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Chapter ATCP 40

FERTILIZER AND RELATED PRODUCTS

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Note: Chapter ATCP 40 as it existed on September 30, 2005 was repealed and a new chapter ATCP 40 was created effective October 1, 2005.

Subchapter I — General Provisions

ATCP 40.01 Purpose. This chapter has the following purposes:

(1) To protect Wisconsin consumers, including farmers and household users, against unfair and deceptive practices in the sale of fertilizers or soil or plant additives.

(2) To protect honest businesses against unfair and deceptive methods of competition.

(3) To prevent certain hazards to persons, property and the environment.

Note: See s. 94.64, Stats. (fertilizer), s. 94.65, Stats. (soil or plant additives), s. 100.18, Stats. (fraudulent representations), s. 100.37, Stats. (hazardous substances), s. 100.42, Stats. (product safety) and ch. ATCP 139 (consumer product safety).

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

ATCP 40.02 Definitions. In this chapter:

(1) "Active ingredient" means an element, chemical compound or other substance that affects the efficacy, usefulness or performance of a fertilizer or soil or plant additive. "Active ingredient" includes all of the following:

(a) A plant nutrient.

(b) A living microorganism.

(c) Any other component declared, or required to be declared under this chapter, as an active ingredient on the product label.

(2) "Bulk fertilizer" or "bulk soil or plant additive" means a fertilizer or soil or plant additive that is distributed in unpackaged form, or in a container that holds more than 55 gallons of liquid or 100 lbs. of dry material.

(3) "Combination product" means any of the following:

(a) A fertilizer−additive combination.

(b) A fertilizer−pesticide combination.

(c) A pesticide−additive combination.

(d) A fertilizer or soil or plant additive combined with seed.

(e) A fertilizer or soil or plant additive combined with liming material.

(4) "Custom mixed fertilizer" means a fertilizer that a manufacturer mixes for a retail customer according to individual specifications provided by the retail customer.

(5) "Department" means Wisconsin department of agriculture, trade and consumer protection.

(6) "Distribute" means to import, consign, sell, offer for sale, solicit orders for sale, or supply for sale or use in this state. "Distribute" does not include the sale or delivery of manure represented only as manure, by the person who owns or operates the farm that produces the manure, for application on any of the following:

(a) Land owned or controlled by that person.

(b) Land covered by a nutrient management plan under s. ATCP 50.04 (3).

(7) "Enhancing element" means aluminum, cobalt, selenium, silicon or sodium.

(8) "Fertilizer" means any substance that contains one or more plant nutrients, is used for its plant nutrient content, and is designed for use or claimed to have value in promoting plant growth. "Fertilizer" includes agricultural and nonagricultural fertilizers, fertilizer materials, mixed fertilizers, custom mixed fertilizers, and combination products containing fertilizer. "Fertilizer" does not include unmanipulated animal or vegetable manure, marl, liming material, wood ashes, or sewage sludge other than finished sewage sludge products.

(9) "Fertilizer−additive combination" means a fertilizer combined with a soil or plant additive, or a fertilizer that is represented as having plant growth benefits beyond those attributable to the fertilizer's plant nutrient contents. "Fertilizer−additive combination" includes a fertilizer that is represented to contain enhancing elements other than cobalt or sodium.

(10) "Fertilizer material" means a substance that meets all of the following criteria:

(a) It is an element, a chemical compound, or a substance manufactured by chemical reaction.

(b) It contains one or more plant nutrients.

(c) It is a fertilizer component or is used to compound fertilizer.

(11) "Fertilizer−pesticide combination" means a fertilizer combined with a pesticide.

Note: For example, "weed and feed" products are fertilizer−pesticide combinations.

(12) "Finished sewage sludge product" means a product, consisting partly or entirely of sewage sludge, that has been disinfected or treated to facilitate sale or distribution. "Finished sewage sludge product" does not include sewage sludge distributed

under a pollutant discharge elimination permit issued by the department of natural resources under s. 283.31 or 283.35, Stats.

(13) "Foliar fertilizer" means a fertilizer designed or labeled for direct application to plant foliage and intended for absorption through the plant's foliage.

(14) "Grade" means the percentage guarantees of total nitrogen (N), available phosphate (P_2O_5) and soluble potash (K_2O), stated in the same terms, order and percentages as in the guaranteed analysis.

(15) "Guaranteed analysis" means the guaranteed percentage content by weight of each plant nutrient, active ingredient and inert ingredient, stated according to s. ATCP 40.10 or 40.26. For microbiological ingredients in a soil or plant additive, "guaranteed analysis" means the number of viable microorganisms or colony forming units per unit of dry weight or per unit of liquid volume.

(16) "Inert ingredient" means a component that does not affect product efficacy or performance.

(17) "Label" means a written, printed, graphic or pictorial statement that is one of the following:

(a) Part of, or attached to, a package containing fertilizer or a soil or plant additive.

(b) Used to identify, for distribution or storage, a bulk fertilizer or a bulk soil or plant additive.

(18) "Labeling" means labels and other written, graphic or pictorial statements that accompany a fertilizer or a soil or plant additive, or that promote the sale or distribution of fertilizer or soil or plant additives. "Labeling" includes advertising and website materials that promote the sale or distribution of a fertilizer or soil or plant additive.

(19) "Landowner" has the meaning given in s. ATCP 50.01 (15).

(20) "Manipulated manure" means manure that is ground, pelletized, mechanically dried, packaged, supplemented with plant nutrients or other substances, or otherwise treated in a manner designed to facilitate sale or distribution as a fertilizer or soil or plant additive. "Manipulated manure" does not include unpackaged manure that is modified solely as an incidental result of normal on−farm practices such as the following:

(a) Addition of bedding, sand or water for purposes of animal husbandry or barn cleaning.

(b) Shredding, grinding or agitating for purposes of manure handling or removal from a manure storage system.

(c) Drying incidental to mechanical ventilation of animal confinement areas.

(21) "Manufacture" means any of the following:

(a) To process, granulate, compound, formulate, produce, mix, blend, or alter the composition of a fertilizer, fertilizer material, or soil or plant additive for distribution.

(b) To package or label, for distribution, a fertilizer, fertilizer material, or soil or plant additive.

(22) "Micronutrient" means boron, chlorine, copper, iron, manganese, molybdenum, nickel, or zinc.

(23) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials, or a fertilizer material and any other substance. A fertilizer material containing impurities inherent in the manufacture of that fertilizer material does not constitute a "mixed fertilizer" unless the distributor claims that the impurities are plant nutrients, fertilizer materials or soil or plant additives.

(24) "Nonagricultural fertilizer" means a fertilizer designed, labeled and distributed for non−farm use, including use for home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses, nurseries, or scientific research or experimentation.

(25) "Nutrient management plan" means a plan that complies with s. ATCP 50.04 (3).

(26) "Packaged fertilizer" means a fertilizer that is sold in a closed package or container. "Packaged fertilizer" includes packaged custom mixed fertilizer.

(27) "Packaged soil or plant additive" means a soil or plant additive that is sold in a closed package or container.

(28) "Percent" or "percentage" means percentage by weight.

(29) "Pesticide" has the meaning given in s. 94.67, Stats. "Pesticide" includes a fertilizer−pesticide combination and a pesticide−additive combination.

(30) "Pesticide−additive combination" means a pesticide combined with a soil or plant additive.

(31) "Plant nutrient" or "nutrient" means any of the following:

(a) A primary plant nutrient.

(b) A secondary plant nutrient.

(c) A micronutrient.

(32) "Primary plant nutrient" means nitrogen (N), available phosphate (P_2O_5) or soluble potash (K_2O).

(33) "Product" means a fertilizer or a soil or plant additive.

(34) "Product name" means a name, designation or trademark that identifies a product.

(35) "Ready−to−use liquid fertilizer" means a liquid fertilizer that is designed and labeled to be applied without prior mixing or dilution by the user.

(36) "Represent" means to state or imply by any means, including any oral, written, graphic or broadcast means.

(37) "Scientific evidence" means evidence that is logically derived from controlled experiments designed, conducted and reported according to the scientific method, using relevant experimental and statistical analytical procedures that are generally recognized and defensible as valid and appropriate among peers in the relevant scientific community. Testimonials are not "scientific evidence."

(38) "Secondary plant nutrient" means calcium, magnesium or sulfur.

(39) "Sewage" has the meaning given in s. 281.01 (13), Stats.

(40) "Sewage sludge" means the solid, semi−solid or liquid residue generated during the treatment of sewage in a treatment works. Sewage sludge includes scum or solids recovered in primary, secondary or advanced wastewater treatment processes, and also includes material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of a sewage sludge incinerator, or grit or screenings generated during preliminary treatment of domestic sewage in a treatment works.

(41) "Soil or plant additive" or "additive" means a substance, intended for application to seeds, soil or plants, that 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 soil, or favorably modifying the structural, physical or biological properties of the soil for agronomic or horticultural purposes. "Soil or plant additive" includes a combination product containing a soil or plant additive, and also includes any product represented to contain humate, humin, humic acid, fulvic acid or other humic substances. "Soil or plant additive" does not include any of the following:

(a) Fertilizer, other than a fertilizer−additive combination. A fertilizer is not considered a fertilizer−additive combination merely because its guaranteed analysis includes guarantees under s. ATCP 40.10 for cobalt or sodium.

(b) Liming material that is distributed solely for the purposes stated in s. 94.66 (1) (am), Stats., and is not part of a combination product.

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(c) Wood ashes, unmanipulated animal manure or unmanipulated vegetable manure. This exemption does not apply to wood ashes or manure distributed under another name or description.

(d) A pesticide registered under 7 USC 136 or by the department, other than a pesticide−additive combination.

(e) Mulches distributed only as soil covers or weed barriers.

(f) Perlite labeled as perlite, or vermiculite labeled as vermiculite, that is not mixed with any other substance.

(g) Potting soil or similar mixtures of readily identifiable organic substances, unless labeled with performance claims associated with its use as a soil amendment.

(h) Compost, peat moss, tree bark, wood shavings, and other readily identifiable organic substances that are commonly applied to soil, provided that all the following apply:

1. The substance is distributed under its common name. Composts must identify the material composted, such as animal manure, yard waste or urban refuse.

2. The product labeling does not make performance claims related to plant growth, plant health, crop yield or soil fertility.

(i) Seed, labeled according to ch. ATCP 20, that has been treated or coated with a soil or plant additive. This exemption does not apply to any of the following:

1. Substances sold for later application to seed.

2. Substances, containing seeds or seed parts, that are sold as soil or plant additives.

(j) An adjuvant sold only to improve the mixing, handling or application of fertilizers or pesticides. This exemption does not apply if a distributor makes any other benefit claims for the adjuvant, other than a precautionary written statement on the product label that says the adjuvant may increase the contact effects of products applied with it.

(k) Sewage sludge other than a finished sewage sludge product.

(42) "Special agricultural−use fertilizer" means a fertilizer that is any of the following:

(a) Designed and labeled to remedy only plant nutrient deficiencies unique to certain agricultural crops or local Wisconsin agricultural areas.

(b) Designed and labeled solely for organic crop production.

(43) "Substantiate" means to demonstrate clearly and convincingly, with satisfactory and sufficient evidence.

(44) "Unmanipulated animal or vegetable manure" means animal or vegetable manure that is not manipulated.

(45) "Wisconsin conditions" means plant growing conditions, including conditions related to soil, climate, growing season, plant species, plant varieties and plant growing practices, that are similar or identical to those commonly found in Wisconsin.

(46) "Working days" means the days designated in s. 230.35 (4), Stats.

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

Subchapter II — Fertilizer

ATCP 40.04 Fertilizer license. (1) ANNUAL LICENSE REQUIRED. Except as provided in sub. (2), no person may manufacture or distribute a fertilizer in this state without an annual license from the department. A separate license is required for each business location or mobile unit at which a person manufactures fertilizer in this state. A license is not transferable between persons or locations. A license expires on August 14 of each year.

Note: Since a license is not transferable between persons, a license holder must re−apply for a license if it changes its legal identity.

(2) LICENSE EXEMPTIONS. Subsection (1) does not apply to a person who does only the following:

(a) Distributes fertilizer materials to a licensed fertilizer manufacturer for further manufacturing.

(b) Distributes packaged fertilizer in its original package, as packaged and labeled by a person who holds a fertilizer license under sub. (1) and a product permit if required for that fertilizer under s. ATCP 40.12. A person does not qualify for this exemption if the person makes any additional content or performance claims for the packaged fertilizer.

(c) Distributes bulk fertilizer obtained from a supplier licensed under sub. (1) if all of the following apply:

1. The person does not mix or blend bulk fertilizer, except to combine identically labeled lots of bulk fertilizer received from the same licensed supplier.

2. The bulk fertilizer bears the label information provided by the licensed supplier, including the supplier's name, product name, fertilizer grade and guaranteed analysis.

(3) LICENSE APPLICATION. A person shall apply for an annual fertilizer license on a form provided by the department. A license application shall include all of the following:

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

(b) The applicant's social security number if the applicant is an individual. If the applicant is a partnership, the application shall include the social security number of each individual partner.

Note: A social security number is required under s. 93.135(1)(cm), Stats.

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

(d) Each address and mobile unit at which the applicant proposes to manufacture fertilizer in this state. Before adding a manufacturing location or mobile manufacturing unit during a license year, a license holder shall obtain an additional license for that location or unit.

(e) The fees and surcharges required under sub. (4).

(f) A current list of fertilizer products which the applicant proposes to manufacture or distribute, and for which the applicant is required to have permits under s. ATCP 40.12. The application shall include a current label for each of those products.

Note: A license under sub. (1) does not authorize the license holder to manufacture or distribute a fertilizer product for which a permit is required under s. ATCP 40.12 unless the license holder also holds that permit.

(g) Other relevant information required by the department.

(4) LICENSE FEES. A person applying for an annual fertilizer license shall pay the following fees and surcharges:

(a) A $30 license fee for each business location and each mobile unit at which the applicant proposes to manufacture fertilizer in this state. If the applicant distributes but does not manufacture fertilizer in this state, the applicant shall pay a single license fee of $30.

(b) A $20 agricultural chemical cleanup surcharge for each business location and each mobile unit at which the applicant proposes to manufacture fertilizer in this state, other than a business location or mobile unit licensed under s. 94.685 or 94.703, Stats. If the applicant distributes but does not manufacture fertilizer in this state, the applicant shall pay a single agricultural chemical cleanup surcharge of $20.

(c) A late renewal fee equal to 20% of the combined license fees and surcharges required under pars. (a) and (b), whichever is greater, if the applicant fails to apply for a renewal license before the prior year's license expires.

Note: The late fee under par. (c) is required by s. 93.21, Stats.

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

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

(c) A license holder may not distribute a fertilizer for which a permit is also required under s. ATCP 40.12, unless the license holder also holds that permit.

(d) If a license applicant does not manufacture fertilizer in Wisconsin, but seeks a license only to distribute a fertilizer for which a permit is required under s. ATCP 40.12, the department may grant or deny the license application when it grants or denies the permit application.

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

ATCP 40.06 Fertilizer; tonnage reports and fees. **(1)** ANNUAL TONNAGE REPORT AND FEE PAYMENT. By August 14 of each year, a person required to hold a fertilizer license under s. ATCP 40.04 shall do all of the following:

(a) Report to the department the number of tons of each grade of fertilizer that the person distributed in this state in the 12 months ending June 30 of that year. The person shall file the report in writing, on a form prescribed by the department.

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

(2) FEE AMOUNTS. Except as provided in sub. (3), a person shall pay the following fees and surcharges on tonnage reported under sub. (1) (a):

(a) A basic fee of 30 cents per ton, or $25, whichever is greater.

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

(c) An additional research fee of 10 cents per ton, or $1, whichever is greater.

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

(e) A weights and measures inspection fee of 2 cents per ton, or $1, whichever is greater.

(f) An agricultural chemical cleanup surcharge of 63 cents per ton.

(3) FEE EXEMPTIONS. The fees under sub. (2) do not apply to fertilizer sold, for resale or further manufacturing, to a person licensed under s. ATCP 40.04.

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

(a) Combination products, if any.

(b) All fillers, carriers and fluids included with a fertilizer at the time of distribution.

(5) PENALTIES FOR LATE FILING. A person who fails to comply with sub. (1) by August 14 shall pay an additional fee of 10 percent of the tonnage fees due, but not less than $10.

Note: The department may also suspend a license or permit for nonpayment of fees.

(6) TONNAGE INFORMATION CONFIDENTIAL. The department may not release information showing the grades or amounts of fertilizer that an individual license holder has sold, or the fees or surcharges that an individual license holder has paid under this section. The department may publish aggregate summaries that do not reveal individual license holder information.

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05; **CR 06−028: am. (2) (f) Register November 2006 No. 611, eff. 12−1−06.**

ATCP 40.08 Fertilizer labeling. **(1)** PACKAGED FERTILIZER. Packaged fertilizer shall be clearly and conspicuously labeled with all of the following:

(a) The name and address of the licensed manufacturer or distributor.

(b) The fertilizer product name.

(c) The fertilizer grade if the fertilizer is represented as containing any primary nutrients. The fertilizer grade shall conform to the guaranteed analysis for total nitrogen (N), available phosphate (P_2O_5) and soluble potash (K_2O). The grade shall be stated in whole numbers except that a grade value may be stated in decimal units with a preceding zero when the guarantee is less than one percent.

(d) A guaranteed analysis that complies with s. ATCP 40.10.

(e) The net weight of the fertilizer contained in the package.

(f) Any statements or disclaimers required under subs. (4) to (6).

(g) Any other information required under this chapter.

(2) BULK FERTILIZER. (a) A person distributing bulk fertilizer to another person shall give the recipient a written label statement with each delivery. The written label statement shall clearly and conspicuously disclose all of the following:

1. The name and address of the licensed manufacturer or distributor.

2. The name and address of the recipient.

3. The date of delivery.

4. The product name, if any.

5. The fertilizer grade, except as provided in par. (b). The fertilizer grade shall be stated in whole numbers and shall conform to the guaranteed analysis for total nitrogen (N), available phosphate (P_2O_5) and soluble potash (K_2O).

6. A guaranteed analysis, except as provided in par. (b). The guaranteed analysis shall comply with s. ATCP 40.10.

7. The net weight of each lot or load included in the delivery.

8. Other information required under this chapter.

(b) A manufacturer who custom mixes bulk fertilizer for a purchaser may provide the purchaser with a written statement listing the weight and grade of each ingredient included in the custom mixed fertilizer. A manufacturer of bulk custom mixed fertilizer may provide this written ingredient statement in place of a written grade statement and guaranteed analysis unless the purchaser contracts for a specified grade of custom mixed fertilizer.

(c) A person who sells bulk agricultural fertilizer to a landowner shall record the name and address of the nutrient management planner who prepared the landowner's nutrient management plan, if the landowner has a nutrient management plan under s. ATCP 50.04 (3). The seller may record this information on the label statement required under par. (a) if the seller retains a copy of that statement. The seller shall keep the required information for at least 24 months after the seller files the fertilizer tonnage report required under s. ATCP 40.06 (1).

(d) A manufacturer or distributor who stores bulk fertilizer shall attach, to each storage bin or container, a label that clearly and conspicuously identifies the name or grade of the fertilizer stored in that bin or container. The grade, if stated, shall be stated in whole numbers.

Note: See ch. Comm 43 and ch. ATCP 32 related to anhydrous ammonia systems and bulk storage of fertilizer.

(3) COMBINATION PRODUCTS. (a) Fertilizer−additive combinations shall be labeled according to this section and s. ATCP 40.24. The label format shall be as shown in *Appendix A*.

(b) Fertilizer−pesticide combinations that are not custom mixed shall be labeled according to this section and s. ATCP 29.06.

(c) Fertilizer−pesticide combinations that are custom mixed shall be labeled according to this section. A person who sells or distributes a custom mixed fertilizer−pesticide combination shall provide all of the following to the person who receives that product from the seller or distributor:

1. The label of each pesticide used to make the product.

2. The product's written formula. The formula shall identify all of the pesticides and other ingredients contained in the product, together with the amount by weight of each ingredient.

(d) Fertilizer−seed combinations shall be labeled according to this section and ch. ATCP 20.

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(e) Fertilizer−liming material combinations shall be labeled according to this section and ch. ATCP 41.

(f) Combination products shall be labeled with all the following:

1. The purposes for which the product is effective.

2. Complete use directions to ensure efficacy, usefulness and safety, under Wisconsin conditions, for each purpose identified under subd. 1. Use directions shall include recommended application sites, rates, frequency, timing and methods.

(g) A combination product label shall accurately state the contents of the combination product, not just the components of the combination product.

(4) HAZARD CAUTION STATEMENT. (a) A fertilizer label shall include a caution statement if the fertilizer may be toxic to plants or animals when the fertilizer is handled or applied under reasonably foreseeable use conditions. The label shall warn the user of the potential hazard, and shall explain how to prevent or minimize the hazard.

(b) Labels for fertilizer products, other than fertilizer−pesticide combination products, shall comply with ch. ATCP 139 and ss. 100.37 and 100.42, Stats., as applicable.

Note: For example, boron, molybdenum and nickel may be toxic to crops and crop−consuming animals when applied at excessive rates or at inappropriate sites. Fertilizers containing these substances may need caution statements to prevent or minimize toxicity hazards. Chapter ATCP 139 and ss. 100.37 and 100.42, Stats., regulate consumer product safety and hazardous substances (pesticides are separately regulated under ss. 94.67−71, Stats.). See also sub. (5) and s. ATCP 40.18.

(5) FOLIAR FERTILIZERS. (a) Except as provided in par. (b), a foliar fertilizer label shall disclose all of the following:

1. The purposes for which the labeler claims that foliar application is effective and useful.

2. Complete use directions to ensure that foliar application will be effective and useful for each recommended purpose, under Wisconsin conditions. Use directions shall identify recommended application sites, rates, frequency, timing and methods.

(b) Paragraph (a) does not apply if the foliar fertilizer label includes all of the following that apply:

1. The following clear and conspicuous written statement if the fertilizer label guarantees primary plant nutrients:

> **"Foliar fertilization with primary nutrients will not provide the quantities of nutrients required for normal plant growth. This product may cause foliar burn if applied in higher than recommended rates or concentrations. Use only as a supplement to a regular fertilization program."**

2. The following clear and conspicuous written statement if the fertilizer label guarantees secondary nutrients or micronutrients:

> **"Foliar fertilization can be an effective remedy for diagnosed plant deficiencies of secondary nutrients and micronutrients, but may cause plant damage if applied at more than recommended rates or concentrations. Use of this product is recommended only as a supplement to a regular fertilization program and only on plants with confirmed secondary nutrient or micronutrient deficiencies."**

(6) USE DIRECTIONS. (a) The label of a fertilizer product for which a permit is required under s. ATCP 40.12 (1) shall clearly disclose all of the following:

1. The purposes for which the fertilizer product is recommended.

2. Use directions to ensure effectiveness, under Wisconsin conditions, for each recommended purpose. Use directions for non−agricultural fertilizers shall identify recommended application sites, rates, frequency, timing and methods.

(b) The department may require supplementary label disclosures if the department finds that, in the absence of those disclosures, the label statements under par. (a) may be deceptive or misleading. A failure to require supplementary disclosures does not constitute a finding, by the department, that the product is properly labeled.

Note: For example, if a label implies that a product is effective for an entire season, but the product does not provide enough nutrients for season−long effectiveness when applied according to label directions, the department might require supplementary disclosures to remedy the deceptive or misleading implication. Disclosures might include, for example, a limitation of efficacy claims or a disclosure of nutrient amounts compared to annual plant nutrient needs.

(7) SUBSTANTIATING FERTILIZER CLAIMS. (a) A person who is required to hold a license under s. ATCP 40.04 shall have all of the following:

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

2. Relevant scientific evidence to substantiate every performance claim made for a fertilizer product for which a permit is required under s. ATCP 40.12 (1). Performance claims include implied warranties, if any, under s. ATCP 40.12 (6). The scientific evidence shall substantiate each performance claim under Wisconsin conditions, assuming that the product is applied for recommended purposes according to label directions. The person shall have that scientific evidence before making the performance claim. Testimonials are not scientific evidence under this subdivision.

(b) The department may require a person to submit substantiating information under par. (a). The department may require the person to submit the information before or after the department issues a license under s. ATCP 40.04 or a permit under s. ATCP 40.12. The issuance of a license or permit does not create any finding or presumption that the license or permit holder has complied with par. (a).

(8) TERMS AND DEFINITIONS. Terms used in fertilizer labeling shall be consistent with the fertilizer terms and definitions contained in the Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004).

Note: The Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004) is on file with the department, the secretary of state and the legislative reference bureau. Copies may be obtained from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636−3508, or online at http://www.aapfco.org.

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

Note: All of the materials identified in sub. (2), except cobalt and sodium, are plant nutrients. Cobalt and sodium are "enhancing elements." See ATCP 40.01 (7).

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

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

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

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

Note: A fertilizer that claims enhancing elements, other than cobalt and sodium, is considered a "fertilizer−additive combination." See ATCP 40.01 (9).

(2) MINIMUM GUARANTEES. (a) Except as provided in par. (b), no person may represent that a fertilizer contains any of the fol-

lowing plant nutrients or enhancing elements unless that plant nutrient or enhancing element is guaranteed at or above the following amount:

Plant Nutrient	**Minimum Guarantee**
Total Nitrogen (N)	1.0%
Available Phosphate (P_2O_5)	1.0%
Soluble Potash (K_20)	1.0%
Calcium (Ca)	1.0%
Magnesium (Mg)	0.5%
Sulfur (S)	1.0%
Boron (B)	0.02%
Chlorine (Cl)	0.1%
Cobalt (Co)	0.0005%
Copper (Cu)	0.05%
Iron (Fe)	0.1%
Manganese (Mn)	0.05%
Molybdenum (Mo)	0.0005%
Nickel (Ni)	0.05%
Sodium (Na)	0.1%
Zinc (Zn)	0.05%

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

1. Ready−to−use liquid fertilizer labeled only for nonagricultural uses.

2. Fertilizer labeled only for hydroponic or continuous plant feeding use.

3. Potting soil with nutrient guarantees.

4. Primary nutrient guarantees, authorized under s. ATCP 40.12 (9), for fertilizer distributed pursuant to a permit under s. ATCP 40.12.

(c) Except as provided in sub. (6) (b) or (7), a fertilizer label may not identify any plant nutrient that has a guarantee of zero.

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

Guaranteed Analysis

Total Nitrogen (N) ..... ___%
_____% Ammoniacal Nitrogen
_____% Nitrate Nitrogen
_____% Water Insoluble Nitrogen
_____% (Other recognized and determinable forms of nitrogen)
Available Phosphate (P_2O_5) ..... ___%
Soluble Potash (K_2O) ..... ___%
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) ..... ___%

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.

2. Identify the source of each plant nutrient, using only terms defined in the Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004).

Note: The Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004) is on file with the department, the secretary of state and the legislative reference bureau. Copies may be obtained from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636−3508, or online at http://www.aapfco.org.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: See definitions of "enhancing element" and "fertilizer−additive combination" in s. ATCP 40.01(7) and (9).

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

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

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

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

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

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

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

Note: The Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004) is on file with the department, the secretary of state and the legislative reference bureau. Copies may be obtained from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636−3508, or online at http://www.aapfco.org.

2. The source material and the fertilizer are clearly and conspicuously labeled using the defined term under subd. 1.

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

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

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

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

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

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

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

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

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

(c) The fertilizer label.

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

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

Note: A person may, for a single product, need permits under both subs. (4) and (5).

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

(g) The following written statement signed by the applicant: **"I hereby certify all the following:**

1. **When applied for labeled purposes according to label directions, this fertilizer provides available nutrients in amounts that are efficacious and useful under Wisconsin conditions. Except as otherwise specifically disclosed on the product label, use according to label directions provides annual nutrient amounts that equal or exceed annual plant nutrient needs.**
2. **The statements on this fertilizer label, and in related advertising and promotional materials, are truthful. The applicant has relevant and reliable information to substantiate all product labeling, including any claim or guarantee related to product contents. The applicant has relevant scientific evidence to substantiate all express and implied performance claims.**
3. **This fertilizer product and its labeling comply with** ch. ATCP 40, Wis. Adm. Code."

(h) Other relevant information required by the department.

Note: You may obtain a permit application form from the department at the following address:
Department of Agriculture, Trade and Consumer Protection
ARM Division
PO Box 8911
Madison, WI 53708−8911.

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

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

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

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

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

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

(a) The primary plant nutrient guarantee is at least 0.1%.

(b) The total of all primary plant nutrients in the product is less than 10%.

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

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

Note: For example, if the label states that the fertilizer contains 30% N, but testing shows that the fertilizer contains only 27.5% N, the fertilizer is mislabeled.

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

(2) SECONDARY AND MICRONUTRIENTS. A fertilizer is mislabeled if, based on a sample collected and tested according to s. ATCP 40.16, the actual amount of any secondary nutrient, micronutrient or enhancing element listed in a guaranteed analysis falls short of the label guarantee by an amount that exceeds the allowable deficiency 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) ECONOMIC VALUE. Economic value, for purposes of sub. (1) (c), equals {[total nitrogen (N) guarantee] x 2} + {[available phosphate (P_2O_5) guarantee] x 2} + {soluble potash (K_2O) guarantee}.

Note: The multipliers in sub. (3) are based on approximate relative average wholesale prices for primary plant nutrients in Wisconsin. The department will conduct periodic wholesale price surveys and will adjust the multipliers, as the department deems necessary, by rule.

(4) CUSTOM MIXED FERTILIZER. Label guarantees for a custom mixed fertilizer shall be calculated from the custom mix formulation.

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

ATCP 40.16 Fertilizer sampling and analysis. (1) SAMPLING METHODS. The department may collect official fertilizer samples to determine compliance with plant nutrient guarantees. The department shall collect official samples using applicable methods from the Inspectors Manual of the Association of American Plant Food Control Officials, 6th edition (1999).

Note: The Inspectors Manual of the Association of American Plant Food Control Officials, 6th edition (1999) is on file with the department, the secretary of state and the legislative reference bureau. Copies are available from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636−3508, or online at http://www.aapfco.org.

(2) TEST METHODS. The department may test official fertilizer samples to determine compliance with nutrient guarantees. The department shall test official samples using applicable methods from the "Official Methods of Analysis of AOAC International," volume I, 17th edition as updated by the 2nd revision (2003).

Note: The "Official Methods of Analysis of AOAC International," volume I, 17th edition as updated by the 2nd revision (2003) is on file with the department, the secretary of state and the legislative reference bureau. Copies are available from AOAC International at 481 N. Frederick Ave., Suite 500, Gaithersburg, MD 20877−2417.

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

Note: See s. ATCP 40.08.

(2) No fertilizer may contain a metal in a concentration that exceeds the maximum allowable concentration specified for that metal in the statement of uniform interpretation and policy No. 25, contained in the Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004).

Note: Statement of uniform interpretation and policy 25, from the Official Publication of the Association of American Plant Food Control Officials, No 57 (2004), is on file with the department, the secretary of state and the legislative reference bureau. Copies may be obtained from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636−3508, or online at http://www.aapfco.org.

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

Subchapter III — Soil or Plant Additives

ATCP 40.20 Soil or plant additives; license. (1) ANNUAL LICENSE REQUIRED. Except as provided in sub. (2), no person may manufacture or distribute a soil or plant additive in this state without an annual license from the department. A license is not transferable between persons. A license expires on March 31 of each year.

Note: Since a license is not transferable between persons, a license holder must apply for a new license if it changes its legal identity.

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

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

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

(b) The applicant's social security number if the applicant is an individual. If the applicant is a partnership, the application shall include the social security number of each individual partner.

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

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

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

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

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

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

(g) Other relevant information required by the department.

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

(a) A license fee of $25.

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

Note: See s. 93.21, Stats.

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

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

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

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

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

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

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

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

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

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

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

Note: The department may also suspend a license or permit for nonpayment of fees.

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

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

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

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

(e) Complete use directions to ensure that the product is effective for the purposes recommended in par. (d). Use directions shall identify recommended application sites, methods, rates and frequencies. If effectiveness depends on use with other products, the label shall clearly disclose that fact.

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

(g) Any other information required under this chapter.

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

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

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

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

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

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

Note: See also sub. (4). Chapter ATCP 139 and ss. 100.37 and 100.42, Stats., regulate consumer product safety and hazardous substances.

(4) IMPLIED WARRANTY. (a) A person who distributes a soil or plant additive implicitly warrants that the soil or plant additive is effective for all of the purposes recommended in the product labeling, when applied under Wisconsin conditions according to the product label. This warranty does not limit any other express or implied warranty that may apply under Wisconsin law.

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

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

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

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

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

(b) The department may require a person to submit substantiating information under par. (a). The department may require the person to submit the information before or after the department issues a license under s. ATCP 40.20 or a permit under s. ATCP 40.28. The issuance of a license or permit does not create any finding or presumption that the license or permit holder has complied with par. (a).

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

GUARANTEED ANALYSIS

ACTIVE INGREDIENTS

Common Name (Chemical Name) ..... _____%
Common Name (Chemical Name) ..... _____%
Common Name (Chemical Name) ..... _____%

INERT INGREDIENTS

Common Name (Chemical Name) ..... _____%
Common Name (Chemical Name) ..... _____%
Common Name (Chemical Name) ..... _____%

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

(3) ACTIVE INGREDIENTS. (a) The guaranteed analysis shall identify, under the "ACTIVE INGREDIENTS" subtitle, each ingredient that actively and directly contributes to the performance of the soil or plant additive. Except as provided in par. (b), the guaranteed analysis shall guarantee the amount of each active ingredient as a percentage of the soil or plant additive.

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

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

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

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

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

Note: The Merck Index, 12th edition (1996) is on file with the department, the secretary of state and the legislative reference bureau. Copies are available from Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065.

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

(7) FERTILIZER−ADDITIVE COMBINATIONS. The guaranteed analysis for a fertilizer−additive combination shall be in the format shown in *Appendix A*. Plant nutrients shall be guaranteed according to s. ATCP 40.10. Other ingredients shall be guaranteed according to this section.

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

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

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

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

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

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

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

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

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

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

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

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

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

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

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

(e) A fee of $100.

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

"I hereby certify all the following:

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

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

3. This product and its labeling comply with ch. ATCP 40, Wis. Adm. Code."

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

1. A method contained in the "Official Methods of Analysis of AOAC International", volume I, 17th edition as updated by the 2nd revision (2003).

Note: The "Official Methods of Analysis of AOAC International, volume I, 17th edition as updated by the 2nd revision (2003) is on file with the department, the secre-

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tary of state and the legislative reference bureau. Copies are available from AOAC International at 481 N. Frederick Ave., Suite 500, Gaithersburg, MD 20877−2417.

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

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

(h) Other relevant information required by the department.

Note: You may obtain a permit application form from the department at the following address:

Department of Agriculture, Trade and Consumer Protection
ARM Division
PO Box 8911
Madison, WI 53708−8911

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

Note: See s. ATCP 40.24.

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

Subchapter IV — Reviewing Permit Applications

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

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

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

Note: For example, the department may review performance claims such as the following:

• "Product X helps develop stronger, deeper root systems to help plants fight against minor diseases and insect infestations."

• "Product X will provide plant nutrients needed to give your lawn a golf course look."

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

(2) DENY THE PERMIT. If the department denies the permit, the department shall give the applicant written notice of its reasons.

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

(a) Identify the reasons for the supplementary review.

(b) Identify the scope of the supplementary review.

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

Note: The department may request assistance from the university of Wisconsin, college of agriculture and life sciences in evaluating any substantiating evidence under this section.

(b) In its supplementary review, the department may consider any information that the department considers relevant, including information provided by the applicant. The department may consider whether the information is accurate, relevant, material, reliable, properly documented, substantiated, scientifically valid, persuasive, consistent with generally accepted scientific knowledge, consistent with other reliable information, applicable under Wisconsin conditions, and applicable in light of recommended uses, use rates and use directions.

(3) REVIEW PERIOD. The department shall complete a supplementary review under sub. (1) as soon as reasonably possible, and

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within 120 working days after the department receives all of the supplementary information requested under sub. (1) (a).

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

Subchapter V — Prohibitions

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

(a) Misrepresent or falsify any information.

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

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

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

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

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

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

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

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

Subchapter VI — Enforcement and Appeals

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

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

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

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

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

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

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

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

ATCP 40.58 Stop sale and holding orders. (1) STOP SALE ORDER. The department may issue a written order prohibiting the distribution or movement of a product if the department finds that the product is distributed in violation of s. 94.64 or 94.65, Stats., or this chapter. No person may distribute or move a product in violation of the department's order.

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

(2) TEMPORARY HOLDING ORDER. (a) The department may issue a written holding order, temporarily prohibiting the distribution or movement of a product, if the department has reason to believe that the product is distributed in violation of s. 94.64 or 94.65, Stats., or this chapter. The department may issue a tempo-

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rary holding order pending further examination or analysis to determine whether there is a violation of s. 94.64 or 94.65, Stats., or this chapter. No person may distribute or move a product in violation of a temporary holding order.

Note: See ss. 94.64 (11) (b) and 94.65 (10) (a), Stats.

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

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

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

(4) RELEASING AN ORDER. The department may release an order if any of the following apply:

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

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

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

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

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.

ATCP 40.62 Administrative appeals. (1) REQUEST FOR HEARING. A person who is the subject of any of the following department actions may request a hearing and reconsideration of that action:

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

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

Note: See also s. ATCP 40.56 (2) (c).

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

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

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

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

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

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

(f) The requested remedy.

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

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

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

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

History: CR 04−140: cr. Register September 2005 No. 597, eff. 10−1−05.