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Scott McCallum, Governor
Philip Edw. Albert, Secretary

February 18, 2002

Senator Fred Risser
President of the Senate
Room 220 South, State Capitol
Madison, Wisconsin 53702

Representative Scott Jensen
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Jensen:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 01-087

RULE NO.: Chapters Comm 10 & 51

RELATING TO: Flammable, Combustible & Hazardous Liquids

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

Philip Edw. Albert
Secretary

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 01-087

RULE NO.: Chapters Comm 10 & 51

RELATING TO: Flammable, Combustible & Hazardous Liquids

1. **Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.**

Because lapses in fire safety and environmental protection can cause business and personal disruption and economic hardship far beyond their area of origin, these standards must be applied uniformly regardless of the size of the business involved.

2. **Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.**

Comments raised at the hearing, that could apply to small businesses, include the proposed requirement to register tanks that contain federally-regulated hazardous substances and the proposal to change operating permits to be valid for one year as opposed to the current 3-year period. The registration of tanks that contain federally-regulated hazardous substances is an essential step in carrying out the statutory mandate contained in s. 101.09, Stats. This statute section requires the department to promulgate rules for the construction, maintenance and abandonment of tanks that store these liquids. The department needs an accurate picture of what liquids are currently stored in tanks in the state to get an idea of how to regulate them in a safe and cost-effective manner. Changing the permit period to one year will eliminate a substantial amount of the inaccuracy in the storage tank database and should make it easier for businesses of all sizes to comply with the rule. The 3-year permit renewal was often problematic for businesses that experienced staff turnover. The one-year permit renewal will now correspond to the customary annual inspection.

(Continued on next page)

3. Nature and estimated cost of preparation of any reports by small businesses.

There are no reports required of small businesses under this proposal. The requirement to register tanks and obtain an operating permit for tanks applies to all businesses. Both registration and permitting entail gathering information and filling out forms but there is no filing fee associated with either process.

4. Nature and estimated cost of other measures and investments required of small businesses.

There are no other additional measures required of small businesses under this proposal.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

There would be no additional cost to the agency.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

As stated under 1., reducing any of the requirements for a small business could result in a fire or in environmental contamination that could cause serious, long-term disruption to an entire area. The effects would most likely not be limited to the place of origin.

RULE REPORT

Department of Commerce

Rule No.: Chapter Comm 10

Relating to: Flammable, Combustible and Hazardous Liquids

Agency contact person for substantive questions:

Name Sheldon Schall

Title Section Chief

Telephone Number 266-0956

Agency contact person for internal processing:

Name Duane Hubeler

Title Code Consultant

Telephone Number 266-1390

1. **Agency statutory authority under which the agency intends to promulgate the rule(s).**

101.09 (3), 101.11, 101.14 (4) (a), and 101.142, Stats.

2. **Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).**

Federal Clean Water Act, CERCLA

3. **Citation of court decisions which are applicable to the proposed rule(s).**

None known

4. Description of the proposed rule(s).

The proposed rule change consists primarily of updating adopted national standards and repealing requirements that are obsolete because the federally-mandated deadlines have passed. There are additional changes designed to streamline the permitting and tank registration processes. Tank registration will be required for tanks that store federally regulated hazardous substances as a prerequisite to regulating these tanks in accordance with s. 101.09, Stats. There are many miscellaneous changes designed to clarify ambiguous requirements and to codify long-standing department policies and industry practices.

5. Reason for the proposed rule(s).

The code has not had a thorough revision since it was first promulgated over 10 years ago. In that time, there have been major changes in national standards, technology and industry practice. The code has some requirements that are no longer relevant due to obsolete technology or federally-mandated deadlines that have passed. The scope of the code has been expanded to comply with the new statutory requirements to regulate hazardous liquids under s. 101.09, Stats.



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapters Comm 10 and 51

Relating to: Flammable, Combustible & Hazardous Liquids

Clearinghouse Rule No.: 01-087

The Wisconsin Department of Commerce proposes an order to repeal ss. Comm 10.01 (51) Note, 10.14 and 10.15, 10.17, 10.32 and Figures 10.32-1 to 10.32-3, 10.345 (1) (e), 10.345 (2), 10.415 (3), 10.415 (6) (a) to (i) and (n) to (o), 10.415 (10), 10.42 (4) (a) Note, 10.44 to 10.45, 10.46, 10.505 (2) Note, 10.52 (1), (2) (intro.), (2) (d), and (4), 10.56 Note, 10.57 (2), and 10.732 (3) Note;

to renumber ss. Comm 10.415 (6) (j) to (m), 10.52 (2) (a) to (c), and 10.57 (3) and (3m);

to renumber and amend s. Comm 10.52 (2) (a) 2;

to amend ss. Comm 10.001 (1), 10.01 (22), 10.01 (101p), 10.28 (4) (b), 10.29, 10.31 (1) (a), 10.335 (2), 10.34, 10.345 (1) (intro.) and (a), 10.36 (3) (a) 1. and (b), 10.415 (1) (a) and (2), 10.415 (7) (a) and (9) (a), 10.415 (11) (intro.) and 10.42 (1), 10.42 (4) (c), 10.455 (1), and Comm 51.25, Table 51.25-17;

to repeal and recreate ss. Comm 10.001 (2) (a), 10.01 (5) and (21), 10.01 (38) and (51), 10.01 (65) and (78), 10.10 (1) and (2), 10.125, 10.13, 10.16, 10.25 to 10.27, 10.28 (2) (b), 10.33 (1) (b) 5., 10.345 (1) (d), 10.37 (title) and (1), 10.415 (4) and Table 10.415, 10.415 (6) (title) and (intro.), 10.43, 10.51, 10.55 (2), and 10.57 (1);

and to create ss. Comm 10.01 (intro.) Note, 10.01 (51m), 10.01 (102m), 10.347, 10.475 and 10.52 (2) (a).

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Analysis of Proposed Rules

Statutory Authority: ss. 101.09 (3), 101.11 and 101.14 (4) (a), Stats.

Statutes Interpreted: ss. 101.09 (3), 101.11 (2), 101.14 (4) (a) and (g), and 101.142, Stats.

Under the statute sections listed above, the department has the responsibility to adopt rules for the safe storage, handling and use of flammable, combustible and hazardous liquids. The requirements established in this code encompass both fire and environmental safety aspects for flammable and combustible liquids and incorporate registration requirements for tanks that contain federally regulated hazardous substances.

The changes contained in this proposal are intended primarily to update adopted national standards, remove obsolete deadline requirements and streamline administrative processes. Some of the changes are designed to correct typographic errors and clarify ambiguous requirements. Wherever possible, conflicting rules in this chapter have been repealed so the requirement will be as specified in the current national standard. Additional requirements have been added for more frequent monitoring of corrosion protection measures. Requirements have also been added for the removal of heating oil tanks and for notifying heating oil vendors of the tank removal.

SECTION 1. Comm 10.001 (1) is amended to read:

Comm 10.001 (1) The purpose of this chapter is to provide for safe storage, display, installation, operation, use, maintenance and transportation of flammable and combustible liquids and the equipment, facilities and buildings that are used to store, transfer and dispense them.

SECTION 2. Comm 10.001 (2) (a) is repealed and recreated to read:

Comm 10.001 (2) (a) The rules of this chapter are intended to comply with s. 101.09 (3), Stats.

Note: s. 101.09 (3), Stats., reads in part: "The department shall promulgate by rule construction, maintenance and abandonment standards applicable to tanks for the storage, handling or use of liquids that are flammable or combustible or are federally regulated hazardous substances, and to the property and facilities where the tanks are located, for the purpose of protecting the waters of the state from harm due to contamination by liquids that are flammable or combustible or are federally regulated hazardous substances."

Note: The definition of federally regulated hazardous substances as defined under s. 101.09, Stats., corresponds to the CERCLA List of Hazardous Substances and Reportable Quantities contained in 40 CFR part 302.4, Table 302.4.

SECTION 3. Comm 10.01 (intro.) Note is created to read:

Note: For definitions of technical terms not included in this code, the Petroleum Equipment Lexicon is a helpful source. It is available from PEI at the address in Table 10.25-6.

SECTION 4. Comm 10.01 (5) and (21) are repealed and recreated to read:

Comm 10.01 (5) "Authorized agent" means either the LPO, or the department in areas of the state where there is no LPO.

Note: See s. Comm 10.01 (51m) for the definition of LPO.

Comm 10.01 (21) "Change-in-service" means continued use of a storage tank system in another status or continued use of a tank that previously stored a regulated substance to store a non-regulated substance.

Note: An example of change-in-service resulting from another status is an in-use tank that moves to temporary-out-of service status. An example of change-in service resulting from a previously stored regulated substance to storage of a non-regulated substance is a tank storing heating oil converted to a storage tank for water.

SECTION 5. Comm 10.01 (22) is amended to read:

Comm 10.01 (22) "Combustible liquid" means a liquid having a flash point at or above 100°F. Combustible liquids are subdivided as follows:

(a) "Class II liquids" means those having flash points at or above 100°F and below 140°F.

(b) "Class IIIA liquids" means those having flash points at or above 140°F and below 200°F.

(c) "Class IIIB liquids" means " means those having flash points at or above 200°F. This chapter does not cover Class IIIB liquids.

Note: Where the terms "Combustible Liquids" or "Class III Liquids" are used in this chapter they mean Class IIIA liquids only.

Note: The upper limit of 200°F is given because the application of this chapter does not extend to liquids having flash points above 200°F and, therefore, this limitation should not be construed as indicating that liquids with higher flash points are noncombustible.

SECTION 6. Comm 10.01 (38) and (51) are repealed and recreated to read:

Comm 10.01 (38) "Flash point" means the minimum temperature at which a liquid will give off sufficient vapor to form an ignitable mixture with air near the surface of the liquid or within the test vessel.

Note: See NFPA 30 for the appropriate test method for a specific liquid.

Comm 10.01 (51) "Listed and labeled" means equipment or materials to which has been attached a label or identifying mark by, and which is included in a list published by, an organization acceptable to the department that is concerned with product evaluation, that maintains periodic inspections of listed and labeled equipment or materials and by whose labeling the manufacturer indicates compliance with appropriate standards or performance for a specified purpose.

SECTION 7. Comm 10.01 (51m) is created to read:

Comm 10.01 (51m) "LPO" or "Local program operator" means an entity, either public or private, under contract with the department to enforce the provisions of this chapter and provide tank system plan review and inspection services in a specific region of the state.

SECTION 8. Comm 10.01 (65) and (78) are repealed and recreated to read:

Comm 10.01 (65) "Owner" means: (a) In the case of an in-use storage tank system, any person who owns at least the tank storage portion of a storage tank system used for storage or dispensing of regulated substances or the person owning the property on which the storage tank system is located.

(b) In the case of a storage tank system not in use, any person who owned at least the tank storage portion of the storage tank system immediately prior to the discontinuation of its use, or the person owning the property on which the storage tank system is located.

Comm 10.01 (78) "Regulated substance" means any flammable or combustible liquid and any liquid that is a federally regulated hazardous substance as defined under s. 101.09, Stats.

Note: The definition of federally regulated hazardous substances as defined under s. 101.09, Stats., corresponds to the CERCLA List of Hazardous Substances and Reportable Quantities contained in 40 CFR part 302.4, Table 302.4.

SECTION 9. Comm 10.01 (101p) is amended to read:

Comm 10.01 (101p) "Used product" means a flammable, ~~or~~ combustible or hazardous liquid ~~with a flash point of 200F or lower~~ that is no longer suitable for its original use, has been contaminated, or has been mixed with other products.

SECTION 10. Comm 10.01 (102m) is created to read:

Comm 10.01 (102m) "Vehicle collision protection" means a structure or mechanism to protect a tank or system component from vehicle impact.

SECTION 11. Comm 10.10 (1) and (2) are repealed and recreated to read:

Comm 10.10 Approval of proposed construction, installation or operation. (1)
GENERAL. (a) Plan review and written approval from the authorized agent shall be obtained before any of the following activities are performed on storage tanks used to store a regulated substance:

1. Commencing any construction of new or additional aboveground or underground tank installation or piping installation.
2. Changing the operation of an installation from storage of a non-regulated substance to a regulated substance.
3. Adding or modifying tank or pipe corrosion protection.
4. Adding vapor or groundwater monitoring wells.
5. Adding leak detection.
6. Adding spill or overflow protection.

7. Tank lining.

8. Converting a full-service station to a self-service station or converting to the use of key-, card- or code-operated dispensing devices.

(b) Approval is not required for either of the following:

1. Oil-burning installations for one- and 2-family dwellings located aboveground or in basements.

2. Integral fuel supply tanks of a motor vehicle, aircraft, watercraft, mobile power plant or mobile heating plant.

(2) **AUTHORIZED AGENT APPROVAL.** (a) *Exercise of jurisdiction.* With the approval of the chief elected municipal official, the municipality shall determine if a municipal department or other authorized agent approved by the department will exercise jurisdiction over the provisions of this chapter.

(b) *Plan review and approval.* 1. Plans for installations in which all tanks for the storage, handling or use of flammable or combustible liquids have an individual capacity of less than 5000 gallons shall be submitted for review and approved in writing by the authorized agent.

2. The review of plans and the installation inspection for compliance with the provisions of this chapter shall be performed by a certified tank inspector as designated by the department.

SECTION 12. Comm 10.125 is repealed and recreated to read:

Comm 10.125 Specific approval of materials, equipment, concepts, technology and devices. (1) **SPECIFIC APPROVAL REQUIRED.** Specific approval shall be obtained in writing from the department for the following items:

(a) Any leak detection method for tanks or piping used to comply with a leak detection requirement under this chapter or federal law.

(b) Flexible non-metallic piping.

(c) Synthetic flexible dike liners.

(2) **DISCRETIONARY APPROVAL.** (a) The department may require specific, written approval in accordance with sub. (3) for the use of new or unproven materials, equipment, concepts, technology or devices. This approval may specify conditions or limitations.

(b) Any person may request specific, written approval in accordance with sub. (3) for uses or new or unproven materials, equipment, concepts, technology or devices not specified in this code.

(3) APPLICATION FOR APPROVAL. (a) *General*. 1. Application for approval shall include sufficient test results or other evidence from an independent third party to prove that the material, equipment, concept, technology or device meets the requirements or the intent of this chapter.

2. Application for approval shall include information on inspection, testing and maintenance of the product.

3. Upon receipt of a completed application, the fee specified in ch. Comm 2, and all information and documentation needed to complete the review, the department will review and make a determination on an application for approval within 60 business days.

(b) *Leak detection methods*. The application for approval of leak detection methods specified in sub. (1) (a) shall include certification from an independent third party that the method has been evaluated in accordance with the applicable USEPA standard test procedure for evaluating the method.

(c) *Flexible non-metallic piping*. The application for approval of flexible non-metallic piping shall include certification from an independent third party that the material has been evaluated in accordance with UL 971 - Nonmetallic Underground Piping for Flammable Liquids or an equivalent standard.

(d) *Synthetic flexible dike liners*. 1. The application for approval of synthetic flexible dike liners shall include certification from an independent third party that the material has been evaluated according to a protocol acceptable to the department, along with information on product compatibility, construction methods and specifications, field installation, seam testing procedures, bedding specifications and any required soil cover.

2. For flexible dike liners that do not require a soil cover, information shall be submitted that assesses the fire hazard of the exposed liner material.

(4) PRODUCTS REQUIRING LISTING AND LABELING. The following products or materials shall be listed and labeled to show compliance with a standard developed by a nationally recognized association or independent testing laboratory that is recognized by the department:

(a) Shop-built tanks and metallic flex connectors.

(b) Any product or material required to be listed or labeled by a standard adopted under s. Comm 10.25.

Note: Copies of the department forms required in this chapter are available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's web site at <http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html>

SECTION 13. Comm 10.13 is repealed and recreated to read:

Comm 10.13 Tank Registration. (1) GENERAL. (a) Except as provided in par. (b), all storage tanks used to store a regulated substance shall be registered with the department.

(b) The following tanks do not require registration with the department:

1. Dedicated breakout tanks at pipeline facilities.
2. Any aboveground tanks of 110 gallons or less capacity.
3. Farm and residential aboveground tanks of 1,100 gallons or less capacity.
4. Aboveground tanks of 660 gallon or less capacity storing heating oil for consumptive use on the premises.
5. Aboveground tanks of 660 gallon or less capacity located inside a building used for industrial processes.

Note: Per Wisconsin Statutes, eligibility for Petroleum Environmental Cleanup Fund Act (PECFA) funds requires prior tank registration.

(2) REGISTRATION DEADLINES AND RESPONSIBLE PARTIES. (a) The owner of a newly-installed storage tank shall register the tank within 15 days of completion of the installation.

(b) The new owner of an existing storage tank undergoing a change in ownership shall register within 15 days of the change.

(c) The owner of an existing tank at a facility that undergoes a name change or an owner who undergoes a change of name or mailing address shall register the change within 15 days.

(d) The owner of an existing tank system that undergoes any of the following changes or modifications shall register the change or modification within 15 days of completion:

1. A storage tank undergoing a change in service.
2. Temporary or permanent closure.
3. The addition of release detection, spill or overfill control or corrosion protection for any part of the system.
4. Interior tank lining.

(e) The owner of a permanently closed or removed tank shall register within 15 days of closure or removal.

(f) The owner of land on which unregistered tanks are discovered, including any that were permanently closed or removed, shall register the tanks within 15 days of discovery.

(3) **REGISTRATION PROCEDURE.** One storage tank registration form for each tank shall be completed and submitted to the department by the owner.

Note: Form ERS-7437 - Underground Storage Tank Registration and form ERS-8731 - Aboveground Storage Tank Registration required under this section are available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's web site at <http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html>

SECTION 14. Comm 10.14 and 10.15 are repealed.

SECTION 15. Comm 10.16 is repealed and recreated to read:

Comm 10.16 Tank permits. (1) **GENERAL.** (a) Except as provided in par. (b), all in-use and temporarily out-of-service storage tanks used to store a regulated substance shall obtain a permit to operate from the department.

(b) The following tanks do not require a permit to operate from the department:

1. Any aboveground tank.
2. Farm and residential underground storage tanks of 1,100 gallon or less capacity used for storing motor fuel.
3. Underground storage tanks of 4,000 gallon or less capacity storing heating oil for consumptive use on the premises.

(2) **PERMIT APPLICATION TIMELINE.** The tank owner shall obtain a permit to operate after all requirements for plan approval under s. Comm 10.10 and registration under s. Comm 10.13 are completed and the tank is installed, but before the tank is placed in service.

(3) **PERMIT APPLICATION PROCEDURE.** The owner shall complete one permit application form for each tank and submit it to the department together with all of the following:

(a) For all permit applications and renewals:

1. The most recent test report for any cathodic protection or impressed current system.
2. Proof of financial responsibility as specified in subch. VIII of this code.
3. Proof of compliance with leak detection requirements.

(b) For the initial permit application only, also submit the following:

1. A completed tank installation inspection checklist, completed by the installer.
2. A tank locator diagram, map or plot plan drawn to scale specifying the exact individual tank location in relation to streets, buildings, and compass direction, unless previously submitted to the department as part of the plan review process under s. Comm 10.10.

Note: Forms ERS-7658 - Storage Tank Use Permit Application and ERS-6294 - Storage Tank Installation Inspection Checklist required under this section are available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's web site at <http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html>

(4) PERMIT PROCESSING. (a) The department will review and make a determination on the permit application within 30 business days of receipt of the completed forms and required information.

(b) Upon review and acceptance of the required forms and information specified in sub. (3), the department will issue an underground storage tank use permit for each storage tank.

(5) PERMIT EXPIRATION AND RENEWAL. (a) The underground storage tank use permit will expire 1 year from the date of issuance.

(b) The tank owner of record will be sent a permit renewal notice by the department before the expiration of the current permit.

(c) The tank owner shall follow the procedure under sub. (3) to renew the permit.

SECTION 16. Comm 10.17 is repealed.

SECTION 17. Comm 10.25 to 10.27 are repealed and recreated to read:

Comm 10.25 Adoption of standards by reference. (1) CONSENT TO INCORPORATE. Pursuant to s. 227.21, Stats., the attorney general and the revisor of statutes have consented to the incorporation by reference of the standards listed in Tables 10.25 - 1 to 10.25-8.

Note: Copies of the adopted standards are on file in the offices of the department, the secretary of state and the revisor of statutes. Copies of the standards may be purchased through the respective organizations listed in Tables 10.25 - 1 to 10.25 - 8.

(2) ALTERNATE STANDARDS. Alternate standards that are equivalent to or more stringent than the standards incorporated by reference in this code may be used in lieu of incorporated standards if the alternate standard is approved by the department, or if written approval is issued by the department in accordance with s. Comm 10.125 (2) (a), under all of the following conditions:

(a) Determination of approval shall be based on an analysis of the alternate standard and the incorporated standard, prepared by a qualified independent third party or the organization that published the incorporated standard.

(b) The department may include specific conditions in issuing an approval, including an expiration date for the approval. Violations of the conditions under which an approval is issued shall constitute a violation of this code.

(c) If the department determines that the alternate standard is not equivalent to or more stringent than the standards incorporated by reference, the request for approval will be denied in writing.

(d) The department may revoke an approval for any false statements or misrepresentations of facts on which the approval was based. The department may re-examine an approved alternate standard or issue a revised approval at any time.

Table 10.25-1

API	American Petroleum Institute 1220 L Street, NW Washington, DC 20005
Standard Reference Number	Title
1. API 650 - 98	Welded Steel Tanks For Oil Storage.
2. API 651 - 97	Cathodic Protection of Aboveground Petroleum Storage Tanks.
3. API 652 - 97	Lining of Aboveground Petroleum Storage Tank Bottoms.
4. API 653 - 98	Tank Inspection, Repair, Alteration, & Reconstruction.
5. API 1604 - 96	Closure of Underground Petroleum Storage Tanks.
6. API 1615 - 96	Installation of Underground Petroleum Storage Systems.
7. API 1621 - 93	Bulk Liquid Stock Control at Retail Outlets.
8. API 1631 - 97	Interior Lining of Underground Storage Tanks.
9. API 1632 - 97	Cathodic Protection of Underground Petroleum Storage Tanks & Piping Systems.
10. API 1637 - 95	Using the API Color-Symbol System to Mark Equipment & Vehicles for Product Identification at Service Stations & Distribution Terminals.
11. API 2000 - 98	Venting Atmospheric & Low-Pressure Storage Tanks.
12. API 2015 - 94	Safe Entry & Cleaning of Petroleum Storage Tanks.
13. API 2200 - 83	Repairing Crude Oil, LP Gas and Product Pipelines.
14. API 2350 - 96	Overfill Protection for Storage Tanks in Petroleum Facilities.
15. API 2610 - 94	Design, Construction, Operation, Maintenance and Inspection of Terminal and Tank Facilities.

Table 10.25-2

KWA	Ken Wilcox Associates 1125 Valley Ridge Drive Grain Valley, MO 64029
Standard Reference Number	Title
	Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera.

Table 10.25-3

NACE	NACE International P.O. Box 218340 Houston, TX 77218
Standard Reference Number	Title
1. RP 0169-96	Recommended Practice, Control of External Corrosion on Underground or Submerged Metallic Piping Systems.
2. RP 0188-99	Discontinuity (Holiday) Testing of Protective Coatings.
3. RP 0190-95	External Protective Coatings for Joints, Fittings & Valves on Metallic Underground or Submerged Pipelines & Piping Systems.
4. RP 0193-2001	External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms.
5. RP 0285-95	Recommended Practice, Control of External Corrosion of Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems.
6. RP 0286-97	Electrical Isolation of Cathodically Protected Pipelines.
7. TM 0497-97	Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems.

Table 10.25-4

NFPA	National Fire Protection Association 1 Batterymarch Park Quincy, MA 02269
Standard Reference Number	Title
1. 30 - 2000	Flammable and Combustible Liquids Code.
2. 30A - 2000	Code for Motor Fuel Dispensing Facilities & Repair Garages.
3. 30B - 1998	Code for the Manufacture & Storage of Aerosol Products.
4. 31 - 2001	Standard for the Installation of Oil-Burning Equipment.
5. 33 - 2000	Standard for Spray Application Using Flammable and Combustible Materials.
6. 34 - 2000	Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids.
7. 35 - 1999	Standard for the Manufacture of Organic Coatings.
8. 37 - 1998	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines.

9. 45 - 2000	Standard on Fire Protection for Laboratories Using Chemicals.
10. 68 - 1998	Standard for Venting of Deflagrations.
11. 326 - 1999	Standard for Safeguarding Tanks & Containers for Entry, Cleaning or Repair.
12. 385 - 2000	Standard for Tank Vehicles for Flammable and Combustible Liquids.
13. 395 - 1993	Standard for Storage of Flammable & Combustible Liquids on Farms & Isolated Sites.
14. 407 - 2001	Standard for Aircraft Fuel Servicing.
15. 415 - 1997	Standard for Airport Terminal Buildings, Fueling Ramp Drainage and Loading Walkways.

Table 10.25-5

NLPA	National Leak Prevention Association 7685 Fields Ertel Road Cincinnati, OH 45241
Standard Reference Number	Title
1. 632 - 1990	Internal Inspection of Steel Tanks for Upgrading With Cathodic Protection Without Lining.

Table 10.25-6

PEI	Petroleum Equipment Institute P.O. Box 2380 Tulsa, OK 74101
Standard Reference Number	Title
1. RP100, 2000	Recommended Practices for Installation of Underground Liquid Storage Systems.
2. RP200, 1999	Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling.
3. RP300, 1997	Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites.
4. Lexicon, 1995	Petroleum Equipment Lexicon.

Table 10.25-7

SSPC	Society for Protective Coatings 40 24 th Street Pittsburgh, PA 15222
Standard Reference Number	Title
1. VIS 2	Standard Method of Evaluating Degree of Rusting On Painted Steel Surfaces.

Table 10.25-8

STI	Steel Tank Institute 570 Oakwood Road Lake Zurich, IL 60047
Standard Reference Number	Title
1. SP001-00	Standard for Inspection of In-Service Shop-Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids.

Comm 10.26 Secondary references. For the purposes of this chapter, the department will enforce the applicable provisions of the following Wisconsin administrative codes in lieu of the indicated standards that are referenced in the adopted NFPA standards:

(1) **BOILERS AND PRESSURE VESSELS.** Chapter Comm 41 in lieu of the ASME Boiler and Pressure Vessel Code.

(2) **BUILDING ELEMENTS.** Chapters Comm 50 to 64 in lieu of the following NFPA standards:

(a) NFPA 101 - Life Safety Code.

(b) NFPA 220 - Standard on Types of Building Construction.

(c) NFPA 221 - Standard for Fire Walls and Fire Barrier Walls.

(3) **ELECTRICAL INSTALLATIONS.** Chapter Comm 16 in lieu of NFPA 70 - National Electrical Code.

Comm 10.27 Application of standards. (1) Except as otherwise provided in this chapter, all flammable and combustible liquids, and equipment, facilities, and the buildings that are used to store them shall be designed, constructed, installed, operated, inspected, tested and maintained as specified in the standards adopted in s. Comm 10.25, as they apply to the specific liquid, equipment, facility or building.

(2) All fire detection, prevention, suppression and isolation features required by a standard adopted under s. Comm 10.25 shall be provided as specified in the standard.

SECTION 18. Comm 10.28 (2) (b) is repealed and recreated to read:

Comm 10.28 (2) (b) Liquids having a flash point of less than 100°F may not be dispensed into a portable container or portable tank unless both of the following conditions are met:

1. The container or tank is substantially bright red in color.

2. The container or tank has a listing mark from an independent testing agency.

SECTION 19. Comm 10.28 (4) (b) is amended to read:

Comm 10.28 (4) (b) Industrial processes requiring use of class I flammable liquids for degreasing or cleaning any engine, machine or part shall be designed to incorporate a ventilation system to reduce and maintain vapor concentration to less than 25% of the lower explosive limit. ~~The interior of closed vessels may be cleaned with class I flammable liquids in an inert atmosphere as specified in s. 9-3 of NFPA 35.~~

SECTION 20. Comm 10.29 and (title) are amended to read:

Comm 10.29 (title) ~~Race track~~ Racetrack fueling stations. Tanks of racing vehicles shall be filled from safety cans, fixed pumping facilities or from properly mounted contractor tanks ~~designed in accordance with s. Comm 10.32.~~ During a race in which a vehicle is competing, the vehicle may be refueled while its engine is running. Signs prohibiting smoking in fueling areas shall be posted and an approved fire extinguisher of at least 20 B:C classification shall be provided at each fueling location.

SECTION 21. Comm 10.31 (1) (a) is amended to read:

Comm 10.31 (1) (a) The fueling of motor vehicles shall be in accordance with the ~~provisions of NFPA Standards 30 and 30A as adopted in s. Comm 10.25 unless otherwise specified in this chapter.~~

SECTION 22. Comm 10.32 and Figures 10.32-1 to 10.32-3 are repealed.

SECTION 23. Comm 10.33 (1) (b) 5. is repealed and recreated to read:

Comm 10.33 (1) (b) 5. The placement of tanks shall be in accordance with NFPA 30.

SECTION 24. Comm 10.335 (2) is amended to read:

Comm 10.335 (2) **USE AND HANDLING.** Other aspects of use and handling of used motor vehicle engine crankcase oil not described in sub. (1) shall comply with the requirements of this chapter for Class ~~IIIA~~ IIIB combustible liquids.

SECTION 25. Comm 10.34 is amended to read:

Comm 10.34 Tanks used as pressure vessels. Tanks used as pressure vessels shall be constructed of steel and shall comply with the applicable provisions of ~~chs. Comm 41-42 ch.~~ Comm 41.

SECTION 26. Comm 10.345 (1) (intro.) and (a) are amended to read:

Comm 10.345 (1) **NEW AND REPLACEMENT TANKS.** (intro.) In addition to the requirements specified in ~~s. 2-2.3.3~~ of NFPA Standard 30, dike systems for new and replacement outside aboveground storage tanks shall comply with this subsection.

(a) The capacity of the dike system shall be 25% larger than required by ~~s. 2-2.3.3 (b)~~ of NFPA Standard 30.

SECTION 27. Comm 10.345 (1) (d) is repealed and recreated to read:

Comm 10.345 (1) (d) 1. The walls of the dike system shall be constructed of earth, solid masonry, steel, or poured or precast concrete.

2. Dikes with the walls and floor made of steel or poured or precast concrete shall have all cracks, seams and joints sealed to be liquid-tight.

3. Dikes with the walls or floor made of earth or masonry shall be lined with a synthetic material having a maximum permeability of 10^{-6} centimeters per second for the substance stored.

4. Synthetic liners shall be installed under the direct supervision of a qualified representative of the manufacturer.

5. All synthetic liners and their seams shall be tested and maintained in accordance with the manufacturer's recommendations.

SECTION 28. Comm 10.345 (1) (e) and Comm 10.345 (2) are repealed.

SECTION 29. Comm 10.347 is created to read:

Comm 10.347 Vehicle collision protection. (1) Except for tanks covered under part 5 of this subchapter, vehicle collision protection is required for any tank or system component that could result in a release of product when damaged, in any area where impact due to speed, turning, or backing of any type of motorized or self-propelled vehicle is likely to occur.

(2) There shall be at least 24 inches of clearance between a vehicle impact barrier and the tank or system component to be protected.

(3) Except as provided in sub. (4), impact barriers shall be designed to protect the tank from impact damage by the force of the largest vehicle routinely in the traffic area traveling at 5 miles per hour or at the average traveling speed, if higher than 5 miles per hour.

(4) For impact barriers designed primarily to protect from impact of automobiles, the barrier shall be capable of withstanding a minimum horizontal live load of 1000 pounds per lineal foot acting at 18 inches above grade level.

Note: For many applications, the department will accept either D.O.T. guardrails or 4-inch steel posts filled with concrete, set at least 3 feet into the ground and spaced no more than 4 feet on center.

SECTION 30. Comm 10.36 (3) (a) 1. and (b) are amended to read:

Comm 10.36 (3) (a) 1. To permanently close an aboveground storage tank system, owners and operators shall empty and clean it by removing all liquids and accumulated sludges in accordance with the procedures specified in API Publication 2015-Cleaning Petroleum Storage Tanks. Tanks shall be inerted so that the composition of the atmosphere inside the tank is not more than 10% of the lower explosive limit for the stored product prior to performing any other work on the tank.

(b) Continued use of an aboveground storage tank system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators shall empty and clean the tank by removing all liquids and accumulated sludges in accordance with the procedures specified in API Publication 2015-Cleaning Petroleum Storage Tanks. Cleaning of tanks shall be performed by persons certified by the department to do such work.

SECTION 31. Comm 10.37 (title) and (1) are repealed and recreated to read:

Comm 10.37 General requirements for bulk plants and terminals. (1) LESSER CLEARANCES AT BULK PLANTS THAT WERE IN EXISTENCE BEFORE MAY 1, 1991. Bulk plant facilities that were in existence before May 1, 1991 may be renovated or updated, but no additional storage capacity is permitted in violation of the clearances specified in NFPA 30.

SECTION 32. Comm 10.415 (1) (a) and (2) are amended to read:

Comm 10.415 (1) (a) ~~The storage of fuel for motor vehicles at service stations shall comply with ch. 2 of NFPA 30A, except that aboveground tank systems may be used at marinas, private airports that are registered with the federal government or department of transportation, and retail, commercial, industrial, and governmental establishments in accordance with this section.~~ Aboveground tanks shall may not be used for vehicle fueling at residences except as provided in s. Comm 10.42 (3).

(2) (title) ~~TANK DESIGN, AND CONSTRUCTION AND INSTALLATION.~~ (a) The design, construction and installation of aboveground tanks for motor vehicle fueling shall comply with ~~chapter 2 of NFPA 30~~ NFPA 30A and this subsection.

(b) Tanks shall be listed and labeled for aboveground use. ~~Tanks shall be placed on a properly engineered base and elevated at least one foot above the dike floor.~~

SECTION 33. Comm 10.415 (3) is repealed.

SECTION 34. Comm 10.415 (4) and Table 10.415 are repealed and recreated to read:

Comm 10.415 (4) LOCATION. (a) The setbacks specified in Table 10.415 shall be maintained at all times.

(b) 1. The setback distances for vaulted tanks shall be measured from the outer perimeter of the vault.

2. The setback distances for tanks that are placed in dikes shall be measured from the inner edge of the dike wall.

3. The setback distances for all tanks other than vaulted or diked tanks shall be measured from the outermost surface of the tank.

TABLE 10.415
Setbacks for Aboveground Tanks Used for Motor Vehicle Fueling

Type of Tank	Individual Tank Capacity (gal)	Setback from nearest important building on same property (ft)	Setback from nearest retail dispenser (ft)	Setback from lot line that can be built upon, including the far side of a public way (ft)	Setback from near side of a public way (ft)	Minimum distance between tanks (ft)
Vaulted ¹	0-15,000	0	0	0	0	Separate compartment for each tank
Protected ²	0-6,000	5	25	15	5	3
	6,001-12,000	15	25	25	15	3
Fire - Resistant ³	0-2,000	25	25	25	25	3
	2,001-12,000	25	25	50	25	3
Other Code Complying Tanks	0-2,000	25	30	50	50	3
	2,001-12,000	50	50	100	50	3

¹A vaulted tank is one placed in a liquid-tight concrete enclosure consisting of 4 walls, a top and a bottom that completely encloses the tank and provides protection from physical damage and limits heat transfer from a high intensity liquid pool fire.

²A protected tank is a listed and labeled system that consists of a primary tank along with integral secondary containment that provides protection from physical damage and limits heat transfer from a high intensity liquid pool fire. Systems listed as complying with UL 2085 or an equivalent standard are considered protected tanks.

³A fire-resistant tank is a listed and labeled primary tank with or without integral secondary containment that provides protection from heat transfer from a high intensity liquid pool fire. Systems listed as complying with UL 2080 or an equivalent standard are considered fire-resistant tanks.

SECTION 35. Comm 10.415 (6) (title) and (intro.) are repealed and recreated to read:

Comm 10.415 (6) TANKS IN VAULTS. Tanks placed in vaults shall comply with the requirements of NFPA 30, NFPA 30A and all of the following:

SECTION 36. Comm 10.415 (6) (a) to (i) and (n) to (o) are repealed.

SECTION 37. Comm 10.415 (6) (j) to (m) are renumbered Comm 10.415 (6) (a) to (d).

SECTION 38. Comm 10.415 (7) (a), and (9) (a) are amended to read:

Comm 10.415 (7) (a) Aboveground Diking used to provide secondary containment for aboveground motor fuel tanks shall be placed within dikes which conform to section 2-2.3.3 of NFPA Standard 30 and with s. Comm 10.345 (1).

Comm 10.415 (9) (a) Piping, valves and fittings shall comply with ~~ch. 3 of NFPA 30~~ and this subsection.

SECTION 39. Comm 10.415 (10) is repealed.

SECTION 40. Comm 10.415 (11) (intro.) and Comm 10.42 (1) are amended to read:

Comm 10.415 (11) (intro.) **VENTS AND FILL OPENINGS.** Vents and other openings in aboveground vehicle fueling tanks shall be provided in accordance with ~~section 2-2 of NFPA 30~~ and with this subsection.

Comm 10.42 (1) **GENERAL.** Except as otherwise provided in this section, the dispensing of Class I or II liquids into the tanks of self-propelled marine craft having a fuel capacity of less than 10,500 gallons shall comply with the requirements of NFPA Standard 30A.

SECTION 41. Comm 10.42 (4) (a) Note is repealed.

SECTION 42. Comm 10.42 (4) (c) is amended to read:

Comm 10.42 (4) (c) The tank vehicle complies with ~~the requirements of NFPA Standard 385.~~

SECTION 43. Comm 10.43 is repealed and recreated to read:

Comm 10.43 Farms and construction sites. The storage and handling of flammable and combustible liquids at farms and at temporary, isolated construction sites shall comply with the requirements of NFPA 395 and s. Comm 10.455.

SECTION 44. Comm 10.44 to 10.45 are repealed.

SECTION 45. Comm 10.455 (1) is amended to read:

Comm 10.455 (1) **TANK LISTING.** The tank shall be listed and labeled for aboveground use ~~in accordance with standards recognized by the department as specified in s. Comm 10.27.~~

SECTION 46. Comm 10.46 is repealed.

SECTION 47. Comm 10.475 is created (at the end of Subchapter V, Part 6) to read:

Comm 10.475 Heating oil tanks that are removed from service. (1) APPLICATION. This section applies to heating oil storage tanks that are connected to heating appliances and that store heating oil that is consumed on the premises.

(2) GENERAL. A heating oil storage tank that is placed out of service for any reason other than immediate repair or replacement shall follow the procedure in either par. (a) or (b):

(a) The tank and all connected piping, including the vent and fill piping, shall be emptied, cleaned and removed from the premises.

(b) 1. The tank and all connected piping shall be emptied and purged of all vapors.

2. If the tank is not removed, the tank vent shall remain intact and open.

3. If the outside fill pipe is not removed, it shall be filled with concrete to the top of the pipe and capped.

4. Any piping that is not removed, other than a tank vent, shall be capped or otherwise sealed.

(3) RESPONSIBLE PARTIES. (a) *Contractors.* A person who is under contract, with the person who owns or controls a property, to remove a heating oil storage tank or to place a heating oil storage tank out of service shall be responsible for complying with the requirements under sub. (2).

(b) *Owners.* If there is no contractor, the person who owns or controls a property from which a heating oil storage tank is removed, or on which a heating oil storage tank is placed out of service, shall be responsible for complying with the requirements under sub. (2).

(4) NOTIFICATION REQUIREMENT. The person who owns or controls property from which a heating oil storage tank has been removed, or on which a heating oil storage tank has been placed out of service, shall provide written notice to the current heating oil vendor within 7 days after removing the tank or placing the tank out of service. If there is a scheduled delivery in less than 7 days, notification may be given verbally provided it is followed by written notification within 7 days after verbal notification.

SECTION 48. Comm 10.505 (2) Note is repealed.

SECTION 49. Comm 10.51 is repealed and recreated to read:

Comm 10.51 (1) GENERAL. (a) Owners and operators of UST systems shall meet the requirements of this part.

(b) Tanks and piping shall be installed, maintained and operated in accordance with this section and ss. Comm 10.52 to 10.58.

(2) CORROSION PROTECTION. (a) Any portion of a tank and piping that is in contact with the ground shall be protected from corrosion by one of the following methods:

1. The tank and piping shall be constructed of an inherently corrosion-resistant material.
2. The tank and piping shall be protected from corrosion in accordance with a standard developed by a nationally recognized association or independent testing laboratory that is acceptable to the department.
3. The tank and piping shall be protected with a cathodic protection system designed by a NACE-certified corrosion specialist or cathodic protection specialist.
4. The tank and piping shall be installed at a site that is determined by a NACE-certified corrosion specialist or cathodic protection specialist to be non-corrosive during the operational life of the system.

Note: See s. Comm 10.25, Table 10.25-3 for information on contacting NACE.

(b) Specialists retained for the purpose of complying with the options under par. (a) 3. or 4. shall make at least one personal visit to each tank site during the design stage.

(3) FLEXIBLE CONNECTIONS. Flexible piping approved under s. Comm 10.125 or listed metallic flex connectors shall be used in all of the following locations:

- (a) At the top of the tank.
- (b) Between the tank and the vent pipe.
- (c) Below the dispenser.
- (d) In fiberglass pipe, where there are sections less than 4 feet long between turns.

(4) SYSTEM ACCESS. (a) All underground storage tank systems shall be designed and constructed to allow access to all connections between the tank and piping, venting, and appurtenances that require maintenance or replacement.

(b) The means of access shall be sufficient in size to allow for installation, maintenance and inspection of all system appurtenances.

(5) SPILL AND OVERFILL PREVENTION. All underground storage tank systems shall be provided with the following equipment:

(a) A catch basin or similar equipment to contain spillage.

(b) Overfill prevention equipment that does at least one of the following:

1. Restricts flow 30 minutes prior to overflow.
2. Alerts the operator with a high-level alarm at least one minute prior to overflow.
3. Automatically shuts off flow so that no fittings on top of the tank are exposed to product.

(6) INSTALLATION. (a) All tanks and piping shall be installed by an installer who has been certified in accordance with ch. Comm 5.

(b) All installation shall be according to the manufacturer's instructions, the applicable national standards adopted under s. Comm 10.25 and this code.

(7) CERTIFICATION OF INSTALLATION. Upon completion of any installation of new or replacement tanks or piping, or any system modification or upgrade that requires plan approval or registration or permitting, the contractor shall provide the owner, the inspector and the department with a completed tank installation checklist.

Note: Form ERS-6294 - Underground Storage Tank Installation Inspection Checklist required under this section is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's web site at <http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html>

SECTION 50. Comm 10.52 (1), (2) (intro.), (2) (d), and (4) are repealed.

SECTION 51. Comm 10.52 (2) (a) to (c) are renumbered Comm 10.52 (2) (b) to (d).

SECTION 52. Comm 10.52 (2) (a) is created to read:

Comm 10.52 (2) (a) *General*. Steel tanks that are upgraded with interior lining or cathodic protection shall follow the applicable national standard adopted under s. Comm 10.25 and the requirements of this section.

SECTION 53. Comm 10.52 (2) (b) 2., as renumbered, is amended to read:

Comm 10.52 (2) (b) 2. Within 10 years after lining and at least every 5 years thereafter, the lined tank is internally inspected either by manned entry or in accordance with the standard adopted in Table 10.25-2 and found to be structurally sound with the lining still performing in accordance with original design specifications.

SECTION 54. Comm 10.55 (2) is repealed and recreated to read:

Comm 10.55 (2) CATHODIC PROTECTION SYSTEMS. (a) All cathodic protection for UST systems shall comply with NACE RP 0285.

(b) All cathodic protection for UST systems shall be tested by a NACE-certified corrosion technologist or a NACE-certified corrosion technician directly supervised by a certified corrosion technologist within 6 months of installation and at least annually thereafter.

Note: Under s. Comm 10.25 (2), the department may accept cathodic protection testing by a technician certified under an equivalent national standard.

SECTION 55. Comm 10.56 Note is repealed.

SECTION 56. Comm 10.57 (1) is repealed and recreated to read:

Comm 10.57 (1) STANDARDS. Repairs to UST systems shall be made by the manufacturer's authorized representative or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

SECTION 57. Comm 10.57 (2) is repealed.

SECTION 58. Comm 10.57 (3) is renumbered Comm 10.57 (2) and Comm 10.57 (3m) is renumbered Comm 10.57 (3).

SECTION 59. Comm 10.732 (3) Note is repealed.

SECTION 60. Comm 51.25, Table 51.25-17, lines 17, 18 and 20 to 22 are amended to read:

Table 51.25-17

(Partial Table)

NFPA	National Fire Protection Association One Batterymarch Park P.O. Box 9101 Quincy Massachusetts 02269 - 9101
------	---

Standard Reference Number	Title
17. 30 - 1996 <u>2000</u>	Flammable and Combustible Liquids Code.
18. 30A - 1996 <u>2000</u>	Automotive and Marine Service Station Code. <u>Code for Motor Fuel Dispensing Facilities and Repair Garages.</u>
20. 31 - 1997 <u>2001</u>	Standard for the Installation of Oil Burning Equipment.
21. 33 - 1995 <u>2000</u>	Standard for Spray Application Using Flammable or Combustible Materials.
22. 34 - 1995 <u>2000</u>	Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 10
Amendment No. if Applicable

Subject

Chapter Comm 10 - Flammable and Combustible Liquids Code

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

- Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
- Counties Others _____
- School Districts WTCS Districts

- 2. Decrease Costs
 - Permissive Mandatory

- 4. Decrease Revenues
 - Permissive Mandatory

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

There are no changes proposed in these rules that will effect staffing levels or revenues.

Long-Range Fiscal Implications
None known or anticipated

Agency/Prepared by: (Name & Phone No.)
Commerce / Duane Hubeler 266-1390

Authorized Signature/Telephone No.

Date

2/14/02

FISCAL ESTIMATE WORKSHEET
Detailed Estimate of Annual Fiscal Effect
DOA-2047(R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
Chapter Comm 10

Subject
Chapter Comm 10 - Flammable and Combustible Liquids Code

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
0

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs By Category	\$ 0	\$ -0
B. State Costs By Source of Funds		
GPR	\$	\$
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$ 0	\$ -0
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$ 0	\$ -0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Commerce / Duane Hubeler 266-1390

Authorized Signature/Telephone No.
[Signature]

Date
2/14/02

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 10 DATE: Wednesday, August 15, 2001
RELATING TO: Flammable & Combustible Liquids TIME: 10:00
LOCATION: Conference Room 3B CITY: Madison

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
Daniel S. May	SC Johnson	Racine WI			X
Troy Bethel	Kwik Trip	La Crosse WI			X
Tom Gabriel	SEPA	Madison WI			X
Blair Selton	✓				
Joseph Blum	Cops	Hartford			
Bob Elvert	EXHIBITOR				X

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 01-087

Hearing Location: Madison

Rule Number: Ch. Comm 10

Hearing Date: Wednesday, August 15, 2001

Relating to: Flammable & Combustible Liquids

Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
No one testified at this hearing			

DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

Clearinghouse Rule Number: 01-087		Written Comments	
Rule Number: Ch. Comm 10		End Date: Friday, August 31, 2001	
Relating to: Flammable & Combustible Liquids			
Comment Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
1	Erin Roth Wisconsin Petroleum Council Madison, WI	<p>1. The WPC generally supports the proposed changes.</p> <p>2. The proposal to require synthetic dike liners to have a permeability of 10^{-7} centimeters per second (cps) is too strict and does not agree with other standards such as those promulgated by WDNR. Recommends a less stringent 10^{-6} cps standard to be consistent with other agencies.</p> <p>3. There is an apparent error in s. Comm 10.345 (2) (a) and (c), relating to lining of aboveground tanks, where it requires the use of methods used for lining underground tanks.</p>	<p>1. Support is noted.</p> <p>2. Agree. After further research and consultation, the proposal will be changed to 10^{-6} cps.</p> <p>3. Agree. All of s. Comm 10.345 (2) will be repealed, since it relates to compliance deadlines that have passed. This will eliminate the conflict.</p>
2	Catherine Hay-Bassett Hydrite Chemical Co. Brookfield, WI	<p>1. Proposed s. Comm 10.13 (1) (a), relating to tank registration, should be clarified to state it applies to all storage tanks "containing a regulated substance".</p> <p>2. Proposed s. Comm 10.16 (1) (a), relating to tank permits, should also be clarified to state it applies to all storage tanks "containing a regulated substance".</p> <p>3. Proposed s. Comm 10.16 (3) (a) 1., relating to test reports for cathodic protection, should be clarified to state it is not applicable to all aboveground storage tanks.</p> <p>4. The annual permit expiration is much too short. This should stay at 3 years as in the current rule. Most other regulatory permits are valid for longer than one year. The more frequent permit expiration will have considerable administrative costs. Annual inspections are not a problem but these should not be tied to an annual permit.</p>	<p>1. Agree that this clarification will be helpful. Also, the definition of "regulated substance" has been expanded to include federally regulated hazardous substances per s. 101.09, Stats.</p> <p>2. Agree that this clarification will be helpful. Also, the definition of "regulated substance" has been expanded to include federally regulated hazardous substances per s. 101.09, Stats.</p> <p>3. Disagree. Proposed s. Comm 10.16 (1) (b) clearly states that all aboveground tanks are already exempt from permitting requirements.</p> <p>4. Disagree. The three-year tank permit period is a significant contributor to the inaccuracies of the storage tank database and is also an administrative challenge for many businesses that experience staff turnover. The department intends to modify the</p>

DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

Clearinghouse Rule Number: 01-087		Written Comments	
Rule Number: Ch. Comm 10		End Date: Friday, August 31, 2001	
Relating to: Flammable & Combustible Liquids			
Comment Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
	Hay-Bassett (cont.)	<p>5. States that there was a lack of opportunity to comment on the proposed regulations and inconsistent answers to verbal questions from the department.</p> <p>6. States that the combination of adding rules for tanks containing CERCLA substances and the one-year permit expiration date will add a huge, unnecessary burden to Wisconsin industry.</p>	<p>5. While this code project was considered a "quick fix" type project, designed primarily to update adopted national standards and to comply with recent statute changes, all standard and required notification procedures and comment periods were strictly observed. Representation on the code revision committee includes industry-related trade associations and a subcommittee primarily representing the chemical industry.</p> <p>6. The USEPA and s. 101.09, Stats., require Wisconsin to promulgate rules for hazardous substance USTs. For many years both the Wisconsin regulatory community and the government authority have maintained a proactive attitude to provide equivalent requirements for both USTs and ASTs based upon accepted national standards. Commerce has experienced a cooperative positive reaction from the regulated community toward promulgating AST rules. The administrative renewal process is designed to be very efficient with a single process period to benefit owners of multiple tanks.</p>

DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

Clearinghouse Rule Number: 01-087		Written Comments	
Rule Number: Ch. Comm 10		End Date: Friday, August 31, 2001	
Relating to: Flammable & Combustible Liquids			
Comment Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
3	Jeff Schoepke WI Manufacturers & Commerce Madison, WI	<p>1. States that this rule change should not have been conducted as an emergency rule-making procedure.</p> <p>2. States that s. Comm 10.13 has been changed to require registration of all hazardous material storage tanks while current regulations require registration for flammable & combustible liquids only. The scope statement for this project does not mention this change. The change will be overly burdensome.</p> <p>3. States that the regulated community has not been given an opportunity to comment on the requirement for supply tanks to be registered.</p> <p>4. States that tanks that store hazardous materials are regulated by the: i) National Fire Protection Association (NFPA), ii) EPA's National Pollutant Discharge Elimination System (NPDES), iii) Spill Prevention, Control and Countermeasure (SPCC) plans, iv) OSHA's Process Safety Management Program and, in some cases, the v) Resource Conservation and Recovery Act (RCRA) and/or vi) risk management plans. Most flammable and combustible liquid tanks are inspected regularly by local fire departments. Given this level of</p>	<p>1. This rule change has never been considered or conducted as an emergency rule-making procedure.</p> <p>2. Agree that the scope of the chapter has changed to include federally-regulated hazardous substances per s. 101.09, Stats. Disagree that all hazardous material storage tanks are included. There are several major exemptions from the registration requirement in proposed s. Comm 10.13. The scope statement clearly states the rule will incorporate requirements from 1999 AB 133 (now s. 101.09, Stats.) relating to hazardous substance storage. The administrative renewal process is designed to be very efficient with a single process period to benefit owners of multiple tanks.</p> <p>3. The scope of the rule is limited to storage tanks. Tanks are defined as "storage" or "process" tanks. The term "supply" tank is a generic term that is used variably and interchangeably with application. A supply tank may be a storage tank or a process tank.</p> <p>4. i) NFPA covers only liquids that are fire or explosion hazards. There are many federally regulated hazardous substances that do not present these hazards. Further, NFPA is a private agency whose rules have no legal effect until adopted by an agency with legal standing, such as Commerce in ch. Comm 10. Routine fire inspections do not include tank inspection activities. Tank inspections</p>

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 01-087		Written Comments	
Rule Number: Ch. Comm 10		End Date: Friday, August 31, 2001	
Relating to: Flammable & Combustible Liquids			
Comment Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
	Schoepke (cont.)	oversight, the additional registration of tanks by Commerce is unnecessary.	are conducted by certified tank inspectors. Many flammable & combustible liquid tanks are inspected by fire departments employing certified tank inspectors conducting inspections under the scope of ch. Comm 10. Items ii - v) NPDES, RCRA, SPCC, etc. do not address technical design, system construction, facility installation and fire safety issues. Oversight by Commerce in these areas is mandated by Wisconsin statutes and USEPA requirements.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 01-087

RULE NO.: Chapters Comm 10 & 51

RELATING TO: Flammable, Combustible & Hazardous Liquids

Agency contact person for substantive questions.

Name: Sheldon Schall

Title: Section Chief, Bureau of Storage Tanks

Telephone No. 6-0956

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

(Continued on next page)

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

NOT APPLICABLE

4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

NOT APPLICABLE

7. Review rules for permit action deadline [s. 227.15(2)(h)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

NOT APPLICABLE

COMMENTS ON CLEARINGHOUSE REPORT TO AGENCY

CLEARINGHOUSE RULE 01-087

1. Statutory Authority

Statutory authority for ch. Comm 10 comes from s. 101.09, Stats., which covers protection for the waters of the state. Authority also comes from s. 101.14, Stats., and s. 101.11, Stats., which relate to general fire safety and workplace safety requirements. These statutes apply regardless of the size of a tank that may contain a flammable, combustible or hazardous liquid.

2. Form, Style and Placement in Administrative Code

a. Disagree. There are many possible parties who may choose to acquire this type of approval including owners, operators, manufacturers, distributors, sales personnel, etc. This necessary ambiguity has not been a problem in the past.

b. Agree with the first sentence. Complying with the suggestion in the second sentence would be very problematic due to the large number of possible federal regulations that might apply depending on the specific characteristics of the liquid.

f. The comma was added in error. It will be removed.

g. Disagree. The acronym "NACE" is pronounced as if it were a one-syllable word rather than as 4 individual letters. Therefore preceding it with "a" is appropriate.

All other comments a. to g. were implemented as suggested.

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

All of s. 10.345 (2) was subsequently repealed so the error was eliminated.

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

a. Agree with the first sentence. Disagree with the suggestion in the second sentence. In this context "product" is a suitable replacement for the entire list.

c. The name change could apply to both the owner and the facility. The wording has been clarified to reflect this.

g. The wording "that is acceptable to the department" has been added to help clarify the definition.

j. Disagree. There are required standards that relate to the type of material used. This type of standard would not be "performed".

All other comments a. to k. were implemented as suggested.



WISCONSIN LEGISLATIVE COUNCIL THE RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-087

AN ORDER to repeal Comm 10.01 (51) Note, 10.14 and 10.15, 10.17, 10.32 and Figures 10.32-1 to 10.32-3, 10.345 (1) (e), 10.415 (3), (6) (a) to (i) and (n) to (o) and (10), 10.42 (4) (a) Note, 10.44 to 10.45, 10.46 and 10.505 (2) Note, 10.52 (1), (2) (intro.) and (d), and (4), 10.56 Note, 10.57 (2) and 10.732 (3) Note; to renumber Comm 10.415 (6) (j) to (m), 10.52 (2) (a) to (c) and 10.57 (3) and (3m); to renumber and amend Comm 10.52 (2) (a) 2; to amend Comm 10.28 (4) (b), 10.29, 10.31 (1) (a), 10.335 (2), 10.34, 10.345 (1) (intro.) and (a) and (2) (a) and (c), 10.36 (3) (a) 1. and (b), 10.415 (1) (a), (2), (7) (a), (9) (a) and (11) (intro.) and 10.42 (1) and (4) (c), 10.455 (1) and Comm 51.25, Table 51.25-17; to repeal and recreate Comm 10.01 (21), 10.01 (38) and (65), 10.125, 10.13, 10.16, 10.25 to 10.27, 10.28 (2) (b), 10.33 (1) (b) 5., 10.345 (1) (d), 10.37 (title) and (1), 10.415 (4) and Table 10.415 and (6) (title) and (intro.), 10.43, 10.51, 10.55 (2) and 10.57 (1); and to create Comm 10.01 (intro.) Note and (102m), 10.347 and 10.52 (2) (a), relating to flammable and combustible liquids.

Submitted by DEPARTMENT OF COMMERCE

07-18-01 RECEIVED BY LEGISLATIVE COUNCIL.

08-13-01 REPORT SENT TO AGENCY.

RS:NZ:jal;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL

RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 01-087

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 September 1998.]

1. Statutory Authority

Section Comm 10.13 subjects above-ground tanks under 5,000 gallons to regulation, but s. 101.09 (2) (c), Stats., exempts such tanks from regulation. The department should describe its authority for the rule.

2. Form, Style and Placement in Administrative Code

a. Section Comm 10.125 (1) (intro.) provides that specific approval shall be obtained in writing from the department for certain items. The use of the passive voice makes the provision unclear. Although the rule implicitly requires the owner or operator to seek specific approval, the language does not clearly so state. A preferred format would be: "An owner or operator of . . . shall receive written approval from the department before using any of the following procedures or items:".

b. In s. Comm 10.125 (1) (a), the phrase "this code" should be replaced by the phrase "this chapter." (The entire rule should be reviewed for this problem.) Also, the phrase "federal law" should be replaced by discrete citations to federal law, if possible.

c. In s. Comm 10.125 (2) (a), the phrase ", at its discretion" is unnecessary and should be deleted.

d. In s. Comm 10.13 (2) (d) 1., "storage tank undergoing a" should be deleted.

- e. In s. Comm 10.26 (2) (intro.), the hyphen should be replaced by the word "to."
- f. In s. Comm 10.415 (9) (a), the comma is being added, so it should be underlined.
- g. In s. Comm 10.51 (2) (a) 4., the second occurrence of the word "a" should be replaced by the word "an." [See also s. Comm 10.55 (2) (b).]

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

Section Comm 10.345 (2) (a) requires compliance with ". . . sub. (1) (c) to (e)" However, sub. (1) (e) is repealed by SECTION 23.

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

a. In s. Comm 10.125 (3) (a) 1., it appears that the words "concepts" and "technology" should be added to the list of approval items in order to be consistent with sub. (2) (a). Similarly, in sub. (3) (a) 2., the use of the term "product" is inconsistent with the list contained in sub. (2) (a). The term "product" should be replaced by a repetition of the list.

b. Section Comm 10.125 (4) uses the phrase "listed and labeled," and in a number of places in the rule "and labeled" is inserted after "listed." While the definition of "listed" includes placing a label on the equipment, it would be clearer to either define "labeled" separately, or to define the whole phrase "listed and labeled."

c. In s. Comm 10.13 (2) (c), does the phrase "name change" apply both to the owner and to the facility?

d. In s. Comm 10.25 (intro.), "standards when approved" should be changed to "standards if the alternate standard is approved." Also, it appears that this provision would be more clear if a comma were inserted after the first occurrence of the word "department;" if a comma were inserted after the cross-reference; and the introduction concluded with the phrase "under all of the following conditions;".

e. In s. Comm 10.26 (intro.), the wording is confusing. Could "where the indicated standards are referenced in" be replaced with "in lieu of"?

f. In s. Comm 10.415 (b) 1. to 3., "involving" should be changed to "for."

g. In s. Comm 10.51 (2) (a) 2., what constitutes a "nationally recognized association"?

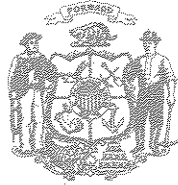
h. In s. Comm 10.51 (4) (a), the wording is awkward. It would be clearer if ". . . shall be provided with access . . ." were changed to ". . . shall be designed and constructed so as to allow access"

i. In s. Comm 10.51 (5) (b) 1. to 3., the verbs should be changed to the singular form: "restrict" to "restricts," "alert" to "alerts," and "shut" to "shuts."

j. In s. Comm 10.51 (6) (b), the provision can be made more clear by inserting the word "performed" after the phrase "shall be."

k. Section Comm 10.51 (7) is difficult to read. It might be clearer if "piping and any system" were changed to "piping, or any system." Further, "the owner, inspector" should be changed to "the owner, the inspector."

FEB 27 2002



Judith B. Robson
Wisconsin State Senator

February 26, 2002

Senator James Baumgart
Room 306 South

Re: Clearinghouse Rule 01-087, relating to flammable and hazardous liquids

Dear Senator Baumgart:

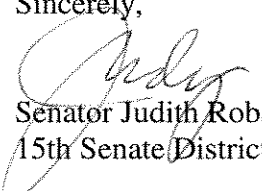
Clearinghouse Rule 01-087 was referred to your committee for review. I respectfully urge you to object to a portion of this rule on the grounds that it is contrary to state statute.

Section 10.13 of the proposed rule subjects above-ground tanks with a capacity of under 5,000 gallons to regulation, but section 101.09(2)(c) of the Wisconsin Statutes exempts such tanks from regulation.

Administrative rules are extensions of state statutes. As such, they must be based on, and should not directly conflict with, our statutes. Rules that are not based on or that conflict with statutes violate the Legislature's constitutional authority to write the laws of the state. In short, rules without statutory authority and rules that conflict with statutes are an assault on the integrity of the Legislature and should not be tolerated.

For this reason I respectfully urge your committee to object to the portion of CR 01-087 that conflicts with section 101.0(2)(c) of the statutes.

Sincerely,


Senator Judith Robson
15th Senate District

JR:da

March 29, 2002

Philip Albert, Secretary
WI Department of Commerce
201 W. Washington Ave.
Madison, WI 53702

Dear Secretary Albert:

The Senate Environmental Resources Committee took executive action on CR Rule 01-087, relating to flammable, combustible and hazardous liquids. By a vote of 5 Ayes, 0 Noes & 0 Absent, the committee passed the following motion to request the Department of Commerce to consider modification of the rule:

Moved by Senator Baumgart, that the Senate Environmental Resources Committee:

1. Recommends that the Department of Commerce, under s. 227.19 (4) (b) 2., Stats. agrees to consider modifying Clearinghouse Rule 01-087, relating to flammable, combustible and hazardous liquids, to eliminate the applicability of ch. Comm 10 to liquids having flash points at or above 200 degrees Fahrenheit as specified in ss. Comm 10.01 (22) and 10.335 (2) of the proposed rule.
2. If the Department of Commerce does not agree to consider the modification identified in item 1, in writing, by the end of the workday on Monday, April 1, 2002, the Committee objects, under s. 227.19 (4) (d) 6., Stats., to proposed ss. Comm 10.01 (22) and 10.335 (2) on the grounds that these subsections are arbitrary and capricious.

Sincerely,

Jim Baumgart, Chair
Senate Environmental Resources Committee

JB:ae



P. O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD #: (608) 264-8777
<http://www.commerce.state.wi.us>
<http://www.wisconsin.gov>
Scott McCallum, Governor
Philip Edw. Albert, Secretary

April 1, 2002

The Honorable James R. Baumgart, Chair
Senate Environmental Resources Committee
Room 306 South, State Capitol
Madison, WI 53707-7882

Dear Senator Baumgart:

Thank you for the opportunity to permit the Department of Commerce to testify before your committee on Clearinghouse Rule 01-087, relating to flammable, combustible and hazardous liquids. On Friday, March 29, 2002, we received a request by the committee to consider a modification of the rule.

The Department hereby agrees to consider modifying Clearinghouse Rule 01-087 to eliminate the applicability of Chapter Comm 10, Wisconsin Administrative Code, to liquids having flash points at or above 200 degrees Fahrenheit as specified in ss. Comm 10.01 (22) and 10.335 (2) of the proposed rule. This agreement is being submitted under section 227.19 (4) (b) 2., Stats.

If you have any questions regarding this matter, please contact Martha Kerner at 266-2125.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Albert', is written over a light blue horizontal line.

Philip Edw. Albert
SECRETARY

cc: The Honorable Jean L. Hundertmark, Chairperson
Assembly Committee on Labor and Workforce Development

Kerner, Martha

From: Bob Bartlett [bbartlett@pmawwacs.org]
Sent: Wednesday, April 03, 2002 3:38 PM
To: ccliff@commerce.state.wi.us
Subject: FW: Comm 10 Motion



Comm 10 Phase I
motion.doc

Cathy,

As you know some of our members had concerns with the CR 01-087 as drafted. We appreciate your willingness to work with us on modifications as we collaborate in phase 2 of the COMM 10 code development. Therefore, we do not object to legislative approval of CR 01-087 at this time.

Please call me if you have any questions.

Bob

Robert Bartlett
121 South Pinckney Street, Suite 300
Madison, WI 53703
608-256-7555 - voice
608-256-7666 - fax
bbartlett@pmawwacs.org
www.pmawwacs.com

-----Original Message-----

From: Tim Clay [mailto:tim.clay@wfcmac.org]
Sent: Monday, April 01, 2002 1:28 PM
To: Bob Bartlett; dgallo@reinhardt.com
Subject: Comm 10 Motion

Please review the attached motion pertaining to Comm 10 that I prepared. This addresses most of WFC's issues and should allow the rule to advance.

Tim

Kerner, Martha

From: Tim Clay [tim.clay@wfcmac.org]
Sent: Wednesday, April 03, 2002 4:08 PM
To: Cliff, Cathy - COMM
Subject: Comm 10 CR-01-087

Cathy,

WFC has agreed to work with the Department of Commerce on the issues we raised in the document named Comm 10 Phase 1 motion (attached). We acknowledge that we've revolved those issues brought to Senator Baumgart's attention. (Combustible definition doc. attached).

We are glad that we have reached agreement on this issue and look forward to working with you in the near future.



Comm 10 Phase I
motion.doc

Tim Clay

CR-01-087

Comm 10--Flammable and Combustible Liquids

Motion to adopt CR-01-087 with the condition that the following issues will be addressed in the Phase II rule development process and through legislation.

Phase II rule writing

- Clearly identify that the regulation of non-hazardous Class IIIB liquid storage tanks is not retroactive. This section should not conflict or supercede pre-existing laws or rules that currently regulate the storage of these substances.
- Create a new section in Comm 10 that specifically applies to non-hazardous Class IIIB liquids. This section should attempt to identify a flash point limit at which the perceived fire hazard is such that regulation of the tank system is not warranted. It is recognized that not all tank systems contain liquids that pose a fire hazard, such as tanks storing milk, liquid feed, or other non-hazardous products. This section should also address the following:
 1. Applicable national standards. Regulation of Class IIIB liquids could require the adoption of new standards, such as those that apply to food grade storage tank systems.
 2. Applicability to storage tank systems. Clearly define the scope to reflect that the section applies to storage tanks (virgin products and certain wastes) and not to processing or certain other waste tank systems.

APR 16 2002

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<http://www.wisconsin.gov>

Scott McCallum, Governor
Philip Edw. Albert, Secretary



April 10, 2002

The Honorable James R. Baumgart, Chair
Senate Environmental Resources Committee
Room 306 South, State Capitol
Madison, WI 53707-7882

Dear Senator Baumgart:

This letter contains further clarification re: Clearinghouse Rule 01-087, relating to flammable, combustible and hazardous liquids. On Monday, April 1, we responded to a request by the committee to consider modification of the rule, stating that the department agrees to consider modification of the Clearinghouse Rule 01-087 to eliminate the applicability of Chapter Comm 10, Wisconsin Administrative Code to liquids having flash points at or above 200 degrees Fahrenheit as specified in ss. Comm 10.01 (22) and 10.335 (2) of the proposed rule.

Subsequent to our April 1 letter, we have discussed this issue with Bob Bartlett of the Petroleum Marketers of Wisconsin and Tim Clay of the Wisconsin Federation of Coops. Both of these organizations had voiced concerns with the code language applying to liquids with flash points at or above 200 degrees Fahrenheit. I have attached correspondence with each of these gentlemen concurring with approval of Clearinghouse Rule 01-087 as proposed by Commerce, under the conditions that Commerce agrees to work with the Comm 10 Code Committee to address their concerns in phase 2 of the Comm 10 rule update.

We believe that this agreement will allow us to address all of the concerns while moving Comm 10 in the direction it needs to go in order to be up to date with current national standards and EPA requirements.

If you have any questions regarding this matter, please contact Martha Kerner, Executive Assistant, or Cathy Cliff, Administrator of the Division of Environmental and Regulatory Services at 266-2125 or 266-9403 respectively.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Edw. Albert', written over a horizontal line.

Philip Edw. Albert
SECRETARY

Attachments: E-mail correspondence with Bob Bartlett, Petroleum Marketers of Wisconsin
E-mail correspondence with Tim Clay, Wisconsin Federation of Coops
Copy of attachment to Tim Clay email correspondence

Cc: The Honorable Jean L. Hundertmark, Chairperson
Assembly Committee on Labor and Workforce Development

CR-01-087

Section 5.

Comm 10.21 (22)

(c) "Class IIIB liquids" means those having a flash points at or above 200°F. ~~This chapter does not cover Class IIIB liquids.~~

~~Note: Where the terms "Combustible Liquids" or "Class III Liquids" are used in this chapter they mean Class IIIA liquids only.~~

~~Note: The upper limit of 200°F is given because the application of this chapter does not extend to liquids having flash points above 200°F and, therefore, this limitation should not be construed as indicating that liquids with higher flash points are noncombustible.~~

Questions:

- Was this section modified to reflect statutory change made with 1999 Act 9 which governs the regulation of hazardous substances (even if the flash points exceeds 200°F)? As drafted, this section would expand Commerce's authority to also include tanks (USTs or ASTs) that contain non-hazardous substances with higher flash points (most anything but water).
- Why was the 200°F cap deleted and what other UST and AST tanks would be regulated under this new definition? What section(s) of rules apply to these newly regulated tank systems if the cap is deleted?
- What is the justification for expanding the applicability of Comm 10 to tanks containing products with flash points exceeding 200°F?

Recommendation:

- Retain the existing flash point cap (200°F), but modify the section to reflect that Comm 10 applies to tanks storing hazardous substances even if the flash point exceeds 200°F. This modification reflects the department's obligation to regulate tanks storing hazardous substances, but retains the current provision that tanks storing non-hazardous substances with a flash point of 200°F or higher are not subject to Comm 10. This work can be completed during phase II of the Comm 10 rule making process.