



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-120

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 2002.]

1. Statutory Authority

There may be a lack of statutory authority for the postponement in s. ATCP 40.06 (3) (a) 5. of the 86-cents-per-ton agricultural chemical cleanup surcharge required by s. 94.64 (4) (a) 5., Stats., unless the postponement is a “lower surcharge” under s. 94.73 (15), Stats. Section ATCP 40.06 (3) (a) 5. postpones application of the surcharge until after June 30, 2004, although the effective date for the statutory surcharge requirement is July 26, 2003 (the day after 2003 Wisconsin Act 33 was published, since the act does not specify another effective date for the requirement). Under s. 94.64 (4) (a) 5., Stats., it appears that the department would only have authority to postpone the requirement if the postponement were a “lower surcharge” under s. 94.73 (15), Stats. If this is the case, the department should cite s. 94.73 (15), Stats., as statutory authority.

If the department does not consider the postponement a lower surcharge under s. 94.73 (15), Stats., it should delete the words “on all fertilizer that the person sells or distributes after June 30, 2004” from s. ATCP 40.06 (3) (a) 5. Section ATCP 40.06 (3) (a) (intro.) already includes the words “on all fertilizer that the person sells or distributes in this state” and those are the words that correctly state the statutory requirement that the surcharge on fertilizer applies only to sales or distributions in this state. (Similarly, in s. ATCP 40.06 (3) (a) 6., the words “on all fertilizer that the person sells or distributes” should be deleted.)

4. Adequacy of References to Related Statutes, Rules and Forms

a. The second paragraph of the analysis, last sentence, states that the new surcharge will apply to fertilizer distributed after July 1, 2004, “with initial payment due in August 2005.” However, the rule does not address when initial payment is due. Also, “after” should be changed to “on or after.”

b. In s. ATCP 40.06 (3) (a) 1., first sentence, the word “base” should be changed to “basic” to correspond to the word “basic” in the current rule. If, “basic” is being changed to “base,” this should be done through striking and underscoring.

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

In the third paragraph of the analysis, first sentence, “according to reflect” is not grammatically correct. It appears the word “according” should be changed to “accordingly.” In the last sentence, “cents” is plural in its first occurrence, but not in its second. It should be plural in both occurrences.