

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

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 99-010

AN ORDER to amend ILHR 10.18 (3) (intro.); and to create ILHR 10.18 (3) (d) and 10.48, relating to flammable and combustible liquids.

Submitted by **DEPARTMENT OF COMMERCE**

01-25-99 RECEIVED BY LEGISLATIVE COUNCIL.

02-17-99 REPORT SENT TO AGENCY.

RNS:DLS:kjf;jal

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 STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 99-010

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.]

2. Form, Style and Placement in Administrative Code

In s. ILHR 10.48, "this code" should be "this chapter."



201 West Washington Avenue
P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018

Tommy G. Thompson, Governor
Brenda J. Blanchard, Secretary

April 13, 1999 APR 14 REC'D

Senate Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Assembly Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 99-010

RULE NO.: Chapter Comm 10

RELATING TO: Flammable and Combustible Liquids

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brenda J. Blanchard', written over a horizontal line.

Brenda J. Blanchard
Secretary



201 West Washington Avenue
P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018

Tommy G. Thompson, Governor
Brenda J. Blanchard, Secretary

April 13, 1999

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.: 99-010

RULE NO.: Chapter Comm 10

RELATING TO: Flammable and Combustible 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,

Brenda J. Blanchard
Secretary

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 99-010

RULE NO.: Chapter Comm 10

RELATING TO: Flammable and Combustible Liquids

Final regulatory flexibility analysis not required. (Statement of determination required.)

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.

The rule provision contains no required reporting requirements. Rather, the rule sets a process by which the agency takes enforcement actions. Less stringent enforcement action is not provided in the rule because it is an implementation of federal EPA requirements, which the agency does not have the authority to modify.

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.

The rule provision was not the subject of extensive comment by the regulated community. The trade and industry associations support the overall enforcement process. To the extent that issues exist, it has been on the overall code element that is being enforced which does impact businesses. The over arching code requirement, however, is set by the EPA and simply incorporated as required into state rules. The state does not have the authority to be less stringent than the EPA, so a reduction in requirements is not allowed.

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

No reporting is required by small businesses based upon this provision.

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

The new rule provision does not require investment on the part of small businesses.

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.

The rule provision actually simplifies and streamlines the enforcement process for the agency. The rule eliminates a number of steps and re-inspections, which would otherwise be required.

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

No elements are included in item 1 and, as a result, there is no negative impact on public health, safety and welfare. The overall provision that is being implemented by the rule is a provision that protects against environmental damage and impacts to public health and safety. The rule being implemented actually serves to increase protection for public health and safety.



State of Wisconsin \ Department of Commerce

RULES IN FINAL DRAFT FORM

Rule No.: Chapter Comm 10

Relating to: Flammable and Combustible Liquids

Clearinghouse Rule No.: 99-010

The Wisconsin Department of Commerce proposes an order to amend Comm 10.18 (3) (intro) and to create Comm 10.18 (3) (d) and 10.48 relating to flammable and combustible liquids.

Analysis of Proposed Rules

Statutory Authority: ss. 101.09, 101.142, and 101.144

Statutes Interpreted: ss. 101.09, 101.142, and 101.144

Under sections 101.09, 101.142, and 101.144, Wisconsin Statutes, the Department protects public health, safety, welfare, and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade period came to an end, and all underground tank systems falling under the United States Environmental Protection Agency's rules are now required to have been upgraded to include adequate protection against corrosion, leaks, spills, and overfills. Under the proposed rule, the Department and its contracted agents will conduct inspections to ensure that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action will be taken to either prevent the tank systems from continuing to be used or to prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this order is in response to environmental issues associated with non-upgraded tank systems.

SECTION 1. Comm 10.18 (3) (intro) is amended to read:

Comm 10.18 (3) SYSTEM SHUTDOWN. Persons with enforcement authority under this chapter shall have the authority to shut down tank systems or components of tank systems ~~via the issuance of orders and disabling of the system with locks~~ under the following conditions:

SECTION 2. Comm 10.18 (3) (d) is created to read:

Comm 10.18 (3) (d) *Immediate shutdown because of upgrade standards violation.* Tank systems that do not comply with the provisions of either s. Comm 10.51 or 10.52 after December 22, 1998, shall be subject to immediate shutdown.

SECTION 3. Comm 10.48 is created to read:

Comm 10.48 Product delivery to tank systems. It shall be a violation of this chapter for any person to deliver or place a flammable or combustible liquid into a tank system that has been shut down by an enforcement action under s. Comm 10.18.

(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.

File ref: lr draft and summary

RULE REPORT

Department of Commerce

Rule No.: Chapter ILHR 10

Relating to: Flammable and Combustible Liquids

Agency contact person for substantive questions:

Name Sheldon Schall

Title Director, Bureau of Storage Tank Regulation

Telephone Number 608-266-0956

Agency contact person for internal processing:

Name Sam Rockweiler

Title Code Consultant

Telephone Number 608-266-0797

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

101.09, 101.142, and 101.144, Stats.,

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

40 CFR Parts 280 and 281

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

None known.

4. Description of the proposed rule(s).

The proposed permanent rule would replace an identical emergency rule that was adopted in December, 1998, and is consistent with and complimentary to related rules issued by the United States Environmental Protection Agency.

On December 22, 1998, a ten-year upgrade period specified in 40 CFR Part 280.21(a) came to an end, and all underground tank systems falling under the USEPA rules are now required to have been upgraded to include adequate protection against corrosion, leaks, spills, and overfills. Under the proposed rule, the Department and its contracted agents will conduct inspections to ensure that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action will be taken to either prevent the tank systems from continuing to be used or to prevent the delivery of additional petroleum product to the systems.

5. Reason for the proposed rule(s).

The alternatives of either allowing continued operation of tank systems that have not been upgraded, or waiting for federal enforcement of the upgrade requirements would significantly threaten public health, safety, welfare, and the environment. New releases from these non-upgraded tank systems would also add to the financial burden on the Petroleum Environmental Cleanup Fund program, which is currently significantly over-subscribed.

1997 Session

FISCAL ESTIMATE
DOA-2048 (R10/92)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

ILHR 10

Amendment No. if Applicable

Subject Flammable and Combustible Liquids

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

Increases Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenue
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

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

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Very few enforcement actions are expected to result from the proposed rules, because the rules are being implemented after a ten-year upgrade period that the United States Environmental Protection Agency established for obtaining compliance with the associated construction standards.

Long-Range Fiscal Implications

None known.

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

Bill Morrissey 266-7605

Authorized Signature/Telephone No. Date

Philip Eden Albert
(608) 267-0770 12/2/98

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R10/92)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
 ILHR 10

Subject

Flammable and Combustible Liquids

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

| 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 | 0 | - 0 |
| SEG/SEG-S | 0 | - 0 |
| 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 | \$ | \$ - |
| GPR Earned | | - |
| FED | | - |
| PRO/PRS | 0 | - 0 |
| SEG/SEG-S | 0 | - 0 |
| 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.)

Bill Morrissey 266-7605

Authorized Signature/Telephone No.

Bill Morrissey
 (608) 267-0770

Date

12/7/92

**PUBLIC HEARING COMMENT AND AGENCY RESPONSE
DEPARTMENT OF COMMERCE**

DIVISION OF SAFETY AND BUILDINGS

| |
|---------------------------------|
| Hearing Location: Madison, Wis. |
| Hearing Date: March 3, 1999 |

| |
|--|
| Rule Number: Chapter Comm 10 |
| Relating To: Flammable and Combustible Liquids |

| Commenting In | Sup. Opp. | For Info. | Exh. No. | Presenter, Group Represented, City, State | Comments/Recommendations | Agency Response |
|------------------|-----------|--------------|-------------|---|----------------------------|-----------------|
| | | | | | | |
| | | | | | No comments were received. | |
| | | | | | | |

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 99-010

RULE NO.: Chapter Comm 10

RELATING TO: Flammable and Combustible Liquids

Agency contact person for substantive questions.

Name: Sheldon Schall

Title: Director, Bureau of Storage Tank Regulation

Telephone No. 608-266-0956

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 reverse side)

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
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
7. Review rules for permit action deadline (s.227.15(2)(h))
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached



April 5, 1999

APR 05 1999

Senator Judy Robson
Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 South, Capitol
Madison, WI 53707

Representative Glenn Grothman
Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
Madison, WI 53707

Dear Senator Robson and Representative Grothman:

As you may know, this Department adopted an emergency rule in December of last year relating to Flammable and Combustible Liquids. The emergency rule took effect on December 11, and is currently in effect. The emergency rule will expire on May 10, 1999, unless an extension is granted by the Joint Committee for Review of Administrative Rules.

Since adoption of the emergency rule and pursuant to chapter 227, Stats., the Department has filed a proposed permanent rule with the Wisconsin Legislative Council (Clearinghouse Rule Number 99-010) to replace the emergency rule, held a hearing on that rule on March 3, 1999, and plans to file the final rule with the Legislature within the next two weeks.

The Joint Committee for Review of Administrative Rules (JCRAR) requests that agencies make a formal request for an extension prior to the expiration of an emergency rule. Under section 227.19 (4), Stats., the legislative standing committees have 30 days to review the final rule before the agency may adopt the rule. Due to the time factors associated with the rulemaking process in ch. 227, Stats., the permanent rule cannot be adopted and placed in effect prior to the expiration of the emergency rule.

In light of these facts, we respectfully request a 60-day extension of the emergency rule under s. 227.24 (2), Stats., in order to preserve the public safety and welfare and to provide a smooth and orderly transition from the emergency rule to the permanent rule.

Judy Robson and Glenn Grothman

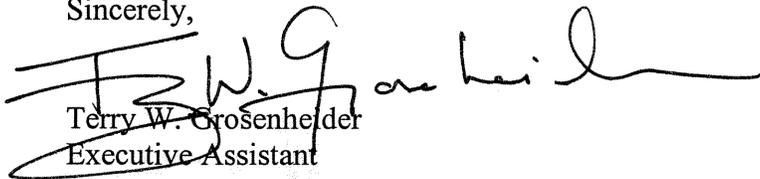
Page 2

March 30, 1999

If you have any questions regarding our progress to date or this request, please don't hesitate to contact us. Thank you in advance for your consideration of our request.

A copy of the emergency rule is enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry W. Grosenhelder". The signature is fluid and cursive, with a large initial "T" and "W".

Terry W. Grosenhelder
Executive Assistant

Enc.

File ref: JCRAR extension request1

Department of Commerce

Emergency Rule Relating to the Regulation of Flammable and Combustible Liquids

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, welfare and the environment.

The facts constituting the emergency are as follows. Under sections 101.09, 101.142 and 101.144, Wisconsin Statutes, the Department protects public health, safety, welfare and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade deadline comes to an end, and all tank systems falling under the United States Environmental Protection Agency's rules are required to have been upgraded to comply with new and environmentally protective construction standards. After the final compliance date, the Department and its contracted agents will conduct inspections to guarantee that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action must be taken to either prevent the tank systems from continuing to be used or prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this order is in response to environmental issues associated with non-upgraded tank systems.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Dated at Madison, Wisconsin, this
7 day of December, A.D. 1998,
By the Department of Commerce


Philip Edw. Albert, Acting Secretary

SECTION 1. ILHR 10.18 (3) (intro) is amended to read:

ILHR 10.18 (3) SYSTEM SHUTDOWN. Persons with enforcement authority under this chapter shall have the authority to shut down tank systems or components of tank systems ~~via the issuance of orders and disabling of the system with locks~~ under the following conditions:

SECTION 2. ILHR 10.18 (3) (d) is created to read:

ILHR 10.18 (3) (d) *Immediate shutdown because of upgrade standards violation.* Tank systems that do not comply with the provisions of either s. ILHR 10.51 or 10.52 after December 22, 1998, shall be subject to immediate shutdown.

SECTION 3. ILHR 10.48 is created to read:

ILHR 10.48 Product delivery to tank systems. It shall be a violation of this code for any person to deliver or place a flammable or combustible liquid into a tank system that has been shut down by an enforcement action under s. ILHR 10.18.

(End)

JUN 08 REC'D

June 4, 1999

Senator Judy Robson
Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 South, Capitol
Madison, WI 53707

Representative Glenn Grothman
Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
Madison, WI 53707

Dear Senator *Judy* Robson and Representative *Glenn* Grothman:

As you may know, this Department adopted an emergency rule in December of last year for chapter Comm 10, relating to Flammable and Combustible Liquids. The emergency rule took effect on December 11, 1998, has been extended once by the Joint Committee for Review of Administrative Rules, and will expire on July 9, 1999, unless a second extension is granted by the Committee.

Following the first extension of the emergency rule and pursuant to chapter 227, Stats., the Department transmitted a proposed permanent rule to legislative review (Clearinghouse Rule Number 99-010) for replacing the emergency rule. The 30-day review period has recently expired, with no action taken, for each of the two legislative standing committees to which the rule was referred. We are now adopting the permanent rule and filing it with the Revisor of Statutes and the Secretary of State. Based on information from the Revisor's office, the time factors associated with adopting, printing, and publishing will cause the permanent rule to not come into effect prior to September 1, 1999.

The Joint Committee for Review of Administrative Rules requests that agencies make a formal request for an extension prior to the expiration of an emergency rule.

In light of these facts, we respectfully request a 60-day extension of the emergency rule under s. 227.24 (2), Stats., in order to preserve the public safety and welfare and to provide a smooth and orderly transition from the emergency rule to the permanent rule.

Judy Robson and Glenn Grothman

Page 2

June 4, 1999

If you have any questions regarding our progress to date or this request, please don't hesitate to contact us. Thank you in advance for your consideration of our request.

A copy of the emergency rule is enclosed.

Sincerely,



Brenda J. Blanchard

Secretary

Enc.

File ref: JCRAR extension request2

Department of Commerce

Emergency Rule Relating to the Regulation of Flammable and Combustible Liquids

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, welfare and the environment.

The facts constituting the emergency are as follows. Under sections 101.09, 101.142 and 101.144, Wisconsin Statutes, the Department protects public health, safety, welfare and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade deadline comes to an end, and all tank systems falling under the United States Environmental Protection Agency's rules are required to have been upgraded to comply with new and environmentally protective construction standards. After the final compliance date, the Department and its contracted agents will conduct inspections to guarantee that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action must be taken to either prevent the tank systems from continuing to be used or prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this order is in response to environmental issues associated with non-upgraded tank systems.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Dated at Madison, Wisconsin, this
7 day of December, A.D. 1998,
By the Department of Commerce


Philip Edw. Albert, Acting Secretary

SECTION 1. ILHR 10.18 (3) (intro) is amended to read:

ILHR 10.18 (3) SYSTEM SHUTDOWN. Persons with enforcement authority under this chapter shall have the authority to shut down tank systems or components of tank systems ~~via the issuance of orders and disabling of the system with locks~~ under the following conditions:

SECTION 2. ILHR 10.18 (3) (d) is created to read:

ILHR 10.18 (3) (d) *Immediate shutdown because of upgrade standards violation.* Tank systems that do not comply with the provisions of either s. ILHR 10.51 or 10.52 after December 22, 1998, shall be subject to immediate shutdown.

SECTION 3. ILHR 10.48 is created to read:

ILHR 10.48 Product delivery to tank systems. It shall be a violation of this code for any person to deliver or place a flammable or combustible liquid into a tank system that has been shut down by an enforcement action under s. ILHR 10.18.

(End)