

DATCP Docket No. 00-R-14
Rules Clearinghouse No. 04-140

**ORDER OF THE WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION
REPEALING AND RECREATING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection adopts the following
2 order to repeal and recreate ch. ATCP 40, relating to the manufacture and distribution of
3 fertilizer and soil or plant additives.

4

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates the manufacture and sale of *fertilizer* and *soil or plant additives*, as required by ss. 94.64 and 94.65, Stats. DATCP regulates to protect farmers, consumers and honest competitors against unfair and deceptive sales practices. Regulation is designed to prevent fraudulent sales of worthless products, deceptive ingredient and performance claims, and latent safety hazards.

Under current law, companies must be licensed to manufacture or distribute fertilizer and soil or plant additives in this state. License holders file annual tonnage reports and pay tonnage fees. Product-specific permits are required for low-nutrient mixed fertilizers, and for soil or plant additives. Permit applicants must submit product labels, and must be able to justify label claims.

This rule repeals and recreates DATCP’s current rules related to the manufacture and distribution of fertilizer and soil or plant additives. This rule clarifies standards and procedures related to all of the following:

- Licensing manufacturers and distributors.
- License and tonnage fees (this rule does not increase fees).
- Product labeling and ingredient guarantees.
- Permits for low-nutrient mixed fertilizers and soil or plant additives.
- Substantiation of performance claims.
- Product sampling and analysis.
- Toxic contaminants.
- Enforcement and appeals.

This rule does not regulate the *application* of fertilizer or soil or plant additives. This rule exempts, from regulation, a farmer who sells manure produced on his or her farm. This rule also exempts federally qualified “organic” products from permit requirements (and from certain labeling and substantiation requirements) under this rule.

DATCP developed this rule in consultation with an advisory committee including agricultural producers, product manufacturers and distributors, “organic” industry representatives, and University of Wisconsin experts.

Statutory Authority

Statutory authority: ss. 93.07(1), 94.64(1)(p), (3m)(a)1. and (9), 94.65(1)(a)2. and (f), (5)(g) and (9), and 100.37(2) and 100.42(2), Stats.

Statutes interpreted: ss. 93.06(7) and (8), 94.64, 94.65, 100.37 and 100.42, Stats.

DATCP regulates the manufacture and sale of *fertilizer* under s. 94.64, Stats. A *fertilizer* is a substance that contains one or more recognized plant nutrients, is used for its plant nutrient content, and is designed for use or claimed to have value in promoting plant growth. The fertilizer law does not apply to “unmanipulated” manure (as defined in this rule), liming materials or other exempt products. Under the fertilizer law:

- DATCP licenses fertilizer manufacturers and distributors, regulates fertilizer labeling and sales practices, issues permits for low-nutrient mixed fertilizers, regulates deceptive labeling claims, and tests products for compliance with ingredient guarantees.
- DATCP collects license, permit and tonnage fees, and allocates fee revenues (according to a statutory formula) for program administration, environmental cleanup and research.
- DATCP may deny, suspend or revoke licenses or permits, impose license or permit conditions, issue holding orders to prevent the sale of adulterated or misbranded fertilizer, and pursue court action against law violators.
- DATCP may adopt rules, under ss. 94.64(1)(p), (3m)(a)1. and (9), Stats., related to this regulatory program. DATCP also has general rulemaking authority under s. 93.07(1), Stats.

DATCP regulates the manufacture and sale of *soil or plant additives* under s. 94.65, Stats. A *soil or plant additive* is a substance (other than a fertilizer) which is intended for application to seeds, soil or plants, and which is designed for use or claimed to have value in promoting or sustaining plant growth, improving crop yield or quality, promoting or sustaining the fertility of soil, or favorably modifying the structure, physical or biological properties of the

soil for agronomic or horticultural purposes.

The soil or plant additive law does not apply to “unmanipulated” manure (as defined in this rule), fertilizer, registered pesticides, liming materials or other exempt products. Under the soil or plant additive law:

- DATCP licenses product manufacturers and distributors, regulates product labeling and sales practices, issues permits for individual products, regulates deceptive labeling claims, and tests products for compliance with ingredient guarantees.
- DATCP collects license, permit and tonnage fees, and allocates fees (according to a statutory formula) for program administration, environmental cleanup and research.
- DATCP may deny, suspend or revoke licenses or permits, impose license or permit conditions, issue holding orders to prevent the sale of adulterated or misbranded products, and pursue court action against law violators.
- DATCP may adopt rules, under ss. 94.65(1)(a)2. and (f), (5)(g) and (9), Stats., to implement this regulatory program. DATCP also has general rulemaking authority under s. 93.07(1), Stats.

DATCP also regulates hazardous substances and consumer product safety under ss. 100.37 and 100.42, Stats. Under these statutes, DATCP may regulate products (including fertilizers or soil or plant additives) that may pose latent safety hazards under foreseeable use conditions.

Rule Contents

License to Manufacture or Distribute

Under current law, a person must have an annual license to manufacture or distribute fertilizers, and a separate license to manufacture or distribute soil or plant additives. This rule clarifies current licensing requirements and procedures.

This rule exempts certain persons from licensing. For example, this rule exempts a farmer who sells or distributes manure for application to land covered by a nutrient management plan, regardless of whether the manure is “manipulated.” This rule also exempts persons who merely sell ingredients to licensed manufacturers, or distribute the packaged and labeled products of license holders.

A person must apply for a license on a form provided by DATCP. The person must include the required license information and fees, and must identify any low-nutrient mixed fertilizers or soil or plant additives for which product-specific permits are required (see below).

DATCP must normally grant or deny a license application within 45 working days after DATCP receives a complete license application. If DATCP denies a license application, or issues a conditional license, it must give its reasons.

License holders are currently required to pay annual license fees (based on number of business locations). License holders must also file confidential annual tonnage reports with DATCP, and pay tonnage fees based on product tonnage distributed in this state. Fee revenues are allocated according to a statutory formula for program administration, environmental cleanup and research. *This rule does not change current license or tonnage fees, or the allocation of fee revenues.*

Product-Specific Permits

Under current law, a license holder must have a product-specific permit to distribute a low-nutrient mixed fertilizer (in which the sum of the guarantees for primary plant nutrients is less than 24%) or a soil or plant additive. This rule exempts, from these permit requirements, an “organic” product that complies with federal rules and is properly labeled for organic crop production only (see below).

An application for a product-specific permit must include all of the following:

- Proposed product labeling. The product label must include recommended uses and use directions to ensure effectiveness.
- A fee of \$25 for a fertilizer and \$100 for a soil or plant additive (*this rule does not change current fees*).

The applicant must certify all of the following in the application:

- The product is effective and useful for labeled purposes when applied under Wisconsin conditions according to label directions.
- The applicant has reliable information to substantiate product labeling, including content guarantees. The applicant must specify a laboratory method for testing the amount of each active ingredient guaranteed on the product label.
- The applicant has relevant scientific evidence to substantiate product performance claims.

The applicant is not required to submit substantiating information unless DATCP requests that information. DATCP may review a permit application to the extent that it deems appropriate.

DATCP may review:

- Product labeling.
- Product efficacy, under Wisconsin conditions, when the product is used according to label directions.
- Product content and performance claims. DATCP may determine whether claims are truthful and properly substantiated. DATCP may also review laboratory methods used to determine product contents.
- Possible health, safety and environmental hazards (and hazard labeling).

DATCP has 30 working days to determine whether an application is complete. If an application is incomplete, DATCP must tell the applicant what is needed to complete the application. If the applicant fails to complete the application within 30 days, DATCP may deny the application.

DATCP must grant or deny an application within 60 working days after the applicant submits a complete application, unless DATCP reasonably finds that a supplementary review is necessary (for example, DATCP might request substantiation of performance claims that appear to be false or exaggerated). DATCP must identify the scope of any supplementary review, the reasons for the supplementary review, and any additional information requested of the applicant. DATCP must complete the supplementary review as soon as reasonably possible, but not more than 120 days after DATCP receives the requested information.

When the supplementary review is complete, DATCP must grant or deny the permit. DATCP may impose conditions on a permit as necessary (for example, DATCP may require the applicant to change false label claims).

DATCP currently processes 350 to 400 permits each year. In some cases, where there are serious concerns related to product efficacy or label claims, DATCP consults with university experts and evaluates available scientific evidence.

Fertilizer Labeling

This rule clarifies current fertilizer labeling requirements. Under this rule, all packaged fertilizer must be clearly and conspicuously labeled with the following information:

- The name and address of the licensed manufacturer or distributor.
- The fertilizer product name.

- The fertilizer “grade.” This is a shorthand statement of primary plant nutrient contents. Primary plant nutrients are nitrogen (N), available phosphate (P₂O₅) and soluble potash (K₂O), commonly designated as N-P-K.
- A “guaranteed analysis” of primary nutrients, secondary nutrients, micro-nutrients and enhancing elements, if any. The guaranteed analysis must be presented in a standard format. Guarantees must be expressed as minimum percentages by weight of the fertilizer. Supplementary information is required in some cases.
- The net weight of the fertilizer contained in the package.
- Any statements or disclaimers required by this rule.

A manufacturer or distributor of bulk (unpackaged) fertilizer must provide similar information related to each bulk fertilizer delivery, on a written label statement that accompanies the delivery. The label statement must also indicate the delivery date, the name and address of the recipient, and the weight of the delivery.

A manufacturer who “custom-mixes” bulk fertilizer according to the purchaser’s specifications may provide the purchaser with a written statement listing the weight and grade of each *ingredient*, rather than the grade and guarantee of the finished product, unless the purchaser contracts for a specified grade of finished product.

Under current rules, a person who sells bulk agricultural fertilizer to a landowner must record (and keep for 2 years) the name and address of the nutrient management planner who prepared the landowner’s nutrient management plan (if any). This rule does not change that requirement.

Soil or Plant Additive Labeling

This rule clarifies current labeling requirements for soil or plant additives. Soil or plant additives must be clearly and conspicuously labeled with the following information:

- The name and address of the licensed manufacturer or distributor.
- The product name.
- The net weight or liquid measure of the package or bulk delivery.
- The purposes for which the soil or plant additive is recommended.
- Complete use directions to ensure that the product is effective and useful under Wisconsin

conditions. The use directions must include the recommended application sites, methods, rates and frequencies. If effectiveness depends on use with other products or practices, that must be disclosed.

- A “guaranteed analysis.”
- Supplementary disclosures, if applicable.

The “guaranteed analysis” must list all active and inert ingredients in a standard format. The amount of each active ingredient must be guaranteed as a percentage by weight of the soil or plant additive, unless the active ingredient is a microorganism. If microorganisms are claimed as active ingredients, the label must identify the type of microorganism and must guarantee the number of viable microorganisms (or colony forming units) per milliliter of liquid product or per gram of non-liquid product.

An “organic” product need *not* be labeled with recommended uses or use directions, provided the product complies with federal rules and is designed and labeled solely for organic crop production (see below). Product labeling must comply with other requirements under this rule.

A manufacturer or distributor may not make any untrue, deceptive or misleading claims for the product.

Implied Warranty

A person who distributes a low-nutrient mixed fertilizer or soil or plant additive implicitly warrants that the product is effective for all of the purposes recommended in the product labeling, when applied under Wisconsin conditions according to label directions. This warranty does not apply to federally qualified “organic” products that are designed and labeled solely for organic crop production (see below).

Combination Products; Labeling

Combination products (fertilizers or soil or plant additives combined with each other, or with pesticides, seed or liming materials) must be labeled according to this rule and other applicable regulations. For example, fertilizer-pesticide combinations (such as “weed and feed” products) must be labeled according to this rule and applicable pesticide rules.

Substantiating Label Claims

Manufacturers and distributors of fertilizers or soil or plant additives must have:

- Relevant and reliable information to substantiate product labeling, including product content claims.

- Relevant scientific evidence to substantiate performance claims made for low-nutrient mixed fertilizers or soil or plant additives. The evidence must substantiate the performance claims under Wisconsin conditions, when the product is applied according to label directions.

Manufacturers and distributors must have substantiation for label claims *before* they make those claims. DATCP *may* require a manufacturer or labeler to submit substantiating information. This rule spells out standards for scientific substantiation of performance claims (for example, mere “testimonials” do not qualify).

“Organic” Products

This rule exempts federally qualified “organic” products from permit requirements and certain labeling requirements under this rule (see above) if all of the following apply:

- The product complies with federal rules related to products used for organic crop production (and the product label so states).
- The product label states that “This product is intended for use according to an approved organic system plan.”
- The manufacturer or distributor makes no performance claims for the product.

Although federally qualified “organic” products are exempt from some requirements under this rule, they must comply with other requirements. Sellers must be licensed by DATCP, and must label product contents according to this rule. A seller may not make false, deceptive or misleading claims.

Product Sampling and Testing

DATCP may collect and test product samples to determine compliance with content guarantees. For these “official tests,” DATCP will use sampling and test methods prescribed in this rule.

Content Deficiencies

A fertilizer is mislabeled if an “official test” shows any of the following:

- The fertilizer contains less than 90% of the label guarantee for any primary nutrient.
- The actual percentage amount of any primary nutrient falls at least 2 percentage points short of the percentage amount stated on the label.

- The economic value of primary nutrients actually present is less than 98% of the “economic value” of the amounts guaranteed (“economic value” is calculated according to this rule).
- The amount of any secondary nutrient, micronutrient or enhancing element falls short of the label guarantee by an amount specified in this rule.

A soil or plant additive is mislabeled if an “official test” shows that it contains less than 98% of the amount of any active ingredient guaranteed on the label.

Toxic Substances

No product may contain any of the following:

- Toxic concentrations of metals (toxic concentrations are specified in this rule).
- A substance that is toxic or injurious to plants, animals or humans when the fertilizer or soil or plant additive is handled or applied under reasonably foreseeable use conditions, unless the substance and its hazards are identified on the product label.

Special Provisions

This rule includes specific regulations or disclosure requirements related to:

- Fertilizer labeled for foliar application.
- Phosphite.

Prohibitions

Under this rule:

- No person may misrepresent or falsify any license or permit application, or any other information filed with DATCP under this rule.
- No person may do any of the following in connection with the labeling, promotion or distribution of any fertilizer or soil or plant additive:
 - Make any statement that is false, deceptive or misleading.
 - Make any statement that is inconsistent with the product label.
 - Represent that a product contains a plant nutrient or other substance, unless the

“guaranteed analysis” includes a guarantee for that substance.

- Make any statement or warranty that is not substantiated, to the extent required under this chapter, at the time the statement or warranty is made.
- State or imply that DATCP endorses or warrants the product.
- Make any performance claim, for a product distributed under permit, that is contrary to the product label contained in the approved permit application.

Enforcement

DATCP may take the following actions against rule violators, as appropriate (per current law):

- Deny, suspend, revoke, or impose conditions on a license or permit (the affected manufacturer or distributor may demand a formal administrative hearing).
- Issue holding orders to prevent the sale or movement of illegal products.
- Seek prosecution in court (seizure actions, injunctions, restitution, civil forfeitures or criminal penalties).

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has requested permission from the attorney general and the revisor of statutes to incorporate the following standards by reference in this rule:

- Fertilizer terms defined in the Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004).
- Fertilizer sample collection methods specified in the Inspectors Manual of the Association of American Plant Food Control Officials, 6th edition (1999).
- Fertilizer test methods specified in the “Official Methods of Analysis of AOAC International,” volume I, 17th edition as updated by the 2nd revision (2003).
- Statement of uniform interpretation and policy 25, related to heavy metal concentrations in fertilizer, contained in the Official Publication of the Association of American Plant Food Control Officials, No 57 (2004).
- Standard chemical names listed in the Merck Index, 12th edition (1996).

Copies of the standards will be kept on file with DATCP, the secretary of state and the revisor of statutes. Copies may be obtained from the publishing organizations.

Fiscal Impact

This rule will have no fiscal impact on DATCP or local units of government. This rule will clarify current regulations, and improve program administration. DATCP does not anticipate any additional costs or staffing needs. A complete fiscal estimate is attached.

Business Impact

This rule will protect farmers, consumers and honest competitors against unfair and deceptive sales practices. This rule is designed to prevent fraudulent sales of worthless or hazardous products. It is also designed to prevent deceptive labeling claims that may mislead purchasers or give sellers an unfair competitive advantage.

There are approximately 540 persons licensed to manufacture or distribute fertilizers or soil or plant additives in Wisconsin. Up to 30% of these license holders may be small businesses. Affected businesses include farm centers and cooperatives, lawn care businesses, and manufacturers of nonagricultural and specialty fertilizers.

This rule will have few, if any, adverse impacts on business. This rule will not increase fees and, for most honest businesses, will not increase costs. For the most part, this rule merely clarifies current requirements and procedures. However, this rule may require some businesses to modify their labels, or be more diligent in substantiating label claims.

The fertilizer industry serves about 30,000 Wisconsin farmers, many of whom are small businesses. This rule will benefit farmers, by preventing unfair and deceptive sales practices. This rule will facilitate farmer-to-farmer sales of manure, by expanding the current exemption for “unmanipulated” manure and creating an exemption for “manipulated” manure sold for application under a nutrient management plan.

This rule makes special allowance for sellers of federally qualified “organic” fertilizers and soil or plant additives. Federally qualified “organic” products are exempt from permit requirements, and from certain labeling requirements, if they are designed and labeled solely for use in organic crop production (basic licensing and labeling requirements will still apply). Sellers may not make false, deceptive or misleading claims for “organic” products.

Because this rule will not have a significant adverse impact on small business, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats. A small business analysis (“final regulatory flexibility analysis”) is attached.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Environmental Impact

This rule will have no adverse environmental impact. This rule will clarify the licensing, permitting and labeling requirements for fertilizer and soil or plant additive products. This rule will help prevent environmental and safety hazards associated with some products. A complete environmental assessment is attached.

Federal Regulation

There is no significant federal regulation of fertilizers or soil or plant additives, although there is a long history of regulation by states (see below).

The United States department of agriculture (USDA) has established rules for “organic” crop production. USDA rules set standards for fertilizers and soil or plant additives used in “organic” crop production. USDA also accredits private organizations that may approve “organic” products. This rule exempts federally qualified “organic” products from permit requirements and certain labeling requirements under this rule (see above).

Surrounding State Regulation

General

States have historically regulated fertilizer and soil or plant additives to prevent fraudulent sales of worthless products, and to protect farmers, consumers and honest competitors against unfair and deceptive practices.

State fertilizer regulators have organized a national Association of American Plant Food Control Officials (AAPFCO). AAPFCO promotes uniform state laws related to fertilizers, soil or plant additives (also known as soil amendments), and liming materials used to correct soil acidity. Most states, including Wisconsin and surrounding states, follow AAPFCO principles and have similar basic laws. However, there is some variation in laws from state to state.

Fertilizer laws tend to be more standardized than soil or plant additive laws. Wisconsin’s soil or plant additive law is similar to laws in Minnesota and Iowa. Illinois has little regulation of soil or plant additives. Michigan’s law is similar to those in Wisconsin, Minnesota and Iowa, but is narrower in scope (it exempts various biological and hormone products).

Basic Fertilizer Regulation

Wisconsin and adjoining states have similar basic fertilizer laws, based on AAPFCO models. Wisconsin and adjoining states require similar labeling, and use similar terms and definitions (typically drawn from AAPFCO). There are minor variations between states.

Manure Sales

Fertilizer laws vary in their treatment of manure. All states exempt “unmanipulated” manure from the definition of *fertilizer*, but there is uncertainty related to the definition of “unmanipulated” manure and the treatment of bulk manure sales (including, for example, sales of farm-dried or farm-composted manure). Iowa licenses distributors of “bulk dry animal nutrient products” and has mechanisms to make purchasers aware of nutrient contents. Minnesota licenses commercial animal waste technicians and, effective in 2005, will certify private manure applicators. Illinois and Michigan do not address the issue.

This rule clarifies that manure is “unmanipulated” (and thus exempt from rule coverage) if it is modified solely for purposes of on-farm storage, handling, animal husbandry or odor control, rather than commercial sales. This rule *also* exempts “manipulated” manure sold or distributed for use on land covered by a nutrient management plan (this exemption is not available in other states).

Nutrient Content

Wisconsin and all adjoining states, except Minnesota, require minimum percentage guarantees for primary plant nutrients (N-P-K) in mixed fertilizers sold for general agricultural use. The minimum percentage is 24% in Wisconsin, 20% in Illinois and Michigan, and 21% in Iowa (most mixed fertilizers actually have much higher guarantees).

Wisconsin allows sales of low-nutrient mixed fertilizers (below 24%) for specialized agricultural use or nonagricultural use, but only with a permit. Illinois, Michigan and Iowa allow sales only for nonagricultural use (Iowa also allows foliar fertilizers and composts for organic crop production).

The adjoining states require *annual* permits for nonagricultural fertilizer products (Iowa requires a one-time permit). Wisconsin requires one-time (not annual) permits, and only for low-nutrient products. This rule exempts federally listed “organic” products from the Wisconsin permit requirement. Wisconsin and Iowa spell out procedures for granting and suspending permits (other states are less clear).

Tonnage Reports and Fees

Wisconsin and adjoining states require fertilizer tonnage reports and tonnage fees. Wisconsin requires once-per-year reporting, whereas adjoining states require monthly (IL) or semi-annual (MN, IA, MI) reporting. Wisconsin tonnage fees are higher than surrounding states. Wisconsin is somewhat unique in using tonnage fees to fund environmental cleanup and research, as well as program administration. This rule does not change current tonnage fees.

Use Directions

This rule requires use directions on low-nutrient mixed fertilizers (not other fertilizers) and on soil or plant additives. The AAPFCO model requires use directions for *all* packaged

1
2
3
4
5
6
7
8

SUBCHAPTER I
GENERAL PROVISIONS

9 **ATCP 40.01 Purpose.** This chapter has the following purposes:

- 10 (1) To protect Wisconsin consumers, including farmers and household users, against
11 unfair and deceptive practices in the sale of fertilizers or soil or plant additives.
12 (2) To protect honest businesses against unfair and deceptive methods of
13 competition.
14 (3) To prevent certain hazards to persons, property and the environment.

15 **NOTE:** See s. 94.64, Stats. (fertilizer), s. 94.65, Stats. (soil or plant additives),
16 s. 100.18, Stats. (fraudulent representations), s. 100.37, Stats. (hazardous
17 substances), s. 100.42, Stats. (product safety) and ch. ATCP 139 (consumer
18 product safety).

19 **ATCP 40.02 Definitions.** In this chapter:

20 (1) “Active ingredient” means an element, chemical compound or other substance that
21 affects the efficacy, usefulness or performance of a fertilizer or soil or plant additive. “Active
22 ingredient” includes all of the following:

- 23 (a) A plant nutrient.
24 (b) A living microorganism.
25 (c) Any other component declared, or required to be declared under this chapter, as
an active ingredient on the product label.

 (2) “Bulk fertilizer” or “bulk soil or plant additive” means a fertilizer or soil or plant
additive that is distributed in unpackaged form, or in a container that holds more than 55
gallons of liquid or 100 lbs. of dry material.

 (3) “Combination product” means any of the following:

- 1 (a) A fertilizer-additive combination.
- 2 (b) A fertilizer-pesticide combination.
- 3 (c) A pesticide-additive combination.
- 4 (d) A fertilizer or soil or plant additive combined with seed.
- 5 (e) A fertilizer or soil or plant additive combined with liming material.
- 6 **(4)** “Custom mixed fertilizer” means a fertilizer that a manufacturer mixes for a retail
- 7 customer according to individual specifications provided by the retail customer.
- 8 **(5)** “Department” means Wisconsin department of agriculture, trade and consumer
- 9 protection.
- 10 **(6)** “Distribute” means to import, consign, sell, offer for sale, solicit orders for sale, or
- 11 supply for sale or use in this state. “Distribute” does not include the sale or delivery of manure
- 12 represented only as manure, by the person who owns or operates the farm that produces the
- 13 manure, for application on any of the following:
- 14 (a) Land owned or controlled by that person.
- 15 (b) Land covered by a nutrient management plan under s. ATCP 50.04(3).
- 16 **(7)** “Enhancing element” means aluminum, cobalt, selenium, silicon or sodium.
- 17 **(8)** “Fertilizer” means any substance that contains one or more plant nutrients, is used
- 18 for its plant nutrient content, and is designed for use or claimed to have value in promoting
- 19 plant growth. “Fertilizer” includes agricultural and nonagricultural fertilizers, fertilizer materials,
- 20 mixed fertilizers, custom mixed fertilizers, and combination products containing fertilizer.
- 21 “Fertilizer” does not include unmanipulated animal or vegetable manure, marl, liming material,
- 22 wood ashes, or sewage sludge other than finished sewage sludge products.

1 **(9)** “Fertilizer-additive combination” means a fertilizer combined with a soil or plant
2 additive, or a fertilizer that is represented as having plant growth benefits beyond those
3 attributable to the fertilizer’s plant nutrient contents. “Fertilizer-additive combination” includes
4 a fertilizer that is represented to contain enhancing elements other than cobalt or sodium.

5 **(10)** “Fertilizer material” means a substance that meets all of the following criteria:

6 (a) It is an element, a chemical compound, or a substance manufactured by chemical
7 reaction.

8 (b) It contains one or more plant nutrients.

9 (c) It is a fertilizer component or is used to compound fertilizer.

10 **(11)** “Fertilizer-pesticide combination” means a fertilizer combined with a pesticide.

11 **NOTE:** For example, “weed and feed” products are fertilizer-pesticide
12 combinations.

13
14 **(12)** “Finished sewage sludge product” means a product, consisting partly or entirely
15 of sewage sludge, that has been disinfected or treated to facilitate sale or distribution.

16 “Finished sewage sludge product” does not include sewage sludge distributed under a
17 pollutant discharge elimination permit issued by the department of natural resources under s.
18 283.31 or 283.35, Stats.

19 **(13)** “Foliar fertilizer” means a fertilizer designed or labeled for direct application to
20 plant foliage and intended for absorption through the plant’s foliage.

21 **(14)** “Grade” means the percentage guarantees of total nitrogen (N), available
22 phosphate (P₂O₅) and soluble potash (K₂O), stated in the same terms, order and percentages
23 as in the guaranteed analysis.

1 **(15)** “Guaranteed analysis” means the guaranteed percentage content by weight of
2 each plant nutrient, active ingredient and inert ingredient, stated according to s. ATCP 40.10
3 or 40.26. For microbiological ingredients in a soil or plant additive, “guaranteed analysis”
4 means the number of viable microorganisms or colony forming units per unit of dry weight or
5 per unit of liquid volume.

6 **(16)** “Inert ingredient” means a component that does not affect product efficacy or
7 performance.

8 **(17)** “Label” means a written, printed, graphic or pictorial statement that is one of the
9 following:

10 (a) Part of, or attached to, a package containing fertilizer or a soil or plant additive.

11 (b) Used to identify, for distribution or storage, a bulk fertilizer or a bulk soil or plant
12 additive.

13 **(18)** “Labeling” means labels and other written, graphic or pictorial statements that
14 accompany a fertilizer or a soil or plant additive, or that promote the sale or distribution of
15 fertilizer or soil or plant additives. “Labeling” includes advertising and website materials that
16 promote the sale or distribution of a fertilizer or soil or plant additive.

17 **(19)** “Landowner” has the meaning given in s. ATCP 50.01(15).

18 **(20)** “Manipulated manure” means manure that is ground, pelletized, mechanically
19 dried, packaged, supplemented with plant nutrients or other substances, or otherwise treated
20 in a manner designed to facilitate sale or distribution as a fertilizer or soil or plant additive.

21 “Manipulated manure” does not include unpackaged manure that is modified solely as an
22 incidental result of normal on-farm practices such as the following: (a) Addition of

1 bedding, sand or water for purposes of animal husbandry or barn cleaning.

2 (b) Shredding, grinding or agitating for purposes of manure handling or removal from a
3 manure storage system.

4 (c) Drying incidental to mechanical ventilation of animal confinement areas.

5 **(21)** “Manufacture” means any of the following:

6 (a) To process, granulate, compound, formulate, produce, mix, blend, or alter the
7 composition of a fertilizer, fertilizer material, or soil or plant additive for distribution.

8 (b) To package or label, for distribution, a fertilizer, fertilizer material, or soil or plant
9 additive.

10 **(22)** “Micronutrient” means boron, chlorine, copper, iron, manganese, molybdenum,
11 nickel, or zinc.

12 **(23)** “Mixed fertilizer” means a fertilizer containing any combination or mixture of
13 fertilizer materials, or a fertilizer material and any other substance. A fertilizer material
14 containing impurities inherent in the manufacture of that fertilizer material does not constitute a
15 “mixed fertilizer” unless the distributor claims that the impurities are plant nutrients, fertilizer
16 materials or soil or plant additives.

17 **(24)** “Nonagricultural fertilizer” means a fertilizer designed, labeled and distributed for
18 non-farm use, including use for home gardens, lawns, shrubbery, flowers, golf courses, parks,
19 cemeteries, greenhouses, nurseries, or scientific research or experimentation.

20 **(25)** “Nutrient management plan” means a plan that complies with s. ATCP 50.04(3).

21 **(26)** “Packaged fertilizer” means a fertilizer that is sold in a closed package or
22 container. “Packaged fertilizer” includes packaged custom mixed fertilizer.

1 (27) “Packaged soil or plant additive” means a soil or plant additive that is sold in a
2 closed package or container.

3 (28) “Percent” or “percentage” means percentage by weight.

4 (29) “Pesticide” has the meaning given in s. 94.67, Stats. “Pesticide” includes a
5 fertilizer-pesticide combination and a pesticide-additive combination.

6 (30) “Pesticide-additive combination” means a pesticide combined with a soil or plant
7 additive.

8 (31) “Plant nutrient” or “nutrient” means any of the following:

9 (a) A primary plant nutrient.

10 (b) A secondary plant nutrient.

11 (c) A micronutrient.

12 (32) “Primary plant nutrient” means nitrogen (N), available phosphate (P_2O_5) or
13 soluble potash (K_2O).

14 (33) “Product” means a fertilizer or a soil or plant additive.

15 (34) “Product name” means a name, designation or trademark that identifies a
16 product.

17 (35) “Ready-to-use liquid fertilizer” means a liquid fertilizer that is designed and
18 labeled to be applied without prior mixing or dilution by the user.

19 (36) “Represent” means to state or imply by any means, including any oral, written,
20 graphic or broadcast means.

21 (37) “Scientific evidence” means evidence that is logically derived from controlled
22 experiments designed, conducted and reported according to the scientific method, using

1 relevant experimental and statistical analytical procedures that are generally recognized and
2 defensible as valid and appropriate among peers in the relevant scientific community.

3 Testimonials are not “scientific evidence.”

4 (38) “Secondary plant nutrient” means calcium, magnesium or sulfur.

5 (39) “Sewage” has the meaning given in s. 281.01(13), Stats.

6 (40) “Sewage sludge” means the solid, semi-solid or liquid residue generated during
7 the treatment of sewage in a treatment works. Sewage sludge includes scum or solids
8 recovered in primary, secondary or advanced wastewater treatment processes, and also
9 includes material derived from sewage sludge. Sewage sludge does not include ash generated
10 during the firing of a sewage sludge incinerator, or grit or screenings generated during
11 preliminary treatment of domestic sewage in a treatment works.

12 (41) “Soil or plant additive” or “additive” means a substance, intended for application
13 to seeds, soil or plants, that is designed for use or claimed to have value in promoting or
14 sustaining plant growth, improving crop yield or quality, promoting or sustaining the fertility of
15 soil, or favorably modifying the structural, physical or biological properties of the soil for
16 agronomic or horticultural purposes. “Soil or plant additive” includes a combination product
17 containing a soil or plant additive, and also includes any product represented to contain
18 humate, humin, humic acid, fulvic acid or other humic substances. “Soil or plant additive”
19 does not include any of the following:

20 (a) Fertilizer, other than a fertilizer-additive combination. A fertilizer is not considered
21 a fertilizer-additive combination merely because its guaranteed analysis includes guarantees
22 under s. ATCP 40.10 for cobalt or sodium.

1 (b) Liming material that is distributed solely for the purposes stated in s.
2 94.66(1)(am), Stats., and is not part of a combination product.

3 (c) Wood ashes, unmanipulated animal manure or unmanipulated vegetable manure.
4 This exemption does not apply to wood ashes or manure distributed under another name or
5 description.

6 (d) A pesticide registered under 7 USC 136 or by the department, other than a
7 pesticide-additive combination.

8 (e) Mulches distributed only as soil covers or weed barriers.

9 (f) Perlite labeled as perlite, or vermiculite labeled as vermiculite, that is not mixed
10 with any other substance.

11 (g) Potting soil or similar mixtures of readily identifiable organic substances, unless
12 labeled with performance claims associated with its use as a soil amendment.

13 (h) Compost, peat moss, tree bark, wood shavings, and other readily identifiable
14 organic substances that are commonly applied to soil, provided that all the following apply:

15 1. The substance is distributed under its common name. Composts must identify the
16 material composted, such as animal manure, yard waste or urban refuse.

17 2. The product labeling does not make performance claims related to plant growth,
18 plant health, crop yield or soil fertility.

19 (i) Seed, labeled according to ch. ATCP 20, that has been treated or coated with a
20 soil or plant additive. This exemption does not apply to any of the following:

21 1. Substances sold for later application to seed.

22 2. Substances, containing seeds or seed parts, that are sold as soil or plant additives.

1 (j) An adjuvant sold only to improve the mixing, handling or application of fertilizers or
2 pesticides. This exemption does not apply if a distributor makes any other benefit claims for
3 the adjuvant, other than a precautionary written statement on the product label that says the
4 adjuvant may increase the contact effects of products applied with it.

5 (k) Sewage sludge other than a finished sewage sludge product.

6 **(42)** “Special agricultural-use fertilizer” means a fertilizer that is any of the following:

7 (a) Designed and labeled to remedy only plant nutrient deficiencies unique to certain
8 agricultural crops or local Wisconsin agricultural areas.

9 (b) Designed and labeled solely for organic crop production.

10 **(43)** “Substantiate” means to demonstrate clearly and convincingly, with satisfactory
11 and sufficient evidence.

12 **(44)** “Unmanipulated animal or vegetable manure” means animal or vegetable manure
13 that is not manipulated.

14 **(45)** “Wisconsin conditions” means plant growing conditions, including conditions
15 related to soil, climate, growing season, plant species, plant varieties and plant growing
16 practices, that are similar or identical to those commonly found in Wisconsin.

17 **(46)** “Working days” means the days designated in s. 230.35(4), Stats.

18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

SUBCHAPTER II
FERTILIZER

ATCP 40.04 Fertilizer license. (1) ANNUAL LICENSE REQUIRED. Except as provided in sub. (2), no person may manufacture or distribute a fertilizer in this state without an annual license from the department. A separate license is required for each business location or mobile unit at which a person manufactures fertilizer in this state. A license is not transferable between persons or locations. A license expires on August 14 of each year.

NOTE: Since a license is not transferable between persons, a license holder must re-apply for a license if it changes its legal identity.

(2) LICENSE EXEMPTIONS. Subsection (1) does not apply to a person who does only the following:

(a) Distributes fertilizer materials to a licensed fertilizer manufacturer for further manufacturing.

(b) Distributes packaged fertilizer in its original package, as packaged and labeled by a person who holds a fertilizer license under sub. (1) and a product permit if required for that fertilizer under s. ATCP 40.12. A person does not qualify for this exemption if the person makes any additional content or performance claims for the packaged fertilizer.

(c) Distributes bulk fertilizer obtained from a supplier licensed under sub. (1) if all of the following apply:

1. The person does not mix or blend bulk fertilizer, except to combine identically labeled lots of bulk fertilizer received from the same licensed supplier.

2. The bulk fertilizer bears the label information provided by the licensed supplier,

1 including the supplier's name, product name, fertilizer grade and guaranteed analysis.

2 (3) LICENSE APPLICATION. A person shall apply for an annual fertilizer license on a
3 form provided by the department. A license application shall include all of the following:

4 (a) The applicant's correct legal name, and any trade name under which the applicant
5 does business.

6 (b) The applicant's social security number if the applicant is an individual. If the
7 applicant is a partnership, the application shall include the social security number of each
8 individual partner.

9 *NOTE:* A social security number is required under s. 93.135(1)(cm), Stats.

10 (c) Each address from which the applicant proposes to do business in this state.

11 (d) Each address and mobile unit at which the applicant proposes to manufacture
12 fertilizer in this state. Before adding a manufacturing location or mobile manufacturing unit
13 during a license year, a license holder shall obtain an additional license for that location or unit.

14 (e) The fees and surcharges required under sub. (4).

15 (f) A current list of fertilizer products which the applicant proposes to manufacture or
16 distribute, and for which the applicant is required to have permits under s. ATCP 40.12. The
17 application shall include a current label for each of those products.

18 *NOTE:* A license under sub. (1) does not authorize the license holder to manufacture
19 or distribute a fertilizer product for which a permit is required under s. ATCP
20 40.12 unless the license holder also holds that permit.

21
22 (g) Other relevant information required by the department.

23
24 (4) LICENSE FEES. A person applying for an annual fertilizer license shall pay the
25 following fees and surcharges:

1 (a) A \$30 license fee for each business location and each mobile unit at which the
2 applicant proposes to manufacture fertilizer in this state. If the applicant distributes but does
3 not manufacture fertilizer in this state, the applicant shall pay a single license fee of \$30.

4 (b) A \$20 agricultural chemical cleanup surcharge for each business location and each
5 mobile unit at which the applicant proposes to manufacture fertilizer in this state, other than a
6 business location or mobile unit licensed under s. 94.685 or 94.703, Stats. If the applicant
7 distributes but does not manufacture fertilizer in this state, the applicant shall pay a single
8 agricultural chemical cleanup surcharge of \$20.

9 (c) A late renewal fee equal to 20% of the combined license fees and surcharges
10 required under pars. (a) and (b), whichever is greater, if the applicant fails to apply for a
11 renewal license before the prior year's license expires.

12 **NOTE:** The late fee under par. (c) is required by s. 93.21, Stats.
13

14 **(5) ACTION ON LICENSE APPLICATION.** (a) Except as provided in par. (d), the
15 department shall grant or deny a license application under sub. (3) within 45 working days
16 after the department receives a complete application.

17 (b) The department may place conditions on a license. If the department denies a
18 license or issues a license with conditions, the department shall give the applicant written
19 notice of its reasons.

20 (c) A license holder may not distribute a fertilizer for which a permit is also required
21 under s. ATCP 40.12, unless the license holder also holds that permit.

22 (d) If a license applicant does not manufacture fertilizer in Wisconsin, but seeks a
23 license only to distribute a fertilizer for which a permit is required under s. ATCP 40.12, the

1 department may grant or deny the license application when it grants or denies the permit
2 application.

3 **ATCP 40.06 Fertilizer; tonnage reports and fees. (1) ANNUAL TONNAGE**
4 **REPORT AND FEE PAYMENT.** By August 14 of each year, a person required to hold a fertilizer
5 license under s. ATCP 40.04 shall do all of the following:

6 (a) Report to the department the number of tons of each grade of fertilizer that the
7 person distributed in this state in the 12 months ending June 30 of that year. The person shall
8 file the report in writing, on a form prescribed by the department.

9 (b) Pay fees and surcharges under sub. (2). The person shall include the payment
10 with the tonnage report under par. (a).

11 **(2) FEE AMOUNTS.** Except as provided in sub. (3), a person shall pay the following
12 fees and surcharges on tonnage reported under sub. (1)(a):

13 (a) A basic fee of 30 cents per ton, or \$25, whichever is greater.

14 (b) A research fee of 10 cents per ton, or \$1, whichever is greater.

15 (c) An additional research fee of 10 cents per ton, or \$1, whichever is greater.

16 (d) A groundwater fee of 10 cents per ton, or \$1, whichever is greater.

17 (e) A weights and measures inspection fee of 2 cents per ton, or \$1, whichever is
18 greater.

19 (f) An agricultural chemical cleanup surcharge of 86 cents per ton.

20 **(3) FEE EXEMPTIONS.** The fees under sub. (2) do not apply to fertilizer sold, for
21 resale or further manufacturing, to a person licensed under s. ATCP 40.04.

22 **(4) COMBINATIONS AND FILLERS.** A person shall include all of the following in the

1 tonnage reported under sub. (1)(a):

2 (a) Combination products, if any.

3 (b) All fillers, carriers and fluids included with a fertilizer at the time of distribution.

4 (5) PENALTIES FOR LATE FILING. A person who fails to comply with sub. (1) by
5 August 14 shall pay an additional fee of 10 percent of the tonnage fees due, but not less than
6 \$10.

7 **NOTE:** The department may also suspend a license or permit for nonpayment of
8 fees.

9
10 (6) TONNAGE INFORMATION CONFIDENTIAL. The department may not release
11 information showing the grades or amounts of fertilizer that an individual license holder has
12 sold, or the fees or surcharges that an individual license holder has paid under this section.
13 The department may publish aggregate summaries that do not reveal individual license holder
14 information.

15 **ATCP 40.08 Fertilizer labeling. (1) PACKAGED FERTILIZER.** Packaged fertilizer
16 shall be clearly and conspicuously labeled with all of the following:

17 (a) The name and address of the licensed manufacturer or distributor.

18 (b) The fertilizer product name.

19 (c) The fertilizer grade if the fertilizer is represented as containing any primary
20 nutrients. The fertilizer grade shall conform to the guaranteed analysis for total nitrogen (N),
21 available phosphate (P_2O_5) and soluble potash (K_2O). The grade shall be stated in whole
22 numbers except that a grade value may be stated in decimal units with a preceding zero when
23 the guarantee is less than one percent.

1 (d) A guaranteed analysis that complies with s. ATCP 40.10.

2 (e) The net weight of the fertilizer contained in the package.

3 (f) Any statements or disclaimers required under subs. (4) to (6).

4 (g) Any other information required under this chapter.

5 (2) BULK FERTILIZER. (a) A person distributing bulk fertilizer to another person shall

6 give the recipient a written label statement with each delivery. The written label statement

7 shall clearly and conspicuously disclose all of the following:

8 1. The name and address of the licensed manufacturer or distributor.

9 2. The name and address of the recipient.

10 3. The date of delivery.

11 4. The product name, if any.

12 5. The fertilizer grade, except as provided in par. (b). The fertilizer grade shall be
13 stated in whole numbers and shall conform to the guaranteed analysis for total nitrogen (N),
14 available phosphate (P₂O₅) and soluble potash (K₂O).

15 6. A guaranteed analysis, except as provided in par. (b). The guaranteed analysis
16 shall comply with s. ATCP 40.10.

17 7. The net weight of each lot or load included in the delivery.

18 8. Other information required under this chapter.

19 (b) A manufacturer who custom mixes bulk fertilizer for a purchaser may provide the

20 purchaser with a written statement listing the weight and grade of each ingredient included in

21 the custom mixed fertilizer. A manufacturer of bulk custom mixed fertilizer may provide this

22 written ingredient statement in place of a written grade statement and guaranteed analysis

1 unless the purchaser contracts for a specified grade of custom mixed fertilizer.

2 (c) A person who sells bulk agricultural fertilizer to a landowner shall record the
3 name and address of the nutrient management planner who prepared the landowner's nutrient
4 management plan, if the landowner has a nutrient management plan under s. ATCP 50.04(3).
5 The seller may record this information on the label statement required under par. (a) if the
6 seller retains a copy of that statement. The seller shall keep the required information for at
7 least 24 months after the seller files the fertilizer tonnage report required under s. ATCP
8 40.06(1).

9 (d) A manufacturer or distributor who stores bulk fertilizer shall attach, to each
10 storage bin or container, a label that clearly and conspicuously identifies the name or grade of
11 the fertilizer stored in that bin or container. The grade, if stated, shall be stated in whole
12 numbers.

13 **NOTE:** See ch. COMM 43 and ch. ATCP 32 related to anhydrous ammonia
14 systems and bulk storage of fertilizer.
15

16 **(3) COMBINATION PRODUCTS.** (a) Fertilizer-additive combinations shall be labeled
17 according to this section and s. ATCP 40.24. The label format shall be as shown in
18 ***Appendix A.***

19 (b) Fertilizer-pesticide combinations that are not custom mixed shall be labeled
20 according to this section and s. ATCP 29.06.

21 (c) Fertilizer-pesticide combinations that are custom mixed shall be labeled according
22 to this section. A person who sells or distributes a custom mixed fertilizer-pesticide
23 combination shall provide all of the following to the person who receives that product from the

1 seller or distributor:

2 1. The label of each pesticide used to make the product.

3 2. The product's written formula. The formula shall identify all of the pesticides and
4 other ingredients contained in the product, together with the amount by weight of each
5 ingredient.

6 (d) Fertilizer-seed combinations shall be labeled according to this section and ch.
7 ATCP 20.

8 (e) Fertilizer-liming material combinations shall be labeled according to this section
9 and ch. ATCP 41.

10 (f) Combination products shall be labeled with all the following:

11 1. The purposes for which the product is effective.

12 2. Complete use directions to ensure efficacy, usefulness and safety, under Wisconsin
13 conditions, for each purpose identified under subd. 1. Use directions shall include
14 recommended application sites, rates, frequency, timing and methods.

15 (g) A combination product label shall accurately state the contents of the combination
16 product, not just the components of the combination product.

17 **(4) HAZARD CAUTION STATEMENT.** (a) A fertilizer label shall include a caution
18 statement if the fertilizer may be toxic to plants or animals when the fertilizer is handled or
19 applied under reasonably foreseeable use conditions. The label shall warn the user of the
20 potential hazard, and shall explain how to prevent or minimize the hazard.

21 (b) Labels for fertilizer products, other than fertilizer-pesticide combination products,
22 shall comply with ch. ATCP 139 and ss. 100.37 and 100.42, Stats., as applicable.

1 **NOTE:** For example, boron, molybdenum and nickel may be toxic to crops and
2 crop-consuming animals when applied at excessive rates or at inappropriate
3 sites. Fertilizers containing these substances may need caution statements to
4 prevent or minimize toxicity hazards. Chapter ATCP 139 and ss. 100.37 and
5 100.42, Stats., regulate consumer product safety and hazardous substances
6 (pesticides are separately regulated under ss. 94.67-71, Stats.). See also sub.
7 (5) and s. ATCP 40.18.
8

9 **(5) FOLIAR FERTILIZERS.** (a) Except as provided in par. (b), a foliar fertilizer label

10 shall disclose all of the following:

- 11 1. The purposes for which the labeler claims that foliar application is effective and
12 useful.
- 13 2. Complete use directions to ensure that foliar application will be effective and useful
14 for each recommended purpose, under Wisconsin conditions. Use directions shall identify
15 recommended application sites, rates, frequency, timing and methods.

16 (b) Paragraph (a) does not apply if the foliar fertilizer label includes all of the following
17 that apply:

18 1. The following clear and conspicuous written statement if the fertilizer label
19 guarantees primary plant nutrients:

20 **“Foliar fertilization with primary nutrients will not provide the quantities of**
21 **nutrients required for normal plant growth. This product may cause foliar burn**
22 **if applied in higher than recommended rates or concentrations. Use only as a**
23 **supplement to a regular fertilization program.”**
24

25 2. The following clear and conspicuous written statement if the fertilizer label
26 guarantees secondary nutrients or micronutrients:

27 **“Foliar fertilization can be an effective remedy for diagnosed plant deficiencies**
28 **of secondary nutrients and micronutrients, but may cause plant damage if**
29 **applied at more than recommended rates or concentrations. Use of this**
30 **product is recommended only as a supplement to a regular fertilization program**
31 **and only on plants with confirmed secondary nutrient or micronutrient**

1 **deficiencies.”**

2

3 **(6) USE DIRECTIONS.** (a) The label of a fertilizer product for which a permit is
4 required under s. ATCP 40.12(1) shall clearly disclose all of the following:

5 1. The purposes for which the fertilizer product is recommended.

6 2. Use directions to ensure effectiveness, under Wisconsin conditions, for each
7 recommended purpose. Use directions for non-agricultural fertilizers shall identify
8 recommended application sites, rates, frequency, timing and methods.

9 (b) The department may require supplementary label disclosures if the department
10 finds that, in the absence of those disclosures, the label statements under par. (a) may be
11 deceptive or misleading. A failure to require supplementary disclosures does not constitute a
12 finding, by the department, that the product is properly labeled.

13 **NOTE:** For example, if a label implies that a product is effective for an entire season,
14 but the product does not provide enough nutrients for season-long
15 effectiveness when applied according to label directions, the department might
16 require supplementary disclosures to remedy the deceptive or misleading
17 implication. Disclosures might include, for example, a limitation of efficacy
18 claims or a disclosure of nutrient amounts compared to annual plant nutrient
19 needs.

20

21 **(7) SUBSTANTIATING FERTILIZER CLAIMS.** (a) A person who is required to hold a
22 license under s. ATCP 40.04 shall have all of the following:

23 1. Relevant and reliable information to substantiate all fertilizer labeling, including any
24 claim or guarantee related to fertilizer contents. The person shall have substantiation for each
25 labeling statement before making that statement. Testimonials are not reliable information
26 under this subdivision.

27 2. Relevant scientific evidence to substantiate every performance claim made for a

1 fertilizer product for which a permit is required under s. ATCP 40.12(1). Performance claims
2 include implied warranties, if any, under s. ATCP 40.12(6). The scientific evidence shall
3 substantiate each performance claim under Wisconsin conditions, assuming that the product is
4 applied for recommended purposes according to label directions. The person shall have that
5 scientific evidence before making the performance claim. Testimonials are not scientific
6 evidence under this subdivision.

7 (b) The department may require a person to submit substantiating information under
8 par. (a). The department may require the person to submit the information before or after the
9 department issues a license under s. ATCP 40.04 or a permit under s. ATCP 40.12. The
10 issuance of a license or permit does not create any finding or presumption that the license or
11 permit holder has complied with par. (a).

12 (8) TERMS AND DEFINITIONS. Terms used in fertilizer labeling shall be consistent
13 with the fertilizer terms and definitions contained in the Official Publication of the Association
14 of American Plant Food Control Officials, No. 57 (2004).

15 *NOTE:* The Official Publication of the Association of American Plant Food Control
16 Officials, No. 57 (2004) is on file with the department, the secretary of state
17 and the revisor of statutes. Copies may be obtained from the treasurer of the
18 Association of American Plant Food Control Officials, Inc., North Carolina
19 Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or
20 online at <http://www.aapfco.org>.

21
22
23
24 **ATCP 40.10 Fertilizer; guaranteed analysis.** (1) GENERAL. (a) A fertilizer
25 label shall contain a guaranteed analysis that complies with this section. A guaranteed analysis
26 may guarantee any plant nutrients or enhancing elements identified in sub. (2), and shall

1 guarantee at least one of the plant nutrients identified in sub. (2). Each guarantee shall be
2 expressed as a minimum guaranteed percentage by weight of the fertilizer.

3 **NOTE:** All of the materials identified in sub. (2), except cobalt and sodium, are plant
4 nutrients. Cobalt and sodium are “enhancing elements.” See ATCP 40.01(7).
5
6

7 (b) No person may represent any of the following:

8 1. That a fertilizer contains any plant nutrient unless that plant nutrient is identified in
9 sub. (2) and in the guaranteed analysis under par. (a).

10 2. That a fertilizer contains the enhancing element cobalt or sodium unless that
11 enhancing element is included in the guaranteed analysis under par. (a).

12 3. That a fertilizer contains an enhancing element other than cobalt or sodium, unless
13 that enhancing element is guaranteed as a soil or plant additive ingredient under sub. (10).

14 **NOTE:** A fertilizer that claims enhancing elements, other than cobalt and sodium, is
15 considered a “fertilizer-additive combination.” See ATCP 40.01(9).
16

17 **(2) MINIMUM GUARANTEES.** (a) Except as provided in par. (b), no person may
18 represent that a fertilizer contains any of the following plant nutrients or enhancing elements
19 unless that plant nutrient or enhancing element is guaranteed at or above the following amount:

20	Plant Nutrient	Minimum Guarantee
21	Total Nitrogen (N)	1.0%
22	Available Phosphate (P ₂ O ₅)	1.0%
23	Soluble Potash (K ₂ O)	1.0%
24	Calcium (Ca)	1.0%
25	Magnesium (Mg)	0.5%
26	Sulfur (S)	1.0%
27	Boron (B)	0.02%
28	Chlorine (Cl)	0.1%
29	Cobalt (Co)	0.0005%
30	Copper (Cu)	0.05%
31	Iron (Fe)	0.1%

1	Manganese (Mn)	0.05%
2	Molybdenum (Mo)	0.0005%
3	Nickel (NI)	0.05%
4	Sodium (Na)	0.1%
5	Zinc (Zn)	0.05%
6		

7 (b) Paragraph (a) does not apply to any of the following:

- 8 1. Ready-to-use liquid fertilizer labeled only for nonagricultural uses.
- 9 2. Fertilizer labeled only for hydroponic or continuous plant feeding use.
- 10 3. Potting soil with nutrient guarantees.
- 11 4. Primary nutrient guarantees, authorized under s. ATCP 40.12(9), for fertilizer
- 12 distributed pursuant to a permit under s. ATCP 40.12.

13 (c) Except as provided in sub. (6)(b) or (7), a fertilizer label may not identify any plant
14 nutrient that has a guarantee of zero.

15 (3) **FORMAT.** A guaranteed analysis shall appear in the following format:

16

17

1 **GUARANTEED ANALYSIS**

2 **Total Nitrogen (N) ____%**
3 **____% Ammoniacal Nitrogen**
4 **____% Nitrate Nitrogen**
5 **____% Water Insoluble Nitrogen**
6 **____% (Other recognized and determinable forms of nitrogen)**
7 **Available Phosphate (P₂O₅) ____%**
8 **Soluble Potash (K₂O) ____%**
9 **Calcium (Ca) ____%**
10 **Magnesium (Mg) ____%**
11 **Sulfur (S) ____%**
12 **Boron (B) ____%**
13 **Chlorine (Cl) ____%**
14 **Cobalt (Co) ____%**
15 **Copper (Cu) ____%**
16 **Iron (Fe) ____%**
17 **Manganese (Mn) ____%**
18 **Molybdenum (Mo)..... ____%**
19 **Nickel (Ni) ____%**
20 **Sodium (Na) ____%**
21 **Zinc (Zn) ____%**

22
23 *NOTE:* Percentage guarantees must equal or exceed the minimum guarantees
24 specified in sub. (2).
25

26 **(4) NUTRIENT SOURCE STATEMENT.** (a) A guaranteed analysis shall include a

27 separate nutrient source statement if any of the following apply:

- 28 1. The sum of the guarantees for the primary plant nutrients is less than 24%.
29 2. The fertilizer is a fertilizer-additive combination.
30 3. The fertilizer label represents that the fertilizer contains an organic or slowly
31 released plant nutrient.

32 (b) A plant nutrient source statement under par. (a) shall do all of the following:

- 33 1. Identify the source materials from which the guaranteed plant nutrients are derived,
34 in descending order of content by weight of source material.

1 2. Identify the source of each plant nutrient, using only terms defined in the Official
2 Publication of the Association of American Plant Food Control Officials, No. 57 (2004).

3 **NOTE:** The Official Publication of the Association of American Plant Food Control
4 Officials, No. 57 (2004) is on file with the department, the secretary of state
5 and the revisor of statutes. Copies may be obtained from the treasurer of the
6 Association of American Plant Food Control Officials, Inc., North Carolina
7 Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or
8 online at <http://www.aapfco.org>.

9
10 **(5) PERCENTAGE GUARANTEES; HOW EXPRESSED.** (a) A zero shall precede the
11 decimal point in every guarantee that is less than one percent.

12 (b) A minimum guarantee for a primary plant nutrient shall be stated as a whole
13 number if the guarantee is at least 1.0%.

14 **(6) CHEMICAL FORMS.** (a) If a guaranteed analysis identifies any chemical form of a
15 plant nutrient that has more than one chemical form, it shall identify all chemical forms of the
16 plant nutrient and provide a percentage guarantee for each. The percentage guarantee for
17 each chemical form shall precede the identified chemical form and may include non-zero
18 decimal units. Subsection (3) illustrates the correct format for nitrogen.

19 (b) A chemical form under par. (a) may have a percentage guarantee of zero,
20 provided that the combined guarantee for all chemical forms of the plant nutrient equals or
21 exceeds the minimum guarantee required under sub. (2).

22 (c) No person may represent that a fertilizer contains an organic or slowly released
23 plant nutrient unless all of the following apply:

24 1. The guaranteed analysis lists slowly released chemical forms of that plant nutrient.

25 2. The combined guarantees for slowly released forms of the plant nutrient comprise

1 at least 15% of the total guarantee for that plant nutrient, except as otherwise provided for
2 nitrogen under sub. (8)(b).

3 (7) MAXIMUM GUARANTEES. (a) A fertilizer label may contain a separate written
4 statement, not part of the guaranteed analysis, which states that the amount of a specified plant
5 nutrient or other substance does not exceed a specified percentage by weight of the fertilizer.

6 (b) No person may sell or distribute a fertilizer for use on tobacco unless its label
7 states the maximum amount of chlorine that may be present in the fertilizer.

8 (8) NITROGEN GUARANTEES. (a) A nonagricultural fertilizer label shall guarantee the
9 ammoniacal, nitrate, water insoluble and other chemical forms of nitrogen, as illustrated in sub.
10 (3).

11 (b) No fertilizer label may identify nitrogen as organic unless the water insoluble or
12 slow release nitrogen guarantee is at least 60% of the non-urea nitrogen designated as
13 organic.

14 (9) PHOSPHITE AND PHOSPHOROUS ACID. (a) Notwithstanding sub. (5)(a):

15 1. No fertilizer labeling may identify phosphite or phosphorous acid as a fertilizer
16 ingredient.

17 2. No phosphate nutrient guarantee may include any phosphate derived from
18 phosphite or phosphorous acid.

19 (b) Paragraph (a) does not prohibit the identification, in a fertilizer-pesticide
20 combination, of a pesticide containing phosphite or phosphorous acid.

21 (10) FERTILIZER- ADDITIVE COMBINATIONS. The guaranteed analysis for a fertilizer-
22 additive combination shall be in the format shown in *Appendix A*. Enhancing nutrients other

1 than cobalt and sodium, if claimed, shall be guaranteed as soil or plant additive active
2 ingredients.

3 **NOTE:** See definitions of “enhancing element” and “fertilizer-additive combination”
4 in ss. ATCP 40.01(7) and (9).

5
6 **ATCP 40.12 Fertilizer permits. (1) PERMIT REQUIRED.** Except as provided in sub.
7 (2), no person may distribute a mixed fertilizer for which the sum of the primary plant nutrient
8 guarantees totals less than 24% unless one of the following applies:

9 (a) The distribution is for special agricultural uses, pursuant to a permit under sub. (4).

10 (b) The distribution is for nonagricultural uses, pursuant to a permit under
11 sub. (5).

12 **(2) EXEMPTIONS.** Subsection (1) does not apply to any of the following:

13 (a) A fertilizer labeled with the statement "for further manufacturing use only" and
14 distributed to licensed fertilizer manufacturers who use the fertilizer only for further
15 manufacturing.

16 (b) A fertilizer provided without cost to a recognized research institution solely for the
17 purpose of conducting scientific research.

18 (c) A fertilizer derived from a single source material of uniform plant nutrient content,
19 provided that all of the following apply:

20 1. The source material is accurately described by a term defined in the Official
21 Publication of the Association of American Plant Food Control Officials, No. 57 (2004).

22 **NOTE:** The Official Publication of the Association of American Plant Food Control
23 Officials, No 57 (2004) is on file with the department, the secretary of state
24 and the revisor of statutes. Copies may be obtained from the treasurer of the
25 Association of American Plant Food Control Officials, Inc., North Carolina
26 Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or

1 online at <http://www.aapfco.org>.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

2. The source material and the fertilizer are clearly and conspicuously labeled using the defined term under subd. 1.

(d) A fertilizer labeled solely for organic crop production if all of the following apply:

1. The fertilizer qualifies, or all of its ingredients qualify, under 7 CFR 205 for use in organic crop production.

2. The fertilizer label discloses the listing or approval under subd. 1.

3. The fertilizer label conspicuously states that **“This product is intended for use according to an approved organic system plan.”**

4. The manufacturer or distributor makes no performance claims for the product.

5. The product label provides use directions, including use rates and methods of application.

(3) PERMIT APPLICATION. A person seeking a permit under sub. (4) or (5) shall apply on a form provided by the department. The application shall include all of the following:

(a) The applicant’s name, business address and fertilizer license number under s. ATCP 40.04. If the applicant does not have a fertilizer license, the applicant shall also submit a license application under s. ATCP 40.04. No permit under sub. (4) or (5) is valid unless the permit holder also holds a current license under s. ATCP 40.04.

(b) The name, business address and fertilizer license number of the fertilizer manufacturer if the applicant is not the manufacturer.

(c) The fertilizer label.

(d) Proposed labeling, including any advertising or promotional materials that make

1 content or performance claims not included on the product label.

2 (e) A statement indicating whether the applicant seeks a permit under sub. (4) or (5),
3 or both.

4 **NOTE:** A person may, for a single product, need permits under both sub. (4) and
5 sub. (5).
6

7 (f) A fee of \$25 for each requested permit.

8 (g) The following written statement signed by the applicant:

9 **“I hereby certify all the following:**

10

11 **1. When applied for labeled purposes according to label directions, this**
12 **fertilizer provides available nutrients in amounts that are efficacious and**
13 **useful under Wisconsin conditions. Except as otherwise specifically**
14 **disclosed on the product label, use according to label directions provides**
15 **annual nutrient amounts that equal or exceed annual plant nutrient needs.**

16

17 **2. The statements on this fertilizer label, and in related advertising and**
18 **promotional materials, are truthful. The applicant has relevant and reliable**
19 **information to substantiate all product labeling, including any claim or**
20 **guarantee related to product contents. The applicant has relevant scientific**
21 **evidence to substantiate all express and implied performance claims.**

22

23 **3. This fertilizer product and its labeling comply with ch. ATCP 40, Wis. Adm.**
24 **Code.”**

25

26 (h) Other relevant information required by the department.

27 **NOTE:** You may obtain a permit application form from the department at the
28 following address:

29

30 Department of Agriculture, Trade and Consumer Protection

31 ARM Division

32 PO Box 8911

33 Madison, WI 53708-8911.
34

35

(4) SPECIAL AGRICULTURAL USE PERMIT. The department may issue a special

36 agricultural use permit if the department finds, based on a review under subch. IV, that the

1 application is complete and the fertilizer is designed and labeled as a special agricultural-use
2 fertilizer.

3 (5) NONAGRICULTURAL USE PERMIT. The department may issue a nonagricultural
4 use permit if the department finds, based on a review under subch. IV, that the application is
5 complete and the fertilizer is designed and labeled only as a nonagricultural-use fertilizer.

6 (6) IMPLIED WARRANTY. A person who distributes a fertilizer product pursuant to a
7 permit under this section implicitly warrants that the product is effective for all of the purposes
8 recommended in the product labeling, when applied under Wisconsin conditions according to
9 the product label. This warranty does not limit any other express or implied warranty that may
10 apply under Wisconsin law. The department does not warrant the efficacy or usefulness of
11 any fertilizer, or the truth of any labeling statement.

12 (7) PERMIT NOT TRANSFERABLE. A permit under this section covers only one fertilizer
13 product. A permit is not transferable between persons or products.

14 (8) FERTILIZER-ADDITIVE COMBINATIONS. A permit under this section does not
15 authorize a person to distribute a fertilizer-additive combination in this state unless the person
16 also holds a license under s. ATCP 40.20 and a permit, if required, under s. ATCP 40.28.

17 (9) PRIMARY NUTRIENT GUARANTEES. A permit under this section may authorize a
18 minimum guarantee of less than 1.0% for any primary plant nutrient if all of the following apply:

- 19 1. The primary plant nutrient guarantee is at least 0.1%.
- 20 2. The total of all primary plant nutrients in the product is less than 10%.

21 (10) ACTION ON PERMIT APPLICATION. The department shall act on a permit
22 application according to subch. IV.

1 **ATCP 40.14 Fertilizer content deficiencies. (1) PRIMARY NUTRIENTS.** A
2 fertilizer is mislabeled if any of the following apply, based on a sample collected and tested
3 according to s. ATCP 40.16:

4 (a) The fertilizer contains less than 90% of the label guarantee amount for any primary
5 nutrient.

6 (b) The actual percentage amount of any primary nutrient falls at least 2 percentage
7 points short of the percentage amount stated on the label.

8 **NOTE:** For example, if the label states that the fertilizer contains 30% N, but testing
9 shows that the fertilizer contains only 27.5% N, the fertilizer is mislabeled.

10 (c) The economic value of primary nutrients actually present is less than 98% of the
11 economic value of the amounts guaranteed, where economic value is calculated according to
12 sub. (3).
13

14 **(2) SECONDARY AND MICRONUTRIENTS.** A fertilizer is mislabeled if, based on a
15 sample collected and tested according to s. ATCP 40.16, the actual amount of any secondary
16 nutrient, micronutrient or enhancing element listed in a guaranteed analysis falls short of the
17 label guarantee by an amount that exceeds the allowable deficiency shown in Table 1.

TABLE 1.

ELEMENT	ALLOWABLE DEFICIENCY (SUM EXPRESSED AS % OF LABEL GUARANTEE)
Calcium Magnesium Sulfur	0.2 + 5% of the label guarantee
Boron	0.003 + 15% of the label guarantee

Cobalt Molybdenum	0.0001 + 30% of the label guarantee
Chlorine Copper Iron Manganese Nickel Sodium Zinc	0.005 + 10% of the label guarantee

1
2 **(3) ECONOMIC VALUE.** Economic value, for purposes of sub. (1)(c), equals {[total
3 nitrogen (N) guarantee] x 2} + {[available phosphate (P₂O₅) guarantee] x 2} + {soluble
4 potash (K₂O) guarantee}.

5 **NOTE:** The multipliers in sub. (3) are based on approximate relative average
6 wholesale prices for primary plant nutrients in Wisconsin. The department will
7 conduct periodic wholesale price surveys and will adjust the multipliers, as the
8 department deems necessary, by rule.

9
10 **(4) CUSTOM MIXED FERTILIZER.** Label guarantees for a custom mixed fertilizer shall
11 be calculated from the custom mix formulation.

12 **ATCP 40.16 Fertilizer sampling and analysis. (1) SAMPLING METHODS.** The
13 department may collect official fertilizer samples to determine compliance with plant nutrient
14 guarantees. The department shall collect official samples using applicable methods from the
15 Inspectors Manual of the Association of American Plant Food Control Officials, 6th edition
16 (1999).

17 **NOTE:** The Inspectors Manual of the Association of American Plant Food Control
18 Officials, 6th edition (1999) is on file with the department, the secretary of state
19 and the revisor of statutes. Copies are available from the treasurer of the
20 Association of American Plant Food Control Officials, Inc., North Carolina
21 Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or

1 online at <http://www.aapfco.org>.

2
3 (2) TEST METHODS. The department may test official fertilizer samples to determine
4 compliance with nutrient guarantees. The department shall test official samples using
5 applicable methods from the “Official Methods of Analysis of AOAC International,” volume I,
6 17th edition as updated by the 2nd revision (2003).

7 **NOTE:** The “Official Methods of Analysis of AOAC International,” volume I, 17th
8 edition as updated by the 2nd revision (2003) is on file with the department, the
9 secretary of state and the revisor of statutes. Copies are available from
10 AOAC International at 481 N. Frederick Ave., Suite 500, Gaithersburg, MD
11 20877-2417.
12

13 **ATCP 40.18 Fertilizer; toxic substances.** (1) No fertilizer may contain any
14 substance that is toxic or injurious to plants, animals or humans when the fertilizer is handled
15 or applied under reasonably foreseeable use conditions unless the substance and hazard are
16 disclosed on the fertilizer label.

17 **NOTE:** See s. ATCP 40.08.

18 (2) No fertilizer may contain a metal in a concentration that exceeds the maximum
19 allowable concentration specified for that metal in the statement of uniform interpretation and
20 policy No. 25, contained in the Official Publication of the Association of American Plant Food
21 Control Officials, No. 57 (2004).

22 **NOTE:** Statement of uniform interpretation and policy 25, from the Official
23 Publication of the Association of American Plant Food Control Officials, No
24 57 (2004), is on file with the department, the secretary of state and the revisor
25 of statutes. Copies may be obtained from the treasurer of the Association of
26 American Plant Food Control Officials, Inc., North Carolina Department of
27 Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or online at
28 <http://www.aapfco.org>.
29
30

31 **SUBCHAPTER III**

1 **SOIL OR PLANT ADDITIVES**

2
3 **ATCP 40.20 Soil or plant additives; license. (1) ANNUAL LICENSE REQUIRED.**

4 Except as provided in sub. (2), no person may manufacture or distribute a soil or plant
5 additive in this state without an annual license from the department. A license is not
6 transferable between persons. A license expires on March 31 of each year.

7 **NOTE:** Since a license is not transferable between persons, a license holder must
8 apply for a new license if it changes its legal identity.

9
10 **(2) EXEMPTION.** The license requirement under sub. (1) does not apply to a person
11 who merely distributes a soil or plant additive packaged and labeled by a license holder who
12 also holds any permit required under s. ATCP 40.28(1), provided the person makes no
13 additional content or performance claims for the product.

14 **(3) LICENSE APPLICATION.** A person shall apply for an annual license under sub. (1)
15 on a form provided by the department. An application shall include all of the following:

16 (a) The applicant's correct legal name, and any trade name under which the applicant
17 does business.

18 (b) The applicant's social security number if the applicant is an individual. If the
19 applicant is a partnership, the application shall include the social security number of each
20 individual partner.

21 **NOTE:** A social security number is required under s. 93.135(1)(d), Stats.

22 (c) Each address from which the applicant proposes to do business in this state.

23 (d) Each address at which the applicant proposes to manufacture a soil or plant
24 additive in this state. A license holder shall notify the department in writing before

1 manufacturing a soil or plant additive at any other address.

2 (e) The fees required under sub. (4).

3 (f) A current list of soil or plant additives for which the applicant requires permits
4 under s. ATCP 40.28(1), and the current label for each of those products.

5 **NOTE:** A license under sub. (1) does not authorize the license holder to manufacture
6 or distribute a soil or plant additive for which a permit is required under s.
7 ATCP 40.28 unless the license holder holds that permit.

8
9 (g) Other relevant information required by the department.

10 **(4) LICENSE FEES.** A person applying for an annual soil or plant additive license shall
11 pay the following fees and surcharges:

12 (a) A license fee of \$25.

13 (b) A late renewal fee of \$5 if the applicant fails to apply for a renewal license before
14 the prior year's license expires.

15 **NOTE:** See s. 93.21, Stats.

16
17 **(5) ACTION ON LICENSE APPLICATION.** (a) Except as provided in par. (d), the
18 department shall grant or deny a license application under sub. (3) within 45 working days
19 after the department receives a complete application.

20 (b) The department may place conditions on a license. If the department denies a
21 license application or issues a license with conditions, the department shall give the applicant
22 written notice of the reasons.

23 (c) A license holder may not distribute a soil or plant additive for which a permit is
24 required under s. ATCP 40.28(1) unless the license holder also holds that permit.

25 (d) If a license applicant does not manufacture soil or plant additives in Wisconsin,

1 but seeks a license only to distribute a soil or plant additive for which a permit is required
2 under s. ATCP 40.28(1), the department may grant or deny the license application when it
3 grants or denies the permit application.

4 **ATCP 40.22 Soil or plant additives; tonnage reports and fees. (1) ANNUAL**
5 **TONNAGE REPORT AND FEE PAYMENT.** By March 31 of each year, a person required to hold
6 a license under s. ATCP 40.20 shall do all of the following:

7 (a) Report to the department the number of tons of each soil or plant additive the
8 person distributed in this state in the preceding calendar year. The person shall file the report
9 in writing, on a form provided by the department.

10 (b) Pay fees and surcharges under sub. (2). The person shall include the payment
11 with the tonnage report under par. (a).

12 **(2) FEE AMOUNTS.** A person shall pay the following fees and surcharges on tonnage
13 reported under sub. (1)(a):

14 (a) A basic fee of 25 cents per ton, or \$25, whichever is greater.

15 (b) A research fee of 10 cents per ton, or \$1, whichever is greater.

16 (c) A groundwater fee of 10 cents per ton, or \$1, whichever is greater.

17 **(3) COMBINATIONS AND FILLERS.** A person shall include all of the following in the
18 tonnage reported under sub. (1)(a):

19 (a) Combination products that contain a soil or plant additive, if any.

20 (b) All fillers, carriers and fluids included with a soil or plant additive at the time of
21 distribution.

22 **(4) PENALTIES FOR LATE FILING.** A person who fails to comply with sub. (1) by

1 March 31 shall pay an additional fee of 10 percent of the tonnage fees due, but not less than
2 \$10.

3 **NOTE:** The department may also suspend a license or permit for nonpayment of
4 fees.

5
6 **ATCP 40.24 Soil or plant additives; labeling. (1) GENERAL.** A soil or plant
7 additive shall be clearly and conspicuously labeled with all of the following:

8 (a) The name and address of the manufacturer or distributor who is licensed under s.
9 ATCP 40.20 and who also holds a permit for that product under s. ATCP 40.28(1) if a
10 permit is required.

11 (b) The product name of the soil or plant additive.

12 (c) The net weight or the liquid measure and density of the package or bulk delivery
13 to which the label applies.

14 (d) The purposes for which the soil or plant additive is recommended and effective.

15 This paragraph does not apply to a product that is distributed solely for organic crop
16 production and qualifies for exemption under s. ATCP 40.28(1)(b).

17 (e) Complete use directions to ensure that the product is effective for the purposes
18 recommended in par. (d). Use directions shall identify recommended application sites,
19 methods, rates and frequencies. If effectiveness depends on use with other products, the label
20 shall clearly disclose that fact.

21 (f) A guaranteed analysis that complies with s. ATCP 40.26.

22 (g) Any other information required under this chapter.

23 **(2) COMBINATION PRODUCTS.** (a) Fertilizer-additive combinations shall be labeled

1 according to this section and s. ATCP 40.08.

2 (b) Pesticide-additive combinations shall be labeled according to this section and s.
3 ATCP 29.06.

4 (c) Products combining a soil or plant additive with seed shall be labeled according to
5 this section and ch. ATCP 20.

6 (d) Products combining a soil or plant additive with liming material shall be labeled
7 according to this section and ch. ATCP 41.

8 **(3) HAZARD CAUTION STATEMENT.** (a) A soil or plant additive label shall include a
9 caution statement if the soil or plant additive may be toxic to plants or animals when the
10 product is handled or applied under reasonably foreseeable use conditions. The label shall
11 warn the user of the potential hazard, and shall explain how to prevent or minimize the hazard.

12

13 (b) Labels for soil or plant additives, other than pesticide-additive combinations, shall
14 comply with ch. ATCP 139 and ss. 100.37 and 100.42, Stats., as applicable.

15 **NOTE:** See also sub. (4). Chapter ATCP 139 and ss. 100.37 and 100.42, Stats.,
16 regulate consumer product safety and hazardous substances.

17

18 **(4) IMPLIED WARRANTY.** (a) A person who distributes a soil or plant additive
19 implicitly warrants that the soil or plant additive is effective for all of the purposes
20 recommended in the product labeling, when applied under Wisconsin conditions according to
21 the product label. This warranty does not limit any other express or implied warranty that may
22 apply under Wisconsin law.

23 (b) Paragraph (a) does not apply to a product that is distributed solely for organic

1 crop production and qualifies for exemption under s. ATCP 40.28(1)(b). This exemption
2 does not limit any other express or implied warranty that may apply under Wisconsin law.

3 (c) The department does not warrant the efficacy of any soil or plant additive, or the
4 truth of any label statement.

5 (5) PROOF OF PRODUCT CLAIMS. (a) A person who manufactures or distributes a
6 soil or plant additive shall have all of the following:

7 1. Relevant and reliable information to substantiate all product labeling, including any
8 claim or guarantee of product contents. The person shall have substantiation for each labeling
9 statement before making that statement. Testimonials are not reliable information under this
10 subdivision.

11 2. Relevant scientific evidence to substantiate every performance claim, including any
12 implied warranty under sub. (4). The scientific evidence shall substantiate that the product is
13 effective for the stated purpose when applied under Wisconsin conditions according to the
14 product label. The person shall have that scientific evidence before making the claim or
15 implied warranty. Testimonials are not scientific evidence under this subdivision.

16 (b) The department may require a person to submit substantiating information under
17 par. (a). The department may require the person to submit the information before or after the
18 department issues a license under s. ATCP 40.20 or a permit under s. ATCP 40.28. The
19 issuance of a license or permit does not create any finding or presumption that the license or
20 permit holder has complied with par. (a).

21 **ATCP 40.26 Soil or plant additives; guaranteed analysis.** (1) GENERAL. The
22 label of every soil or plant additive shall include a guaranteed analysis that complies with this

1 section. No person may represent that a soil or plant additive contains any substance unless
2 that substance is listed in the guaranteed analysis.

3 (2) FORMAT. (a) A guaranteed analysis for a soil or plant additive shall have the
4 following format:

5 **GUARANTEED ANALYSIS**

6 **ACTIVE INGREDIENTS**

7 **Common Name (Chemical Name)..... _____%**
8 **Common Name (Chemical Name) _____%**
9 **Common Name (Chemical Name)..... _____%**

10
11 **INERT INGREDIENTS**

12 **Common Name (Chemical Name)..... _____%**
13 **Common Name (Chemical Name)..... _____%**
14 **Common Name (Chemical Name)..... _____%**

15
16 (b) The combined guarantees for active and inert ingredients shall total 100% unless
17 the guaranteed analysis includes one or more active microorganism ingredients identified
18 according to sub. (3)(b). A zero shall precede the decimal on any guarantee that is less than
19 one percent.

20 (3) ACTIVE INGREDIENTS. (a) The guaranteed analysis shall identify, under the
21 “ACTIVE INGREDIENTS” subtitle, each ingredient that actively and directly contributes to the
22 performance of the soil or plant additive. Except as provided in par. (b), the guaranteed
23 analysis shall guarantee the amount of each active ingredient as a percentage of the soil or
24 plant additive.

25 (b) If an active ingredient is a microorganism, the guaranteed analysis shall do all of
26 the following:

27 1. Identify the active microorganism genus. If any activity is unique to a species of the

1 genus, the guaranteed analysis shall also identify that species.

2 2. Guarantee the number of viable microorganisms or colony forming units (CFU's),
3 of each identified genus or species, per milliliter of liquid product or per gram of non-liquid
4 product.

5 (4) INERT INGREDIENTS. The guaranteed analysis shall identify, under the "INERT
6 INGREDIENTS" subtitle, the name and amount of each ingredient that does not contribute
7 directly to the performance of the soil or plant additive.

8 (5) INGREDIENT IDENTIFICATION. Except as provided in sub. (3)(b), the guaranteed
9 analysis shall identify each ingredient by its common name, if any, followed in parentheses by
10 its chemical name as stated in the Merck Index, 12th edition (1996). If an ingredient is not
11 sufficiently defined in the Merck Index, the department may approve an additional or
12 alternative name for the ingredient.

13 **NOTE:** The Merck Index, 12th edition (1996) is on file with the department, the
14 secretary of state and the revisor of statutes. Copies are available from Merck
15 & Co., Inc., Rahway, NJ 07065.
16

17 (6) MINIMUM GUARANTEES. No soil or plant additive label may identify any
18 ingredient for which the guaranteed analysis shows a zero guarantee.

19 (7) FERTILIZER-ADDITIVE COMBINATIONS. The guaranteed analysis for a fertilizer-
20 additive combination shall be in the format shown in *Appendix A*. Plant nutrients shall be
21 guaranteed according to s. ATCP 40.10. Other ingredients shall be guaranteed according to
22 this section.

23 (8) FORMAT EXEMPTIONS. The department may exempt a soil or plant additive from
24 any guaranteed analysis format requirement under this section if the person requesting the

1 exemption demonstrates all of the following to the department’s satisfaction:

2 (a) Another state, which has authorized sale of the soil or plant additive, has a
3 conflicting statute or regulation.

4 (b) The format exemption will reconcile the conflict under par. (a).

5 (c) The format exemption will not affect, to the detriment of purchasers in this state,
6 any claim or disclosure related to product performance, use, purpose, efficacy or active
7 ingredients.

8 (d) The format exemption will not cause the product label to be false, deceptive or
9 misleading in any respect.

10 (e) The format required by the other state satisfies the objectives of this section.

11 (f) The format required by the other state does not violate applicable labeling
12 requirements, if any, under chs. ATCP 20, 29 and 41.

13 **ATCP 40.28 Soil or plant additives; permits. (1) GENERAL.** (a) Except as
14 provided in par. (b), no person may distribute a soil or plant additive in this state without a
15 permit from the department under this section. The department shall review permit
16 applications according to subch. IV.

17 (b) Paragraph (a) does not apply to a soil or plant additive labeled solely for organic
18 crop production if all of the following apply:

19 1. The product qualifies, or all of its active ingredients qualify, under 7 CFR 205 for
20 use in organic crop production.

21 2. The product label discloses the listing or approval under subd. 1.

22 3. The product label conspicuously states that “**This product is intended for use**

1 **according to an approved organic system plan.”**

2 4. The manufacturer or distributor makes no performance claims for the product.

3 5. The product label provides use directions, including use rates and methods of
4 application.

5 (2) PERMIT APPLICATIONS. A person seeking a permit under sub. (1) shall apply on
6 a form provided by the department. The application shall include all of the following:

7 (a) The applicant’s name, business address, and license number under s. ATCP
8 40.20. If the applicant does not have a license under s. ATCP 40.20, the applicant shall also
9 submit a license application under s. ATCP 40.20(3). No permit under this section is valid
10 unless the permit holder also holds a current license under s. ATCP 40.20.

11 (b) The name, business address and license number under s. ATCP 40.20 of the
12 person who manufactures the soil or plant additive, if the applicant is not the manufacturer.

13 (c) The product label, including all of the information required under s. ATCP 40.24.

14 (d) Proposed labeling, including any advertising or promotional materials that make
15 content or performance claims not included on the product label.

16 (e) A fee of \$100.

17 (f) The following written statement signed by the applicant:

18 **“I hereby certify all the following:**

19 **1. This product is effective and useful for all labeled purposes when applied**
20 **under Wisconsin conditions according to label directions.**

21
22 **2. The statements on the product label, and in related advertising and**
23 **promotional materials, are truthful. The applicant has relevant and reliable**
24 **information to substantiate all product labeling, including any claim or**
25 **guarantee related to product contents. The applicant has relevant scientific**
26 **evidence to substantiate all express and implied performance claims.**

1
2 **3. This product and its labeling comply with ch. ATCP 40, Wis. Adm. Code.”**
3

4 (g) A method of analysis for each guaranteed active ingredient in the soil or plant
5 additive. The method shall be one of the following:

6 1. A method contained in the “Official Methods of Analysis of AOAC International”,
7 volume I, 17th edition as updated by the 2nd revision (2003).

8 **NOTE:** The “Official Methods of Analysis of AOAC International, volume I, 17th
9 edition as updated by the 2nd revision (2003) is on file with the department, the
10 secretary of state and the revisor of statutes. Copies are available from
11 AOAC International at 481 N. Frederick Ave., Suite 500, Gaithersburg, MD
12 20877-2417.
13

14 2. For humic substances, the method contained in **Appendix B**.

15 3. A method provided by the applicant and approved in writing by the department.

16 The department may not approve a method under this subdivision if a method applies under
17 subd. 1. or 2. A method approved under this subdivision must be relevant and scientifically
18 defensible.

19 (h) Other relevant information required by the department.

20 **NOTE:** You may obtain a permit application form from the department at the
21 following address:

22
23 Department of Agriculture, Trade and Consumer Protection
24 ARM Division
25 PO Box 8911
26 Madison, WI 53708-8911.
27

28 **(3) PERMIT NOT TRANSFERABLE.** A permit under this section covers only one soil or
29 plant additive product. A permit is not transferable between persons or products.

30 **(4) FERTILIZER- ADDITIVE COMBINATIONS.** A permit under this section does not

1 authorize a person to distribute a fertilizer-additive combination unless the person also holds a
2 fertilizer license under s. ATCP 40.04 and a fertilizer permit, if required, under s. ATCP
3 40.12.

4 (5) ACTION ON PERMIT APPLICATION. The department shall act on a permit
5 application according to subch. IV.

6 **ATCP 40.30 Soil or plant additives; content deficiencies.** A soil or plant additive
7 is mislabeled if, based on a sample collected and tested according to s. ATCP 40.32, the
8 product contains less than 98% of the amount of any active ingredient guaranteed on the
9 package label.

10 **ATCP 40.32 Soil or plant additives; sampling and testing.** (1) SAMPLING. The
11 department may sample a soil or plant additive to determine whether it contains ingredients in
12 the amounts guaranteed on the product label, or to test for toxic substances or other
13 contaminants. The department shall use a sampling method that is appropriate to the material
14 being sampled.

15 (2) TESTING. The department may determine appropriate methods for testing soil or
16 plant additives. The department shall use methods identified in s. ATCP 40.28(2)(g), if
17 available.

18 **ATCP 40.34 Soil or plant additives; toxic substances.** (1) No soil or plant
19 additive may contain any substance that is toxic or injurious to plants, animals or humans when
20 the soil or plant additive is handled or applied under reasonably foreseeable use conditions,
21 unless the substance and hazards are identified on the product label.

22 **NOTE:** See s. ATCP 40.24.
23

1 (2) No soil or plant additive may contain a metal identified in *Appendix C* in a
2 concentration that exceeds the maximum allowable concentration specified for that metal in
3 *Appendix C*.

4 **SUBCHAPTER IV**
5 **REVIEWING PERMIT APPLICATIONS**

6
7 **ATCP 40.40 Complete application.** Within 30 working days after a person submits
8 a permit application under s. ATCP 40.12 or 40.28, the department shall determine whether
9 the application is sufficiently complete to warrant further review. If the application is
10 incomplete, the department shall notify the applicant of what is needed to complete the
11 application. The department shall deny the application if the applicant fails to complete the
12 application within 30 days of the department's notice.

13 **ATCP 40.42 Initial review of permit application.** The department may review a
14 permit application to the extent that it deems appropriate, based on product uses, content,
15 labeling and performance claims. The department may do all of the following as part of its
16 review:

- 17 (1) Review product labeling for compliance with this chapter.
- 18 (2) Review the efficacy and usefulness of the product, under Wisconsin conditions,
19 when the product is used according to label directions.
- 20 (3) Review labeling statements, including statements related to product contents and
21 performance, to determine whether they are accurate, truthful and properly substantiated.

22 **NOTE:** For example, the department may review performance claims such as the
23 following:

- 24
- 25 • "Product X helps develop stronger, deeper root systems to help plants
26 fight against minor diseases and insect infestations."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

- “Product X will provide plant nutrients needed to give your lawn a golf course look.”

(4) Review for possible health, safety and environmental hazards, and for proper labeling of products containing potentially hazardous or toxic ingredients.

(5) Review any analytical methodology proposed by the applicant under s. ATCP 40.28(2)(g).

(6) Review for compliance with other requirements under this chapter.

ATCP 40.44 Action on permit application. Within 60 working days after the department receives a complete permit application under s. ATCP 40.12 or 40.28, the department shall do one of the following:

(1) Issue the permit. The department may limit the time period for which the permit is effective, or impose other permit conditions that it deems necessary. If the department imposes permit conditions, the department shall give the applicant written notice of its reasons.

(2) Deny the permit. If the department denies the permit, the department shall give the applicant written notice of its reasons.

(3) Notify the applicant, in writing, that the department will conduct a supplementary review under s. ATCP 40.46. The notice shall do all the following:

(a) Identify the reasons for the supplementary review.

(b) Identify the scope of the supplementary review.

(c) Identify any additional information that the department requires of the applicant under s. ATCP 40.46 in order to conduct the supplementary review. The department may specify the form in which the applicant must submit the information.

1 **ATCP 40.46 Supplementary review. (1) GENERAL.** (a) The department may
2 conduct a supplementary review of a permit application under s. ATCP 40.12 or 40.28 if the
3 department has reasonable grounds to conclude that the supplementary review is needed to
4 determine compliance with this chapter. The department may require the applicant to submit
5 information under this section that may be relevant to the supplementary review. The
6 department may deny a permit application if the applicant fails to provide the information.

7 **NOTE:** The department may request assistance from the university of Wisconsin,
8 college of agriculture and life sciences in evaluating any substantiating evidence
9 under this section.
10

11 (b) In its supplementary review, the department may consider any information that the
12 department considers relevant, including information provided by the applicant. The
13 department may consider whether the information is accurate, relevant, material, reliable,
14 properly documented, substantiated, scientifically valid, persuasive, consistent with generally
15 accepted scientific knowledge, consistent with other reliable information, applicable under
16 Wisconsin conditions, and applicable in light of recommended uses, use rates and use
17 directions.

18 **(3) REVIEW PERIOD.** The department shall complete a supplementary review under
19 sub. (1) as soon as reasonably possible, and within 120 working days after the department
20 receives all of the supplementary information requested under sub. (1)(a).

21 **(4) ACTION FOLLOWING SUPPLEMENTARY REVIEW.** When the department
22 completes its supplementary review, the department shall do one of the following:

23 (a) Issue the permit. The department may limit the time period for which the permit is
24 effective, or impose other permit conditions that it deems necessary. If the department

1 imposes permit conditions, the department shall give the applicant written notice of its reasons.

2 (b) Deny the permit. If the department denies the permit, the department shall give
3 the applicant written notice of its reasons.

4 **ATCP 40.48 Scientific substantiation.** Test data and reports submitted in support
5 of a permit application are not considered scientific unless all of the following apply:

6 (1) The test data and reports result from tests conducted by competent scientific
7 researchers, using appropriate scientific methods.

8 (2) Test data and reports include all information needed to replicate the tests.

9 (3) Field test data and reports, if any, result from field tests that comply with the
10 standards in *Appendix D*.

11 (4) Field test reports, if any, comply with the standards in *Appendix E*.

12 **ATCP 40.50 Withdrawing or modifying a permit application.** A permit applicant
13 may withdraw or modify an application at any time. An applicant may modify product
14 contents or labeling to resolve issues presented in the permit review process. The department
15 may, in its discretion, advise on label revisions at any point in the permit review process.

16 Within 60 working days after the department receives a modified application that is complete,
17 the department shall take action as provided in s. ATCP 40.44.

18 **ATCP 40.52 Permit reconsideration.** The department may, at any time, reconsider
19 the issuance of any permit under s. ATCP 40.12 or 40.28. The department may require a
20 permit holder to submit relevant information as for a supplementary review under s. ATCP
21 40.46.

22 **SUBCHAPTER V**
23 **PROHIBITIONS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ATCP 40.54 Prohibitions. (1) APPLICATIONS AND REPORTS. No person may do any of the following in connection with a license or permit application under this chapter, or in connection with any report or statement filed with the department under this chapter:

- (a) Misrepresent or falsify any information.
- (b) Make any statement that is not substantiated, to the extent required under this chapter, at the time the statement is made.

(2) ADVERTISING AND PROMOTIONAL STATEMENTS. No person may do any of the following in connection with the labeling, advertising, promotion or distribution of any fertilizer or soil or plant additive:

- (a) Make any representation that is false, deceptive or misleading.
- NOTE:* See also s. 100.18, Stats. A federally trademarked product name is not considered false, deceptive or misleading under par. (a).
- (b) Make any representation that is inconsistent with the product label.
 - (c) Represent that a product contains a plant nutrient or other beneficial substance, unless the guaranteed analysis includes a guarantee for that substance.

- (d) Make any representation or warranty that is not substantiated, to the extent required under this chapter, at the time the representation or warranty is made.

- (e) Represent that the department endorses or warrants the product.

- (f) Make any performance, use or efficacy claim for a product, distributed pursuant to a permit under s. ATCP 40.12 or 40.28, that exceeds or is inconsistent with the product label contained in the approved permit application. This does not apply to a performance, use or efficacy claim that the department approves in writing.

1 (g) Distribute a fertilizer, pursuant to the exemption in s. ATCP 40.12(2)(a), to a
2 person in this state who is not licensed under s. ATCP 40.04.

3 **SUBCHAPTER VI**
4 **ENFORCEMENT AND APPEALS**

5 **ATCP 40.56 License or permit action.** (1) The department may, for cause, deny,
6 suspend, revoke, or impose conditions on a license or permit issued under this chapter.

7 Cause includes any of the following:

8 (a) Failure to comply with s. 94.64 or 94.65, Stats., or this chapter.

9 (b) Failure to provide information required under s. 94.64 or 94.65, Stats., or this
10 chapter.

11 (c) Failure to comply with the terms and conditions of a license or permit issued under
12 this chapter. This may include violations resulting from material changes in product contents,
13 product labeling, or product advertising or promotional claims.

14 (d) In the case of a permit issued under s. ATCP 40.12 or 40.28, the permit holder
15 no longer holds a license under s. ATCP 40.04 or 40.28 that is required for the validity of the
16 permit.

17 (e) In the case of a permit issued under s. ATCP 40.12 or 40.28, the permit holder
18 has not distributed any product pursuant to the permit for at least 12 months.

19 **NOTE:** Sections 93.06(7) and (8), Stats., authorize the department to deny,
20 suspend, revoke or impose conditions on licenses or permits.

21 (2) **SUMMARY PERMIT SUSPENSION.** (a) The department's division of agricultural
22 resource management may, by written notice, summarily suspend or impose conditions on a
23 permit issued under s. ATCP 40.12 or 40.28, for any of the reasons identified in sub. (1).
24
25

1 (b) A summary suspension under par. (a) shall take effect on a date specified in the
2 suspension notice, but not sooner than 10 days after the suspension notice is served on the
3 permit holder. The division administrator shall sign the suspension order.

4 (c) A permit holder may request a hearing on a summary suspension under this
5 subsection, pursuant to s. ATCP 1.03. The administrative law judge or final decision maker
6 may stay the summary suspension pending hearing or decision, but a request for hearing does
7 not automatically stay a summary suspension.

8 **ATCP 40.58 Stop sale and holding orders. (1) STOP SALE ORDER.** The
9 department may issue a written order prohibiting the distribution or movement of a product if
10 the department finds that the product is distributed in violation of s. 94.64 or 94.65, Stats., or
11 this chapter. No person may distribute or move a product in violation of the department's
12 order.

13 **NOTE:** See ss. 94.64(11)(a) and (b) and s. 94.65(10)(b), Stats.

14 **(2) TEMPORARY HOLDING ORDER.** (a) The department may issue a written holding
15 order, temporarily prohibiting the distribution or movement of a product, if the department has
16 reason to believe that the product is distributed in violation of s. 94.64 or 94.65, Stats., or this
17 chapter. The department may issue a temporary holding order pending further examination or
18 analysis to determine whether there is a violation of s. 94.64 or 94.65, Stats., or this chapter.
19 No person may distribute or move a product in violation of a temporary holding order.

20 **NOTE:** See ss. 94.64(11)(b) and 94.65(10)(a), Stats.

21 (b) A temporary holding order on a fertilizer remains in effect for 15 days unless the
22 department extends or withdraws the order. The department may extend the temporary

1 holding order for up to 15 days to complete sampling, analysis and evaluation of the fertilizer
2 and its labeling.

3 (c) A temporary holding order on a soil or plant additive or a fertilizer-additive
4 combination remains in effect for 60 days unless the department withdraws the order. (3)
5 SERVING AN ORDER. The department shall serve an order under sub. (1) or (2) by delivering
6 or mailing a copy to the owner or custodian of the product, or by posting a copy in a
7 conspicuous place on or near the product.

8 (4) RELEASING AN ORDER. The department may release an order if any of the
9 following apply:

10 (a) The department finds that the violation has been corrected.

11 (b) The department determines, upon further investigation, that there is no violation.

12 (c) The department determines that the order is not necessary or appropriate, or is no
13 longer necessary or appropriate.

14 **ATCP 40.60 Court enforcement.** The department may seek court action to enforce
15 this chapter, including any of the following actions that may be appropriate:

16 (1) FERTILIZER SEIZURE. The department, or a district attorney at the request of the
17 department, may ask a court to seize and dispose of a fertilizer as provided in s. 94.64(11)(c),
18 Stats.

19 (2) INJUNCTION AND RESTITUTION. The department, or a district attorney at the
20 request of the department, may ask a court to issue a temporary or permanent injunction under
21 s. 94.64(11)(d) or 94.65(10)(d), Stats., to restrain a violation of this chapter. The department
22 may also ask a court to order restitution.

1 (3) CIVIL FORFEITURE. The department may ask a district attorney to seek a court-
2 ordered civil forfeiture under s. 94.64(12)(a) or 94.65(11)(a), Stats.

3 (4) CRIMINAL PROSECUTION. The department may ask a district attorney to initiate a
4 criminal prosecution under s. 94.64(12)(a) or 94.65(11)(b), Stats.

5 **NOTE:** A buyer injured by a violation of this chapter may sue the violator for any
6 contract remedies that may apply. If the violation pertains to a soil or plant
7 additive, the person may also sue for double damages, costs and reasonable
8 attorney fees under s. 94.65(12), Stats.

9
10 **ATCP 40.62 Administrative appeals. (1) REQUEST FOR HEARING.** A person who
11 is the subject of any of the following department actions may request a hearing and
12 reconsideration of that action:

13 (a) The denial or restriction of a permit or initial license under this chapter.

14 (b) A stop sale order or holding order under s. ATCP 40.58.

15 **NOTE:** See also s. ATCP 40.56(2)(c).

16 (2) REQUEST FORM AND CONTENTS. A request under sub. (1) shall be in writing,
17 and shall include all of the following:

18 (a) A copy of the notice or order under sub. (1) that the requester asks the
19 department to reconsider.

20 (b) The requester's objections to the department's action, including disputed facts
21 and conclusions.

22 (c) The harm allegedly caused to the requester by the department's action.

23 (d) Identification of all the information that supports the requester's objections and
24 alleged harm.

1 (e) The legal basis for the requester's objections.

2 (f) The requested remedy.

3 **(3) INFORMAL CONFERENCE.** (a) If the department receives a written request that
4 complies with sub. (2), the administrator of the department's agricultural resource management
5 division shall schedule an informal conference with the requester. The administrator or the
6 administrator's designee shall initiate the conference within 10 working days after the
7 department receives the request unless the requester agrees to a later date.

8 (b) Following completion of the informal conference, the administrator or designee
9 shall decide whether to affirm, reverse or modify the disputed action. The administrator or
10 designee shall issue a written decision and provide a copy to the requester. The administrator
11 or designee shall issue the decision as soon as reasonably possible, but not more than 30
12 working days after completion of the informal conference.

13 **(4) FORMAL HEARING.** (a) If an issue is not resolved by the informal conference
14 under sub. (3), an adversely affected party may request a contested case hearing on the
15 unresolved issue, pursuant to ch. 227, Stats., and ch. ATCP 1. Hearing requests shall comply
16 with sub. (2).

17 (b) A hearing on the denial or restriction of a permit or initial license shall be
18 conducted as a class 1 contested case under ch. 227, Stats. A hearing on the suspension,
19 revocation or restriction of an issued license or permit shall be conducted as a class 2
20 contested case under ch. 227, Stats.

21 **EFFECTIVE DATE.** This rule takes effect on the first day of the month following
22 publication in the Wisconsin administrative register, as provided under s. 227.22(2)(intro.).

1

2

Dated this _____ day of _____, 2005

3

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

4

5

6

7

8

By _____

9

Rodney J. Nilsestuen,

10

Secretary

APPENDIX A

FERTILIZER-ADDITIVE LABEL FORMAT

The guaranteed analysis for a fertilizer-additive combination must appear in the following format. Nutrients and enhancing elements identified in s. ATCP 40.10(2), if claimed, must meet minimum guarantees required in s. ATCP 40.10(2). Enhancing elements other than cobalt or sodium, if claimed, must be guaranteed as soil or plant additive ingredients.

GUARANTEED ANALYSIS

PLANT NUTRIENTS

Total Nitrogen (N)	_____ %
_____ % Ammoniacal Nitrogen	
_____ % Nitrate Nitrogen	
_____ % Water Insoluble Nitrogen	
_____ % (Other recognized and determinable forms of nitrogen)	
Available Phosphate (P ₂ O ₅)	_____ %
Soluble Potash (K ₂ O)	_____ %
Calcium (Ca)	_____ %
Magnesium (Mg)	_____ %
Sulfur (S)	_____ %
Boron (B)	_____ %
Chlorine (Cl)	_____ %
Cobalt (Co)	_____ %
Copper (Cu)	_____ %
Iron (Fe)	_____ %
Manganese (Mn)	_____ %
Molybdenum (Mo).....	_____ %
Nickel (Ni).....	_____ %
Sodium (Na)	_____ %
Zinc (Zn)	_____ %

SOURCE OF PLANT NUTRIENTS:

(A listing of the sources of all elements listed above in a descending order of content by weight for each plant nutrient source)

SOIL ADDITIVE ACTIVE INGREDIENTS

or

PLANT ADDITIVE ACTIVE INGREDIENTS

or

SOIL OR PLANT ADDITIVE ACTIVE INGREDIENTS

Common Name (Chemical Name).....	_____ %
Common Name (Chemical Name)	_____ %

INERT INGREDIENTS

Common Name (Chemical Name).....	_____ %
Common Name (Chemical Name).....	_____ %

APPENDIX B

HUMIC SUBSTANCE EXTRACTION TEST

The analytical method for determining the percentage content of a humic substance in a product shall follow a colorimetric test of a 0.5N NaOH extraction from the formulated product. The methodology is as follows:

Scope

This method may be used for solid and liquid samples containing 0.5% or more humic acid. The humic acids are dissolved by treatment with 1N sodium hydroxide and then precipitated with hydrochloric acid.

Equipment and Reagents

1. Centrifuge
2. 100 mL Screw Cap Centrifuge Bottles
3. 1 N NaOH
4. 1% NaOH (10 g/liter)
5. Conc. HCl
6. 100°C Drying Oven
7. Mechanical Shaker

Analysis

1. Weigh appropriate size sample into a 100 mL wide mouth screw top bottle to give close to 0.2 gms of dry humic acid ppt.
2. Add 50 mLs 1 N NaOH, seal tightly.
3. Shake on mechanical shaker for 1.5 hours for solids, 30 minutes for liquids.
4. Rinse the cap with 5 mLs 1% NaOH.
5. Centrifuge for 25 minutes at 2000 rpm.
6. Decant supernatant liquid into a second weighed bottle.
7. Add 10 mLs 1% NaOH to first bottle, shake vigorously, centrifuge again.
8. Add the supernatant liquid to the second centrifuge bottle.
9. To the combined extracts in the second bottle, add conc. HCl until the pH is adjusted to between 1 and 2.
10. Centrifuge the sample for 25 minutes at 2000 rpm.
11. Carefully decant the liquid and discard.
12. Add 25 mLs distilled water (previously adjusted to pH 1-2 with HCl) to the bottle with ppt., shake vigorously to free all ppt. from bottom and centrifuge again.
13. Again, carefully decant the liquid and discard.

14. Repeat steps 12 and 13 two more times.
15. Dry the bottle with humic acid overnight at 100° - 110° C.
16. Cool in dessicator and weigh.

Calculations

$$\% \text{ Humic Acid} = \frac{\text{Weight dried residue} \times 100}{\text{Sample weight}}$$

References

John Husler, University of New Mexico, Department of Geology, Albuquerque, New Mexico

C.A. Black, Methods of Soil Analysis Part 2, American Society of Agronomy, Inc., Madison, Wisconsin, 1965.

APPENDIX C

NON-NUTRIENT METALS; PROHIBITED CONCENTRATIONS

Products Derived from Organic Sources

If a soil or plant additive is derived from materials that are at least 80% organic matter on a dry weight basis, the concentration of arsenic, cadmium, lead, mercury, nickel or selenium in that product may not exceed the maximum concentration specified for that metal in 40 CFR 503.

Soil or Plant Additive Less than 80% Organic

If a soil or plant additive is derived from materials that are less than 80% organic matter on a dry weight basis, the product may not contain any metal shown in Table C-1 in a concentration that exceeds the maximum concentration shown in Table C-1:

**Table C-1
METAL CONTAMINATION LIMITS FOR SOIL OR PLANT ADDITIVES
DERIVED FROM SOURCE LESS THAN 80% ORGANIC**

Metal	Maximum Concentration (in ppm) for Product Applied at Less than 250 Lbs. per Acre per Year	Maximum Concentration (in ppm) for Product Applied at 250 Lbs. per Acre per Year, or More
Arsenic	1,300 ppm.	325,000 divided by maximum annual application rate (lbs./acre)
Cadmium	1,000 ppm.	250,000 divided by maximum annual application rate (lbs./acre)
Lead	6,100 ppm.	1,525,000 divided by maximum annual application rate (lbs./acre)
Mercury	100 ppm.	25,000 divided by maximum annual application rate (lbs./acre)
Nickel	25,000 ppm.	6,250,000 divided by maximum annual application rate (lbs./acre)
Selenium	2,600 ppm.	650,000 divided by maximum annual application rate (lbs./acre)

APPENDIX D

FIELD TEST STANDARDS

A field test shall meet the following standards:

(1) Testing shall be done over at least 2 growing seasons, or in at least 2 geographically separated locations over at least one growing season. Testing on agricultural crops shall continue through normal Wisconsin harvest time for those crops and include appropriate yield and quality data for that crop.

(2) Testing shall be done under Wisconsin conditions, or under conditions that are relevant to Wisconsin product users. For plants typically grown indoors, or in greenhouses or outdoor pots, tests may be conducted under greenhouse conditions that resemble the plants' normal growing conditions.

(3) Testing shall include all of the following:

(a) An untreated control area or control sample. The control area or control sample shall be identical, in relevant respects, to treated areas or samples.

(b) An area or sample treated with the test product, at the product label rate.

(c) An area or sample treated with a comparable product, if any, that is permitted in Wisconsin. The product shall be applied at the rate specified on the label of that product.

(d) If the test product is a fertilizer or fertilizer-additive, an area or sample treated with a fertilizer permitted in Wisconsin. The fertilizer shall supply the same nutrients supplied by the test product, and be applied at a rate consistent with relevant and published recommendations of the university of Wisconsin.

(4) Test areas or test samples under paragraph (3) shall be randomly distributed among test plots, to achieve a statistically valid plot design. Plot treatments shall be replicated at least 4 times. Plots shall be large enough to avoid overlapping treatment effects.

(5) Testing on agricultural crops shall include accurate measurement of crop yield and quality. The measurement of crop yield and quality shall be based upon the parameters that establish the market value for the crop being tested.

APPENDIX E

FIELD TEST REPORT STANDARDS

A field test report shall follow principles of scientific investigation. Methods, statistics and interpretations shall be capable of withstanding peer review in the scientific communities of agronomy, horticulture or soil science. The report shall be peer reviewed, or prepared to peer review standards. The report shall contain all the following:

- (1) A descriptive title.
- (2) An introduction that clearly describes all the following:
 - (a) The product being tested, including a statement of ingredients and ingredient amounts.
 - (b) The crop, plant or nutrient response being measured.
 - (c) The funding source for the research, and the researcher's financial interest in the product, if any.
 - (d) The research location and facility.
 - (e) The identity and background of the researcher, including any bias the researcher has toward the product being tested.
- (3) A clear statement of the hypothesis or product claim being tested.
- (4) A statement of methods and materials. This statement shall explain how the test was scientifically designed to prove or disprove the hypothesis or product claim. It shall describe, in detail, the test design, setting, methods, conditions, dates and locations. The description shall be sufficiently clear and detailed so that another researcher can replicate the test based solely on the report. If the test was not done in Wisconsin or under Wisconsin growing conditions, the statement shall identify significant differences in the growing conditions.
- (5) A statement and discussion of test results. This shall include all the following:
 - (a) A clear and detailed statement of the test results, including a statistical report and analysis of the test results at the 1% or 5% level of statistical significance.

NOTE: The department may consider test results reported at the 10% level of statistical significance only to the extent that those results are supported

consistently through many years of research or in numerous locations.

- (b) A conclusion based on the stated test results. The conclusion shall indicate whether the test did or did not prove the hypothesis or product claim. If the test was not conducted under Wisconsin conditions, the conclusion shall discuss the validity and relevance of the test under Wisconsin conditions.