

# **05hr\_CRule\_04-140\_AC-Ag\_pt01c**



Details:

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

### **2005-06**

(session year)

### **Assembly**

(Assembly, Senate or Joint)

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

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1           **ATCP 40.10 Fertilizer; guaranteed analysis. (1) GENERAL.** (a) A fertilizer  
2 label shall contain a guaranteed analysis that complies with this section. A guaranteed  
3 analysis may guarantee any plant nutrients or enhancing elements identified in sub. (2),  
4 and shall guarantee at least one of the plant nutrients identified in sub. (2). Each  
5 guarantee shall be expressed as a minimum guaranteed percentage by weight of the  
6 fertilizer.

7           **NOTE:** All of the materials identified in sub. (2), except cobalt and sodium, are  
8 plant nutrients. Cobalt and sodium are “enhancing elements.” See ATCP  
9 40.01(7).  
10

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

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

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

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

19           **NOTE:** A fertilizer that claims enhancing elements, other than cobalt and  
20 sodium, is considered a “fertilizer-additive combination.” See ATCP  
21 40.01(9).  
22

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

1	<b>Plant Nutrient</b>	<b>Minimum Guarantee</b>
2	Total Nitrogen (N)	1.0%
3	Available Phosphate (P <sub>2</sub> O <sub>5</sub> )	1.0%
4	Soluble Potash (K <sub>2</sub> O)	1.0%
5	Calcium (Ca)	1.0%
6	Magnesium (Mg)	0.5%
7	Sulfur (S)	1.0%
8	Boron (B)	0.02%
9	Chlorine (Cl)	0.1%
10	Cobalt (Co)	0.0005%
11	Copper (Cu)	0.05%
12	Iron (Fe)	0.1%
13	Manganese (Mn)	0.05%
14	Molybdenum (Mo)	0.0005%
15	Nickel (NI)	0.05%
16	Sodium (Na)	0.1%
17	Zinc (Zn)	0.05%

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

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

25 (c) Except as provided in sub. (6)(b) or (7), a fertilizer label may not identify any

26 plant nutrient that has a guarantee of zero.

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

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**GUARANTEED ANALYSIS**

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

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

- (4) NUTRIENT SOURCE STATEMENT.** (a) A guaranteed analysis shall include a separate nutrient source statement if any of the following apply:
1. The sum of the guarantees for the primary plant nutrients is less than 24%.
  2. The fertilizer is a fertilizer-additive combination.
  3. The fertilizer label represents that the fertilizer contains an organic or slowly released plant nutrient.
- (b) A plant nutrient source statement under par. (a) shall do all of the following:
1. Identify the source materials from which the guaranteed plant nutrients are derived, 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  
2 Official Publication of the Association of American Plant Food Control Officials, No. 57  
3 (2004).

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

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

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

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

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

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

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

1           2. The combined guarantees for slowly released forms of the plant nutrient  
2     comprise at least 15% of the total guarantee for that plant nutrient, except as otherwise  
3     provided for nitrogen under sub. (8)(b).

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

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

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

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

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

17           1. No fertilizer labeling may identify phosphite or phosphorous acid as a fertilizer  
18     ingredient.

19           2. No phosphate nutrient guarantee may include any phosphate derived from  
20     phosphite or phosphorous acid.

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

1           **(10) FERTILIZER-ADDITIVE COMBINATIONS.** The guaranteed analysis for a  
2 fertilizer-additive combination shall be in the format shown in *Appendix A*. Enhancing  
3 nutrients other than cobalt and sodium, if claimed, shall be guaranteed as soil or plant  
4 additive active ingredients.

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

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

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

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

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

16           (a) A fertilizer labeled with the statement "for further manufacturing use only"  
17 and distributed to licensed fertilizer manufacturers who use the fertilizer only for further  
18 manufacturing.

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

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

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

1           **NOTE:** The Official Publication of the Association of American Plant Food  
2           Control Officials, No 57 (2004) is on file with the department, the  
3           secretary of state and the revisor of statutes. Copies may be obtained from  
4           the treasurer of the Association of American Plant Food Control Officials,  
5           Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh,  
6           NC 33636-3508, or online at <http://www.aapfco.org>.  
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8           2. The source material and the fertilizer are clearly and conspicuously labeled  
9           using the defined term under subd. 1.

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

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

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

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

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

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

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

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



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

3 (c) The fertilizer label.

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

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

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

10  
11 (f) A fee of \$25 for each requested permit.

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

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

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

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

28  
29 **3. This fertilizer product and its labeling comply with ch. ATCP 40, Wis.**  
30 **Adm. Code.”**

31  
32 (h) Other relevant information required by the department.

33 **NOTE:** You may obtain a permit application form from the department at the  
34 following address:  
35

1 Department of Agriculture, Trade and Consumer Protection  
2 ARM Division  
3 PO Box 8911  
4 Madison, WI 53708-8911.  
5

6 (4) SPECIAL AGRICULTURAL USE PERMIT. The department may issue a special  
7 agricultural use permit if the department finds, based on a review under subch. IV, that  
8 the application is complete and the fertilizer is designed and labeled as a special  
9 agricultural-use fertilizer.

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

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

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

22 (8) FERTILIZER-ADDITIVE COMBINATIONS. A permit under this section does not  
23 authorize a person to distribute a fertilizer-additive combination in this state unless the  
24 person also holds a license under s. ATCP 40.20 and a permit, if required, under s. ATCP  
25 40.28.

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

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

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

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

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

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

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

18           (c) The economic value of primary nutrients actually present is less than 98% of  
19 the economic value of the amounts guaranteed, where economic value is calculated  
20 according to sub. (3).

21           **(2) SECONDARY AND MICRONUTRIENTS.** A fertilizer is mislabeled if, based on a  
22 sample collected and tested according to s. ATCP 40.16, the actual amount of any  
23 secondary nutrient, micronutrient or enhancing element listed in a guaranteed analysis  
24

1 falls short of the label guarantee by an amount that exceeds the allowable deficiency  
 2 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

3  
 4 **(3) ECONOMIC VALUE.** Economic value, for purposes of sub. (1)(c), equals {[total  
 5 nitrogen (N) guarantee] x 2} + {[available phosphate (P<sub>2</sub>O<sub>5</sub>) guarantee] x 2} + {soluble  
 6 potash (K<sub>2</sub>O) guarantee}.

7 **NOTE:** The multipliers in sub. (3) are based on approximate relative average  
 8 wholesale prices for primary plant nutrients in Wisconsin. The department  
 9 will conduct periodic wholesale price surveys and will adjust the  
 10 multipliers, as the department deems necessary, by rule.  
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12 **(4) CUSTOM MIXED FERTILIZER.** Label guarantees for a custom mixed fertilizer  
 13 shall be calculated from the custom mix formulation.

14 **ATCP 40.16 Fertilizer sampling and analysis. (1) SAMPLING METHODS.** The

1 department may collect official fertilizer samples to determine compliance with plant  
2 nutrient guarantees. The department shall collect official samples using applicable  
3 methods from the Inspectors Manual of the Association of American Plant Food Control  
4 Officials, 6<sup>th</sup> edition (1999).

5 **NOTE:** The Inspectors Manual of the Association of American Plant Food  
6 Control Officials, 6<sup>th</sup> edition (1999) is on file with the department, the  
7 secretary of state and the revisor of statutes. Copies are available from the  
8 treasurer of the Association of American Plant Food Control Officials,  
9 Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh,  
10 NC 33636-3508, or online at <http://www.aapfco.org>.

11  
12 **(2) TEST METHODS.** The department may test official fertilizer samples to  
13 determine compliance with nutrient guarantees. The department shall test official  
14 samples using applicable methods from the “Official Methods of Analysis of AOAC  
15 International,” volume I, 17<sup>th</sup> edition as updated by the 2<sup>nd</sup> revision (2003).

16 **NOTE:** The “Official Methods of Analysis of AOAC International,” volume I,  
17 17<sup>th</sup> edition as updated by the 2<sup>nd</sup> revision (2003) is on file with the  
18 department, the secretary of state and the revisor of statutes. Copies are  
19 available from AOAC International at 481 N. Frederick Ave., Suite 500,  
20 Gaithersburg, MD 20877-2417.

21  
22 **ATCP 40.18 Fertilizer; toxic substances. (1)** No fertilizer may contain any  
23 substance that is toxic or injurious to plants, animals or humans when the fertilizer is  
24 handled or applied under reasonably foreseeable use conditions unless the substance and  
25 hazard are disclosed on the fertilizer label.

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

27 **(2)** No fertilizer may contain a metal in a concentration that exceeds the  
28 maximum allowable concentration specified for that metal in the statement of uniform  
29 interpretation and policy No. 25, contained in the Official Publication of the Association

1 of American Plant Food Control Officials, No. 57 (2004).

2 **NOTE:** Statement of uniform interpretation and policy 25, from the Official  
3 Publication of the Association of American Plant Food Control Officials,  
4 No 57 (2004), is on file with the department, the secretary of state and the  
5 revisor of statutes. Copies may be obtained from the treasurer of the  
6 Association of American Plant Food Control Officials, Inc., North  
7 Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-  
8 3508, or online at <http://www.aapfco.org>.  
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10  
11 **SUBCHAPTER III**  
12 **SOIL OR PLANT ADDITIVES**  
13

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

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

18 **NOTE:** Since a license is not transferable between persons, a license holder must  
19 apply for a new license if it changes its legal identity.  
20

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

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

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

30 (b) The applicant's social security number if the applicant is an individual. If the

1 applicant is a partnership, the application shall include the social security number of each  
2 individual partner.

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

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

5 (d) Each address at which the applicant proposes to manufacture a soil or plant  
6 additive in this state. A license holder shall notify the department in writing before  
7 manufacturing a soil or plant additive at any other address.

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

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

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

14 (g) Other relevant information required by the department.

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

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

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

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

21 (5) ACTION ON LICENSE APPLICATION. (a) Except as provided in par. (d), the  
22 department shall grant or deny a license application under sub. (3) within 45 working  
23 days after the department receives a complete application.  
24  
25

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

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

6 (d) If a license applicant does not manufacture soil or plant additives in  
7 Wisconsin, but seeks a license only to distribute a soil or plant additive for which a  
8 permit is required under s. ATCP 40.28(1), the department may grant or deny the license  
9 application when it grants or denies the permit application.

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

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

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

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

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

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

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



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

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

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

6           (4) PENALTIES FOR LATE FILING. A person who fails to comply with sub. (1) by  
7 March 31 shall pay an additional fee of 10 percent of the tonnage fees due, but not less  
8 than \$10.

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

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

13           (a) The name and address of the manufacturer or distributor who is licensed  
14 under s. ATCP 40.20 and who also holds a permit for that product under s. ATCP  
15 40.28(1) if a permit is required.

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

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

19           (d) The purposes for which the soil or plant additive is recommended and  
20 effective. This paragraph does not apply to a product that is distributed solely for organic  
21 crop production and qualifies for exemption under s. ATCP 40.28(1)(b).

22           (e) Complete use directions to ensure that the product is effective for the purposes  
23 recommended in par. (d). Use directions shall identify recommended application sites,  
24

1 methods, rates and frequencies. If effectiveness depends on use with other products, the  
2 label shall clearly disclose that fact.

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

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

5 **(2) COMBINATION PRODUCTS.** (a) Fertilizer-additive combinations shall be  
6 labeled according to this section and s. ATCP 40.08.

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

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

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

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

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

20 **NOTE:** See also sub. (4). Chapter ATCP 139 and ss. 100.37 and 100.42, Stats.,  
21 regulate consumer product safety and hazardous substances.  
22

23 **(4) IMPLIED WARRANTY.** (a) A person who distributes a soil or plant additive  
24 implicitly warrants that the soil or plant additive is effective for all of the purposes

1 recommended in the product labeling, when applied under Wisconsin conditions.  
2 according to the product label. This warranty does not limit any other express or implied  
3 warranty that may apply under Wisconsin law.

4 (b) Paragraph (a) does not apply to a product that is distributed solely for organic  
5 crop production and qualifies for exemption under s. ATCP 40.28(1)(b). This exemption  
6 does not limit any other express or implied warranty that may apply under Wisconsin law.

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

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

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

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

21 (b) The department may require a person to submit substantiating information  
22 under par. (a). The department may require the person to submit the information before

1 or after the department issues a license under s. ATCP 40.20 or a permit under s. ATCP  
2 40.28. The issuance of a license or permit does not create any finding or presumption  
3 that the license or permit holder has complied with par. (a).

4 **ATCP 40.26 Soil or plant additives; guaranteed analysis. (1) GENERAL.** The  
5 label of every soil or plant additive shall include a guaranteed analysis that complies with  
6 this section. No person may represent that a soil or plant additive contains any substance  
7 unless that substance is listed in the guaranteed analysis.

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

10 **GUARANTEED ANALYSIS**

11 **ACTIVE INGREDIENTS**

12 **Common Name (Chemical Name).....** \_\_\_\_\_ %  
13 **Common Name (Chemical Name) .....** \_\_\_\_\_ %  
14 **Common Name (Chemical Name).....** \_\_\_\_\_ %

15  
16 **INERT INGREDIENTS**

17 **Common Name (Chemical Name).....** \_\_\_\_\_ %  
18 **Common Name (Chemical Name).....** \_\_\_\_\_ %  
19 **Common Name (Chemical Name).....** \_\_\_\_\_ %

20  
21 (b) The combined guarantees for active and inert ingredients shall total 100%  
22 unless the guaranteed analysis includes one or more active microorganism ingredients  
23 identified according to sub. (3)(b). A zero shall precede the decimal on any guarantee  
24 that is less than one percent.

25 **(3) ACTIVE INGREDIENTS.** (a) The guaranteed analysis shall identify, under the  
26 “ACTIVE INGREDIENTS” subtitle, each ingredient that actively and directly contributes to  
27 the performance of the soil or plant additive. Except as provided in par. (b), the

1 guaranteed analysis shall guarantee the amount of each active ingredient as a percentage  
2 of the soil or plant additive.

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

5 1. Identify the active microorganism genus. If any activity is unique to a species  
6 of the genus, the guaranteed analysis shall also identify that species.

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

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

13 (5) INGREDIENT IDENTIFICATION. Except as provided in sub. (3)(b), the  
14 guaranteed analysis shall identify each ingredient by its common name, if any, followed  
15 in parentheses by its chemical name as stated in the Merck Index, 12<sup>th</sup> edition (1996). If  
16 an ingredient is not sufficiently defined in the Merck Index, the department may approve  
17 an additional or alternative name for the ingredient.

18 *NOTE:* The Merck Index, 12<sup>th</sup> edition (1996) is on file with the department, the  
19 secretary of state and the revisor of statutes. Copies are available from  
20 Merck & Co., Inc., Rahway, NJ 07065.  
21

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

24 (7) FERTILIZER-ADDITIVE COMBINATIONS. The guaranteed analysis for a fertilizer-

1 additive combination shall be in the format shown in *Appendix A*. Plant nutrients shall  
2 be guaranteed according to s. ATCP 40.10. Other ingredients shall be guaranteed  
3 according to this section.

4 (8) **FORMAT EXEMPTIONS.** The department may exempt a soil or plant additive  
5 from any guaranteed analysis format requirement under this section if the person  
6 requesting the exemption demonstrates all of the following to the department's  
7 satisfaction:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (a) The applicant’s name, business address, and license number under s. ATCP  
14 40.20. If the applicant does not have a license under s. ATCP 40.20, the applicant shall  
15 also submit a license application under s. ATCP 40.20(3). No permit under this section is  
16 valid unless the permit holder also holds a current license under s. ATCP 40.20.

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

20 (c) The product label, including all of the information required under s. ATCP  
21 40.24.

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

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

2 (e) A fee of \$100.

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

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

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

7  
8 **2. The statements on the product label, and in related advertising and**  
9 **promotional materials, are truthful. The applicant has relevant and**  
10 **reliable information to substantiate all product labeling, including any**  
11 **claim or guarantee related to product contents. The applicant has**  
12 **relevant scientific evidence to substantiate all express and implied**  
13 **performance claims.**

14  
15 **3. This product and its labeling comply with ch. ATCP 40, Wis. Adm.**  
16 **Code.”**

17  
18 (g) A method of analysis for each guaranteed active ingredient in the soil or plant  
19 additive. The method shall be one of the following:

20 1. A method contained in the “Official Methods of Analysis of AOAC  
21 International”, volume I, 17<sup>th</sup> edition as updated by the 2<sup>nd</sup> revision (2003).

22 **NOTE:** The “Official Methods of Analysis of AOAC International, volume I,  
23 17<sup>th</sup> edition as updated by the 2<sup>nd</sup> revision (2003) is on file with the  
24 department, the secretary of state and the revisor of statutes. Copies are  
25 available from AOAC International at 481 N. Frederick Ave., Suite 500,  
26 Gaithersburg, MD 20877-2417.

27  
28 2. For humic substances, the method contained in *Appendix B*.

29 3. A method provided by the applicant and approved in writing by the  
30 department. The department may not approve a method under this subdivision if a  
31 method applies under subd. 1. or 2. A method approved under this subdivision must be  
32 relevant and scientifically defensible.



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

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

4  
5 Department of Agriculture, Trade and Consumer Protection  
6 ARM Division  
7 PO Box 8911  
8 Madison, WI 53708-8911.  
9

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

12 (4) FERTILIZER-ADDITIVE COMBINATIONS. A permit under this section does not  
13 authorize a person to distribute a fertilizer-additive combination unless the person also  
14 holds a fertilizer license under s. ATCP 40.04 and a fertilizer permit, if required, under s.  
15 ATCP 40.12.

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

18 **ATCP 40.30 Soil or plant additives; content deficiencies.** A soil or plant  
19 additive is mislabeled if, based on a sample collected and tested according to s. ATCP  
20 40.32, the product contains less than 98% of the amount of any active ingredient  
21 guaranteed on the package label.

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

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

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

8 *NOTE:* See s. ATCP 40.24.  
9

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

13 **SUBCHAPTER IV**  
14 **REVIEWING PERMIT APPLICATIONS**  
15

16 **ATCP 40.40 Complete application.** Within 30 working days after a person  
17 submits a permit application under s. ATCP 40.12 or 40.28, the department shall  
18 determine whether the application is sufficiently complete to warrant further review. If  
19 the application is incomplete, the department shall notify the applicant of what is needed  
20 to complete the application. The department shall deny the application if the applicant  
21 fails to complete the application within 30 days of the department's notice.

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

1 (1) Review product labeling for compliance with this chapter.

2 (2) Review the efficacy and usefulness of the product, under Wisconsin  
3 conditions, when the product is used according to label directions.

4 (3) Review labeling statements, including statements related to product contents  
5 and performance, to determine whether they are accurate, truthful and properly  
6 substantiated.

7 **NOTE:** For example, the department may review performance claims such as the  
8 following:

- 9
- 10 • “Product X helps develop stronger, deeper root systems to help plants  
11 fight against minor diseases and insect infestations.”
  - 12
  - 13 • “Product X will provide plant nutrients needed to give your lawn a golf  
14 course look.”
  - 15

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

18 (5) Review any analytical methodology proposed by the applicant under s. ATCP  
19 40.28(2)(g).

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

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

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

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

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

5           (a) Identify the reasons for the supplementary review.

6           (b) Identify the scope of the supplementary review.

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

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

17           **NOTE:** The department may request assistance from the university of Wisconsin,  
18 college of agriculture and life sciences in evaluating any substantiating  
19 evidence under this section.  
20

21           (b) In its supplementary review, the department may consider any information  
22 that the department considers relevant, including information provided by the applicant.  
23 The department may consider whether the information is accurate, relevant, material,  
24 reliable, properly documented, substantiated, scientifically valid, persuasive, consistent

1 with generally accepted scientific knowledge, consistent with other reliable information,  
2 applicable under Wisconsin conditions, and applicable in light of recommended uses, use  
3 rates and use directions.

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

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

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

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

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

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

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

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

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

2           **ATCP 40.50 Withdrawing or modifying a permit application.** A permit  
3 applicant may withdraw or modify an application at any time. An applicant may modify  
4 product contents or labeling to resolve issues presented in the permit review process. The  
5 department may, in its discretion, advise on label revisions at any point in the permit  
6 review process. Within 60 working days after the department receives a modified  
7 application that is complete, the department shall take action as provided in s. ATCP  
8 40.44.

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

13                                   **SUBCHAPTER V**  
14                                   **PROHIBITIONS**  
15

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

19                   (a) Misrepresent or falsify any information.

20                   (b) Make any statement that is not substantiated, to the extent required under this  
21 chapter, at the time the statement is made.

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

1 (a) Make any representation that is false, deceptive or misleading.

2 **NOTE:** See also s. 100.18, Stats. A federally trademarked product name is not  
3 considered false, deceptive or misleading under par. (a).  
4

5 (b) Make any representation that is inconsistent with the product label.

6 (c) Represent that a product contains a plant nutrient or other beneficial  
7 substance, unless the guaranteed analysis includes a guarantee for that substance.

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

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

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

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

17 **SUBCHAPTER VI**  
18 **ENFORCEMENT AND APPEALS**  
19

20 **ATCP 40.56 License or permit action.** (1) The department may, for cause,  
21 deny, suspend, revoke, or impose conditions on a license or permit issued under this  
22 chapter. Cause includes any of the following:

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

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

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

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

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

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

11  
12 (2) SUMMARY PERMIT SUSPENSION. (a) The department's division of agricultural  
13 resource management may, by written notice, summarily suspend or impose conditions on  
14 a permit issued under s. ATCP 40.12 or 40.28, for any of the reasons identified in sub.  
15 (1).

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

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

23 **ATCP 40.58 Stop sale and holding orders. (1) STOP SALE ORDER.** The  
24 department may issue a written order prohibiting the distribution or movement of a



1 product if the department finds that the product is distributed in violation of s. 94.64 or  
2 94.65, Stats., or this chapter. No person may distribute or move a product in violation of  
3 the department's order.

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

5 **(2) TEMPORARY HOLDING ORDER.** (a) The department may issue a written  
6 holding order, temporarily prohibiting the distribution or movement of a product, if the  
7 department has reason to believe that the product is distributed in violation of s. 94.64 or  
8 94.65, Stats., or this chapter. The department may issue a temporary holding order  
9 pending further examination or analysis to determine whether there is a violation of s.  
10 94.64 or 94.65, Stats., or this chapter. No person may distribute or move a product in  
11 violation of a temporary holding order.

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

13 (b) A temporary holding order on a fertilizer remains in effect for 15 days unless  
14 the department extends or withdraws the order. The department may extend the  
15 temporary holding order for up to 15 days to complete sampling, analysis and evaluation  
16 of the fertilizer and its labeling.

17 (c) A temporary holding order on a soil or plant additive or a fertilizer-additive  
18 combination remains in effect for 60 days unless the department withdraws the order.

19 **(3) SERVING AN ORDER.** The department shall serve an order under sub. (1) or (2)  
20 by delivering or mailing a copy to the owner or custodian of the product, or by posting a  
21 copy in a conspicuous place on or near the product.

22 **(4) RELEASING AN ORDER.** The department may release an order if any of the

1 following apply:

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

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

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

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

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

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

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

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

20 **NOTE:** A buyer injured by a violation of this chapter may sue the violator for any  
21 contract remedies that may apply. If the violation pertains to a soil or  
22 plant additive, the person may also sue for double damages, costs and  
23 reasonable attorney fees under s. 94.65(12), Stats.  
24

25 **ATCP 40.62 Administrative appeals.** (1) REQUEST FOR HEARING. A person

1 who is the subject of any of the following department actions may request a hearing and  
2 reconsideration of that action:

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

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

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

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

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

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

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

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

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

16 (f) The requested remedy.

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

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

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

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Rodney J. Nilsestuen,  
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 <sub>2</sub> O <sub>5</sub> ) .....	_____ %
Soluble Potash (K <sub>2</sub> 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**

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

## 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.