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CLEARINGHOUSE RULE 95-052

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

There does not appear to be statutory authority for s. ERB 1.07 (5). The subsection would exempt from hazardous substances inventory fees, calcium chloride, sodium chloride or calcium magnesium acetate when used as road de-icing agents. Section 166.20 (7) (d) and (e), Stats., provide exemptions from inventory fees for operators of facilities that employ fewer than the equivalent of 10 full-time employees in this state and for operators of petroleum marketing facilities with respect to gasoline and diesel fuel, but there is no statutory exemption for calcium chloride, sodium chloride or calcium magnesium acetate. The board should attempt to explain the statutory authority for s. ERB 1.07 (5).

2. Form, Style and Placement in Administrative Code

a. Both treatment clauses in Clearinghouse Rule 95-52 are improperly drafted. The treatment clause in SECTION 1 should be drafted: “ERB 1.07 (4) is amended to read:”. SECTION 2 of Clearinghouse Rule 95-52 should read: “ERB 1.07 (5) and (6) are created to read:”.

b. Because s. ERB 1.07 (5) and (6) are created by Clearinghouse Rule 95-52, rather than amended, they should not be underscored.

5. Clarity, Grammar, Punctuation and Use of Plain Language

If the board determines there is statutory authority for s. ERB 1.07 (5), it is suggested that the provisions of s. ERB 1.07 (6) be included in sub. (5). By referring to “(a)ll other s. 166.20, Stats., regulated hazardous substances,” sub. (6) implicitly refers to calcium chloride, sodium chloride or calcium magnesium acetate which exempted from inventory fees in sub. (5). This meaning would be more clear if the material in sub. (6) were included in sub. (5). In addition, the phrase “(a)ll other s. 166.20, Stats., regulated hazardous substances” would be more clear if drafted as: “(a)ll other hazardous substances regulated under s. 166.20, Stats.”