

CR 93-82

STATE OF WISCONSIN)
)
DEPARTMENT OF AGRICULTURE,)
TRADE AND CONSUMER PROTECTION)

Docket No. 2424

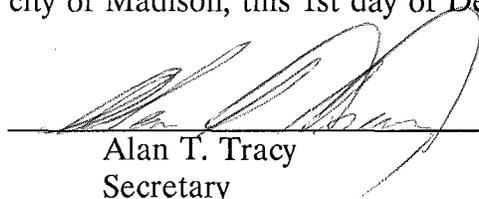
ss.

CERTIFICATION:

I, Alan T. Tracy, Secretary, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the annexed order creating chapter ATCP 137, Wisconsin Administrative Code, relating to representations that products are recycled, recyclable or degradable was duly approved and adopted by the Department on December 1, 1993.

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.

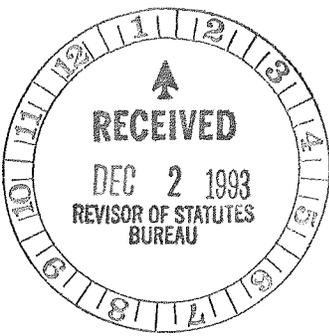
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 1st day of December, 1993.



Alan T. Tracy
Secretary



2-1-94



ORDER OF THE
STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING RULES

1 The State of Wisconsin department of agriculture, trade and
2 consumer protection hereby adopts the following order to create
3 chapter ATCP 137 relating to representations that products are
4 recycled, recyclable or degradable.

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

Statutory authority: ss. 100.20(2) and 100.295, Stats.
Statutes interpreted: ss. 100.20 and 100.295, Stats.

This rule regulates "environmental labeling" claims -- i.e., claims that a product or package is recycled, recyclable or degradable. The rule is designed to be consistent with federal guidelines adopted by the Federal Trade Commission.

This rule applies to representations made for any product or package that is sold or leased, offered for sale or lease, or promoted or distributed for sale or lease at wholesale or retail. The rule applies to oral, written or graphic representations including advertisements, product labels, statements made in the print or broadcast media, and representations made in the form of trademarks, logos, symbols or trade names.

General Prohibitions

Under this rule, no person may represent, directly or by implication, that a product or package is recycled, recyclable or degradable if that representation is false, deceptive or misleading.

Degradability Claims

Under this rule, no person may represent, without qualification, that a product is degradable unless all of the following apply under customary conditions of use and disposal in the area where the product is sold:

- The product decomposes completely to the point that it is entirely broken down into soluble nutrients, minerals, inorganic compounds, simple organic compounds found in

nature, carbon dioxide, methane or water, or any combination of those breakdown products.

- The product decomposes completely within a reasonably short period of time compatible with normal conditions of use or disposal of the product.
- The product's decomposition does not release any contaminant at a level that violates state or federal environmental quality standards, or that is toxic to persons or the environment.

Under this rule, if a product does not meet all of the above requirements, no person may represent that the product is degradable unless the representation is qualified to the extent necessary to avoid consumer deception.

Under this rule, no person may misrepresent, directly or by implication, any of the following:

- That a product is degradable under customary conditions of use and disposal in the area where the product is sold. If a product is not degradable under customary conditions of use and disposal, the representation must specify the conditions of use and disposal under which the product is degradable. If a specified disposal method is not available to a substantial majority of the population in the area where the product is sold, the representation must clearly disclose that it may not be available.
- That a product is compostable in home composting piles or devices. If composting is specified as a method of disposal, the representation must clearly indicate whether the product can be safely and effectively composted at home.
- The rate or extent to which a product will decompose under customary conditions of use and disposal in the area where the product is sold, or under specified conditions of use and disposal.

Recyclability Claims

Under this rule, no person may represent, without qualification, that a product is recyclable unless the product is entirely composed of materials that satisfy all of the following requirements:

- The materials can be collected, separated or otherwise recovered from the solid waste stream by recycling systems that are readily available to a substantial majority of the population in the area where the product is sold, using normal methods of operation.

- The recovered materials can, by means of established commercial processes, be processed and reused as raw materials for the manufacture of new products.

Under this rule, if a product does not meet all of the above requirements, no person may represent that the product is recyclable unless the representation is qualified to the extent necessary to avoid consumer deception.

Under this rule, no person may misrepresent, directly or by implication, any of the following:

- That recycling systems needed to recycle the product are readily available in the area where the product is sold. If suitable recycling systems are not readily available to a substantial majority of the population in the area where the product is sold, or if those systems do not ordinarily accept the product for recycling, no person may represent that the product is recyclable unless the representation clearly discloses that suitable recycling facilities may not be available.
- That the product is compatible with suitable recycling systems that are readily available in the area where the product is sold. If, because of its size, shape or any other reason, a product is incompatible with recycling systems, no person may represent that the product is recyclable.

Recycled Content Claims

Under this rule, no person may represent, without qualification, that a product is recycled, or that it contains or is made from recycled material, unless at least one of the following applies:

- The entire product consists of, or is made from, recycled material.
- The representation clearly identifies, to the nearest 5 percent or closer, the minimum percentage by weight of the product that constitutes or is made from recycled material. For paper products, recycled content may be expressed as a percentage of fiber content in the product rather than a percentage by weight of the product.

Under this rule, no person may represent that a product contains or is made from "pre-consumer material" or "post-consumer material" unless the use of those terms conforms to the definitions specified for those terms under this rule.

Under this rule, if any person represents that a product contains

or is made from "pre-consumer material" or "post-consumer material," the representation must clearly identify, to the nearest 5 percent or closer, the product's minimum percentage content of that material, by weight. For paper products, the percentage content of pre-consumer or post-consumer material may be expressed as a percentage of fiber content rather than a percentage by weight.

Form and Content of Claims; General

Under this rule, no person may represent that a product is recycled, recyclable or degradable unless the representation complies with all of the following:

- If the representation is not valid for the entire product, the representation must clearly identify the specific parts of the product for which the representation is valid. If a representation is valid for a product, but invalid for a closure, fastener or similar minor component of the product, the representation need not specify that the representation does not apply to that minor component unless failure to do so affects the validity of the representation for the rest of the product.
- The representation must clearly identify the product manufacturer, distributor, lessor or seller who is responsible for the representation. If the representation is made as part of a product label, it must include the responsible person's business address, including street address, city, state and zip code, except that the street address may be omitted if the address can be found under the name of the responsible person in a current city directory or telephone directory.

If a representation is required to include any disclosures or qualifying statements under this rule, the disclosures and qualifying statements must be clear and conspicuous in relation to the representation.

Substantiating Claims; General

Under this rule, no person may represent that a product is recycled, recyclable or degradable unless that person can substantiate the representation at the time the representation is made. The substantiation must be all of the following:

- Adequate to support every direct and implied claim made in the representation.
- Based on competent and reliable evidence consisting of tests, analyses, research, studies or other evidence developed and evaluated in an objective manner by persons

1 statements made in the print or broadcast media, and
2 representations made in the form of trademarks, logos, symbols or
3 trade names.

4 **ATCP 137.02 DEFINITIONS.** In this chapter:

5 (1) "Decomposition" means the biological, chemical,
6 photochemical, or other physical process by which an organic
7 substance is broken down and its molecular structure dismantled
8 into soluble nutrients, minerals, inorganic compounds, simple
9 organic compounds found in nature, carbon dioxide, methane or
10 water, or any combination of those breakdown products.

11 (2) "Department" means the state of Wisconsin department of
12 agriculture, trade and consumer protection.

13 (3) "Organic substance" means a natural or synthetic
14 substance consisting of, derived from, or chemically related to
15 carbon compounds in which hydrogen is bonded to carbon.

16 (4) "Package" means any container, wrapping or packing
17 material in which a product is contained or enclosed.

18 (5) "Person" means an individual, corporation, partnership,
19 association or other business organization or entity.

20 (6) "Post-consumer material" means a product or other
21 material generated by a business or consumer that has served its
22 intended end use and has been recovered or diverted from the
23 solid waste stream for purposes of recycling.

24 (7) "Pre-consumer material" means material generated during
25 any step in the production of a product that has been recovered
26 or diverted from the solid waste stream for the purpose of

1 recycling. "Pre-consumer material" does not include the virgin
2 content of scraps or by-products generated and reused within the
3 original product manufacturing process.

4 (8) "Product" means a manufactured article, good,
5 commodity, package or container that is sold or leased, offered
6 for sale or lease, or promoted or distributed for sale or lease
7 at wholesale or retail. "Product" includes a package or
8 container that accompanies, encloses or contains another product.

9 (9) "Recycled material" means pre-consumer material or
10 post-consumer material, or both.

11 (10) "Represent that a product is degradable" means to
12 represent directly or by implication, through the use of any
13 words or images, that a product is capable of complete or partial
14 decomposition, and includes any representation that a product is
15 biodegradable, photodegradable, compostable or decomposable.

16 (11) "Represent that a product is recyclable" means to
17 represent directly or by implication, through the use of any
18 words or images, that a product is entirely or partly composed of
19 materials that can be recovered from the solid waste stream and
20 used in the manufacture of other products.

21 (12) "Represent that a product is recycled" means to
22 represent directly or by implication, through the use of any
23 words or images, that a product is entirely or partly composed of
24 recycled material.

25 (13) "Representation" means any oral, written or pictorial
26 representation made in connection with the sale, lease, offering

1 for sale or lease, promotion or distribution of a product.
2 "Representation" includes advertisements, product labels,
3 statements made in the print or broadcast media, and
4 representations made in the form of trademarks, logos, symbols or
5 trade names.

6 **ATCP 137.03 GENERAL PROHIBITIONS.** (1) No person may
7 represent, directly or by implication, that a product is
8 recycled, recyclable or degradable if the representation is
9 false, deceptive or misleading.

10 (2) No person may represent, directly or by implication,
11 that a product is recycled, recyclable or degradable if the
12 representation violates this chapter.

13 **ATCP 137.04 DEGRADABILITY REPRESENTATIONS.** (1) No person
14 may represent, without qualification, that a product is
15 degradable unless all of the following apply under customary
16 conditions of use and disposal in the area where the product is
17 sold:

18 (a) The product decomposes completely to the point that it
19 is entirely broken down into soluble nutrients, minerals,
20 inorganic compounds, simple organic compounds found in nature,
21 carbon dioxide, methane or water, or any combination of those
22 breakdown products.

23 (b) The product decomposes completely within a reasonably
24 short period of time compatible with normal conditions of use or
25 disposal of the product.

26 (c) The product's decomposition does not release any

1 contaminant or substance at a level that violates state or
2 federal environmental quality standards, or that is toxic to
3 persons or the environment.

4 (2) If a product does not meet all of the requirements
5 under sub. (1), no person may represent that the product is
6 degradable unless the representation is qualified to the extent
7 necessary to avoid consumer deception.

8 (3) No person may misrepresent, directly or by implication,
9 any of the following:

10 (a) That a product is degradable under customary conditions
11 of use and disposal in the area where the product is sold. If a
12 product is not degradable under customary conditions of use and
13 disposal, the representation shall specify the conditions of use
14 and disposal under which the product is degradable. If a
15 specified disposal method is not available to a substantial
16 majority of the population in the area where the product is sold,
17 the representation shall clearly disclose that it may not be
18 available.

19 (b) That a product is compostable in home composting piles
20 or devices. If composting is specified as a method of disposal,
21 the representation shall clearly indicate whether the product can
22 be safely and effectively composted at home.

23 (c) The rate or extent to which a product will decompose
24 under customary conditions of use and disposal in the area where
25 the product is sold, or under specified conditions of use and
26 disposal.

1 disclosures and qualifying statements shall be clear and
2 conspicuous in relation to the representation.

3 **ATCP 137.08 SUBSTANTIATING REPRESENTATIONS.** (1) No person
4 may represent that a product is recycled, recyclable or
5 degradable unless that person can substantiate the representation
6 at the time the representation is made. The substantiation shall
7 be all of the following:

8 (a) Adequate to support every direct and implied claim made
9 in the representation.

10 (b) Based on competent and reliable evidence consisting of
11 tests, analyses, research, studies or other evidence developed
12 and evaluated in an objective manner by persons qualified to do
13 so, using procedures that are generally accepted in the
14 profession as yielding accurate and reliable results.

15 (c) Adequate to prove that the representation is not false,
16 deceptive or misleading.

17 (d) Adequate to support the representation under reasonably
18 foreseeable conditions specified or implied in the
19 representation.

20 (2) No document or other evidence may be used to
21 substantiate a representation under sub. (1) unless the person
22 making the representation possessed that document or evidence at
23 the time the representation was made, and relied upon that
24 document or evidence in making the representation.

25 (3) If any person represents that a product is recycled,
26 recyclable or degradable, the department may issue a written

1 (4) A label only used at wholesale by a manufacturer of
2 connectors for beverage containers as defined in s. 134.77(1)(b),
3 Stats., representing compliance with s. 134.77(3), Stats., to
4 packagers of beverages as defined in s. 134.77(1)(a), Stats.,
5 does not constitute a representation, for purposes of this
6 section, that a plastic beverage connector is degradable as
7 defined in this chapter.

8 (5) No person may represent that a product is degradable
9 unless both of the following apply:

10 (a) The representation complies with s. ATCP 137.07.

11 (b) The person can substantiate the representation under s.
12 ATCP 137.08.

13 **ATCP 137.05 RECYCLABILITY REPRESENTATIONS.** (1) No person
14 may represent, without qualification, that a product is
15 recyclable unless the product is entirely composed of materials
16 that satisfy all of the following requirements:

17 (a) The materials can be collected, separated or otherwise
18 recovered from the solid waste stream by recycling systems that
19 are readily available to a substantial majority of the population
20 in the area where the product is sold, using normal methods of
21 operation.

22 (b) The materials recovered under par. (a) can, by means of
23 established commercial processes, be processed and reused as raw
24 materials for the manufacture of new products.

25 (2) If a product does not meet all of the requirements
26 under sub. (1), no person may represent that the product is

1 recyclable unless the representation is qualified to the extent
2 necessary to avoid consumer deception.

3 (3) No person may misrepresent, directly or by implication,
4 any of the following:

5 (a) That recycling systems needed to recycle the product
6 are readily available in the area where the product is sold. If
7 suitable recycling systems are not readily available to a
8 substantial majority of the population in the area where the
9 product is sold, or if those systems do not ordinarily accept the
10 product for recycling, no person may represent that the product
11 is recyclable unless the representation clearly discloses that
12 suitable recycling facilities may not be available.

13 (b) That the product is compatible with suitable recycling
14 systems that are readily available in the area where the product
15 is sold. If, because of the product's size or shape, or for any
16 other reason, a product is incompatible with recycling systems,
17 no person may represent that the product is recyclable.

18 (4) An identifying symbol placed on a plastic container to
19 comply with ch. ATCP 135 does not constitute a representation,
20 for purposes of this chapter, that the container is recyclable.

21 (5) No person may represent that a product is recyclable
22 unless both of the following apply:

23 (a) The representation complies with s. ATCP 137.07.

24 (b) The person can substantiate the representation under s.
25 ATCP 137.08.

26 ATCP 137.06 RECYCLED CONTENT REPRESENTATIONS. (1) No

1 person may represent, without qualification, that a product is
2 recycled, or that it contains or is made from recycled material,
3 unless at least one of the following applies:

4 (a) The entire product consists of, or is made from,
5 recycled material.

6 (b) The representation clearly identifies, to the nearest 5
7 percent or closer, the minimum percentage by weight of the
8 product that constitutes or is made from recycled material. For
9 paper products, recycled content may be expressed as a percentage
10 of fiber content in the product rather than a percentage by
11 weight of the product.

12 (2) No person may represent that a product contains or is
13 made from "post-consumer material" or "pre-consumer material"
14 unless the use of those terms conforms to the definitions under
15 ss. ATCP 137.02(6) and (7).

16 (3) If any person represents that a product contains or is
17 made from "post-consumer material" or "pre-consumer material,"
18 the representation shall clearly identify, to the nearest 5
19 percent or closer, the product's minimum percentage content of
20 that material, by weight. For paper products, the percentage
21 content of post-consumer or pre-consumer material may be
22 expressed as a percentage of fiber content rather than a
23 percentage by weight.

24 (4) No person may represent that a product is recycled,
25 that it contains or is made from recycled material, or that it
26 contains or is made from "post-consumer material" or "pre-

1 consumer material" unless both of the following apply:

2 (a) The representation complies with s. ATCP 137.07.

3 (b) The person can substantiate the representation under s.
4 ATCP 137.08.

5 **ATCP 137.07 FORM AND CONTENT OF REPRESENTATIONS.** No person
6 may represent that a product is recycled, recyclable or
7 degradable unless the representation complies with all of the
8 following:

9 (1) If the representation is not valid for the entire
10 product, the representation shall clearly identify the specific
11 parts of the product for which the representation is valid. If a
12 representation is valid for a product, but invalid for a closure,
13 fastener or similar minor component of the product, the
14 representation need not specify that the representation does not
15 apply to that minor component unless failure to do so affects the
16 validity of the representation for the rest of the product.

17 (2) The representation shall clearly identify the product
18 manufacturer, distributor, lessor or seller responsible for the
19 representation. If the representation is made as part of a
20 product label, it shall include the responsible person's business
21 address, including street address, city, state and zip code,
22 except that the street address may be omitted if the address can
23 be found under the name of the responsible person in a current
24 city directory or telephone directory.

25 (3) If a representation is required to include any
26 disclosures or qualifying statements under this chapter, the

1 notice to that person requiring that person to provide the
2 department with the evidence upon which that person relied to
3 substantiate the representation at the time the representation
4 was made. The person making the representation shall submit the
5 required evidence to the department within 45 days after the
6 request is made, unless the department grants an extension of
7 time.

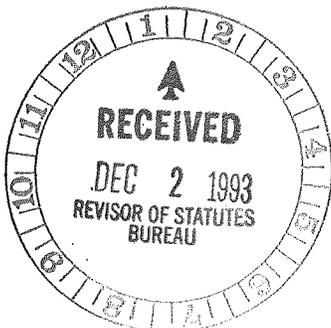
8 **ATCP 137.09 SPECIAL ORDERS.** (1) The department may, by
9 special order under s. 100.20(3), Stats., prohibit any person
10 from violating this chapter, and require that person to take
11 specific action to correct the violation. A special order under
12 s. 100.20(3), Stats., is not a prerequisite to other enforcement
13 action and does not preclude other enforcement action.

14 NOTE: See ch. ATCP 1 related to procedure in special order
15 cases.
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19 SECTION 2. The rules contained in this order shall take
20 effect on the first day of the month following publication in the
21 Wisconsin administrative register as provided in s. 227.22(2),
22 Stats.
23

24 Dated this 1st day of December, 1993.

25 STATE OF WISCONSIN
26 DEPARTMENT OF AGRICULTURE,
27 TRADE AND CONSUMER PROTECTION



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31
32 By [Signature]
33 Alan T. Tracy, Secretary