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FROM: Amy Basel, Fertilizer Specialist

SUBJECT: Fertilizer permits are required for each separate grade of the product.

Fertilizer products with primary plant nutrient guarantees that are less than 24%, must list those grade(s) as a whole number; or in the event that the individual guarantees are less than 1%, express those guarantees in decimal units. A special agricultural use/nonagricultural use permit is required for each fertilizer product containing a primary plant nutrient guarantee that is less than 24%.

Additionally, fertilizer products that are used as combination products (e.g., fertilizer-pesticide; fertilizer-seed; fertilizer-lime) must obtain a permit for each product with a guarantee that is less than 24%. Those guarantees (i.e., fertilizer used as a combination product) must list their grade(s) as a whole number; or in the event that the individual guarantees are less than 1%, express those guarantees in decimal units.

Introduction:

This interpretation is to address the issue related to the grade on the product and whether the issuance of special agricultural use or nonagricultural use fertilizer permits can allow a permit to encompass a range of fertilizer grades rather than an individual grade of fertilizer.

Determination:

A special agricultural use/nonagricultural use permit is required for each fertilizer product containing a primary plant nutrient guarantee that is less than 24%. Fertilizer products must list a grade and the guarantee percentage in whole numbers or decimal units for each plant nutrient guaranteed. The minimum guarantee is to be expressed as one single number and not a range of numbers or values.

Citation references used for basis of determination:

Wis. Stat §94.64(1)(g) "Grade" means the percentage guarantee of total nitrogen, available phosphorus or available phosphate, and soluble potassium or soluble potash stated in the same order as listed in this paragraph.

Wis. Stat §94.64(1)(h) "Guaranteed analysis" means the percentage of each plant nutrient guaranteed or claimed to be present.

Wis. Stat §94.64(1)(i) "Label" means all labels and other written, printed or graphic matter upon or accompanying fertilizer at any time, and includes advertising or sales literature.

Wis. Stat §94.64(1)(Lm) "Nonagricultural fertilizer" means any fertilizer distributed for nonfarm use, such as for home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses or nurseries or for research or experimental use.

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

Wis. Stat §94.64(3m)(a) No person may distribute mixed fertilizer in which the sum of the guarantees for nitrogen, available phosphate and soluble potash totals less than 24% unless:

1. The mixed fertilizer is exempted from this requirement by department rule; or
2. The mixed fertilizer is a nonagricultural or special-use fertilizer and the person obtains a permit from the department authorizing its distribution as a nonagricultural or special-use fertilizer.

Wis. Admin. Code, ATCP 40.02(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.

Wis. Admin. Code, ATCP 40.02(14) "Grade" means the percentage guarantees of total nitrogen (N), available phosphate (P₂O₅) and soluble potash (K₂O), stated in the same terms, order and percentages as in the guaranteed analysis.



Wis. Admin. Code, ATCP 40.02(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.

Wis. Admin. Code, ATCP 40.02(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.

Wis. Admin. Code, ATCP 40.02(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.

Wis. Admin. Code, ATCP 40.02(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.

Wis. Admin. Code, ATCP 40.08 (1)(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.

Wis. Admin. Code, ATCP 40.10 (1)(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.

Wis. Admin. Code, ATCP 40.12 (7) A permit under this section covers only one fertilizer product. A permit is not transferable between persons or products.



Typical business practice (lawn care): Lawn care firms may sell and/or use as part of a contracted application, mixed fertilizer products that contain varying NPK grade guarantees. These varied grades are created when a firm purchases one guaranteed grade of fertilizer product (liquid or dry) and, using a liquid (e.g., water and/or combination of pesticide containing product), dilute the initial product from one guarantee to a different guarantee (e.g., 10-0-10 to 1-0-1).

The practice of reducing fertilizer from one guarantee to another has resulted in lawn care firms inquiring about the need for a nonagricultural use permit for those instances in which the guarantees are lower than the combined 24% of primary plant nutrition, and for instances in which the firm may create varied grades of products at different times of the application season, or for the plant nutritional needs of their clientele.

In lieu of obtaining a number of permits for multiple guarantees, lawn care firms had inquired as to whether a group of products could be included within one permit. An example of this would include obtaining a nonagricultural use permit for a product with a guarantee of 0.25-0.00-0.25, and using/distributing a group of products with the following guarantees, 0.35-0.00-0.25, 0.45-0.00-0.35 under the 0.25-0.00-0.25 nonagricultural use permit.

Exclusion: An instance when a special agricultural use/nonagricultural use permit would not be required is if a person is mixing a concentrate with water in order to provide the guaranteed analysis on that product label. The entity would need to mix according to directions and sell or distribute this product under the company and label name with the listed grade. This is distributed as the manufacturing fertilizer company's product, which would have to have a permit, if under 24% total N-P-K, and the company would have to be licensed.

Summary: Based upon a review of Wis. Stat. ch. 94 and Wis. Admin. Code ch. Adm 40, a nonagricultural or special agricultural-use fertilizer permit could not be issued for a range of fertilizer guarantees (e.g., permit is for a "base" product such as 2-2-2, and that "base" product is used in further manufacture, such as a 1-1-1 product). Thus each primary nutrient must be guaranteed in a single number. Therefore, each fertilizer product that is below a 24 NPK rating, must have its own individual permit and label guarantee. However, this summary does not preclude a manufacturer/blender from using a permitted product (e.g., 2-2-2) as a base for further manufacture at a grade higher than the permitted grade (e.g., 2-3-4) so long as the newer grade is not advertised or listed, as such.

The company cannot be issued a permit for a range of grades within a primary plant nutrient. Each primary nutrient must be guaranteed in a single number. The product label guarantee is a minimum guarantee for the amount of the nutrient in the fertilizer.