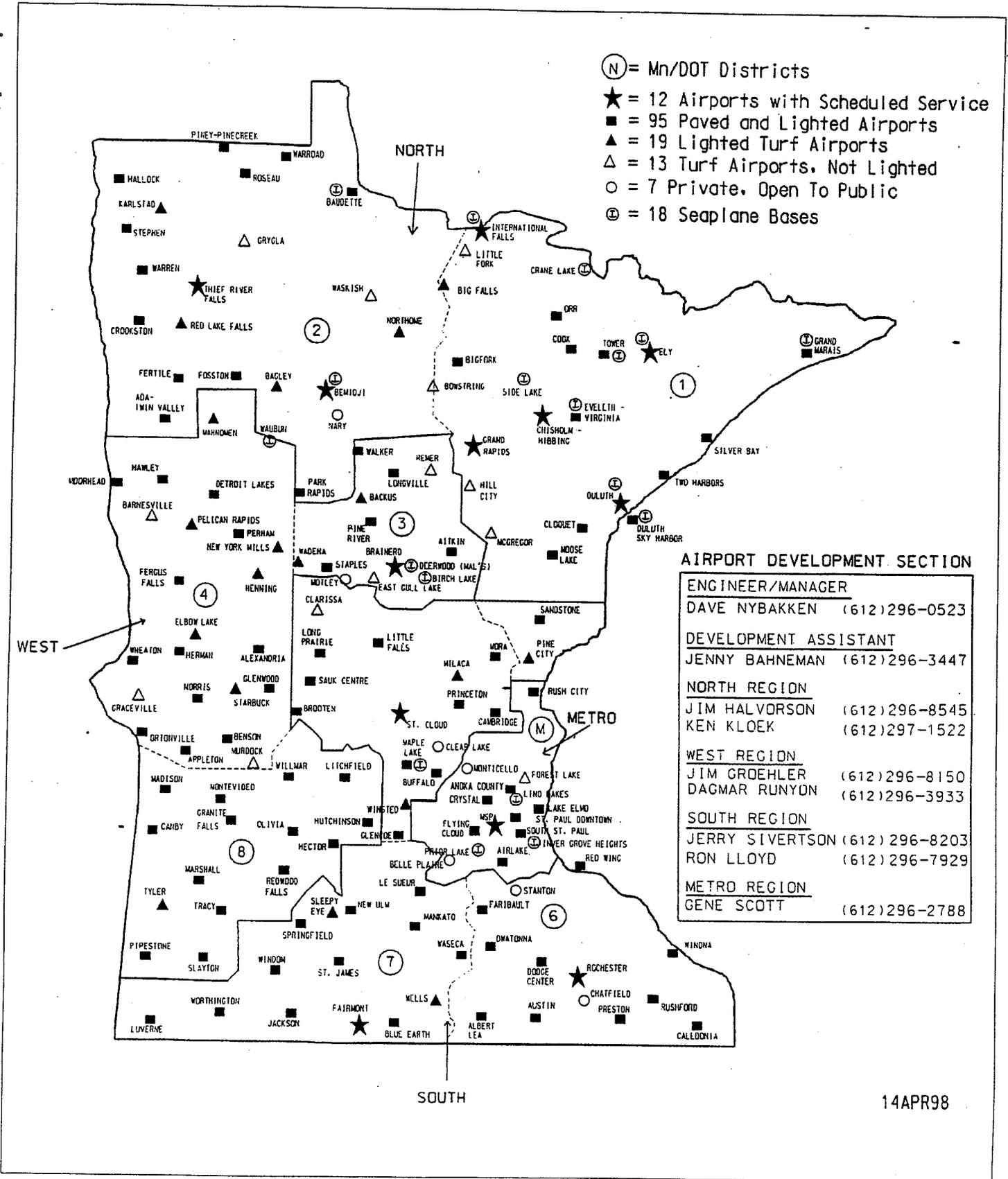
Aerial Applicators / Municipal Airport Study Roster

<p>CLIFTON J. ALLEN, PUBLIC WORKS ENGINEER CITY OF FERGUS FALLS P.O. BOX 868, 112 WEST WASHINGTON FERGUS FALLS, MN 56538-0868 TEL. 218/739-0113 FAX 218/739-0148 clif.allen@ci.fergus-falls.mn.us</p>	<p>G. ROBERT JOHNSON GOVERNMENT SPECIALISTS Co. 340 ZIRCON LANE MINNEAPOLIS, MN 55447 TEL. 612/476-7659 FAX 612/476-2723 Gbob765@aol.com</p>
<p>TERRY AMBROZ MAAA 2916 SOUTH SHORE DRIVE PRIOR LAKE, MN 55372 TEL. 612/447-1187 FAX 612/447-1188 tambroz@aol.com</p>	<p>CLARENCE JUELICH WHEATON CITY CLERK P.O. BOX 868 WHEATON, MN 56296 TEL. 320/563-4110 FAX</p>
<p>LYNN CARLSON CARLSON AG AVIATION Box 126 NORCROSS, MN 56237 TEL. 320//284-2415 FAX 320/284-2499 lflylow@rconnect.com</p>	<p>DAVE KONSHOK MN COALITION OF AIRPORTS 412 NORTH PARK PARK RAPIDS, MN 56470 TEL. 218/732-3454 FAX 218/732-1460</p>
<p>SCOTT CHURCHILL SCOTTS HELICOPTER SERVICE INC. PO Box 92 LESUEUR, MN 56058 TEL. 507/665-4064 FAX 507/665-3680 scotts@mnic.net</p>	<p>PAUL LIEMANDT, MGR., COMPLIANCE & ENFORCEMENT AGRONOMY & PLANT PROTECTION DIVISION MDA, 90 WEST PLATO BLVD. ST. PAUL, MN 55107 TEL 651/297-4872 FAX 651/297-2271 Paul.Liemandt@state.mn.us</p>
<p>VICTORIA COOK, EXECUTIVE DIRECTOR ACRRA BOARD AGRONOMY & PLANT PROTECTION DIVISION MDA, 90 WEST PLATO BLVD. ST PAUL, MN 55107 TEL. 651/296-3349 FAX 651/297-2271 Victoria.Cook@state.mn.us</p>	<p>TERRY MCDILL PROJECT MGR., INCIDENT RESPONSE AGRONOMY & PLANT PROTECTION DIVISION MDA, 90 WEST PLATO BLVD. ST. PAUL, MN 55107 TEL 651/297-4981 FAX 651/297-2271 Terry.McDill@state.mn.us</p>
<p>GREG HARDING, CONSULTANT AGRONOMY & PLANT PROTECTION DIVISION MDA, 90 WEST PLATO BLVD. ST PAUL, MN 55107 TEL. 651/297-7274 FAX 651/297-2271 Greg.Harding@state.mn.us</p>	<p>MARLIN PERHUS FEDERAL AVIATION ADMINISTRATION 6020 28TH AVE. SOUTH, ROOM 201 MINNEAPOLIS, MN 55450 TEL. 612/713-4211 FAX 612/713-4195 marlin.perhus@faa.gov</p>

Aerial Applicators / Municipal Airport Study Roster

<p>PAUL RHEIN, CHAIR, ACRRA BOARD CENEX LAND O' LAKES P.O. BOX 64089 ST. PAUL, MN 55164-0089 TEL. 651/451-5373 FAX 651/451-4569 prhei@cnxlol.com</p>	<p>Richard Theisen or David Nybakken MN DOT / Office of Aeronautics 222 Plato Blvd. St Paul, MN 55107-1618 TEL. 651/6-2552 OR 651/296-9856 FAX 651/297-5643 Richard.Theisen@dot.state.mn.us David.Nybakken@dot.state.mn.us</p>
<p>JEROME R. SIVERTSON, REGIONAL AIRPORT ENGINEER MN DOT / OFFICE OF AERONAUTICS 222 PLATO BLVD. ST. PAUL, MN 55107-1618 TEL. 651/296-8203 FAX 651/297-5643 jerome.sivertson@aero.dot.state.mn.us</p>	<p>JOHN WEBER NATION AIR INSURANCE 13801 PIONEER TRAIL EDEN PRAIRIE, MN 55347 TEL. 612/944-7666 FAX 612/944-7668 MN@nationair.com</p>
<p>MIKE STIEREN RR1 BOX 150 OLIVIA, MN 56277 TEL. 320/523-5472 FAX 320/523-5644</p>	<p>MARK ZABEL, HYDROLOGIST AGRONOMY & PLANT PROTECTION DIVISION MDA, 90 WEST PLATO BLVD. ST PAUL, MN 55107 TEL. 651/297-3491 FAX 651/297-2271 Mark.Zabel@state.mn.us</p>
<p>REMI STONE LEAGUE OF MN CITIES 183 UNIVERSITY AVE. EAST ST. PAUL, MN 55101 TEL. 651/281-1200 FAX 651/281-1299 Rstone@lmnc.org</p>	<p>STEVE NELSON P.O. BOX 345 PERHAM, MN 56573 TEL. 218/346-3331 FAX</p>
<p>BRAD SWENSON CITY OF WADENA P.O. BOX 30 WADENA, MN 56482 TEL. 218/631-7707 FAX 218-631-7709 wadena@wcta.net</p>	
<p>ROBERT C. SWENSON SWENSON LERVICK SYVERSON ANDERSON TROSVIG JACOBSON, P.A. 710 BROADWAY ALEXANDRIA, MN 56308 TEL. 320/763-3141 – WORK/RETIRED FAX 320/763-3657 HOM 320/846-3841 slsa@rea-alp.com</p>	

MINNESOTA PUBLIC-USE AIRPORTS



MINNESOTA DEPARTMENT OF AGRICULTURE
AGRICULTURAL CHEMICAL RESPONSE AND REIMBURSEMENT ACCOUNT
STATEMENT OF REVENUES, EXPENDITURES & FUND BALANCE
For the fiscal years ended June 30.

	1999 %	1999	1998	1997
REVENUE:				
Fertilizer Tonnage Fees	18%	\$ 235,158	\$ 241,088	\$ 238,110
Commercial Applicator-Aquatic	0%	1,900	920	960
Fertilizer Fixed Facility Fees	7%	91,875	87,076	86,550
Non-commercial Pesticide Appl Lic	1%	18,940	20,050	19,610
Pesticide Product Registrations	48%	630,365	572,120	474,075
Pesticide Dealer Storage License	4%	49,875	49,575	51,000
Pesticide Storage - Outside of State	1%	14,000	19,000	26,000
Commercial Pesticide Applicator Lic	7%	94,690	94,940	98,120
Structural Pest Control Company Lic	0%	4,000	3,450	3,450
Investment Earnings	12%	160,376	213,553	226,502
WCRA Refund	0%	0	92	0
Net revenues		1,301,179	1,301,863	1,224,377
EXPENDITURES:				
Reimbursement claims paid		2,069,881	1,630,344	1,750,688
Administrative expenditures		116,393	115,171	110,589
		2,186,274	1,745,515	1,861,277
EXCESS OF REVENUE OVER EXPENDITURES		(885,095)	(443,652)	(636,900)
FUND BALANCE -- beginning of fiscal year		3,373,171	3,816,823	4,453,723
FUND BALANCE -- end of fiscal year		\$ 2,488,076	\$ 3,373,171	\$ 3,816,823

Sources of Funding
Fiscal year 1999

