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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 17-092

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 2. Form, Style and Placement in Administrative Code

- a. The treatment clauses for SECTIONS 1 and 2 of the proposed rule should be combined to specify, “Ch. ATPC 93 is repealed and recreated to read:”.
- b. Because the proposed rule repeals and recreates all of ch. ATPC 93, it is difficult to identify where major or minor revisions are made. Consider, instead, amending only the specific language that is actually being modified, when practical to do so. Existing rule provisions should only be repealed and recreated if major changes are being made. [s. 1.065, Manual.]
- c. In the first Note that follows s. ATPC 93.010 (1), the formatting for the citation to “Section 101.02 (15) (a) of the Statutes” should be changed to “Section 101.02 (15) (a), Stats.”. The same statutory citation issue occurs in the second Note, as well as the first Note following s. ATPC 93.010 (2), and the Note following s. ATPC 93.050 (14). Review the proposed rule for any similar instances. Also, when “Section” appears at the beginning of a sentence, it should be spelled out. In all other instances, the abbreviation “s” or “ss.” should be used.
- d. In the Note following s. ATPC 93.020 (6) (v), after the first instance of the word “Chapter”, subsequent instances of this word should be changed to “ch.”.
- e. In the Note following s. ATPC 93.020 (8) (b), the phrase “(LRB to write in date)” should be revised to “the effective date of this section ... [LRB inserts date]”. [s. 1.01 (9) (b), Manual.] Also, consider revising the phrase “had become” to “is”. [s. 62.05, Stats.] These comments also apply to the Note following s. ATPC 93.110 (4).

- f. The following comments apply to s. ATCP 93.050:
- (1) In sub. (4m), the parentheses around “fill stands” should be deleted. Review the proposed rule for any other use of parentheses that should be removed. [s. 1.01 (6), Manual.]
  - (2) In sub. (10) (Note), “subsection” should be changed to “sub.”. In sub. (36), “the rule” should be changed to “this chapter”.
  - (3) The term that is defined in sub. (20) should be moved to be arranged in alphabetical order.
  - (4) In the Note following sub. (41), “section ATCP 93.050 (115)” should be changed to “sub. (115)”.
  - (5) In the Note following sub. (57), “1” should be changed to “one”. This issue also occurs in sub. (114) (j) (Note), sub. (118) (Note), and sub. (119). Review the proposed rule to ensure that numbers are expressed according to the Manual, s. 1.01 (5).
  - (6) In sub. (59), quotation marks should be inserted around both “intermediate bulk container” and “IBC”.
  - (7) In sub. (71), “must” should be changed to “shall”. This issue also occurs in sub. (114) (m) and sub. (119) (Note). Review the proposed rule for any similar instances.
  - (8) In the Note following sub. (71), “Department” should be changed to “department”. This issue also occurs in the Note following sub. (112), and the second Note following sub (117). Review the proposed rule for any similar instances.
  - (9) In the Note following sub. (88), the citation should be formatted as “s. 101.01 (11), Stats.”. Also, if the definition is identical to the one in the statutes, consider revising sub. (88) to state that the term “has the meaning given in” the statutory citation. These comments also apply to sub. (95) and its Note. Review the proposed rule for any similar instances.
  - (10) In sub. (114) (h) (Note), “paragraph” should be changed to “par.”.
  - (11) In sub. (114) (i) (Note), “subchapter” should be changed to “subch.”.
  - (12) In sub. (114) (j) (Note), “Section” should be changed to “s.”.
- g. In s. ATCP 93.100 (3) (b) (Note), it appears that “ch.” should be added before “ATCP 93”. In par. (c) (Note), “Department of Natural Resources” should be changed to the lowercase. Review the proposed rule for any similar instances.
- h. In s. ATCP 93.110 (4) (Note), it appears that “February 1, 2009” should be deleted and “the effective date of this rule” should be added. Review the proposed rule to ensure that each date reference is as intended.
- i. In s. ATCP 93.115 (3) (c) 2., “s. ATCP 93.115 (3) (c) 1. a.” should be changed to “subd. 1. a.”.

- j. In s. ATCP 93.150 (3) (Note), “sub.” should be added before “(2) (f)” and before “(3)”.
- k. In s. ATCP 93.175 (intro.), “ATCP 93” should be changed to “this chapter”. This issue also occurs in sub. (4). Review the proposed rule for any similar instances.
  - l. The following comments apply to s. ATCP 93.240:
    - (1) In sub. (3) (c), “shall not” should be changed to “may not”. This issue also occurs in sub. (7) (a) 2. Review the proposed rule for any similar instances.
    - (2) In sub. (8) (a) 4. b., “par.” should be changed to “subd.”.
    - (3) In sub. (9) (a), “ATCP 93.240 (13)” should be changed to “sub. (13)”.
    - (4) In sub. (9) (f), the percent symbol should be changed to the word “percent”.
    - (5) In sub. (9) (g) 2., the material in subpars. a. and b. do not appear to be subunits of subd. 2. Should that material be moved to a separate paragraph?
    - (6) In sub. (11) (b) 1., the sentence should end with a period and the semicolon and the word “and” should be removed.
    - (7) In sub. (11) (c), “Wis. Stats.” should be changed to “Stats.”. Review the proposed rule for any similar instances.
    - (8) In sub. (13) (g), the subdivision formatting should be shown as “1.” and “2.”, without the parentheses.
    - (9) In sub. (13) (e) 4., the text should be revised to form a complete sentence.
    - (10) In sub. (17) (a) 3., “sub.”, should be changed to “subd.”.
    - (11) In sub. (18) (a) 1., “department of agriculture, trade and consumer protection” should be changed to “department”.
    - (12) Throughout the proposed rule, review and update the internal cross-references as appropriate. Some instances refer generally to the entire rule section, rather than identifying the specifically applicable reference. Also, there are a number of references formatted with the full chapter or section citation, rather than the internal cross-reference format. [s. 1.07 (2) (Table), Manual]
  - m. In s. ATCP 93.350 (2) (a), the subunit designation “1.” should be removed, as there are no other subdivisions in par. (a).
  - n. In s. ATCP 93.350, are subs. (3) (j) and (12) intentionally unused?
  - o. In s. ATCP 93.410 (9) (a) 1. and (b) 1., there is a period missing at the end of both sentences that read: “Tanks using tight-connect delivery”. A period should be inserted at the end of each sentence. [s. 1.03 (4), Manual].
  - p. In s. ATCP 93.500 (8) (b) (intro.), the interaction of the subsequent subunits should be specified. For example, use the word “all” or “any” and end with a colon. [s. 1.03 (3), Manual.]

q. In s. ATCP 93.515 (6) (a) 1. and 2., the material should end in a period. Also, par. (a) (intro.) should end in a colon and should include explanatory language on how the material interacts, including how the material interacts with the cited federal provision.

r. In s. ATCP 93.515 (6) (b) and (f) the acronym “SIR” is used, but is not a defined term. The term should either be spelled out or defined. Similarly, in other instances where the acronym appears in a parenthetical after the spelled out term, the parenthetical insertions of the term “SIR” should be removed, or, if the acronym is defined, the spelled out term should be removed and the parentheses should be removed from around the acronym. This comment also applies to the use of the acronym “SDS”.

s. In s. ATCP 93.515, is sub. (6) (k) intentionally unused?

t. In s. ATCP 93.517 (2) (d) 1. (intro.), the sentence should be corrected to end with a colon.

u. In s. ATCP 93.535 (5) (a), the material after the colon should be designated and formatted as subds. 1. and 2., and the material before the colon should include a phrase to specify that “any” of the following may be used.

v. In s. ATCP 93.545 (1) (g) (intro.) and (h) (intro.), the material should be corrected to end with a colon.

w. In s. ATCP 93.545 (1) (g) 1. and (2) (g), each instance of the acronym “TOS” should be spelled out, or the acronym should be added to the definition of the phrase “temporarily-out-of-service” in s. ATCP 93.050 (120).

x. In s. ATCP 93.545 (1), is par. (i) intentionally unused?

y. The following comments apply to s. ATCP 93.565:

- (1) The subsection designation “(1)” and its title should be removed, as there are no other subsections in the section.
- (2) In sub. (1) (b) (intro.), introductory material that explains the interaction of the subunits should be inserted.
- (3) The subunits under par. (b) should be reviewed and revised as appropriate to form complete sentences. See, for example, subd. 2.
- (4) It appears that par. (b) 3. b. may be intended to be an introduction for the two following subunits, but it is not phrased and formatted as an introduction and the subunits use subdivision designations that are unavailable at that level of division. This should be corrected and properly formatted.

z. In s. ATCP 93.605 (8) (intro.), do the separation distances apply to “all” of the following subunits?

aa. In s. ATCP 93.620 (2), is par. (b) intentionally unused?

bb. In s. ATCP 93.640 (2), the reference to the effective date should read “after the effective date of this rule ... [LRB inserts date]”. [s. 1.01 (9) (b), Manual.] It does not need to be in bold.

This comment also applies to s. ATCP 93.340 (5) and the Note following s. ATCP 93.680 (4) (b). Review the proposed rule for any similar instances.

cc. In s. ATCP 93.850 (1) (c), the subdivision designation “1.” should be removed, as there are no other subdivisions in the paragraph.

dd. To improve readability for a number of the provisions that are very lengthy, consider dividing the rule section into multiple sections and consistently using descriptive titles for subsections throughout. For example, s. ATCP 93.100 could be divided along these lines: “s. ATCP 93.100 Plan review – General; 93.102 Plan review – Application materials; 93.103 Plan review – Application and approval process; 93.104 Plan review – Plan changes.”. Review the proposed rule for any particularly unwieldy provisions that could be improved by separation into multiple sections.

ee. In the proposed rule, a number of professional standards are updated or newly incorporated by reference. Materials may, in certain circumstances, be incorporated or updated with the consent of the Attorney General. In the rule analysis, the department should comment on its compliance with that requirement. [s. 227.21 (2) (a), Stats.; s. 2.08 (4), Manual.]

ff. In the rule summary’s comparison with rules in adjacent states, consider providing an overview or descriptive comparison of the adjacent states’ rules, rather than simply providing citations to the other states’ rules.

gg. In the rule summary’s listing of the deadline to submit comments, specify how the public hearing date would be determined, and specify how the “final” public hearing date would be identified and known.

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

a. In the Note following s. ATCP 93.050 (51m), “(3)” should be added after “s. 168.21” and before “; Stats.”.

b. In s. ATCP 93.050 (62), the defined terms referred to in the Note are not included in the definition of “leak”, so it appears the Note should be deleted. This issue also occurs in the Note following sub. (76).

c. In s. 93.240 (8) (a) 4. b., it is unclear to what “par. 2.” refers. Is this meant to refer to sub. (2), subd. 2., or something else? [See the subunit abbreviations in s. 1.03 (1) (Example), Manual.]

d. In s. ATCP 93.240 (14) (e) 3., it appears that the reference to “under this section” should be corrected to “under this paragraph”. Also, it appears that the reference to “subd. (a) 2.” should be corrected to “par. (a) 2.”.

e. In s. ATCP 93.410 (6) (d) (intro.), a citation should be inserted to identify to what “this requirement” refers. Should it be the requirements “of this subsection”?

f. In s. ATCP 93.500 (5) (a) 1., the reference to “subd. 2. sub.(1)(b)” is unidentifiable and should be corrected.

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

a. In the table of contents in SECTION 2, subch. III, s. ATCP 93.305, the hyphen between “used-oil” should be deleted. The hyphens should also be removed in subch. iv, s. ATCP 93.445, “temporarily-out-of-service”, and the hyphen between “Tank-system” in s. ATCP 93.465, should also be deleted; these issues also occur in s. ATCP 93.050 (24) and the Note following sub. (26). Review the proposed rule and its table of contents for any similar instances.

b. In the Notes following s. ATCP 93.010 (1), the statutes cited in both Notes refer to “the department”, but should be changed to clarify that “the department” referred to in those statutes is actually the Department of Safety and Professional Services.

c. In s. ATCP 93.010 (5) (b) and other locations, “US EPA” should be changed to “EPA” and a definition of “EPA” should be created in s. ATCP 93.050.

d. In s. ATCP 93.020 (6) (t) (intro.), it appears that the hyphen in “Asphalt-plant” should be deleted. In sub. (6) (u) 2., “are held” should be changed to “is held”. In s. ATCP 93.020 (9), it appears that “in the administrative rule” should be changed to “in this chapter”.

e. The following comments apply to s. ATCP 93.050:

- (1) In sub. (31), the Note following this subsection appears to be substantive; if so, it should be moved to the text of the rule. This comment also applies to subs. (71) and (73).
- (2) In sub. (54), it is unclear what the phrase “does not apply to the general heating fuel application” means. Is it the department’s intent to say that heating fuel used to produce steam for power generation such as electricity or emergency power is not considered “heating fuel” or “heating oil” for purposes of the definition?
- (3) In sub. (104), the word “a” should be added between “of” and “regulated substance”.
- (4) In sub. (112), it would be helpful to add “, under sub. (88)” after “the definition of public employment”, and to add “under sub. (95)” after “or public building”.

f. The following comments apply to s. ATCP 93.100:

- (1) In sub. (1) (c), the phrase “Notwithstanding” should be changed to one word. In addition, a period should be added at the end of the sentence. Also, consider revising the last phrase to the active voice, to specify who shall obtain a plan review and written approval.
- (2) In the first Note following sub. (2) (c), s. ATCP 93.500 (1) provides general information regarding secondary containment, not specifically about separation from water wells and reservoirs – is this the department’s intent?
- (3) The third Note following sub. (2) (c) appears to contain substantive requirements that should be moved to the text of the rule.

(4) In sub. (4) (b) 1., it appears that the phrase “using the system” should be replaced with “commencement of system operation” to make this provision consistent with sub. (4) (a).

g. In s. ATCP 93.115 (1) (a), can the department identify who “code officials having jurisdiction and authority under this chapter” are? In sub. (3) (intro.), certain persons may use “the department-issued red-tag procedure”. Securing a red tag to a component is also mentioned in the Note to sub. (1) (d) and a definition of “red tag” is created in the rule; however, it is unclear what this “procedure” is.

h. In s. ATCP 93.140 (1) (a) 3. Note, it appears that “110” should be changed to “1,100”. In sub. (1) (e) (Note), “Statutes” should be changed to the lowercase. In sub. (6) (c) (intro.), where can a person find the online application to renew a permit? In addition, the period at the end of this sentence should be changed to a colon.

i. In s. ATCP 93.150, it appears that the letter “A” in the first paragraph of material after Table 93.1605 should be deleted. Also in this paragraph, it appears that “will” should be changed to “shall”.

j. In s. ATCP 93.170 (2) (e) 1., it appears that “division” should be changed to “department”.

k. In s. ATCP 93.190, it appears that the hyphens should be deleted in “petition-for-variance”.

l. In s. ATCP 93.200, the word “hereby” should be removed. Also, the second title for the rule section should be removed.

m. In s. ATCP 93.300 (3) (a), consider specifying what is meant by requiring the fill opening to be “provided with spill containment”, since it is not readily clear from the context what that standard would be.

n. In ss. ATCP 93.300 (2) (g), 93.310 (2) (b), 93.350 (2) (a), 93.515 (10) (a) and (b), and 93.535 (5) (e), the phrase “under the supervision” is used. Is this intended to be “direct” supervision, as that term is defined in the proposed rule? If so, the defined term should be used. If not, consider specifying what is meant by “supervision” in the particular circumstances.

o. In s. ATCP 93.330, the department requires that tank supports be capable of supporting a static load equal to at least two times the weight of the full tank. The department requires that this capability be confirmed by engineering structural analysis, field testing, or by reference to an approved design standard. Consider specifying whether the analysis or testing should be documented and under what terms the records must be maintained.

p. In s. ATCP 93.350 (2) (a), the department should specify what is meant by “good engineering practices”, perhaps by reference to industry-specific engineering standards.

q. In s. ATCP 93.430 (2) and (5), what circumstances could be “otherwise approved” or found “acceptable” by the department? A standard or guideline should be specified, or the allowance should be removed. This comment also applies to s. ATCP 93.515 (5) (a) 3. and other instances where that allowance appears without guidance as to how a variance would be considered.

r. In s. ATCP 93.445 (3), it appears that the word “permanently” should be removed, as that terminology is not used in the referenced provision. Also, an event should be identified from which the 60 calendar days begins. Does it begin on the 365<sup>th</sup> day of a tank being out of service? These comments also apply to s. ATCP 93.545 (3). Review the proposed rule for other instances of the word “permanent” or “permanently” in relation to closing a tank system.

s. In s. ATCP 93.450, the sentence is confusing. Should the word “except” be revised to “and”? Also, at what time should the form be submitted?

t. In s. ATCP 93.520 (2) (b) 4., consider revising the phrase “is not closed under subd. 3. a.” to “is lined or repaired under subd. 3. b.”, as that appears to be the only circumstance in which subd. 4. could apply.

u. In s. ATCP 93.535 (5) (a), should both instances of the word “proscribed” be revised to “prescribed” or “described”?

v. In s. ATCP 93.565 (1) (a), the beginning of the timeline for closing a tank system within 60 days “of being abandoned” should be more specifically described. What condition occurs that would bring the abandonment to the owner or the department’s notice, in order to begin the 60-day timeline? Is there a notice requirement? Who gives and who receives the notice that the 60-day requirement will begin?

w. The following comments apply to s. ATCP 93.610:

- (1) It appears that each instance of the phrase “mobile tank” should be revised to the defined term “movable tank”.
- (2) In sub. (2) (a), does the description of the applicable type of storage tank have the same standards as used in the definition of a “movable tank”? If the standard is the same, then the defined term should be used. If the standard is different, then the applicable differences should be specified.
- (3) In sub. (2) (c) (intro.) and (3) (c) (intro.), it appears that the word “any” should be inserted.
- (4) In sub. (3) (d) 2., it appears that the word “tank” should be inserted before “vehicle”, in order to use the defined term.

x. In s. ATCP 93.630, it appears that each reference to a “tank” or “tanks” should be revised to the defined phrase “aboveground storage tank”, unless another type of tank is intended. Review the proposed rule for consistent use of terminology for the defined types of tanks.

y. In s. ATCP 93.650, it appears from the title that each of the provisions in the section applies to storage tanks used for aircraft fuel dispensing. This should be specified in the text of each subsection of the provision, as the title is not part of the substance of the rule itself.