

1985 Assembly Bill 14

Date of enactment: **March 26, 1986**

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1985 Wisconsin Act 147

AN ACT to repeal 94.64 (6) (b) and 94.64 (7) (e); to renumber and amend 94.64 (1) (q); to amend 25.48 (1), 94.64 (1) (e), 94.64 (1) (L), 94.64 (1) (o), 94.64 (3) (a) (intro.), 94.64 (7) (a) and (b), 94.64 (8), 94.64 (8m) (a), 94.64 (9) (intro.), (b) and (c), 94.64 (11) (a) to (c) and 94.66 (1) (am); to repeal and recreate 94.64 (1) (f), 94.64 (1) (p) and 94.65; and to create 94.64 (1) (fm), 94.64 (1) (pm), 94.64 (1) (q) and (t), 94.64 (3m) and 94.64 (9) (f) to (h) of the statutes, relating to the distribution of fertilizer and soil and plant additives in this state, granting rule-making authority and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 25.48 (1) of the statutes is amended to read:

25.48 (1) The fees imposed under s. ss. 94.64 (4) (an) and 94.65 (6) (a) 4.

SECTION 1m. 94.64 (1) (e) of the statutes is amended to read:

94.64 (1) (e) "Fertilizer" means any substance, containing one or more ~~recognized~~ plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and or vegetable manures, marl, liming material, sewage sludge other than finished sewage sludge products, and wood ashes. ~~The term~~ "Fertilizer" includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, specialty nonagricultural fertilizers and all other fertilizers or mixtures ~~thereof~~ of fertilizers, regardless of type or form.

SECTION 2. 94.64 (1) (f) of the statutes is repealed and recreated to read:

94.64 (1) (f) "Fertilizer material" means an element or chemical compound, or a substance manufactured by chemical reaction, which:

1. Contains one or more plant nutrients; and
2. Constitutes a component of fertilizer or is used to compound fertilizer.

SECTION 2m. 94.64 (1) (fm) of the statutes is created to read:

94.64 (1) (fm) "Finished sewage sludge product" means a product consisting in whole or in part of sewage sludge that is distributed to the public and that is

disinfected by means of composting, pasteurization, wet air oxidation, heat treatment or other means.

SECTION 3. 94.64 (1) (L) of the statutes is amended to read:

94.64 (1) (L) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials ~~designed for use or claimed to have value in promoting plant growth, including fertilizer-pesticide mixtures, or a fertilizer material and any other substance.~~ A fertilizer material that contains impurities incident to the normal manufacturing or processing operations of that fertilizer material is not a mixed fertilizer as a result of the presence of such impurities unless the impurities are claimed as plant nutrients or fertilizer materials.

SECTION 4. 94.64 (1) (o) of the statutes is amended to read:

94.64 (1) (o) "~~Per cent~~" "Percent" and "percentage" mean the percentage by weight.

SECTION 5. 94.64 (1) (p) of the statutes is repealed and recreated to read:

94.64 (1) (p) "Plant nutrient" means boron, calcium, chlorine, copper, iron, magnesium, manganese, molybdenum, nitrogen, phosphorus or available phosphoric acid, potassium or potash, sodium, sulfur, zinc or any other chemical element recognized as a plant nutrient by department rule.

SECTION 5m. 94.64 (1) (pm) of the statutes is created to read:

94.64 (1) (pm) "Sewage sludge" means the residue material resulting from the treatment of sewage. In this paragraph, "sewage" has the meaning specified in s. 144.01 (13).

SECTION 6. 94.64 (1) (q) of the statutes is renumbered 94.64 (1) (Lm) and amended to read:

94.64 (1) (Lm) "~~Specialty Nonagricultural~~ fertilizer" means any fertilizer distributed ~~primarily~~ for nonfarm use, such as for home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses, or nurseries, and may include fertilizers used or for research or experimental purposes.

SECTION 7. 94.64 (1) (q) and (t) of the statutes are created to read:

94.64 (1) (q) "Special-use fertilizer" means fertilizer designed and labeled for use in remedying nutrient deficiencies which are unique to certain crops or certain local areas.

(t) "Unmanipulated animal or vegetable manure" means animal or vegetable manure which has not been treated by mechanical drying, grinding or pelletizing, by adding a substance or by any other means.

SECTION 8. 94.64 (3) (a) (intro.) of the statutes is amended to read:

94.64 (3) (a) (intro.) No person ~~shall~~ may manufacture or distribute fertilizer in this state ~~without an~~ unless the person has first obtained an annual license from the department, but no license ~~shall be~~ is required of persons distributing only:

SECTION 9. 94.64 (3m) of the statutes is created to read:

94.64 (3m) NPK PERCENTAGE REQUIREMENT; EXEMPTION PERMITS. (a) No person may distribute mixed fertilizer in which the sum of the guarantees for nitrogen, available phosphoric acid and soluble potash totals less than 24% unless:

1. The mixed fertilizer is exempted from this requirement by department rule; or

2. The mixed fertilizer is a nonagricultural or special-use fertilizer and the person obtains a permit from the department authorizing its distribution as a nonagricultural or special-use fertilizer.

(b) An application for a permit under par. (a) 2 shall be on a form prescribed by the department and shall be accompanied by a proposed product label and a nonrefundable fee of \$25. The department may require that the applicant substantiate, by scientific evidence:

1. The efficacy and usefulness of the nonagricultural or special-use fertilizer if applied under conditions existing in this state at the amount and frequency recommended by the applicant.

2. The truth of any statement made in the proposed product label or in the permit application.

(c) 1. If the department finds that the applicant has fulfilled the requirements of par. (b), the department shall issue the permit.

2. If the department finds that the applicant has failed to meet the requirements of par. (b), the department shall issue a notice of denial of the permit.

(d) Any person who wishes to change the active ingredient contents or the recommended amount or

frequency of application of a nonagricultural or special-use fertilizer for which the person has received a permit under par. (c), shall apply to the department for an amended permit. Paragraphs (b) and (c) apply to the issuance of amended permits.

(e) No person who has been issued a permit or amended permit under this subsection may:

1. Transfer the permit or amended permit to another person.

2. Distribute or promote the distribution of the nonagricultural or special-use fertilizer using any performance, use or efficacy claim which exceeds that allowed by the permit or amended permit or which is inconsistent with the approved product label.

(f) Issuance of a permit or amended permit under this subsection is neither an endorsement nor a warranty by the department.

SECTION 10. 94.64 (6) (b) of the statutes is repealed.

SECTION 11. 94.64 (7) (a) and (b) of the statutes are amended to read:

94.64 (7) (a) To ~~sell or~~ distribute any fertilizer ~~or soil conditioner~~ in violation of the requirements of this section or rules issued ~~thereunder~~ promulgated under this section.

(b) To make any ~~guarantees, claims or representations~~ false, deceptive or misleading guarantee, claim or representation in connection with the sale distribution of fertilizer ~~or soil conditioners~~ or in their labeling ~~which are false, deceptive or misleading.~~

SECTION 12. 94.64 (7) (e) of the statutes is repealed.

SECTION 13. 94.64 (8) of the statutes is amended to read:

94.64 (8) INSPECTION, SAMPLING AND ANALYSIS. (a) The department shall inspect, sample and analyze ~~fertilizers and soil conditioners~~ fertilizer distributed within the state at such time and place and to such extent as is necessary to determine compliance with this section.

(b) ~~Department representatives and inspectors have authority to~~ The department may enter, at all reasonable times, any building, conveyance or premises used in the manufacture and distribution of ~~fertilizers and soil conditioners~~ fertilizer in this state to determine compliance with this section and to stop any conveyance transporting fertilizer ~~or soil conditioners~~ for the purpose of inspecting and sampling the ~~products~~ fertilizer and examining ~~their~~ its labeling.

(c) Manufacturers or distributors of ~~fertilizers and soil conditioners~~ fertilizer shall submit to the department, on request, ~~product~~ fertilizer samples, copies of labeling or any other data or information which the department requests concerning composition and claims and representations made for ~~fertilizers and soil conditioners~~ fertilizer manufactured or distributed by them in this state.

SECTION 13m. 94.64 (8m) (a) of the statutes is amended to read:

94.64 (8m) (a) *Use of funds.* At the end of each fiscal year, the moneys collected under sub. (4) (am) and s. 94.65 (6) (a) 3 shall be forwarded to the university of Wisconsin system to be used for research on soil management, soil fertility, plant nutrition problems and for research on groundwater problems which may be related to fertilizer usage; for dissemination of the results of the research; and for other designated activities tending to promote the correct usage of fertilizer materials.

SECTION 14. 94.64 (9) (intro.), (b) and (c) of the statutes are amended to read:

94.64 (9) RULES. (intro.) The department may, after public hearing, adopt reasonable promulgate rules:

(b) Regulating the sale and labeling of fertilizer and soil conditioners, including warning or caution statements or directions for use in connection with the labeling of such products fertilizer.

(c) Governing methods of sampling, testing, examining and analyzing fertilizer or soil conditioners.

SECTION 15. 94.64 (9) (f) to (h) of the statutes are created to read:

94.64 (9) (f) Establishing standards of identity and purity for fertilizer materials.

(g) Prescribing standards for the exemption of mixed fertilizers from the requirement under sub. (3m) (a).

(h) Establishing standards and procedures to review an application for a permit or an amended permit for the distribution of a nonagricultural or special-use fertilizer under sub. (3m) (b).

SECTION 16. 94.64 (11) (a) to (c) of the statutes are amended to read:

94.64 (11) (a) *Stop sale orders.* The department may issue and enforce a written or printed stop sale order to the owner or custodian of any lot or container of fertilizer or soil conditioner distributed in violation of this section or of rules issued thereunder promulgated under this section. The order shall prohibit the sale or removal of the fertilizer or soil conditioner, except as authorized by the department, until it has been brought into compliance with the law or until a plan for disposition is agreed upon with the department in writing. The stop sale order shall have the effect of a special order under s. 93.18 and shall be subject to judicial review if, within 10 days after service of the order, a request for a hearing is made to the department.

(b) *Temporary holding orders.* A temporary holding order may be issued whenever the department has reason to believe any lot or container of fertilizer or soil conditioner may not be in compliance with the law pending further evaluation or laboratory examination and analysis. A temporary holding order shall be effective for no more than 15 days but may be

extended for an additional 15-day period as may reasonably be necessary to complete sampling, analysis and evaluation of the fertilizer or soil conditioner and its labeling. The fertilizer or soil conditioner shall be released prior to the expiration of such temporary period if found to be in compliance with the law. If found to be in violation of the law, the temporary holding order shall be extended by notice, in writing, to the owner or custodian and a stop sale order issued prohibiting the further movement or disposition of the fertilizer or soil conditioner without consent of the department, subject to the right of hearing before the department if requested within 10 days after service of such notice and stop sale order.

(c) *Seizure, condemnation and sale.* Fertilizer or soil conditioner not in compliance with this section shall be subject to seizure on complaint of the department to a court having jurisdiction. If the court finds that the product fertilizer is in violation of this section and orders the seizure thereof, it shall be disposed of as the court directs. Disposition shall not be ordered by the court without first granting the owner or custodian, at his or her request, reasonable opportunity to reprocess or relabel the product fertilizer under supervision of the department to bring it into compliance with this section.

SECTION 17. 94.65 of the statutes is repealed and recreated to read:

94.65 Soil and plant additives. (1) DEFINITIONS. In this section:

(a) "Active ingredient" means a component of a soil or plant additive from which the soil or plant additive derives all or part of its value or effectiveness and which is:

1. A living microorganism; or
2. Defined as an active ingredient by department rule.

(b) "Brand or product name" means a name, term, design or trademark which identifies the product.

(c) "Distribute" means to import, consign, sell, offer for sale, solicit orders for sale or otherwise supply for use in this state.

(d) "Inert ingredient" means a component of a soil or plant additive which does not affect the performance or efficacy of the soil or plant additive.

(e) "Label" means the display of written, printed or graphic matter which is attached to, or forms a part of, the immediate container of a soil or plant additive, or which accompanies a bulk distribution of soil or plant additive.

(em) "Sewage sludge" has the meaning specified in s. 94.64 (1) (pm).

(f) "Soil or plant additive" means any substance which is intended to be applied to seeds, soil or plants and which is designed for use or claimed to have value in promoting or sustaining plant growth; improving crop yield or quality; promoting or sustaining the fertility of the soil; or favorably modifying the structural, physical or biological properties of the soil for agricul-

tural purposes. "Soil or plant additive" does not include:

1. Fertilizer, as defined in s. 94.64 (1) (e).
2. Liming material, as defined in s. 94.66 (1) (am), if the liming material is distributed solely for the purposes stated in s. 94.66 (1) (am).
3. Wood ashes or unmanipulated animal or vegetable manure, unless distributed under another name or description.
4. Pesticides registered under 7 USC 136 or by the department.
5. Any other substance exempted by department rule.

(g) "Unmanipulated animal or vegetable manure" has the meaning specified in s. 94.64 (1) (t).

(2) LICENSE. (a) Except as provided under par. (b), no person may manufacture or distribute a soil or plant additive in this state unless the person first obtains an annual license from the department. Application for a license or for renewal of a license shall be made on forms provided by the department and shall be accompanied by an annual license fee of \$10. All licenses expire on March 31.

(b) No license is required of a person who distributes a soil or plant additive of a license holder, if the person:

1. Distributes the soil or plant additive under the name of the license holder and in the original container packaged and labeled by the license holder; and
2. Makes no content or performance claim for the soil or plant additive other than the written claim of the license holder.

(3) PERMIT. (a) 1. Except as provided under subsds. 2 and 3, no person may distribute a soil or plant additive in this state unless the person first obtains a permit from the department. A separate permit must be obtained for the distribution of each soil or plant additive.

2. No permit is required of a person who distributes a soil or plant additive for which a permit has been issued to a permit holder, if the person:

- a. Distributes the soil or plant additive under the name of the permit holder and in the original container packaged and labeled by the permit holder; and
- b. Makes no content or performance claim for the soil or plant additive other than the written claim of the permit holder.

3. No permit is required for the landspreading of sewage sludge under a pollutant discharge elimination system permit issued by the department of natural resources under s. 147.02 or 147.023.

(b) The applicant shall apply for a permit on a form provided by the department and shall submit with the application a proposed product label and a nonrefundable fee of \$100. The department may require that the applicant provide substantiation of

application information under sub. (4). The department may also require the applicant to make affirmative label and advertising disclosures if, in the absence of the disclosures, the department determines that the label or advertising of a soil or plant additive is deceptive or misleading.

(c) 1. If the department finds that the applicant has fulfilled the requirements of par. (b), the department shall issue a permit.

2. If the department finds that the applicant has failed to fulfill the requirements of par. (b), the department shall issue a notice of denial of the permit.

(d) 1. Any person who wishes to change the active ingredient contents or the recommended amount or frequency of application of a soil or plant additive for which the person has received a permit under par. (c) 1 shall apply to the department for an amended permit. Paragraphs (b) and (c) apply to the issuance of amended permits.

2. Any person who wishes to revise the label of a soil or plant additive for which the person has received a permit under par. (c) 1, including a label revision which does not necessitate the issuance of an amended permit, shall file the revised label with the department prior to distributing the soil or plant additive bearing the revised label.

(e) No person who has been issued a permit or amended permit under this subsection may:

1. Transfer the permit or amended permit to another person.
2. Distribute or promote the distribution of the soil or plant additive using any performance, use or efficacy claim which exceeds that allowed by the permit or amended permit or which is inconsistent with the approved product label.

(f) Issuance of a permit or amended permit under this subsection is neither an endorsement nor a warranty by the department.

(4) SUBSTANTIATION REQUIREMENTS. (a) As a condition to the issuance of a permit or amended permit under sub. (3), the department may require that the applicant substantiate, by scientific evidence:

1. The efficacy and usefulness of the soil or plant additive if applied under conditions existing in this state at the amount and frequency recommended by the applicant.
2. The truthfulness of any statement made on the proposed soil or plant additive label or in a permit or amended permit application.

(b) The department may require that the substantiation under par. (a) 1 include replicable results of controlled experimental studies using the soil or plant additive, the names and qualifications of the researchers performing the studies and a complete description of the conditions and procedures of the studies.

(c) The department may request assistance from the university of Wisconsin-Madison college of agricul-

tural and life sciences in evaluating any substantiating evidence required under this subsection.

(5) LABEL. Every soil or plant additive distributed in this state shall be clearly and conspicuously labeled with the following information:

(a) The name and address of the permit holder under sub. (3).

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

(c) The net weight or liquid measure of the soil or plant additive contained in the package, container or bulk shipment to which the label refers.

(d) The specific purpose or use for which the soil or plant additive is claimed to be effective.

(e) Complete directions for use of the soil or plant additive, including the recommended amount and frequency of application.

(f) A guaranteed analysis of the contents of the soil or plant additive which shall include:

1. The name and percentage by weight of each active ingredient, listed under the heading "ACTIVE INGREDIENTS". For microbiological products, the statement of active ingredients shall state the number and kind of viable microorganisms per milliliter of liquid product, or per gram of nonliquid product.

2. The name and percentage by weight of each inert ingredient, listed under the heading "INERT INGREDIENTS".

(g) Any other information required by department rule.

(6) FEES, REPORTS AND RECORDS. (a) Each person holding a permit for the distribution of a soil or plant additive under sub. (3) shall:

1. Annually by March 31, file with the department a tonnage report setting forth the number of tons of each soil or plant additive distributed during the preceding year by that person or by any other person authorized under sub. (3) (a) 2 to distribute under the name of that person and pay to the department an inspection fee of 10 cents per ton so distributed. The minimum total fee is \$10.

2. Maintain, for 2 years following the date the tonnage report required under subd. 1 is filed, distribution records upon which the tonnage report is based. The permit holder shall make the distribution records available for inspection, copying and audit by the department upon request.

3. Annually by March 15, pay to the department a research fee of 10 cents for each ton of soil or plant additive distributed as described in the tonnage report filed under subd. 1. The minimum research fee is \$1 for 10 tons or less.

4. Annually by March 15, pay to the department a groundwater fee of 10 cents for each ton of soil or plant additive distributed, as described in the tonnage report filed under subd. 1. The minimum groundwater fee is \$1 for 10 tons or less. All groundwater fees shall be credited to the groundwater fund.

(b) If by March 31 a person holding a permit under sub. (3) has failed to file a tonnage report or to pay the inspection fee required under par. (a), the department may summarily suspend or revoke the permit or license issued under this section. A penalty of 10% of the inspection fee due shall be assessed against the permit holder for all inspection fees not paid when due. The minimum total penalty is \$10. An unpaid inspection fee or penalty shall constitute a debt owed the department by the permit holder until paid. The department may not issue or renew a license or issue a permit or amended permit to a person owing an unpaid inspection fee or penalty.

(7) PROHIBITIONS. No person may:

(a) Distribute a soil or plant additive in violation of this section or of rules promulgated under this section.

(b) Distribute a soil or plant additive which is toxic or injurious to plants when applied according to label directions.

(c) Make, in connection with the distribution or promotion of a soil or plant additive, any false, deceptive or misleading claim, representation or label statement.

(d) Make, in connection with the distribution or promotion of a soil or plant additive, any performance, use or efficacy claim:

1. Which exceeds the authorization of a permit issued for distribution of the soil or plant additive under this section;

2. Which is inconsistent with the product label; or

3. Without having scientific substantiation for the claim at the time the claim is made.

(e) Make any false, deceptive or misleading statement in a permit application or in a report or other document submitted to the department under this section.

(f) Distribute a soil or plant additive under a label which has not been filed with the department.

(g) Imply or directly state that the department endorses or warrants the efficacy of a soil or plant additive.

(8) INSPECTION, SAMPLING AND ANALYSIS. (a) The department may inspect, sample and analyze a soil or plant additive distributed in this state and investigate possible violations of this section and of rules promulgated under this section.

(b) The department may enter at all reasonable times any building, conveyance or premises used in the manufacture or distribution of soil or plant additives in this state to inspect or sample a soil or plant additive.

(c) Upon request of the department, a distributor of a soil or plant additive shall provide the department with a product sample, copy of advertising or label or any other data or information concerning the composition of the soil or plant additive or concerning any claim or representation made in connection with the soil or plant additive.

(9) RULES. The department may promulgate rules to implement and administer this section.

(10) ENFORCEMENT. (a) *Temporary holding order.*

1. If the department has reasonable cause to believe that a soil or plant additive is being distributed in this state in violation of this section or of rules promulgated under this section, the department may serve a written order upon the owner or custodian of the soil or plant additive, temporarily prohibiting the distribution or movement of the product, pending further inspection, sampling or laboratory analysis. No person may distribute or move for any purpose the soil or plant additive described in the temporary holding order while the order is in effect unless the department has approved the distribution or movement.

2. The temporary holding order remains in effect for 60 days after the date of service, unless the order is terminated earlier by the department under subd. 3.

3. If the department determines that the distribution of the soil or plant additive does not violate this section or rules promulgated under this section, the department shall promptly terminate the temporary holding order by giving written notice to the owner or custodian.

(b) *Extended holding order.* 1. If the department determines that the distribution of the soil or plant additive is in violation of this section or of rules promulgated under this section, the department may extend the order by serving written notice on the owner or custodian of the soil or plant additive. No person may distribute, move or dispose of the soil or plant additive described in the extended holding order unless the department has approved the distribution, movement or disposition.

2. An extended holding order remains in effect until the department and the owner or custodian of the soil or plant additive have agreed on conditions of final disposition of the soil or plant additive or until the department authorizes or directs other disposition.

(c) *Right to hearing.* Holding orders under pars. (a) and (b) are subject to a right of hearing before the department if a request for hearing is made within 10 days after the date of service of the notice of the temporary or extended holding order.

(d) *Injunction.* Upon petition of the department, any court having equity jurisdiction may grant an injunction or order under s. 813.025 (2) for any violation of this section or of rules promulgated under this section.

(11) PENALTIES. (a) Any person who violates this section or a rule promulgated under this section shall forfeit not more than \$500 for each violation.

(b) Any person who wilfully violates this section shall be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both. A judge may require a violator to pay restitution to a person injured by the distribution of a soil or plant additive, regardless of whether the violator is placed on probation under s. 973.09. The court may provide for payment of an amount equal to the pecuniary loss, as defined under s. 973.09 (8), caused by the offense, plus \$50. In determining the method of payment, the court shall consider the financial resources and future ability of the violator to pay. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of the victim's pecuniary loss resulting from the offense.

(12) DAMAGES. Any person suffering damages because of a violation of this section by another person may sue for damages in any court of competent jurisdiction and may recover twice the amount of the proven loss, together with costs including reasonable attorney fees, notwithstanding s. 814.04 (1).

SECTION 18. 94.66 (1) (am) of the statutes is amended to read:

94.66 (1) (am) "Liming material" ~~includes all or~~ means any material which contains calcium or calcium and magnesium compounds, is capable of neutralizing soil acidity and is manufactured, sold or distributed for the purpose of neutralizing soil acidity or liming barns. "Liming material" ~~includes any form of limestone, quicklime, hydrated lime, marl, paper mill refuse lime, blast furnace slag, or mine tailings, barn lime or other material manufactured, prepared, sold or distributed for soil amendment purposes or use in barns.~~