

CR 87-111

STATE OF WISCONSIN )  
 )  
DEPARTMENT OF AGRICULTURE, ) SS.  
TRADE & CONSUMER PROTECTION )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Kenneth P. Robert, Administrator of the Agricultural Resource Management Division of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order amending Chapters Ag 17, 162 and 163, Wis. Adm. Code, relating to fertilizer and soil or plant additives and bulk storage of fertilizers and pesticides.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 30<sup>th</sup> day of November, 1987.

Kenneth P. Robert  
Kenneth P. Robert  
Administrator  
Agricultural Resource  
Management Division

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1 ORDER OF THE  
2 WISCONSIN DEPARTMENT OF AGRICULTURE,  
3 TRADE AND CONSUMER PROTECTION  
4 PROMULGATING RULES

4 To renumber Ag 17.07(3); to renumber and amend Ag 17.06,  
5 Ag 17.07(4) and Ag 163.02(3); to amend chapter Ag 17 (title),  
6 Ag 17.01(6), as renumbered, Ag 17.02(1) to (3), Ag 17.03(1),  
7 Ag 17.04(title), (1) (intro.), (2) and (3), Ag 17.07(2) and (3)(a)  
8 [schedule], as renumbered, Ag 17.08(title) and (1)(intro.),  
9 Ag 17.09(title), Ag 162.01(12), Ag 162.03(1)(a), Ag 162.04(9)(a)1  
10 and 3 to 5 and Ag 163.02(5)(b) (intro.) and 1; to repeal and  
11 recreate Ag 162.01(12) and Ag 163.01(14); and to create  
12 Ag 17.01(intro.), (3), (9) and (10), Ag 17.02(4), Ag 17.03(1e) to  
13 (1s) and (2)(title), Ag 17.035, Ag 17.04(5) and (6), Ag 17.06(2),  
14 Ag 17.07(4), Ag 17.10, Ag 162.01(2m), Ag 163.01(2m) and  
15 Ag 163.02(3)(b) and (5)(b)3; relating to fertilizer and soil or  
16 plant additives and bulk storage of fertilizers and pesticides.

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Analysis by the Department of Agriculture,  
Trade and Consumer Protection

1985 Wisconsin Act 147 created a law regulating the sale and distribution of soil and plant additives. These products are defined by law as substances to be applied to seeds, soil or plants for the purpose of promoting or sustaining plant growth, improving crops or soil fertility or otherwise improving soil for agricultural purposes. Fertilizer, liming materials, wood ashes, manure, pesticides and substances exempted by the department of agriculture, trade and consumer protection ("department") by rule are not subject to the soil and plant additives law.

This order defines the active ingredients of soil and plant additives. By law, soil and plant additives distributed in Wisconsin must be labeled with their active ingredients and this order identifies the information that must be present on the label. The rule amendments require the genus of microbiological products (and the species if the product's claims are unique to an identifiable species), plus the common name and chemical name of active or inert ingredients.

For products consisting of a combination of soil or plant additives and fertilizer or pesticides, the order requires

labeling in compliance with both the soil or plant additive laws and the applicable fertilizer or pesticide laws. Due to questions about the efficacy of using foliar fertilizers and limited data regarding their benefits, the order requires foliar fertilizers to be labeled with directions for use, if the use has been scientifically documented as benefitting crops, or with a disclaimer stating that the foliar fertilizer is intended as a supplement to a regular fertilization program and is not sufficient by itself to provide all normal nutrients for agricultural crops.

1985 Wisconsin Act 147 changed some definitions in the fertilizer laws, requiring an update of these rules, and authorized the department to issue permits allowing the sale of special-use agricultural fertilizers whose combined nutrient index is less than 24%. These rule amendments allow the distribution of micronutrient pre-mixes to manufacturers or distributors, even though their combined primary nutrient content falls below the 24% minimum guarantee required of fertilizers by law, if the pre-mix is labeled to identify its components, the label provides directions for proper mixing with other fertilizer material to meet this minimum guarantee and the department has approved the label. The department may require submission of information about a pre-mix micronutrient's efficacy as needed.

The order lists products exempt from soil and plant additive license and permit requirements: manures, mulches, potting soil, peat moss, sand, tree bark, wood shavings and vermiculite, if they are labeled to identify their ingredients and the only claims of benefit made concern a loosening of the soil. Soil or plant additives used for seed treatment are subject to these rules, although treated seed is not. Adjuvants that are intended to improve the mixing, handling or application of a pesticide or fertilizer are also exempt from the soil and plant additive requirements, if any assertions of benefit associated with the adjuvant are limited to precautionary label statements that pesticide or fertilizer activity may increase. The order also corrects a technical error in the listing of maximum allowable deficiencies for secondary nutrients and micronutrients, conforming state rules to a set of model rules used by other states.

The order modifies standards that will take effect on January 1, 1988, concerning the bulk storage of fertilizers. Under current rules bulk fertilizer must be stored in containers that are protected by secondary containment structures to control any leakage. One acceptable secondary containment structure consists of walls surrounding the bulk storage tank, with a liner passing under the tank and stretching up these walls. Moving or dismantling a large storage tank to permit the installation of a liner is expensive, so current rules would permit the construction of a second steel bottom inside a storage tank of 100,000 gallons or more instead of placing a liner beneath the tank. The order authorizes use of other materials, in addition to steel, if the department approves the material (in light of the substances being held in the tank) as providing substantially similar protection for the waters of the state. A request for departmental approval must be supported by a licensed professional engineer's certification that the proposed alternative to steel will provide this protection.

Current pesticide and fertilizer bulk storage rules define "storage container" to include mobile containers such as rail cars if the containers remain in place as fixed storage for more than 15 days. The intent of this rule is to allow mobile containers to remain temporarily on site prior to transferring their contents to a storage tank and for overnight or other short term returns from field applications, but not to allow such containers to be used in place of fixed tanks.

As written, the rule may allow a plant operator to replace fixed tanks with rail cars or tanker trucks, moving them every 15 days and thereby avoiding all secondary containment requirements. This rule revises the definitions of storage container to clarify the original intent, excluding from the definitions mobile containers that store fertilizer or pesticides at a storage facility for less than 15 days only if the storage is incidental to the loading or unloading of another storage container at the facility, and exempting other mobile containers that are off site.

The order also modifies current rules regarding bulk storage of pesticides. These rules prohibit using storage tanks made of ferrous materials unless the tank is stainless steel or contains a protective lining. The order allows persons using liquid pesticides in the wood preservative industry to store the product in a ferrous metal tank if the product is shown to be noncorrosive.

Current rules require liquid pesticide bulk storage containers to be equipped with a conservation vent that relieves excess pressure in the tank, prevents evaporation and seals the tank against rain. The wood preservative industry fills and empties its tanks daily, so evaporation is not reduced by the vent. The industry also generally places its tanks under roofs to protect against rain infiltration and uses chemicals that would not be harmed by evaporation. Since the constant filling and emptying of these tanks could be hazardous if a conservation vent were to stick, causing the tank to rupture, this order does not require wood preservers to use such vents. In the alternative, since without a conservation vent the tank will be open during use, the rule requires the wood preserver to test for employee exposure to the chemicals stored using the appropriate protocol for any state or federal standard.

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1 Pursuant to the authority vested in the state of Wisconsin  
2 department of agriculture, trade and consumer protection by  
3 ss. 93.07(1), 94.64(9), 94.645(3) and 94.65(9), Stats., the  
4 department modifies and creates rules interpreting ss. 94.64,  
5 94.645 and 94.65, Stats., as follows:

6 SECTION 1. Ag 17 (title) is amended to read:

7

CHAPTER AG 17

FERTILIZER AND SOIL OR PLANT ADDITIVES

SECTION 2. Ag 17.01(intro.) is created to read:

Ag 17.01 (intro.) In this chapter:

SECTION 2m. Ag 17.01(1) to (8) are renumbered Ag 17.01(7), (8), (11), (2), (4), (1), (5) and (6) and Ag 17.01(6), as renumbered, is amended to read:

Ag 17.01(6) "Pesticide-fertilizer ~~mixture~~ combination" is a fertilizer which contains or to which a pesticide has been added.

SECTION 3. Ag 17.01 (3), (9) and (10) are created to read:

Ag 17.01 (3) "Micronutrient pre-mix" means a mixed fertilizer, primarily containing micronutrients, which is intended for mixing or blending with other primary nutrient fertilizer materials.

(9) "Soil or plant additive" has the meaning specified in s. 94.65(1)(f), Stats.

(10) "Soil or plant additive-fertilizer combination" means any of the following:

(a) A fertilizer containing a soil or plant additive.

(b) A fertilizer to which a soil or plant additive has been added.

(c) A fertilizer for which claims of benefit are made beyond those associated with the nutrients guaranteed present in the material.

SECTION 4. Ag 17.02(1) to (3) are amended to read:

Ag 17.02(1) Names and definitions for fertilizer ~~or~~, fertilizer materials or soil or plant additives are those adopted by

1 the Association of American Plant Food Control Officials and pub-  
2 lished in the Official Publication of the Association of American  
3 Plant Food Control Officials, No. 37, 1984 40, 1987. ~~Copies may~~  
4 ~~be obtained from the treasurer of the Association of American~~  
5 ~~Plant Food Control Officials, P.O. Box 1163, 1100 Bank St., Room~~  
6 ~~412, Richmond VA 23209. Copies are on file at the offices of the~~  
7 ~~department of agriculture, trade and consumer protection, the~~  
8 ~~secretary of state, and the revisor of statutes.~~

9 (2) The methods of taking official fertilizer samples shall  
10 be the methods adopted by the Association of American Plant Food  
11 Control Officials and published in the Inspectors Manual of the  
12 Association of American Plant Food Control Officials, Fourth  
13 Edition, 1984. ~~Copies may be obtained from the treasurer of the~~  
14 ~~Association of American Plant Food Control Officials, P.O. Box~~  
15 ~~1163, 1100 Bank St., Room 412, Richmond, VA 23209. Copies are on~~  
16 ~~file at the offices of the department of agriculture, trade and~~  
17 ~~consumer protection, the secretary of state, and the revisor of~~  
18 ~~statutes.~~

19 NOTE: Copies of the Official Publications noted in  
20 subs. (1) and (2) may be obtained from the treasurer of  
21 the Association of American Plant Food Control Officials,  
22 P.O. Box 1163, 1100 Bank St., Room 412, Richmond, VA  
23 23209. Copies are also on file at the Madison offices of  
the Department of Agriculture, Trade and Consumer  
Protection, the Secretary of State and the Revisor of  
Statutes.

24 (3) The methods of analysis for fertilizers shall be the  
25 methods adopted by the Association of Official Analytical Chemists  
26 contained in the 1984 Official Methods of Analysis, Fourteenth  
27 Edition, ~~and~~ the methods found in the Association of Official

1 Analytical Chemists ~~Journal~~, ~~Volume 67~~ Journals, Volumes 67  
2 and 68, published by the Association of Official Analytical  
3 Chemists, ~~P.O. Box 540, Benjamin Franklin Station, Washington,~~  
4 ~~D.C. 20044~~, and the 1984 modified comprehensive nitrogen method  
5 adopted by the department of agriculture, trade and consumer pro-  
6 tection. ~~Copies of the Association of Official Analytical Chem-~~  
7 ~~ists methods may be obtained from the association. Copies of the~~  
8 ~~modified comprehensive nitrogen method may be obtained, free of~~  
9 ~~charge, from the department of agriculture, trade and consumer~~  
10 ~~protection. Copies of the Association of Official Analytical~~  
11 ~~Chemists methods and the department of agriculture, trade and con-~~  
12 ~~sumer protection's modified comprehensive nitrogen method are~~  
13 ~~available for inspection and copying at the offices of the depart-~~  
14 ~~ment of agriculture, trade and consumer protection, secretary of~~  
15 ~~state and revisor of statutes.~~

16 NOTE: Copies of the Association of Official Analytical  
17 Chemists methods may be obtained from the Association at  
18 1111 N. 19th St., Suite 210, Arlington, VA 22209.  
19 Copies of these methods and of the modified comprehen-  
20 sive nitrogen method are also on file at the Madison  
offices of the Department of Agriculture, Trade and  
Consumer Protection, the Secretary of State and the  
Revisor of Statutes.

21 SECTION 5. Ag 17.02(4) is created to read:

22 Ag 17.02(4) The methods of sampling and analysis of soil or  
23 plant additives shall be any of the following:

24 (a) Methods adopted by the Association of American Plant  
25 Food Control Officials and published in the Inspectors Manual of  
26 the American Plant Food Control Officials, Fourth Edition, 1984.

27 (b) Methods adopted by the Association of Official

1 Analytical Chemists and contained in the 1984 Official Methods of  
2 Analysis or in the Association of Official Analytical Chemists  
3 Journals, Volumes 67 and 68.

4 (c) Methods specified by the secretary of the department of  
5 agriculture, trade and consumer protection.

6 SECTION 6. Ag 17.03(1) is amended to read:

7 Ag 17.03(1) (title) PESTICIDE-FERTILIZER COMBINATIONS.

8 Pesticide-fertilizer ~~mixtures~~ combinations shall be labeled in  
9 accordance with both the state pesticide and fertilizer law.  
10 Labels shall include ~~specific warnings~~ the identity of all  
11 pesticide active ingredients and concentrations, directions, and  
12 recommended amounts for use on agricultural crops or as specialty  
13 nonagricultural fertilizers and any warning statements related to  
14 use, re-entry into treated areas by unprotected persons or use of  
15 the treated commodity.

16 SECTION 7. Ag 17.03(1e) to (1s) are created to read:

17 Ag 17.03(1e) SOIL OR PLANT ADDITIVE-FERTILIZER COMBINATIONS.

18 Soil or plant additive-fertilizer combinations shall be labeled in  
19 accordance with both the state soil and plant additive and the  
20 fertilizer laws.

21 (1h) SOIL OR PLANT ADDITIVE-PESTICIDE COMBINATIONS. Soil  
22 or plant additive-pesticide combinations shall be labeled in  
23 accordance with both the state soil and plant additive and the  
24 pesticide laws.

25 (1m) MICRONUTRIENT PRE-MIXES. Micronutrient pre-mixes that  
26 are exempt from the minimum guarantees for pre-mixes under  
27 s. Ag 17.035 shall be prominently labeled as follows: "This

1 product is intended for use in mixing or blending with other  
2 fertilizer materials, to produce fertilizers whose total primary  
3 nutrient guarantees equal or exceed 24%."

4 (1s) FOLIAR FERTILIZERS. Any product labeled or advertised  
5 for foliar fertilization of agricultural crops shall be promi-  
6 nently labeled either with directions for agricultural uses, show-  
7 ing only the rates and conditions for use that have been scientif-  
8 ically documented as benefitting crops, or with the following  
9 statement: "Foliar fertilization is intended as a supplement to a  
10 regular fertilization program and will not, by itself, provide all  
11 the nutrients normally required by agricultural crops."

12 SECTION 8. Ag 17.03(2) (title) is created to read:

13 Ag 17.03(2) (title) TOBACCO FERTILIZERS.

14 SECTION 9. Ag 17.035 is created to read:

15 Ag 17.035 EXEMPTING MICRONUTRIENT PRE-MIXES. A micro-  
16 nutrient pre-mix is exempt from the 24% minimum guarantee for  
17 primary nutrients under s. 94.64(3m)(a), Stats., and may be  
18 distributed as a mixed fertilizer if all of the following condi-  
19 tions are met:

20 (1) The product is labeled with directions for use with  
21 other fertilizer materials to meet the 24% minimum guarantee for  
22 primary nutrients.

23 (2) The product is labeled in accordance with  
24 ss. Ag 17.03(1m) and 17.04 and with s. 94.64(2), Stats., and the  
25 product's label has been submitted to and approved by the  
26 department.

27

1 (3) The product is distributed only to fertilizer manufac-  
2 turers or distributors licensed under s. 94.64(3), Stats., for use  
3 in further manufacturing of fertilizers.

4 SECTION 10. Ag 17.04 (title), (1) (intro.), (2) and (3) are  
5 amended to read:

6 Ag 17.04 (title) GUARANTEES; SECONDARY NUTRIENTS AND  
7 MICRONUTRIENTS; ACTIVE AND INERT INGREDIENTS. (1) (intro.) No  
8 fertilizer claims or guarantees for secondary nutrients or micro-  
9 nutrients may be made in any form or manner except for nutrients  
10 guaranteed to be present in the following minimum percentages:

11 (2) ~~Elements guaranteed shall appear in the order~~ Secondary  
12 nutrient and micronutrient guarantees shall appear using the  
13 elemental form and the format listed in sub. (1) and shall  
14 immediately follow guarantees for primary nutrients.

15 (3) Sources of the ~~elements~~ nutrients and active  
16 or inert ingredients, proof of availability or efficacy, and  
17 proposed labels and directions for use of fertilizer or soil or  
18 plant additives shall be furnished to the department on request.

19 SECTION 11. Ag 17.04(5) and (6) are created to read:

20 Ag 17.04(5) Soil or plant additives containing active or  
21 inert ingredients shall be labeled as follows:

22 (a) The genus of each microbiological product shall be  
23 stated. If identifiable and the product's benefits are unique to  
24 the species, a microbiological product's species shall also be  
25 stated.

26 (b) Each inert ingredient shall be stated.

27 (c) Except for microbiological products, each active or

1 inert ingredient's common name, if any, and chemical name, as  
2 listed in The Merck Index, Tenth Edition, 1983, published by  
3 Merck & Co., Inc., shall be stated.

4 NOTE: Copies of The Merck Index may be obtained from  
5 Merck & Co., Inc., Rahway, NJ 07065. Copies are also  
6 on file at the Madison offices of the Department of  
Agriculture, Trade and Consumer Protection, the  
Secretary of State and the Revisor of Statutes.

7 (6) An applicant or permit holder under s. 94.65(3), Stats.,  
8 shall furnish the methods of analysis for each guaranteed active  
9 ingredient in a soil or plant additive to the department of agri-  
10 culture, trade and consumer protection on request.

11 SECTION 12. Ag 17.06 is renumbered Ag 17.06(1) and amended  
12 to read:

13 Ag 17.06(1) In determining tonnages for payment of the  
14 inspection fee, research and groundwater fees, the tonnages of all  
15 fillers or carriers added to dry fertilizers or soil or plant  
16 additives and of water added to liquid fertilizer or soil or plant  
17 additives shall be included.

18 SECTION 13. Ag 17.06(2) is created to read:

19 Ag 17.06(2) Soil or plant additive permit holders and ferti-  
20 lizer licensees distributing soil or plant additive-fertilizer  
21 combinations shall report the combination tonnage for fertilizer  
22 and for soil or plant additives, as required by both ss. 94.64(5)  
23 and 94.65(6), Stats., and shall pay inspection, research and  
24 groundwater fees as required by both ss. 94.64(4) and 94.65(6),  
25 Stats., on the tonnage distributed.

26 SECTION 14. Ag 17.07(2) is amended to read:

27 Ag 17.07(2) A fertilizer ~~is deficient and in excess of~~

1 ~~tolerances for~~ does not meet allowable tolerances for deficiencies  
2 in primary nutrients if it is found to be more than a) 10%:

3 (a) Ten percent or 2 units below label guarantees in any one  
4 of the 3 primary nutrients guaranteed to be present, ~~or b) 3%~~  
5 whichever is less; or

6 (b) Three percent below the combined nutrient index value of  
7 the fertilizer. ~~Sample calculations are set forth in the appendix~~  
8 ~~to these rules.~~

9 NOTE: Sample calculations are set forth in the appendix  
10 to these rules.

11 SECTION 15. Ag 17.07(3) is renumbered Ag 17.07(3)(a) and  
12 Ag 17.07(3)(a)[schedule], as renumbered, is amended to read:

13 Ag 17.07(3)(a)[schedule]

<u>ELEMENT</u>	<u>ALLOWABLE DEFICIENCY</u>
14 Calcium	
15 Magnesium .....	<del>0.02</del> <u>0.2</u> unit + 5% of guarantee
16 Sulfur	
17 Boron .....	0.003 <u>unit</u> + 15% of guarantee
18 Cobalt	
19 Molybdenum .....	<del>0.001</del> <u>0.0001</u> unit + 30% of guarantee
20 Chlorine	
20 Copper	
20 Iron	
21 Manganese .....	0.005 unit + 10% of guarantee
21 Sodium	
22 Zinc	

23 SECTION 16. Ag 17.07(4) is renumbered Ag 17.07(3)(b) and is  
24 amended to read:

25 Ag 17.07(3)(b) ~~The maximum tolerance when calculated in~~  
26 ~~accordance with the 10% factor under sub. (2)(a) shall be 2 units.~~  
27 The maximum tolerance under ~~(3)~~ par. (a) shall be one per cent

1 (1 unit).

2 SECTION 17. Ag 17.07(4) is created to read:

3 17.07(4) A fertilizer is mislabeled if its label guarantee  
4 is not reasonably representative of the product or if, when used  
5 according to its guaranteed nutrient concentrations, it could be  
6 injurious to plants, humans or animals.

7 SECTION 18. Ag 17.08 (title) and (1) (intro.) are amended to  
8 read:

9 Ag 17.08. (title) NONAGRICULTURAL FERTILIZER LABELS. (1)  
10 (intro.) ~~Specialty~~ Nonagricultural fertilizer products shall be  
11 conspicuously labeled to show the following information:

12 SECTION 19. Ag 17.09 (title) is amended to read:

13 Ag 17.09 (title) FERTILIZER INDEX FACTORS.

14 SECTION 20. Ag 17.10 is created to read:

15 Ag 17.10 PRODUCTS EXEMPT FROM SOIL OR PLANT ADDITIVE

16 REQUIREMENTS. (1) Composted or dried manures, mulches intended  
17 as a soil cover, potting soils, peat moss, sand, tree bark, wood  
18 shavings, vermiculite and mixes of these products are exempt from  
19 the soil or plant additive license and permit requirements. if  
20 these ingredients are prominently stated on the label and no  
21 claims of benefits deriving from use of the product are made other  
22 than loosening the soil.

23 (2) Any soil or plant additive used for treatment of seed  
24 shall comply with this chapter and s. 94.65, Stats. Each permit  
25 holder under s. 94.65(3), Stats., shall pay inspection, research  
26 and groundwater fees, regardless of whether the treated seed is  
27 distributed in Wisconsin.

1 (3) Seed that is treated or coated with a soil or plant  
2 additive is exempt from soil or plant additive license and permit  
3 requirements.

4 (4) Adjuvants designed, labeled and promoted for improving  
5 the mixing, handling or application of fertilizers or pesticides  
6 are exempt from soil or plant additive license and permit require-  
7 ments, if no statements of benefit are made beyond a precautionary  
8 label statement that the adjuvant may increase the fertilizer or  
9 pesticidal activity of products applied with it.

10 SECTION 21. Ag 162.01(2m) is created to read:

11 Ag 162.01(2m) "Department" means the department of agricul-  
12 ture, trade and consumer protection.

13 SECTION 21m. Ag 162.01(12) is repealed and recreated to  
14 read:

15 Ag 162.01(12)(a) "Storage container" means a container,  
16 including a rail car, nurse tank or other mobile container, that  
17 is used for the storage of liquid bulk fertilizer.

18 (b) "Storage container" does not include:

19 1. A mobile container storing liquid bulk fertilizer at a  
20 storage facility for less than 15 days, if this storage is  
21 incidental to the loading or unloading of a storage container at  
22 the storage facility.

23 2. A mobile container located other than on property owned,  
24 operated or controlled by a manufacturer or distributor.

25 SECTION 22. Ag 162.03(1)(a) is amended to read:

26 Ag 162.03(1)(a) Areas used for loading liquid bulk ferti-  
27 lizer into storage containers, or for unloading liquid bulk

1 fertilizer from storage containers into mobile containers, shall  
2 be curbed and paved with asphalt, concrete or other department  
3 approved material providing substantially similar protection for  
4 the waters of the state. The curbed and paved surface shall form  
5 or drain into a liquid-tight catch basin. If the curbed and paved  
6 surface drains to a sump, the catch basin may include the sump and  
7 an above-ground container, providing a pump is installed which  
8 automatically transfers the contents of the sump into an above-  
9 ground container. Except as provided in par. (b), curbed surfaces  
10 and catch basins shall be of adequate size and design to contain a  
11 combined total of at least 1,500 gallons (5,680 liters) of dis-  
12 charged liquid.

13 SECTION 23. Ag 162.04(9)(a)1 and 3 to 5 are amended to  
14 read:

15 Ag 162.04(9)(a) 1. A second bottom made of steel shall be  
16 constructed for the storage container. The department may also  
17 approve a second bottom made of other materials if the materials,  
18 considering the substances held in the storage container, provide  
19 protection for the waters of the state that is substantially  
20 similar to the protection provided by a liner under sub. (4).  
21 Any request for departmental approval shall be supported by a  
22 plan, certified by a licensed professional engineer, showing that  
23 the proposed use of other materials will provide this protection.  
24 The second bottom shall be placed over the original bottom ~~on~~ and  
25 a layer of ~~course~~ smooth, fine gravel or coarse sand having a  
26 minimum thickness of 6 inches (15 centimeters).

27 3. The newly constructed ~~steel~~ bottom shall be tested for

1 leaks before any liquid fertilizer is stored on the newly con-  
2 structed bottom. A record of the test shall be kept on file at  
3 the storage facility, or at the nearest local office from which  
4 the storage facility is administered.

5 4. There shall be a method by which leaks from the newly  
6 constructed ~~steel~~ bottom into the sand layer may be readily  
7 detected.

8 5. The newly constructed ~~steel~~ bottom shall be tested at  
9 least once every 2 years for leaks. A record of the tests shall  
10 be kept at the storage facility.

11 SECTION 24. Ag 163.01(2m) is created to read:

12 Ag 163.01(2m) "Department" means the department of agricul-  
13 ture, trade and consumer protection.

14 SECTION 24e. Ag 163.01(14) is repealed and recreated to  
15 read:

16 Ag 163.01(14)(a) "Storage container" means:

17 1. A container used for the storage of liquid bulk  
18 pesticide.

19 2. A rail car, nurse tank or other mobile container used for  
20 the storage of liquid bulk pesticide.

21 3. A container of mini-bulk pesticide.

22 (b) "Storage container" does not include:

23 1. A mobile container storing liquid bulk pesticide at a  
24 storage facility for less than 15 days, if this storage is  
25 incidental to the loading or unloading of a storage container at  
26 the storage facility.

27 2. A mobile container located other than on property owned,

1 operated or controlled by a manufacturer or distributor.

2 3. A container used solely for emergency storage of leaking  
3 pesticide containers that are 55 gallons or smaller.

4 SECTION 24m. Ag 163.02(3) is renumbered Ag 163.02(3)(a) and  
5 amended to read:

6 Ag 163.02(3)(title) VENTING OR EXPOSURE MONITORING.

7 (a) ~~Each~~ Except as provided in par. (b), each fixed storage con-  
8 tainer used for liquid bulk pesticide shall be equipped with a  
9 conservation vent which opens and closes within the designed pres-  
10 sure limits of the container, so as to relieve excess pressure,  
11 prevent evaporative losses, and keep precipitation out of the  
12 container.

13 SECTION 24s. Ag 163.02(3)(b) is created to read:

14 Ag 163.02(3)(b) In place of a conservation vent under  
15 par. (a), a company storing bulk pesticides for use as a wood pre-  
16 servative may conduct air sampling capable of determining the  
17 presence of the wood preserving compound stored at or above levels  
18 regulated by state or federal standards in accordance with  
19 acceptable protocol.

20 SECTION 25. Ag 163.02(5)(b)(intro.) and 1 are amended to  
21 read:

22 Ag 163.02(5)(b) A storage container may not be made of  
23 ferrous metals, unless any of the following occur:

24 1. The container is made of stainless steel; ~~or~~ or.

25 SECTION 26. Ag 163.02(5)(b)3 is created to read:

26 Ag 163.02(5)(b)3. The department approves the use of ferrous  
27 metals based on documentation it receives showing the product

1 stored to be noncorrosive, and the product stored is intended for  
2 use by the wood preservative industry.

3 SECTION 27. CROSS-REFERENCE CHANGE. In the section of rules  
4 listed in Column A, the cross-reference shown in Column B is  
5 changed to the cross-reference shown in Column C:

6	<u>A</u>	<u>B</u>	<u>C</u>
7	Rule Section	Old Cross-Reference	New Cross-Reference
8	Ag 17.05	ch. Ind 43	ch. ILHR 43

9 SECTION 28. EFFECTIVE DATE. (1) Except as provided in  
10 subsection (2), the rules contained in this order take effect on  
11 the first day of the month following their publication, as speci-  
12 fied in section 227.22(2) (intro.), Stats.

13 (2) The treatment of sections Ag 162.04(9)(a)1 and 3 to 5  
14 takes effect on January 1, 1988, or on the first day of the month  
15 following their publication, whichever occurs later.

16 Dated this 1<sup>st</sup> day of December, 1987..

17 STATE OF WISCONSIN  
18 DEPARTMENT OF AGRICULTURE,  
19 TRADE AND CONSUMER PROTECTION

20 By Kenneth P. Robert  
21 Kenneth P. Robert, Administrator  
22 Agricultural Resource Management  
23 Division

24 DAL/T4/1/ADM1  
25 10/7/87-13  
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