

CHAPTER 168

PETROLEUM PRODUCTS AND DANGEROUS SUBSTANCES

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SUBCHAPTER I

PETROLEUM PRODUCT INSPECTIONS

168.01 Definitions. In this subchapter:

(1) “Department” means the department of agriculture, trade and consumer protection.

(2) “Inspector” means a duly authorized petroleum products inspector of the department.

(2s) “Person” includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single-owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.

(3) “Petroleum products” means gasoline, gasoline–alcohol fuel blends, kerosene, fuel oil, burner oil and diesel fuel.

(4) “Supplier” includes a person who imports, or acquires immediately upon import, petroleum products by pipeline or marine vessel from a state, territory or possession of the United States or from a foreign country into a terminal and who is registered under 26 USC 4101 for tax-free transactions in gasoline. “Supplier” also includes a person who produces in this state; or imports into a terminal or bulk plant; or acquires immediately upon import by truck, railcar or barge into a terminal; alcohol or alcohol derivative products. “Supplier” also includes a person who produces, manufactures or refines petroleum products in this state. “Supplier” also includes a person who acquires petroleum products pursuant to an industry terminal exchange agreement or by a 2-party exchange under section 4105 of the Internal Revenue Code. “Supplier” does not include a retail dealer or wholesaler who merely blends alcohol with gasoline before the sale or distribution of the product and does not include a terminal operator who merely handles in a terminal petroleum products consigned to the terminal operator.

History: 1971 c. 215; 1995 a. 27ss. 4473 and 9116 (5); 1997 a. 27; 2005 a. 25; 2011 a. 32; 2013 a. 20 ss. 1951 to 1953, 1955, 1957; 2015 a. 216.

168.04 Standards. (1) The department by rule shall prescribe minimum product grade specifications for gasoline, automotive gasoline, gasoline–alcohol fuel blends, reformulated gasoline, as defined in s. 285.37 (1), and kerosene and may prescribe product grade specifications for aviation gasoline, fuel oils, and diesel fuels.

(2) (a) Except as provided in par. (b), the rules required under sub. (1) shall prohibit gasoline, automotive gasoline, gasoline–alcohol fuel blends, and reformulated gasoline, as defined in s. 285.37 (1), beginning on August 1, 2004, from containing more than 0.5 percent, by volume, of methyl tertiary–butyl ether.

(b) The rules required under sub. (1) shall not prohibit racing fuel used at racing events or in preparation for racing events from containing any amount of methyl tertiary–butyl ether.

(3) Except as otherwise provided in this section, rules promulgated under this section shall be in conformity with nationally recognized standards, specifications, and classifications, such as those published by ASTM International, the Society of Automotive Engineers, and the U.S. Environmental Protection Agency. The department may not promulgate or enforce a rule prohibiting the placement of additional information on the dispensing device.

History: 1971 c. 206; 1977 c. 29; 1979 c. 140; 1989 a. 295; 1991 a. 302; 1995 a. 227; 2003 a. 45; 2015 a. 186.

Cross-reference: See also ch. ATCP 94, Wis. adm. code.

Legislative Council Note, 1979: Clarifies that the department of industry, labor and human relations has authority to promulgate standards for gasoline–alcohol fuel blends. The existing requirement that rules be in conformity with nationally recognized standards, including those published by the U.S. environmental protection agency, should ensure that any rules establishing standards for gasoline–alcohol fuel blends are consistent with federal rulings on those additives permitted to be mixed with unleaded gasoline. [Bill 456–A]

168.05 Inspection of petroleum products. (1) No petroleum product imported into and received in this state or received from a manufacturer or refiner or from a marine or pipeline terminal within this state may be unloaded from its original container except as provided under sub. (5), sold, offered for sale or used until a true sample of not less than 8 ounces is taken as provided in this subchapter. This subsection does not apply if the department has previously inspected the petroleum product at the refinery, marine or pipeline terminal. Each person importing or receiving a petroleum product which has not been previously inspected shall notify the inspector in the person’s district of the receipt thereof, and the inspector shall take a sample of the petroleum product.

(2) If such petroleum product is received on a regular business day between the hours of 7:45 a.m. and 4:30 p.m., such notice shall be given forthwith upon receipt of such petroleum product. If received at any other time, such notice shall be given between the next succeeding hours of 7:45 a.m. and 10 a.m. of a regular business day. Provided, that if any petroleum product is received on Saturday, Sunday, or any legal holiday, designated in s. 995.20, such notice shall be given on the next following regular business day between the hours of 7:45 a.m. and 10 a.m.

(3) If the inspector does not, upon proper notice, after a reasonable length of time, take such sample, the recipient of such petroleum product may, in the presence of a disinterested witness, open such original container and take a true sample of not less than 8 ounces of the contents thereof. Such sample shall be immediately placed in a clean container which is in compliance with s. 168.11 (2) and (3) and tightly closed. The recipient shall record upon a label attached to such container the means of conveyance,

the type of original container, the product name and quantity of the contents thereof, and such other information as the department reasonably requires for the proper identification of such shipment. Such sample thus taken shall be held for delivery, upon demand, to the inspector. After such sample is taken such petroleum product may be unloaded, sold, offered for sale or used the same as if sampled by the inspector.

(4) For the purpose of this section, the following shall constitute a reasonable length of time in which an inspector shall take the sample herein required: If notice is properly given to an inspector before the hour of 11:45 a.m., the inspector shall take such sample before the hour of 4:30 p.m. of the day; if notice is properly given between the hours of 11:45 a.m. and 4:30 p.m., such sample shall be taken before the hour of 11:45 a.m. of the next following regular business day. Saturdays, Sundays, and legal holidays, designated in s. 995.20, shall not be considered regular business days.

(5) The department may permit a recipient to unload such petroleum product prior to inspection if the recipient submits an application setting forth good and sufficient reasons, and may unload ships or boats without inspection if an emergency is declared by the coast guard. A recipient must notify the department as required by sub. (2) and the department shall revoke permission granted under this subsection if the recipient violates sub. (2).

(6) This section does not apply to a petroleum product that is a renewable fuel exempt under s. 78.01 (2n) from the tax under s. 78.01 (1) unless inspection is required by federal law.

History: 1977 c. 21; 1977 c. 187 s. 135; 1977 c. 273, 418; 1983 a. 192 s. 304; 1995 a. 27; 2005 a. 155; 2009 a. 401; 2013 a. 20.

168.06 Powers. (1) For the purposes of administering this subchapter, inspectors may take samples of gasoline, gasoline–alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates for tests and make inspections at any points within or without this state, and may open any original container containing gasoline, gasoline–alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates and take a true sample of not less than 8 ounces of the contents thereof, even though the original containers may still be in the possession of a common or contract carrier, provided the opening and sampling does not unduly inconvenience or hamper the transportation of the products. After the original containers are opened and sampled the same shall be resealed with seals furnished by the department for such purposes. The authority conferred by this section shall be in addition to, and not in limitation of, any of the provisions of s. 168.05.

(2) If any petroleum product is emptied or transferred into any container in which is contained any other grade of petroleum product, then the entire commingling shall be deemed uninspected and a sample of such commingled petroleum product shall be taken before such commingled petroleum product is removed from such container, sold, offered for sale or used.

(3) Notice of such commingling of any petroleum products shall be given in the same manner and subject to the same conditions as notice of the receipts of petroleum products as provided in s. 168.05. The sample of such commingled petroleum products shall be taken by the inspector within a reasonable length of time, as defined and set forth in s. 168.05, after notice. If such inspector does not take such sample within such time, the commingler shall take a true sample of not less than 8 ounces of the commingled petroleum products. The taking, sealing and holding of such sample by the commingler shall, so far as applicable, be governed by the provisions of s. 168.05 relating to the same by a person receiving a petroleum product.

History: 1971 c. 206; 1979 c. 140; 2013 a. 20; 2013 a. 168 s. 21.

168.07 Inspections; requirements. (1) The inspector shall inspect each sample of petroleum product and if the inspector finds that it meets the minimum specifications prescribed by the department, the inspector shall issue an inspection certificate,

except that inspections for particular grade specifications shall be at the discretion of the department. If an inspector believes that a product has been misidentified, an inspection shall be performed. If the inspector finds that the petroleum product does not meet the minimum specifications prescribed by the department, the inspector shall notify the person for whom the inspection was made. After such notice, no person may sell or use the product in this state or remove it from storage as long as it fails to meet the minimum specifications prescribed by the department or until satisfactory disposition is approved by the inspector. Any transporter, wholesaler or distributor of petroleum products who delivers or causes to be delivered a petroleum product that fails to meet the minimum specifications prescribed by the department shall, at the direction of the department, remove the petroleum product and dispose of it in a manner approved by the department. The department may contract for the performance of testing conducted under this subsection.

(2) Inspections under sub. (1) shall be conducted, so far as applicable, in accordance with the methods outlined in the latest revision of the ASTM Book of Standards of ASTM International.

History: 1971 c. 206; 1977 c. 29, 418; 1991 a. 302; 1995 a. 27; 1999 a. 9; 2015 a. 186.

168.08 Records. The department shall keep a record of each inspection made, showing:

(1) Time and place of each inspection.

(6) Name and address of person for whom inspection is made.

History: 1995 a. 27; 2013 a. 20.

168.09 Authority to enter. Any inspector may enter in or upon the premises of any manufacturer, vendor, dealer or user of gasoline, gasoline–alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates, during regular business hours to determine whether any petroleum product intended for sale or use has not been sampled and inspected in accordance with this subchapter.

History: 1971 c. 206; 1979 c. 140; 2013 a. 20.

168.10 Access to records. Every agent or employee of any railroad company or other transportation company and every person transporting gasoline, gasoline–alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates, having the custody of books or records showing the shipment or receipt of gasoline, gasoline–alcohol fuel blends, kerosene, or other refined oils, fuel oils and petroleum distillates shall give and permit the department and the inspectors; and, in regard to the fee under s. 168.12 (1), shall give and permit the department of revenue; free access to such books and records for the purpose of determining the amount of petroleum products shipped and received. All clerks, bookkeepers, express agents, railroad agents or officials, employees, or common carriers, or other persons shall provide the department and the inspectors; and, in regard to the fee under s. 168.12 (1), shall provide the department of revenue; all information in their possession when so requested in tracing, finding, sampling and inspecting such shipments.

History: 1971 c. 206; 1979 c. 140; 1995 a. 27.

168.11 Identifications. (1) (a) Except as provided in par. (b), all devices used to draw petroleum products from storage containers at filling stations, garages or other places where petroleum products are sold or offered for sale shall be marked or labeled in a conspicuous place and in a conspicuous manner with the name and the grades of the petroleum product being dispensed.

(b) 1. A device that dispenses a gasoline–ethanol fuel blend for sale at retail shall be marked or labeled with the percentage of ethanol at all times when the product is offered for sale.

2. A device that dispenses, for sale at retail, a reformulated gasoline, as defined in s. 285.37 (1), that contains an oxygenate other than ethanol shall be marked or labeled with the identity of the oxygenate at all times when the product is offered for sale. The

label shall identify the oxygenate or oxygenates in the manner specified by the department by rule.

3. A label under this paragraph shall be on the front or side of the upper half of the dispensing device and shall be conspicuous and legible to a customer when viewed from the driver's seat of a motor vehicle that is located within 6 feet of the dispensing device. The device may also be marked or labeled with any product grade specifications prescribed under s. 168.04.

(2) No person may deliver, place, receive or store in any visible container any gasoline; any product of petroleum, regardless of name, meeting the gasoline specifications prescribed by the department under s. 168.04; or any product of petroleum commonly or commercially used as a fuel in a spark-ignition internal combustion engine or as a fuel for any appliance or device if such product of petroleum has a flash point of less than 100° F. when tested in the Tagliabue closed cup tester unless the container is constructed of sound metal or of equally sound nonflammable material meeting the requirements of the department's flammable and combustible liquids code; is substantially a bright red color; and has the common name of the product clearly labeled or painted on it. These requirements do not apply to:

(a) The fuel supply tank permanently connected to an internal combustion engine;

(b) The fuel supply tank which is structurally a part of any appliance or device consuming the fuel;

(c) The first use of any container of one gallon or less originally filled by a manufacturer or packager when the container complies with the packaging and labeling requirements of the federal government and its agencies; or

(d) Containers of 275 gallons capacity or more. This provision does not exempt such containers from the identification requirements specified in rules promulgated by the department.

(3) Except for containers referred to in sub. (2) (a), (b) and (c) no person may deliver, place, receive or store any kerosene, diesel fuel or burner oil, or a like product of petroleum which has a flash point of 100° F. or more when tested in the Tagliabue closed cup tester, in any visible container which is in any manner colored red.

(4) No person may use interchangeably any pipeline, hose, pump or metering device to dispense gasoline, or a like product of petroleum which has a flash point of less than 100° F. when tested in the Tagliabue closed cup tester, and to dispense kerosene, diesel fuel or burner fuel oils, or a like product of petroleum which has a flash point of 100° F. or more when tested in the Tagliabue closed cup tester, unless the pipeline, hose, pump or metering device has been sufficiently flushed and cleaned before the interchanged use to eliminate any contamination of products due to the interchanged use.

History: 1971 c. 164, 206; 1977 c. 29; 1979 c. 92; 1987 a. 403; 1989 a. 295; 1993 a. 491; 1995 a. 27, 51, 225, 227; 1997 a. 27; 2011 a. 146.

168.12 Fees for oil inspection. (1) Except as provided in subs. (1g) and (1r), there is imposed a petroleum inspection fee at the rate of 2 cents per gallon on all petroleum products that are received by a supplier for sale in this state or for sale for export to this state. The department of revenue shall determine when a petroleum product is received under this subsection in the same manner that it determines under s. 78.07 when motor vehicle fuel is received. The fee shall be paid under s. 168.125 and shall be based on the number of gallons reported under s. 168.125.

(1g) The fee under sub. (1) is not imposed on petroleum products that are shipped from storage at a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture to a person for storage at another refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture.

(1r) The fee under sub. (1) is not imposed on petroleum products exported from this state by a person who is licensed under sub. (7) or s. 78.09.

(2) The fee under sub. (1) is not imposed on a petroleum product that is a renewable fuel exempt under s. 78.01 (2n) from the tax under s. 78.01 (1).

(5) No fee may be charged on a commingled or blended petroleum product when such commingling or blending is approved by the inspector as a satisfactory means of disposing of contaminated or substandard products.

(6) (a) Any person who purchases in this state general aviation fuel, as defined in s. 78.55 (3), from a supplier is eligible for an allowance of 2 cents for each gallon of general aviation fuel purchased in excess of 1,000,000 gallons per month. A person who purchases general aviation fuel for resale is not eligible for the allowance.

(b) To receive an allowance, an eligible purchaser under par. (a) shall complete a claim upon a form that the department of revenue prescribes and furnishes and file the claim with the department of revenue not later than 12 months after the date of purchase of the general aviation fuel.

(c) The department of revenue shall investigate the correctness and veracity of the representations in the claim and may require a claimant to submit records to substantiate the claim. The department of revenue shall either allow or deny a claim under this subsection not later than 60 days after the filing of the claim. If the department of revenue allows the claim, it shall pay the claimant the amount allowed from the moneys appropriated under s. 20.855 (4) (r). If the department of revenue does not pay the allowance by the 90th day after the date on which the purchaser files the claim, the department of revenue shall also pay interest on the unpaid claim beginning on that day, at the rate of 3 percent per year, from the moneys appropriated under s. 20.855 (4) (r).

(d) If a purchaser negligently files a claim under this subsection that is inaccurate in whole or in part, the department of revenue shall:

1. If the department of revenue has not paid the claim but has allowed a portion of the claim, reduce the allowance by 25 percent.

2. If the department of revenue has paid the claim, require the purchaser to refund to the department of revenue that portion of the amount paid under par. (c) to which the purchaser is not entitled and impose a penalty on the purchaser equal to 25 percent of the allowance, plus interest on the sum of the unpaid penalty and the amount required to be refunded, accruing from the date that the penalty is imposed, at the rate of 12 percent per year.

(e) If a purchaser files a fraudulent claim under this subsection, the department of revenue shall:

1. If the claim has not been paid and the department of revenue allows no portion of the claim, impose a penalty on the purchaser equal to 50 percent of the amount claimed by the purchaser, plus interest on the unpaid penalty, accruing from the date that the penalty is imposed, at the rate of 12 percent per year.

2. If the claim has not been paid and the department of revenue allows a portion of the claim, reduce the allowance by 50 percent.

3. If the claim has been paid, require the purchaser to refund to the department of revenue that portion of the amount paid under par. (c) that the department of revenue determines was fraudulently obtained and impose a penalty on the purchaser equal to 50 percent of the amount claimed by the purchaser, plus interest on the sum of the unpaid penalty and the amount required to be refunded, accruing from the date that the penalty is imposed, at the rate of 12 percent per year.

(f) Any person who knowingly signs or verifies a fraudulent claim under par. (e) may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(g) Any person who knowingly aids, abets or assists another in making a fraudulent claim under par. (e) or in signing or verify-

ing a fraudulent claim under par. (f) may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(h) With respect to imposing a penalty and requiring a refund under par. (d), the department of revenue shall give notice to the purchaser within 4 years after the date that the claim was filed. The department of revenue may impose a penalty and require a refund under par. (e) when the department of revenue discovers the fraud committed.

(7) No person may ship petroleum products into this state unless that person has a valid certificate under s. 73.03 (50) and either has a license under s. 78.09 or obtains a petroleum products shipper license from the department of revenue by filing with that department an application prescribed and furnished by that department and verified by the owner of the business if the owner is an individual, by a member if the owner is an unincorporated association, by a partner if the owner is a partnership or by the president and secretary if the owner is a corporation.

(8) (a) To protect the revenues of this state, the department of revenue may require any person who is liable to that department for the fee under sub. (1) to place with it security in the amount that that department determines. The department of revenue may increase or decrease the amount of the security, but that amount may not exceed 3 times the person's average monthly liability for the fee under sub. (1) as estimated by that department. If any person fails to provide that security, the department of revenue may refuse to issue a license under sub. (7) or s. 78.09 or may revoke the person's license under sub. (7) or s. 78.09. If any taxpayer is delinquent in the payment of the fee under sub. (1), the department of revenue may, upon 10 days' notice, recover the fee, interest, penalties, costs and disbursements from the person's security. The department of revenue may not pay interest on any security deposit.

(b) The security required under par. (a) may be a surety bond furnished to the department of revenue and payable to this state. The department of revenue shall prescribe the form and contents of the bond.

(c) The surety of a bond under par. (b) may conditionally cancel the bond by filing written notice with the person who is liable for the fee under sub. (1) and with the department of revenue. A surety who files that notice is not discharged from any liability that has accrued or from any liability that accrues within 60 days after the filing. If the person who is liable for the fee under sub. (1) does not, within 60 days after receiving the notice, file with the department of revenue a new bond that is satisfactory to that department, that department shall revoke the person's license under sub. (7) or s. 78.09. If the person furnishes a new bond, the department of revenue shall cancel and surrender the old bond when it is satisfied that all liability under the old bond has been discharged.

(d) If the liability on the bond is discharged or reduced or if the department of revenue determines that the bond is insufficient, that department shall require additional surety or new bonds. If any person who is liable for the fee under sub. (1) fails to file that additional bond within 5 days after the department of revenue provides written notice, that person's license under sub. (7) or s. 78.09 is revoked.

(e) Suspension, revocation or cancellation of a license under sub. (7) or s. 78.09, partial recovery on the bond or execution of a new bond does not affect the validity of a bond under this subsection.

(9) Sections 78.65 to 78.74 and 78.79 to 78.81 as they apply to the taxes under ch. 78 apply to the fee under sub. (1).

History: 1971 c. 206; 1977 c. 29, 418; 1985 a. 313; 1987 a. 27, 399; 1989 a. 31; 1991 a. 39, 269; 1993 a. 16, 416; 1995 a. 27; 1997 a. 27; 2005 a. 25; 2009 a. 401; 2013 a. 20.

168.125 Reports; payment. Persons who are liable for the fee under this subchapter shall state the number of gallons of petroleum products on which the fee is due and the amount of their liability for the fee in the reports under s. 78.12 (1) to (3). The

requirements for payment of the motor vehicle fuel tax under s. 78.12 (5) apply to the fee under this subchapter.

History: 1995 a. 27; 2013 a. 20.

168.13 Required records. Every person receiving petroleum products in this state shall keep books and records of all petroleum products so received, together with bills of lading, way-bills and other pertinent documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by the department and its inspectors, and are subject to inspection by the department of revenue in regard to the fee under s. 168.12 (1). Such books, records and other papers and documents shall be preserved for not less than 4 years, unless the department, in writing, authorizes their destruction or disposal at an earlier date.

History: 1995 a. 27.

168.14 Misbranding. (1) It is unlawful for any person to represent, advertise, promote for sale, offer for sale or sell any lubricating oil which is in part or wholly derived from previously used lubricating oil unless such representation, advertisement, sales promotion and the container or item of equipment through which such previously used lubricating oil is shipped, stored, offered for sale or sold, clearly and conspicuously identifies to the public that such lubricating oil has been previously used. The identification shall contain appropriate and descriptive words such as "Reclaimed used lubricating oil," "Rerefined used lubricating oil," "Recleaned used lubricating oil" or "Reconditioned used lubricating oil".

(2) No person may receive, unload, use, sell or offer for sale in this state, any gasoline, gasoline-alcohol fuel blends, kerosene, fuel oils, diesel fuels or other petroleum distillates which the person knows, or reasonably should know, is misidentified as to name or grade. Gasoline-ethanol blends that are identified in compliance with s. 168.11 when sold at retail are correctly identified as to name. Biodiesel blends that are identified in compliance with sub. (2m) (c) 4. when sold at retail are correctly identified as to name.

(2m) (a) "Biodiesel fuel" means a fuel that is comprised of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

(b) No person may represent, advertise, label, or otherwise promote for sale a fuel as being biodiesel fuel unless the fuel meets all of the following requirements:

1. The fuel is registered as biodiesel fuel by a manufacturer under 40 CFR Part 79.

2. The fuel is pure biodiesel fuel, is identified as such with the alphanumeric B100, and does not contain any petroleum product, any additive, or other foreign material.

3. The fuel meets all of the applicable requirements of ASTM International.

(c) No person may represent, advertise, label, or otherwise promote for sale a fuel as being a blend of biodiesel and petroleum-based fuel unless the fuel meets all of the following requirements:

1. The volume percentage of the biodiesel fuel to the petroleum-based fuel is at least 2 percent.

2. The fuel is blended with petroleum-based diesel fuel.

3. The fuel meets all of the applicable requirements of ASTM International.

4. The volume percentage under subd. 1. is disclosed to the purchaser and is identified by use of the alphanumeric Bxx, with a number replacing the xx in the alphanumeric and with that number representing the volume percentage of biodiesel fuel in the biodiesel fuel blend.

(3) A person who sells a gasoline-ethanol fuel blend to a person selling or offering to sell it at wholesale or retail shall provide information before the sale on the ethanol content of the fuel blend

to the person selling or offering to sell it and shall provide written verification of the ethanol content at delivery of the fuel blend.

History: 1971 c. 206; 1977 c. 29; 1979 c. 140; 1989 a. 295.; 2005 a. 83; 2015 a. 186.

168.15 Penalty. Every person who violates any provision of this subchapter that is not related to the fee under s. 168.12 (1) shall forfeit not less than \$10 nor more than \$100 for each violation. Each day a person fails to comply with any provision of this subchapter is a separate violation.

History: 1983 a. 122; 1995 a. 27; 2013 a. 20.

168.16 Duties of department. (1) The department shall enforce this subchapter. Inspection districts shall be defined and numbered by the department.

(2) Any accident or explosion involving products of petroleum which comes to the knowledge of the department shall be investigated to determine whether or not there has been a violation of this subchapter.

(3) The department may, upon request of state agencies or local authorities, assist in the investigation of hazardous situations involving suspected or known products of petroleum.

(4) The department may promulgate reasonable rules relating to the administration and enforcement of this subchapter.

History: 1971 c. 206; 2013 a. 20.

Cross-reference: See also chs. ATCP 93 and 94, Wis. adm. code.

168.17 Attorney general and district attorney to prosecute. Upon request of the department, the attorney general or proper district attorney shall prosecute any action to enforce this subchapter except the fee that is imposed under s. 168.12 (1).

History: 1995 a. 27; 2013 a. 20.

SUBCHAPTER II

STORAGE OF DANGEROUS SUBSTANCES

Cross-reference: See also ch. ATCP 93, Wis. adm. code.

168.21 Definitions. In this subchapter:

(1) “Combustible liquid” means a liquid having a flash point at or above 100 degrees fahrenheit and below 200 degrees fahrenheit.

(2) “Department” means the department of agriculture, trade and consumer protection.

(3) “Federally regulated hazardous substance” means a hazardous substance, as defined in 42 USC 9601 (14).

(4) “Flammable liquid” means a liquid having a flash point below 100 degrees fahrenheit.

(5) “Flash point” means the minimum temperature at which a flammable or combustible liquid will give off sufficient flammable vapors to form an ignitable mixture with air near the surface of the liquid or within the vessel which contains the liquid.

(6) “Secondary containment” means a barrier, approved by the department, that is installed around a storage tank system and that is designed to prevent a leak from a primary tank or piping from contacting the surrounding earth or waters of the state.

(7) “Waters of the state” has the meaning specified under s. 281.01 (18).

History: 2013 a. 20 ss. 1601 to 1607, 1970; Stats. 2013 s. 168.21.

168.22 Storage tanks. (1) Except as provided under subs. (2) to (5), every person who constructs, owns or controls a tank for the storage, handling or use of liquid that is flammable or combustible or a federally regulated hazardous substance shall comply with the standards adopted under s. 168.23.

(2) This subchapter does not apply to storage tanks which require a hazardous waste license under s. 291.25.

(3) This subchapter does not apply to storage tanks which are installed above ground level and which are less than 5,000 gallons in capacity.

(4) Any rules promulgated under s. 168.23 requiring an owner to test the ability of a storage tank, connected piping or ancillary equipment to prevent an inadvertent release of a stored substance do not apply to storage tanks that satisfy all of the following:

(a) Are installed before October 29, 1999.

(b) Have a capacity of less than 1,100 gallons.

(c) Are used to store heating oil for residential, consumptive use on the premises where stored.

(5) This subchapter does not apply to a pressurized natural gas pipeline system regulated under 49 CFR 192 and 193.

History: 2013 a. 20 ss. 1608 to 1614; Stats. 2013 s. 168.22.

168.23 Rules. (1) 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. The rule shall comply with ch. 160. The rule may include different standards for new and existing tanks, but all standards shall provide substantially similar protection for the waters of the state. The rule shall include maintenance requirements related to the detection and prevention of leaks. The rule may require any person supplying heating oil to any noncommercial storage tank for consumptive use on the premises to submit to the department, within 30 days after the department requests, the location, contents and size of any such tank.

(2) The department may transfer any information which the department receives under sub. (1) to any other agency or governmental unit. The department and any such agency shall treat the name of the owner and the location of any noncommercial storage tank which stores heating oil for consumptive use on the premises, required to be submitted to the department under sub. (1), as confidential and shall not permit inspection or copying under s. 19.35 of any record containing the information.

(3) The rule promulgated under sub. (1) may require the certification or registration of persons who install, remove, clean, line, perform tightness testing on and inspect tanks and persons who perform site assessments. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration. The department may not require an individual who is eligible for the veterans fee waiver program under s. 45.44 to pay any fee that may be charged pursuant to such a rule.

(4) The department shall promulgate a rule specifying fees for plan review and inspection of tanks for the storage, handling, or use of flammable or combustible liquids and for any certification or registration required under sub. (3).

(5) (a) Subject to par. (b), in addition to any fee charged by the department by rule for plan review and approval for the construction of a new or additional installation or change in operation of a previously approved installation for the storage, handling or use of a liquid that is flammable or combustible or a federally regulated hazardous substance, as defined in s. 168.21 (3), the department shall collect a groundwater fee of \$100 for each plan review submittal. The moneys collected under this subsection shall be credited to the environmental fund for environmental management.

(b) Notwithstanding par. (a), an installation for the storage, handling or use of a liquid that is flammable or combustible or a federally regulated hazardous substance, as defined in s. 168.21 (3), that has a capacity of less than 1,000 gallons is not subject to the groundwater fee under par. (a).

(6) The department may not promulgate or enforce a rule that requires the owner or operator of a motor vehicle fueling facility to have a telephone or other means for contacting emergency services available to the public.

History: 2013 a. 20 ss. 1615 to 1619, 1629, 1630; Stats. 2013 s. 168.23; 2015 a. 247.

168.24 Secondary containment requirements. (1) In this section, “hazardous substance” means a combustible liquid, a flammable liquid, or a federally regulated hazardous substance.

(2) The department may not impose any requirement that specifies that pipe connections at the top of a storage tank and beneath all freestanding pumps and dispensers that routinely contain a hazardous substance be placed within secondary containment sumps, if the pipe connections were installed or in place on or before February 1, 2009. This section does not apply after December 31, 2020.

History: 2013 a. 20 ss. 1620 to 1622; Stats. 2013 s. 168.24.

168.25 Enforcement. (1) The department shall enforce this subchapter.

(2) The department shall issue orders directing and requiring compliance with the rules and standards of the department adopted under this subchapter whenever, in the judgment of the department, the rules or standards are threatened with violation, are being violated or have been violated.

(3) The circuit court for any county where violation of such an order occurs has jurisdiction to enforce the order by injunctive and other appropriate relief.

History: 2013 a. 20 ss. 1623 to 1626; Stats. 2013 s. 168.25.

168.26 Penalties. Any person who violates this subchapter or any rule or order adopted under this subchapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each violation of this subchapter or any rule or order under this subchapter constitutes a separate offense and each day of continued violation is a separate offense.

History: 2013 a. 20 s. 1627; Stats. 2013 s. 168.26.

168.28 Inventory of petroleum product storage tanks.

(1) **DEFINITIONS.** In this section:

(a) Notwithstanding s. 168.01 (3), “petroleum product” means materials derived from petroleum, natural gas, or asphalt deposits and includes gasoline, diesel and heating fuels, liquefied petroleum gases, lubricants, waxes, greases, and petrochemicals.

(b) “Storage tank” means an enclosed container with a capacity in excess of 60 gallons which is used to hold a petroleum product, regardless of the duration of storage and which is intended for use as a fixed, rather than as a portable, installation.

(2) **INVENTORY OF STORAGE TANKS.** The department shall undertake a program to inventory and determine the location of aboveground storage tanks and underground storage tanks. The department may require its deputies and any person engaged in the business of distributing petroleum products to provide information on the location of aboveground storage tanks and underground storage tanks. The department shall develop uniform procedures for reporting the location of aboveground storage tanks and underground storage tanks.

History: 1983 a. 410; 1989 a. 254; 1991 a. 82; 2013 a. 20 ss. 1631 to 1633; Stats. 2013 s. 168.28.

Cross-reference: See also s. NR 747.11, Wis. adm. code.