

**2007 DRAFTING REQUEST**

**Bill**

Received: **09/20/2006**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Miner**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Buildings/Safety - misc.  
Environment - solid haz. waste**

Extra Copies:

Submit via email: **NO**

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**Pre Topic:**

DOA:.....Miner, BB0033 -

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**Topic:**

Penalties for violations of certain hazardous liquid and petroleum storage laws

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	btradewe 09/27/2006	lkunkel 10/02/2006	sherritz 10/02/2006	_____	lparisi 10/02/2006		

FE Sent For:

<END>

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For: Administration-Budget 266-1103

By/Representing: Miner

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May Contact:

Addl. Drafters:

Subject: Buildings/Safety - misc.  
Environment - solid haz. waste

Extra Copies:

Submit via email: YES

Requester's email:

Carbon copy (CC:) to: lcornelius@commerce.state.wi.us

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For: **Administration-Budget 266-1103**

By/Representing: **Miner**

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/?	btradewe	l/mk 10/2	sh 10/2	sh/rs 10/2			

FE Sent For:

<END>

# Bill Request Form

Legislative Reference Bureau  
100 N. Hamilton Street  
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 9/12/06

Legislator, agency, or other person requesting this draft Department of Commerce

Person submitting request (name and phone number) Louie Cornelius 266-~~8619~~  
8629

Persons to contact for questions about this draft (names and phone numbers) Berni Mattsson : 266-9403

Describe the problem, including any helpful examples. How do you want to solve the problem?

(See attached)

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999 AB-67).

See attached

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES  NO

If yes: Anyone who asks? YES NO  
Any legislator? YES NO

Only the following persons DOA Budget Shop

Do you consider this request urgent? YES NO If yes, please indicate why Budget

Should we give this request priority over any pending request of this legislator, agency, or person?  
YES NO

## State Program Approval

**Background:** In 1984, Congress responded to the increasing threat to groundwater posed by leaking underground storage tanks (USTs) by adding Subtitle I to the Resource Conservation and Recovery Act (RCRA). Subtitle I required the United States Environmental Protection Agency (EPA) to develop a comprehensive regulatory program for USTs storing petroleum or certain hazardous substances. Congress directed EPA to publish regulations that would require owners and operators of new tanks and tanks already in the ground to prevent, detect, and clean up releases. At the same time, Congress banned the installation of unprotected steel tanks and piping beginning in 1985. In 1988, EPA issued UST regulations divided into three sections: technical requirements, financial responsibility requirements, and state program approval objectives.

In 1991, the DILHR (now the Department of Commerce), adopted administrative rules in ch. Comm 10 in order to meet the mandate of s.101.09 (3) (a), Stats., which required in part that the department... "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 Comm 10 rules were based upon and are very similar to the EPA UST regulations. Currently, both federal and state regulations apply in states without SPA. The Wisconsin regulations are generally just as stringent as, and sometimes more stringent than, EPA's regulations.

EPA recognizes that, because of the large size and great diversity of the regulated community, state and local governments are in the best position to oversee USTs. Subtitle I of RCRA allows state UST programs approved by EPA to operate in lieu of the federal program, and EPA's state program approval (SPA) regulations set standards for state programs to meet. In order to encourage states to apply for and achieve SPA, the EPA increases UST grant funding for SPA states by \$50,000 per year. With the proposed law change and subsequent SPA status, Wisconsin should be able to benefit from these additional funds.

In order to avoid confusing duplication of regulations for UST owners, Commerce has applied to the EPA for state program approval or SPA. Owners and operators in states that have an approved UST program do not have to deal with two sets of statutes and regulations (state and federal) that may be conflicting. States take pride in obtaining federal approval of their programs. Once their programs are approved, states have the lead role in UST program enforcement. In states without an approved program, EPA will work with state officials in coordinating UST enforcement actions.

**Problem:** Sections 101.09 (5); 101.143 (10); and 101.144 (4), Wis. Stats., allow for assessment of only \$1000 and \$2000 per day in penalties. In order to meet the EPA SPA criteria, the Wisconsin statutes need to be revised to be consistent with the federal requirements, which currently apply in Wisconsin.

A state program is approved if it is judged to meet three criteria:

1. It sets standards for eight performance criteria that are no less stringent than federal standards.
2. It contains provisions for adequate enforcement.
3. It regulates at least the same USTs as are regulated under federal standards.

The Wisconsin regulations do meet the first and third criteria, but do not provide for the penalties required for SPA. Under the RCRA law, the state must be able to do the following:

To assess or sue to recover in court civil penalties as follows:

- i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to \$5,000 or more per violation.
- ii) Civil penalties for failure to comply with any State requirements or standards for existing or new tank systems must be capable of being assessed for each of violation, up to \$5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall be capable of being assessed up to \$5,000 or more for each day of violation.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

MAR 21 2005

D-8J

RECEIVED

MAR 31 2005

ERS DIVISION

RECEIVED

~~MAR 21 2005~~

ERS DIVISION

Bernice Mattsson, Administrator  
Division of Environmental and Regulatory Services  
Wisconsin Department of Commerce  
Post Office Box 14427  
Madison, Wisconsin 53714-0427

Re: State Program Approval Application

Dear Ms. Mattsson:

We have received your draft application submitted for State Program Approval (SPA). Thank you for the opportunity to review this draft. In many ways, your application demonstrates the Wisconsin State program is well structured and run. However, after reviewing your draft application, we regret to inform you that it appears in one major area the State program fails to meet the requirements of the Federal SPA Regulations found at 40 CFR Part 281.

Generally speaking, under the SPA regulations States must demonstrate they have the authority to assess civil penalties up to \$5,000 or more for each day of violation (40 CFR § 281.41(a)(3)). Based on our review of your draft application, it is our understanding that Wisconsin does not have the authority to assess the required daily fine as provided for under the SPA regulations. We have discussed this issue within the Region and with our Headquarters counterparts. Unfortunately, the consensus is Wisconsin does not have the authority to assess fines in a manner consistent with 40 CFR § 281.41 and we would be unable to approve the Wisconsin State program until the State meets this requirement.

If you would like to discuss this issue further or would like us to consider any additional information you may have, please feel free to contact us. Moreover, if you or the Wisconsin Attorney General's Office can demonstrate that the State does have the authority to assess penalties consistent with the Federal Regulations we would be more than willing to consider that information.

Please contact Mark Restaino, Wisconsin State Program Manager, at (312) 886-0394, should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Margaret M. Guerriero', written in a cursive style.

Margaret M. Guerriero, Director  
Waste, Pesticides and Toxics Division

cc: S. Schall, WCOMM  
P. Albert, WCOMM

## 2003 BILL

1     **AN ACT** *to amend* 101.09 (5) and 101.143 (10) (a) of the statutes; **relating to:**  
2             violations of certain hazardous liquid and petroleum storage laws and  
3             providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

This bill increases the forfeitures that may be assessed for certain violations of hazardous liquid and petroleum storage laws so that the maximum forfeiture is \$5,000 per violation. As under current law, each day of continued violation is a separate offense.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4             **SECTION 1.** 101.09 (5) of the statutes is amended to read:  
5             101.09 (5) **PENALTIES.** Any person who violates this section or any rule or order  
6             adopted under this section shall forfeit not less than \$10 nor more than ~~\$1,000~~ \$5,000  
7             for each violation. Each violation of this section or any rule or order under this  
8             section constitutes a separate offense and each day of continued violation is a  
9             separate offense.





State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0311/1

RCT:.....

Imk

In 9/27

Sam

DOA:.....Miner, BB0033 - Penalties for violations of certain hazardous liquid and petroleum storage laws ✓

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen  
Cut

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**ENVIRONMENT**

**HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP**

Under current law, the Department of Commerce promulgates rules regulating tanks that store flammable, combustible, and hazardous liquids, including petroleum. This bill increases the forfeitures (civil penalties) that may be assessed for the violation of these rules to \$5,000 per violation. ✓

\*

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 101.09 (5) of the statutes is amended to read:

3 101.09 (5) PENALTIES. Any person who violates this section or any rule or order  
4 adopted under this section shall forfeit not less than \$10 nor more than \$1,000 \$5,000  
5 for each violation. Each violation of this section or any rule or order under this

1 section constitutes a separate offense and each day of continued violation is a  
2 separate offense.

3 **History:** 1983 a. 410; 1987 a. 399; 1991 a. 269; 1993 a. 416.; 1995 a. 227; 1999 a. 9; 2001 a. 16.

3 **SECTION 2.** 101.143 (10) (a) of the statutes is amended to read:

4 101.143 (10) (a) Any owner or operator, person owning a home oil tank system  
5 or service provider who fails to maintain a record as required by rules promulgated  
6 under sub. (9) (a) may be required to forfeit not more than \$2,000 <sup>✓</sup>\$5,000. Each day  
7 of continued violation constitutes a separate offense.

8 **History:** 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 301, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378, 417; 1997 a. 27, 35, 237, 252, 283; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

(END)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0311/1  
RCT:lmk:sh

DOA:.....Miner, BB0033 - Penalties for violations of certain hazardous liquid  
and petroleum storage laws

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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8 (END)