

 **05hr\_CRule\_04-140\_AC-Ag\_pt01a**



Details:

(FORM UPDATED: 07/12/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2005-06**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on ... Agriculture (AC-Ag)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                      (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

## PUBLIC NOTICE

### FINAL DRAFT RULE TO LEGISLATURE

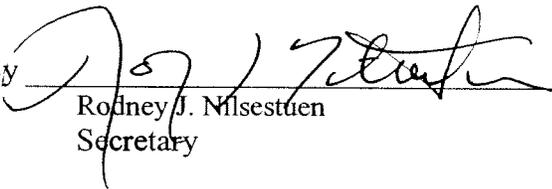
The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #:       **04-140**  
SUBJECT:                               **Fertilizer and Related Products**  
ADM. CODE REFERENCE:       **ATCP 40**  
DATCP DOCKET #:               **00-R-14**

Dated this 7<sup>th</sup> day of June, 2005.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND  
CONSUMER PROTECTION

By

  
Rodney J. Nilsestuen  
Secretary

*Agriculture generates \$51.5 billion for Wisconsin*



State of Wisconsin  
Jim Doyle, Governor

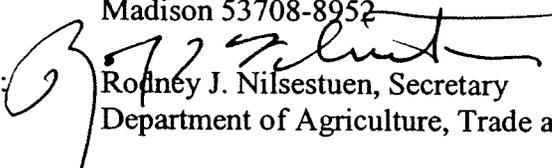
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**Department of Agriculture, Trade and Consumer Protection**  
Rod Nilsestuen, Secretary

DATE: June 8, 2005

TO: The Honorable Alan J. Lasee  
President, Wisconsin State Senate  
Room 219 South, State Capitol  
P.O. Box 7882  
Madison 53707-7882

The Honorable John Gard  
Speaker, Wisconsin State Assembly  
Room 211 West, State Capitol  
P.O. Box 8952  
Madison 53708-8952

FROM:   
Rodney J. Nilsestuen, Secretary  
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Fertilizer and Related Products; Final Draft Rule**  
**(Clearinghouse Rule #04-140)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) is transmitting this rule for legislative committee review, as provided in ss. 227.19(2) and (3), Stats. DATCP will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

### **Background**

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.

*Agriculture generates \$51.5 billion for Wisconsin*

- 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 generally exempts the sale or distribution of manure by farmers. This rule also exempts the sale or distribution of municipal and industrial sewage sludge regulated by the Department of Natural Resources. This rule exempts federally qualified "organic" products from certain permit and labeling requirements, but sellers must be licensed and must avoid fraudulent label claims.

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.

## **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 does not change current license or tonnage fees, or the allocation of fee revenues.*

This rule exempts certain persons from licensing. For example, this rule exempts the following persons from licensing:

- Persons selling only "unmanipulated" manure.
- Persons selling digested, packaged or otherwise "manipulated" manure for application under a nutrient management plan, provided that it is sold only as manure.
- Municipalities and businesses that sell or distribute sewage sludge under regulation by the Department of Natural Resources (DNR).
- Persons who only sell ingredients to licensed manufacturers, for further manufacturing.
- Persons who merely resell pre-packaged and pre-labeled products obtained from license holders.

### **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, a federally qualified "organic" product that is labeled solely for organic crop production (see below).

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 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 grant or deny the permit as soon as reasonably possible, but not more than 120 days after DATCP receives the requested information. 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 ( $P_2O_5$ ) and soluble potash ( $K_2O$ ), 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.

- The net weight of the fertilizer contained in the package.
- Any statement or disclaimers required by 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 distributes 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.

A federally qualified “organic” product need *not* be labeled with recommended uses or use directions, provided the product is designed and labeled solely for organic crop production (see below).

### **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.

### **“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.

### **Official Test Methods and Tolerances**

This rule identifies official test methods used to verify product content guarantees. This rule also spells out enforcement tolerances applied to test results, to determine whether a product is deemed to be “mislabeled” with respect to content guarantees.

### **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.

### **Prohibitions**

This rule prohibits false, unsubstantiated, deceptive or misleading sales claims, or sales claims that are inconsistent with product labels.

## **Enforcement**

This rule identifies the enforcement actions that DATCP may take against law violators, as appropriate (per current law).

### **Rule Changes Following Public Hearings**

DATCP held 3 public hearings on this rule, in Green Bay on February 15, 2005, Madison on February 17, 2005 and Eau Claire on February 22, 2005. Four people testified at the hearings, and 14 people submitted written comments for the hearing record. Attached is a summary of the hearing comments.

Following the public hearings, DATCP made the following changes:

- Removed special provisions related to "humic substances" so that humic substances are treated like other soil or plant additive ingredients.
- Clarified exemptions for "organic products."
- Expanded exemptions for municipal and industrial sewage sludge that is regulated by the Department of Natural Resources.
- Technical changes as necessary.

### **Response to Rules Clearinghouse Comments**

The Legislative Council Rules Clearinghouse recommended a number of changes to the hearing draft rule. DATCP modified the final draft rule to address all of the comments except the following:

- Comment 2.a.* DATCP believes that the construction of these definitions is appropriate and necessary for drafting economy, given the frequency with which the defined terms are used throughout the rule. The construction is also consistent with the statutory construction.
- Comment 2.d.* DATCP believes that the definition of "substantiate" will be helpful if there is a dispute or contested case related to the adequacy of substantiation. DATCP believes that the definition of "unmanipulated animal or vegetable manure" is helpful as a clarification of the statutory definition.
- Comment 2.f.* ATCP 40.04 and 40.20 require annual licensing, so there is no need for a separate license renewal provision.

*Comment 5.c.* DATCP believes that definitions are needed for 3 of the 5 terms listed under s. ATCP 40.02(3). DATCP believes that definitions are needed for both of the terms referenced in s. ATCP 40.02(29), (DATCP corrected one reference to correspond to the defined term).

*Comment 5.e.* DATCP believes that the definition is clear and conforms to the statutory definition.

*Comment 5.k.* Information requirements are clearly identified in the chapter, but may or may not apply depending on the circumstances.

*Comment 5.r.* The provision reads as intended.

### **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, lawncare 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 distributed 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.

### **Fiscal Estimate**

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.

### **Environmental Assessment**

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 final environmental assessment is attached.

### **Federal Regulations**

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

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.

### **Adjacent State Regulations**

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.

The Honorable Alan J. Lasee  
The Honorable John Gard  
June 8, 2005  
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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).

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.

**PUBLIC HEARING COMMENTS**

ATCP 40

Clearinghouse Rule #04-140

DATCP Docket #00-R-14

**Public Hearing Dates/Locations:** February 15, 2005 - Green Bay  
February 17, 2005 - Madison  
February 22, 2005 - Green Bay.

**Open Comment Period:** February 1 to March 2, 2005

**Oral Testimony:**

*Randy Hartung, Hartung Brothers:*

Opposes the requirement for listing ingredient amounts on bulk custom mix loads labels in ATCP 40.08 (2) (b).

*Patrick LeMahieu, Organic Trade Association (OTA):*

Requested language changes to ATCP 40.12 (2) (d) and 40.28 (1) (b) 1 that relates to organic production permit exemptions. Also spoke in opposition to the high application rate of humics.

*Michael Koran:*

Requested technical language changes to ATCP 40.02 (32), ATCP 40.08 (8), 40.12 (2) (d), 40.26 (3) (b) 2, ATCP 40.24 and 40.28 (1) (b) 1.

*Reginald Destree*

Opposes the high application rate of humics due to the toxicity effect it would have on plants.

**Written Comments:**

*David Perkins*

Supports ATCP 40.12 (2) (d) and 40.28 (1) (b) 1 relating to organic production.

*Brian Swingle*

Requests changes to “fertilizer-pesticide combination” and “pesticide-fertilizer combination” terminology used in the hearing draft to be consistent and read only as “fertilizer-pesticide combination.”

*Wayne Kussow*

Requests the 4 replications requirement in Appendix D, item 4, be deleted.

## PUBLIC HEARING COMMENTS

ATCP 40

Clearinghouse Rule #04-140

DATCP Docket #00-R-14

*J.C. Prinzo*

Opposes the requirement of a grade statement of 0-0-0 when the product does not contain NPK in ATPC 40.08 (1) (c).

*Sue Beitlich, Wisconsin Farmers Union:*

Requests clarification on “manipulated” manure in ATCP 40.02 (20). Opposes ATCP 40.02 (8) which requires farmers selling manure to be licensed. In addition, feels farmers who sell manure should not be held responsible for implementing the nutrient management plan; should be the responsibility of the applicator/buyer of the fertilizer in ATCP 40.02 (6) (a) b.

*Mike Koran, Clean Water Consulting LLP:*

Requests technical language changes relating to permit requirements and labeling issues, and humic substances. Requests the definition “fertilizer material” reflect the Association of American Plant Food Control Officials definition.

*Dannielle Koran, Clean Water Consulting, LLP:*

Requests technical language changes relating primarily to permit requirements and labeling issues and humic substances.

*Sally Pick, Organic Trade Association:*

Opposes the language in ATCP 40.12 (2) (d) and 40.28 (1) (b) 1 relating to “fertilizer and soil or plant additives.” Requests deletion of the references to a federal list and recommends wording similar to: “the product or all of its ingredients are compliant with 7CFR205.” Requests “mixed Fertilizer” definition in ATCP 40.02(23) be consistent with the Association of American Plant Food Control Officials (AAPFCO) definition. Requests an addition in ATCP 40.10(2) by inserting a provision from AAPFCO, No. 57, 2004, page 30, that relates to rock phosphate. Requests fertilizer products labeled for use in organic production with nutrient totals less than 24% be classified as both “organic” and “special use.” Requests, in Appendix D, Field Test Standards, (3) (d), that the phrase “University of Wisconsin” be omitted. Opposes the high application rate of humics due to the toxicity effect in plants.

*Edward Wilusz, Wisconsin Paper Council:*

Opposes ATCP 40.02 (40) regarding “sewage sludge,” “sludge,” or “biosolids,” be amended to delete the reference to the phrase “of domestic.” Seeks clarification on ATCP 40.02 (12) and 40.02 (33) relating to the definition of “finished sewage sludge product” and “product” as a defined term.

## PUBLIC HEARING COMMENTS

ATCP 40

Clearinghouse Rule #04-140

DATCP Docket #00-R-14

*James Stawicki, Sturgeon Bay Utilities:*

Opposes proposed revisions in ATCP 40 and requests that the fiscal and regulatory impacts on municipal treatment centers be eliminated.

*Ted Field, West Central Wisconsin Biosolids Facility Commission:*

Requests clarification on rule revisions and how it may affect the land disposal of municipal wastewater biosolids. Seeking input on specific case in Ellsworth, WI.

*David S. Taylor, Madison Metropolitan Sewerage District:*

Opposes additional regulations on biosolids that are already regulated by the Department of Natural Resources. Proposes and seeks changes to ATCP 40.02 (8) as it relates to the definition of "fertilizer," ATCP 40.02 (12) as it relates to the definition of "finished sewage sludge product," and ATCP 40.02 (41) (k) as it relates to sewage sludge. Requests the term "packaged" be clarified.

*Amy Tutweiler, Municipal Environmental Group:*

Opposes additional regulations on biosolids that are already regulated by the Department of Natural Resources. In addition, proposes and seeks changes to ATCP 40.02 (8) as it relates to the definition of "fertilizer," ATCP 40.02 (12) as it relates to the definition of "finished sewage sludge product," and ATCP 40.02 (41) (k) as it relates to sewage sludge. In addition, asks that the term "packaged" be clarified.

*Russ Rasmussen, Bureau of Watershed Management, Department of Natural Resources:*

Opposes proposed revisions to ATCP 40 that relate to the disposal of biosolids. Proposes changes to ATCP 40.02 (8) as it relates to the definition of "fertilizer," ATCP 40.02 (12) as it relates to the definition of "finished sewage sludge product," and ATCP 40.02 (40) as it relates to the definition of "sewage sludge," "sludge," or "biosolids." Comments on the increased financial costs to municipalities or sewerage districts, the paper industry, and the food and dairy industry by adopting the rule as currently proposed.

### **Registered, But Did Not Speak**

*Mike Northouse, Madison Metro Sewerage District:*

Takes no position on the proposal.

*Brian McCloud, Vogel Seed and Fertilizer (Spring Valley):*

Supports the proposal.

**PUBLIC HEARING COMMENTS**

ATCP 40

Clearinghouse Rule #04-140

DATCP Docket #00-R-14

*Steve Hanvold, Customer One Cooperative:*

Supports the proposal with clarification.

*David Taylor, Madison Metropolitan Sewerage District:*

Is in favor of part and opposes part of the proposal.

**Wisconsin Department of Agriculture, Trade and Consumer  
Protection**

**Final Regulatory Flexibility Analysis**

**Rule Subject:** Fertilizer and Related Products  
**Adm. Code Reference:** Chapter ATCP 40, Wis. Adm. Code  
**Rules Clearinghouse #:** 04-140  
**DATCP Docket #:** 00-R-14

**Rule Description**

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 or distributes 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.

**Small Businesses Affected by this Rule**

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.

### Effects on Small Business

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.

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.

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 distributed for application under a nutrient management plan.

This rule makes special allowance for sellers of federally qualified "organic" fertilizers. Qualified "organic" products are exempt from permit requirements, and from certain labeling and substantiation 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 any performance claims or false, deceptive or misleading claims for "organic" products.

### Steps to Assist Small Business

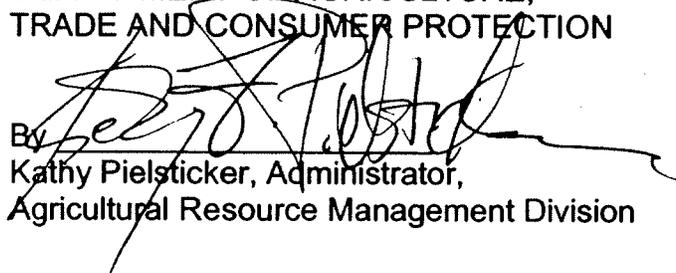
The department will provide assistance to industry, including small businesses, during the permit and licensing process to comply with the requirements of this rule. This rule clearly states the labeling and permitting requirements, which should assist businesses in understanding and complying with the law and rule.

### Conclusion

This rule will not, by itself, have a major impact on small business, since the rule provisions, for the most part, remain unchanged from existing agency and industry practices.

Dated this 19 day of April, 2005.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Kathy Pielsticker, Administrator,  
Agricultural Resource Management Division

**FISCAL ESTIMATE**

DOA-2048 N(R10/98)

- ORIGIN       UPDATED  
 CORRECTED       SUPPLEMENTAL

2001 Session

LRB No. Bill/Adm. Rule No.

ATCP 40

Amendment No. If Applicable

**Subject**

Fertilizer and Related Products

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain appropriation

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget     Yes     No

Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
 Permissive     Mandatory  
2.  Decrease Costs  
 Permissive     Mandatory

3.  Increase Revenues  
 Permissive     Mandatory  
4.  Decrease Revenues  
 Permissive     Mandatory

5. Types of Local Governmental Units Affected:

- Towns     Villages     Cities  
 Counties     Others  
 School Districts     WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

20.115(7)(e), (h), (ha), and (k)

**Assumptions Used In Arriving at Fiscal Estimate**

Revisions to these rules establishes the procedures to be followed in licensing, permitting and labeling fertilizer and soil or plant additive products in Wisconsin. Most rule provisions remain unchanged from existing agency and industry practices. No additional costs are anticipated due to promulgation of these rule changes.

**Long-Range Fiscal Implications**  
none

Agency/Prepared by: (Name & Phone No.)

Dept of Agriculture, Trade & Consumer Protection

Authorized Signature/Telephone No.

Date

Lori Bowman (608)224-4542

*Barbara Krapp* 224-4746 11-18-04

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
FINAL ENVIRONMENTAL ASSESSMENT

**Division Affected:** Agricultural Resource Management

**Rule Number:** ATCP 40

**Clearinghouse Rule Number:** 04-140

**HISTORY AND BACKGROUND**

**1. Rule number and title:**

- New Rule
- Modification of Existing Rules

**2. Statutory Authority**

A. To adopt the proposed rule:

Sections 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), Stats.

B. Statutes(s) being interpreted by proposed rule:

Sections 94.64, 94.65 and 100.37, Stats.

**3. Summarize the history of the proposed rule and the reason the rule was developed:**

Federal laws regulating the manufacturing and distribution of fertilizers or soil and plant additives do not exist. Wisconsin has had laws regulating fertilizers, soil conditioners and microorganisms used to promote plant growth since 1895. Throughout the years, these statutes have been changed to ensure that Wisconsin had regulations that were comprehensive, consistent and equitable. In April 1986, statutes regulating the manufacturing and distribution of fertilizers, soil conditioners and microorganisms were changed so Wisconsin had a fertilizer statute (s. 94.64, Stats.) and a soil and plant additive statute (s. 94.65, Stats.). The system of regulation was structured to be sufficiently flexible to allow for effective and beneficial product innovations and yet be effective in eliminating false, deceptive, misleading, fraudulent and harmful products and practices.

Since 1971, the department has had a rule regulating fertilizers. In 1987, the department added soil and plant additive sections to the existing fertilizer rule and modified the fertilizer sections of the rule.

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.

#### **4. Description of the Proposed Rule**

A. Objective of the proposed rule (be specific and cite internal and external studies, reports, and other information or rationale used in establishing the objectives of the proposed rule).

(1) Environmental Objectives(s)

The objective of the rule revision is to assure that products are safe for humans, animals, plants and the environment. Recently a major concern of the states and the EPA is the safety of fertilizer products. Several states, including Wisconsin, have done studies looking at the heavy metal or non-nutrient metal content of fertilizers. The Association of American Plant Food Control Officials and The Fertilizer Institute performed studies on the health and safety concerns of heavy metal in fertilizers. The department has reviewed these reports. In addition, the department has reviewed the activities of the states of California, Washington and Maine in how they are addressing heavy metal concerns in fertilizers. This rule revision addresses the heavy metals concerns by establishing standards for heavy metal concentrations in fertilizers and soil and plant additives. If products contain greater concentrations than the rule standards, the product is prohibited from distribution in the state. The rule also contains a requirements for products that have the potential to be toxic to plants or animals to be labeled with a caution statement advising the consumer of the hazard.

(2) Programmatic/Administrative Objectives(s):

The best way to regulate fertilizer and soil and plant additive products is through a licensing and permitting regulatory system. The authorizing statutes (ss. 94.64 and 94.65, Stats.) create the general framework for such a system. Throughout the years of administering these programs, the department has developed an effective regulatory system for fertilizers and soil and plant additives. The program attempts to create a level playing field for the regulated industry. The program requires full and accurate labeling of regulated products so consumers can make informed decisions. The program prohibits false, misleading and deceptive labeling and reduces the chances that products that are ineffective and useless will be distributed in Wisconsin.

The rule revisions will make it easier for regulated parties to comply with these rules by making them more understandable. The revision outlines the licensing, labeling and permitting requirements and processes, including timelines and criteria for permit evaluation.

**B. Summarize the key assumptions on which the proposed rule is based.**

The rule revision attempts to create a level playing field for the regulated industry. The rule requires full and accurate labeling of regulated products so consumers can make informed decisions. The rule prohibits false, misleading and deceptive labeling and reduces the chances that products that are ineffective and useless will be distributed in Wisconsin. The rule revision also attempts to assure that products are safe for humans, animals, plants and the environment.

**C. Provide a summary of procedures required by the proposed rule:**

The rule revision requires that persons who manufacture and distribute fertilizer and soil and plant additive products in this state be licensed. The rule outlines the requirements and exemptions to the licensing process. The license application criteria, including the fee structure, are provided in the rule revision. The department has 45 working days to process a license application.

Permits are also required to distribute fertilizer products that contain less than 24% total nitrogen, available phosphate and soluble potash and for all soil and plant additive products. The rule revision outlines the process and timelines that the department will use to evaluate permit applications and make decisions on those applications. The rule revision defines what data is needed to substantiate claims and what constitutes a field study and report.

The rule revision also provides a detailed description of the labeling requirements for fertilizer and soil and plant additive products. The labeling requirements include guaranteed analysis content and format, use directions, and caution and informational statements related to the products.

**D. Identify and explain implicit or explicit exemptions to the proposed rule and explain why they are exempt (e.g., what similar activities or entities would not be affected);**

The rule revision does allow a person who distributes manipulated animal manure for application to land that is under a nutrient management plan under s. ATCP 50.04, Wis. Adm. Code, and applied in compliance with that plan to be exempt from the rule requirements. This exemption only applies if no other plant nutrients have been added. This exemption has been added to allow agricultural producer to manage the manure generated by their operations in an environmentally responsible manner without a severe economic impact.

This rule exempts federally qualified "organic" products from permit requirements and certain labeling and substantiation requirements. Although these 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 any performance claims about the product, nor can they make any false, deceptive or misleading claims. All other existing rule language requirements would still apply to the above procedure changes.

**5. Specifically identify those governmental units, industries, organizations, and other parties that would be affected by the proposed rule. Explain how each would be affected:**

The Department of Agriculture, Trade and Consumer Protection (WDATCP), manufacturers and distributors of fertilizer and soil and plant additive products and the general public will be affected by this rulemaking.

Because the proposed rule will make the rule requirements more understandable, the proposed rule will make both voluntary compliance and agency enforcement of the rule easier. The rule revision clearly outlines the process that the department will use to make decisions on permit application and the timeline, so product manufacturers and distributors are better able to prepare their applications. The rule revision addresses labeling requirements, so that a level playing field for the regulated industry is created. Products are required to have full and accurate labeling, which will protect the consumer from false and misleading claims related to products.

**6. List agencies, groups, individuals contacted regarding the proposed rule.**

This rule was drafted in concert with an advisory committee comprised of agricultural producers, distributors of agricultural and urban fertilizers and soil and plant additives, plus experts in plant nutrition and field experimentation from the University of Wisconsin.

**7. List the existing administrative code affected or replaced by the proposed rule.**

Chapter ATCP 40, Wis. Adm. Codes, is being revised by this action.

**8. List department directives and/or publications the proposed rule would affect.**

None.

**9. If a specific physical and biological setting would be directly affected by the proposed rule, briefly describe the type of the affected area.**

None.

**10. Beneficial and adverse environmental impacts of the proposed rule:**

**A. Identify and briefly describe anticipated direct and indirect impacts on the physical and biological environment.**

Certain fertilizer products have been found to be hazardous to certain plants. These products are required to have certain precautionary statements on their label. In addition, fertilizer products that could cause a substantial injury or be toxic to living things are considered adulterated and may not be sold in Wisconsin.

The rule revisions are consistent with the department's duties and responsibilities under the hazardous substances law (s. 100.37, Stats.) and the department's consumer product safety regulations (Chap. ATCP 139, Wis. Adm. Code).

As a result of testing done by The Fertilizer Institute (TFI) and others, products that contain micronutrients and contain certain levels of arsenic, lead and cadmium have been determined to be harmful to humans. The Association of American Plant Food Control Officials (AAPFCO) has utilized this study to propose that states establish regulations for the prohibiting from distribution of fertilizer products containing these levels of arsenic, lead or cadmium. The department has determined that the levels established by AAPFCO are valid and has incorporated them into this rule.

**B. Identify and briefly describe anticipated direct and indirect economic impacts. Attach a copy of the administrative rule, fiscal estimate, and fiscal estimate work sheet.**

The proposed rule is not anticipated to have any direct or indirect economic impacts.

**C. Identify and briefly describe anticipated direct and indirect impacts on the social and cultural environments (lifestyle) of the parties affected by the proposal.**

The proposed rule is not anticipated to have any direct or indirect impacts on the social and cultural environments of the parties affected by the proposal.

**D. Identify and briefly describe anticipated direct and indirect impacts on the availability and use of energy (Section 1.12, Wisconsin Statutes).**

The implementation of this rule is not expected to affect the overall availability or use of fuel in Wisconsin.

**11. Identify which of the impacts are adverse impacts that cannot be avoided if the proposed rule is implemented.**

There are no adverse environmental impacts anticipated.

**12. Identify and briefly describe and discuss the environmental and administrative impacts of alternatives to the proposed rule, including the following:**

**A. No action or not implementing the proposed rule.**

If the existing rule is not revised as proposed in these rule revisions, inefficiencies discovered in this rule as the program has developed would continue. These inefficiencies are related to department procedures, industry understanding of the regulations, and obstructing certain products from distribution that have been shown to be beneficial to a specific use, among others. Confusion would continue within the regulated community, which could lead to or continue non-compliance with the statutory requirements for these products. In addition, if the rule revisions are not implemented or no action is taken, standards for fertilizer and soil and plant additive products containing heavy metals at levels of public health and environmental concern would not be established.

**B. Legislative modifications of existing statutes to accomplish the objectives of the proposed rules:**

No legislation is needed to achieve the objectives of these rules.

**C. Modify the proposed rule (describe major changes that could be made in the rule to satisfy known or obvious concerns of interested parties and the impacts that would result):**

The proposed rule is a revision of a current rule.

## **EVALUATION**

**13. Evaluation: Discuss each category using additional sheets or pertinent information if necessary. Specifically identify those factors which may distinguish the proposed rule as a major action significantly affecting the quality of the human environment.**

**A. Secondary Effects: To what extent would the proposed rule result in other actions which may significantly affect the environment? Identify the parties affected by secondary effects in item 5.**

The proposed rule in itself is not expected to generate other actions that could affect the natural and human environment.

**B. New Environmental effects: To what extent would the proposed rule result in new physical, biological, or socio-economic impacts.**

This rule should not result in new physical, biological or socio-economic effects. The rule furthers the intended environmental effects of established programs.

**C. Geographically Scarce Resources: To what extent would the proposed rule affect existing environmental features that are scarce, either locally or statewide.**

This rule would not affect existing environmental features that are scarce. It is anticipated that the proposed rule would positively impact the general quality of the Wisconsin environment, by prohibiting distribution of products containing heavy metals.

**D. Controversy: What reaction has been received or anticipated from the public or affected parties on the proposed rules or the objective of the proposed rule? Which of the parties identified in item 5 have been contacted? Summarize their comments. (Attach additional sheets if necessary.)**

No controversial reactions are anticipated on the proposed rules.

**F. Consistency with Plans: To what extent is the proposed rule consistent or inconsistent with local, state, or national long-range plans or policies.**

The rule is being proposed to be as consistent with model bill proposed by the Association of American Plant Food Control Officials. There is no overarching federal regulation governing fertilizer and soil and plant additive products.

- G. Exercise of Discretion: The law(s) which authorize or are interpreted by this rule will provide for varying degrees of discretion to be used by the department in formulating the policies and procedures contained in the rule. In some cases, the department is bound by or limited to federal rules or regulations dealing with the same issues. To what extent is the proposed rule limited by Wisconsin or federal statutes or regulations.**

No state or federal regulation impedes the intended environmental protection provided by these rules.

**H. Regulatory Change:**

- 1. Identify and describe any new or expanded regulation contained in the proposed rule:**

The proposed rule incorporates administration of the fertilizer and soil and plant additive programs.

- 2. Identify and describe deregulation or reduced regulation explicit or implied in the proposed rule:**

The rule is not proposing reduced regulations, but clarifying and expediting existing regulations and policies.

- 3. Identify requirements of other state, federal and local agencies that may be relevant to the proposed rule and explain the differences.**

The proposed rules do not overlap or conflict with any other state, federal or local agencies.

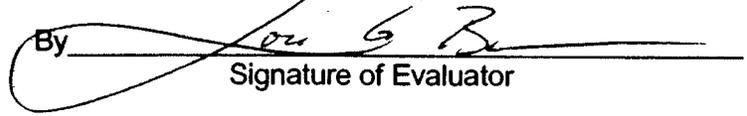
- I. Other: Identify and describe (or cross-reference) other relevant factors which relate to the effects of the proposed rule on the quality of the human environment (e.g., foreclose future options, socio-cultural impacts, cumulative impacts to affected entities, visual impacts, and irreversible commitments of resources.**

There are no other anticipated effects from this rulemaking.

**CONCLUSION**

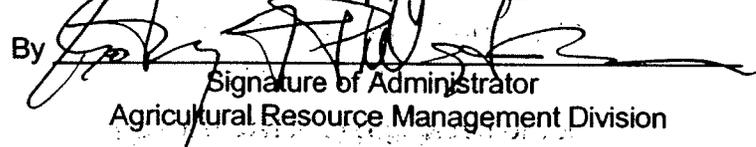
This preliminary assessment finds that promulgation of the revisions to ch. ATCP 40, Wis. Adm. Code would have no significant adverse environment impact and is not a major state action significantly affecting the quality of the human environment. Alternatives to this rule, discussed in this assessment will not reach program goals as effectively as the proposed rule.

Signed this 19 day of April, 2005.

By  Signature of Evaluator

The decision indicating that this document is in compliance with s. 1.11, Stats., is not final until certified by the Administrator of the Agricultural Resource Management Division

Signed this 19 day of April, 2005.

By  Signature of Administrator  
Agricultural Resource Management Division