DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

Clearinghouse Rule Number: 07-029	Hearing Location: Mailed in (location presentations begin on page 31)
Rule Number: Chapters Comm 2, 10, 47 and 48	Hearing Dates: April 30 and May 2 and 3, 2007
Relating to: Flammable, Combustible and Hazardous Liquids	

Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
1	Erin Roth Wisconsin Petroleum Council Madison, Wisconsin	1a. Overall, supports the proposed chapter Comm 10 rules.	1a. Support is noted.
		1b. Comm 10.400 (3): Believes secondary containment of underground piping should not be mandated, because it has drawbacks that include (1) corrosion of both primary and secondary pipe may be promoted by trapped moisture condensing in the interstitial space, and (2) inspection and maintenance of the primary piping is adversely impacted, if not prevented, by the presence of the secondary containment.	1b. The rule text has been revised to not require secondary containment for underground piping that is evaluated and maintained in accordance with API Standard 570, by organizations that maintain or have access to an authorized inspection agency, a repair organization, and technically qualified piping engineers, inspectors and examiners, all as defined in API 570.
		1c. Comm 10.400 (4): States terminals typically have a combination of underground and aboveground piping runs for the same line – which is quite different from airport hydrant systems that are typically all underground. States leak tests on these combination piping systems are not accurate, because of the varying temperatures that result from the different aboveground and underground ambient conditions.	1c. The rule text has been revised to accept in-service evaluations for piping that are performed in accordance with API Standard 570, by organizations that maintain or have access to an authorized inspection agency, a repair organization, and technically qualified piping engineers, inspectors and examiners, all as defined in API 570.
		1d. Comm 10.420 (2): States dike liners have been shown to be unreliable, as in API Publication 341. Believes that rather than spend money on unreliable measures to contain releases, it is more effective to (1) conduct a good tank-inspection-and-maintenance program, as addressed in API Standard 653; and (2) install engineered systems, such as high-level alarms, to prevent the releases from occurring.	1d. The proposed rules for earthen or masonry dike systems have been changed to require submittal of reports of the inspections that are required by API 653 or STI SP001; and to require overfill protection in accordance with NFPA 30 section 21.7.1 for existing tanks within an earthen or masonry dike system, if new tanks are installed
2	Joe Mentzer, P.E. Northern Environmental Mequon, Wisconsin	2a. Comm 10.050 (61): States this definition of "liquid" specifies a minimum viscosity for materials that can be considered liquids – but does not specify an upper limit for viscosity, and therefore could be interpreted to include gases as well as liquids, which is not the intent of the corresponding law.	2a. Although this has not been a point of confusion to date, the definition has been changed to exclude materials that have a vapor pressure of greater than 40 pounds per square inch at 100°F, which is consistent with NFPA 30.
		2b. Comm 10.420 (1) (b): Believes this section exempts tanks with Class IIIB liquids from having secondary containment, which differs from corresponding federal requirements. Suggests changing this section so that it instead requires these tanks to have "appropriate containment and/or discharge structures to prevent a discharge," as is federally required in 40 CFR 112.7 (c). States there are some very large tanks in this category, and a failure could cause significant damage.	2b. Agree that federal requirements may apply that are more restrictive than Comm 10. Since those requirements are not enforced by the Department, an informational Note has been added to this section, for alerting a reader to those requirements.

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		2c. Comm 10.420 (2) (d) 2. Believes the reference to "a maximum permeability of 10^{-6} centimeters per second" would inappropriately allow dike systems to consist of rapidly permeable materials, such as gravel. Suggests changing "maximum" to "minimum."	2c. This phrase has been changed to read "clay material having a permeability of no faster than 10^{-6} centimeters per second."
		2d. Comm 10.420 (2) (d) 2. Believes the clay dike liners in this section are also suitable for single-wall tanks – rather than only tanks with a double bottom that includes interstitial monitoring, as this section currently would require.	2d. The proposed rules have been changed to allow using a clay dike liner with new single-bottom tanks that are constructed to ensure that any leaks from the bottom will drain to a conspicuous location and be contained there.
3	Joan Pape Wisconsin Petroleum Equipment Contractors Association, Inc. Blue Mounds, Wisconsin	3. Comm 10.500: Supports the proposed changes relating to US-EPA Standards. Strongly supports the Department's proposed adoption of the EPA Standard that requires secondary containment on underground storage tanks and lines. States this adoption would provide provisions to prevent leaking underground storage tanks. Believes this would be better than an alternative of having to determine financial responsibility, which would need to include provisions for cleaning up leaks from tanks.	3. Support is noted.
4	Tiffany Goebel, PE, CHMM Midwest Airlines, Inc. Oak Creek, Wisconsin	4a. Comm 10.517 and 10.650: Supports the regulations proposed in these sections and believes they represent standards which are both protective and feasible for the unique design and operational issues associated with airport hydrant fueling systems.	4a. Support is noted.
		4b. Requests revising several other sections to more clearly show that airport hydrant fueling systems are not subject to the same standards as are applied to general aboveground or underground storage tank piping – for example, (1) in Comm 10.500 (1) (b), for secondary containment, exempt all portions of these hydrant systems except any included underground storage tanks and except as provided in Comm 10.517 for leak detection; and (2) specifically exclude these hydrant systems from the definition of "underground storage tank system" in Comm 10.050 (126) (b), the definition of "aboveground storage tank system" in Comm 10.050 (1), the definition of "pipe" or "piping" in Comm 10.050 (80), and the definition of "pipe system" or "piping system" in Comm 10.050 (81).	4b. The definition in Comm 10.050 has been changed to define these hydrant systems as not being part of an aboveground or underground storage tank system, and the rule text in 10.500 (1) (b) has similarly been changed to exempt them from the secondary containment requirements in Comm 10.500. Both of these changes are consistent with USEPA criteria. The remaining Comm 10 requirements for these systems, such as the leak detection requirements, are likewise consistent with the USEPA criteria.
		4c. Suggests clarifying Comm 10.130 to indicate that leak detection methods and leak rates for hydrant systems will be established as provided in Comm 10.517, in lieu of the requirements in Comm 10.130.	4c. Comm 10.130 includes performance requirements and corresponding documentation for leak detection equipment that are needed in

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			combination with the criteria for hydrant systems in Comm 10.517. However, the rule text in Comm 10.130 (2) (a) has been revised to address unique applications such as these, and an informational Note has been added to Comm 10.517 (4) to clarify that a designer of an airport hydrant system who does not have a financial interest in the airport may be considered to be the independent third party that is required in Comm 10.130 (3).
		4d. Believes the proposed rules do not contemplate use of small "defuel/refuel tanks" in the commercial aviation environment. Such tanks are needed for safe and timely removal of jet fuel for aircraft maintenance, and for return of that fuel to the aircraft immediately thereafter. Under the proposed rules, these tanks may be classified as "tank wagons" or "moveable tanks" and could be subject to several infeasible and/or extremely burdensome requirements – such as temporary service of no more than 24 months, prohibited indoor operations, and substantial financial responsibility provisions. Requests modifying Comm 10.610 to allow operation of "tank wagons," "moveable tanks," and "tank vehicles" at commercial aviation facilities on a permanent basis, and indoors (if adequate fire protection systems are in place) to allow for ongoing defueling and refueling of aircraft that are undergoing aircraft maintenance. Requests expanding Comm 10.900 (2) to exempt these tanks from all of the financial responsibility requirements in subchapter VIII. Alternately, suggests expanding the rules to include a separate definition and associated regulations for "defuel/refuel tanks," which could address the appropriate operation of such equipment. Offers to provide additional technical information regarding defuel/refuel operations, a demonstration of those operations, and further details as to possible specific, related modifications to the proposed rules.	4d. An informational Note has been added to the definition of service tanks to clarify that these small refueling tanks are considered service tanks and are therefore not regulated by Comm 10 – if they are typically not moved from one site to another and are operated in a commercial aviation environment by employees of an aviation service company under aviation service protocols and monitored situations, such as in facilitating other maintenance. The informational Note under Comm 10.020 (6) that refers to other Department codes which may address the tanks that are not regulated by Comm 10 has also been revised to reflect that the use of these service tanks is addressed by Comm 14 – the Wisconsin Fire Prevention Code.
5	Donald P. Gallo, Esq., P.E. Wisconsin Petroleum Marketers & Convenience Store Association	5a. Agrees with many of the proposed changes.	5a. Agreement is noted.
		5b. Believes the proposed rule is very complex; and the proposed changes are numerous, including several hundred pages of regulations. It will be difficult for the typical service station owner to comprehend the rule, let alone comply with it.	5b. Agree that storage and dispensing of flammable and combustible liquids is regulated extensively. However, the regulations are commensurate with

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	(WPMCA) Madison, Wisconsin	This complexity is further exacerbated by the fact that the proposed rule incorporates over 60 external referenced standards consisting of at least a few thousand additional pages of regulations and standards. Believes it is unreasonable to expect the regulated community, the majority of which consists of single-station owners, to purchase these referenced standards (at a cost of several thousand dollars) and to be able to read and understand them.	the high fire safety and environmental contamination threats posed by the widespread and pervasive use of these liquids. The extensiveness of the proposed rules partly arises because these rules have not been substantially updated in 16 years, despite ongoing, substantial changes in federal requirements, national standards, and industry practices. Owners and operators who are not familiar with the requirements may want to, and often do, rely on industry professionals or Department staff for assistance. The proposed rules have been changed in several places to be more clear, especially where misinterpretation of retroactivity has resulted in overestimating the operational or financial impacts, and a summary of significant retroactive requirements will be posted on the Department's Web site. See response 5k on page 8, which addresses the standards that are referenced in Comm 10.
		Further, considering the sheer volume of the proposed regulations and their substantial potential impact to the regulated community, the comment period and time from notice to public hearing have been inadequate to provide constitutional due process for notice and comment to the affected community. For example, even with WPMCA's historical participation and generally knowledgeable leadership, the given time period has not been sufficient for WPMCA to solicit meaningful comments on the financial impact of the proposed regulations on the general membership, nor has it been sufficient to prepare a detailed assessment of what the WPMCA believes is an unrealistically low cost estimate prepared by Commerce.	The Department held numerous meetings with industry representatives, including WPMCA, throughout the 7-year period of developing the proposed rules. Over a month in advance of the deadline for submitting Hearing comments, the Department gave WPMCA detailed identification and description of the changes that were made to achieve the Hearing draft, after the previous draft was circulated in December 2006.
		5c. Is very concerned with both current and proposed rules that exceed federal requirements. For example, many of the proposed revisions that the Department is ostensibly implementing as a result of the federal Energy Policy Act of 2005 contain retroactive requirements even though the Act itself does not contain retroactive requirements. Mandating provisions that exceed federal requirements unnecessarily increases the cost to comply, especially where retrofitting is required to comply with retroactive requirements. States these provisions will make the cost	5c. Current and proposed Comm 10 adopt National Fire Protection Association standards that have elements which are more restrictive than federal requirements because those standards and Comm 10 address fire safety that is beyond the scope of those federal requirements. Except for secondary containment at dispenser sumps and auto-shutoffs

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		of motor fuel greater for all consumers and will widen the competition gap between marketers in Wisconsin and those in other states along state-border areas.	for overfills, the new requirements in the proposed rules generally would not apply until replacements or upgrades occur, and are therefore not retroactive. Typically under Comm codes, equipment and facilities must be maintained in accord with the rules they are constructed under; and replacements, alterations, and upgrades must comply with rules in effect at that later date. As described in the rule analysis that accompanies the rules, adjacent States have or are soon adopting similar, rather than less restrictive rules relating to the 2005 Energy Policy Act.
		5d. Believes many of the proposed changes have potential to result in significant costs to comply, in many cases with little or no environmental benefit. Chief among these are the proposed requirements for providing secondary containment sumps for dispensers and submersible pumps, and the requirements to provide synthetic liners on certain forms of secondary containment. Believes the costs to comply with these requirements will present a massive financial burden on petroleum marketers, most of whom are small business owners. States the impact will be especially acute on single-station owners, who own the majority of service stations in the state and who have limited resources to implement costly new requirements.	5d. The proposed rules have been changed in several places where misinterpretation of retroactivity has resulted in overestimating the financial impacts. Except at dispenser sumps, the new secondary-containment requirements in the proposed rules generally would not apply until replacements or upgrades occur. For dike liners, see response 5y on page 12. Where requirements newly apply, the environmental benefits typically relate to reducing the potential for costly, future contamination of groundwater. For example, USEPA data indicate over 34% of releases from components for UST systems occur where connections are made in piping and at dispensers. Installing containment sumps will allow for detection of leaks, and repair of piping- or component-connection failures before a significant, costly environmental release occurs. In addition, some of the new requirements are directed at fire prevention and fuel quality, which may have little or no environmental benefit. No substantiated cost data was submitted to support the claimed financial burden.

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		5e. States bulk and terminal petroleum storage facilities would also be significantly impacted by the proposed rules – for example, the proposed secondary lining requirements for new tanks would be cost-prohibitive to achieve and would likely result in the closing of several important and limited petroleum storage facilities (effectively reducing critical secondary petroleum storage capacity). Believes these lining requirements would almost certainly limit the development of new storage capacity for both petroleum-based and bio-based fuels, which would further limit supply and impair the Governor's biofuels initiative by discouraging the installation of the necessary storage infrastructure to carry out this initiative.	5e. See response 5y on page 12, which addresses the secondary lining. Also, the secondary lining required in the proposed rules has been required by chapter Comm 10 since 1991. The proposed rules include new options relating to that requirement.
		5f. Comm 10.100 (1): Believes replacement of, or modification of, sacrificial anodes for previously approved cathodic protection systems on underground storage tanks should be excluded from plan-review requirements. This is a relatively simple, routine maintenance activity that does not warrant the time and expense entailed in the plan-review process.	5f. Neither the current nor the proposed rules would require plan review for replacement or modification of anodes. However, if an existing corrosion protection (CP) system is being modified, plan submittal is required. The only reasons a CP system would be modified would be to move from one CP method (galvanic or impressed current) to the other, to address a configuration change in the tank system, or to correct a coverage problem with the existing CP. Plan submittal is required so that the Department will know what is being modified, by what company, and the competency qualifications of the CP designer and installer.
		5g. Comm 10.100: Believes plan approval should be automatically granted if the reviewer has not acted on the plans within 15 days of receipt or within some other reasonable time period. Such a provision is successfully used in several WDNR permitting programs and would help to provide certainty to the plan review process. At a minimum, the process of automatic approval after a defined period of time has expired should be available for relatively routine activities such as replacement of sacrificial anodes on cathodic protection systems and many other routine installations or modifications.	5g. Disagree that plans are not acted on within 15 days of receipt, and that automatic approval is then needed. In addition, the Department's review is too integral to public safety to rely instead on automatic approvals. Under the current and proposed Comm 10, the Department is required to review and make a determination on an application for approval within 15 *business* days of receiving the required information and fees. In a search back to December 1997, the Department could find no plan submittal that exceeded that 15-day time period. The plan submittal tracking process includes a 12-day flag as a mechanism to assure that the review time period is

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			maintained. The typical time from the date that a plan has been received by the Department until it is reviewed is 6 to 10 *calendar* days. The Department also has a Web site where contractors can track the progress of the review process for individual plan submittals.
		5h. Comm 10.100 (2): Recommends initiating electronic plan submittal. Businesses are increasingly using computers for communication and recordkeeping. Electronic plan submittal would greatly reduce paperwork, reduce file management efforts, reduce costs for all concerned, and speed the approval process for the regulated community. To eliminate any concerns that Commerce has regarding uniformity of electronic plan submissions, Commerce could set up a form on its Web site to be used to electronically transmit information required for plan review (e.g., applicant information, type of plan review requested) and could provide a means on the form for uploading plans in a universally compatible format (e.g., PDF) to ensure uniformity in plan submissions.	5h. Preliminary efforts with contractors to accommodate electronic submittal of plans indicate that a variety of corresponding software programs are currently in use. Purchasing and maintaining all of the programs, and purchasing the needed printers, would be costly – which would likely increase the submittal fees – and initiating these submittals is not a high priority for the contractors. Electronic-based forms are available on the Department's Web site, but where a signature is needed on a form, the form currently must be mailed in.
		5i. Comm 10.115 (3) (a) 2.: Recommends restricting "immediate shutdown" to situations where there is an immediate threat to human health or the environment. For example, the proposed rule allows immediate shutdown of tank systems that do not have cathodic protection installed as required under Comm 10. Comm 10 requires sacrificial anode systems to maintain negative 850 millivolts minimum resistance, but sacrificial anode systems that are operating below this level are likely providing at least some level of beneficial cathodic protection, so this situation would not truly represent an "immediate" threat. Furthermore, Comm 10.520 allows owners a period of 60 days to investigate and repair systems that do not meet the minimum resistance. To eliminate this inconsistency, revise the code to only allow red-tagging of a tank system with deficient resistance after the owner fails to cure the problem within the allowable repair period. This could be accomplished by moving such cathodic protection deficiencies from "immediate shutdown" to "shutdown after continued violation." Alternately, insert "any" in this code section so that it reads as follows: "Tank systems that do not have *any* leak detection, corrosion protection or spill and overfill protection installed as required under this chapter. [Emphasis added.]"	5i. The rule text authorizes immediate shutdown of tank systems that do not have corrosion protection "installed" – so immediate shutdown is *not* authorized where corrosion protection is installed but operating improperly. An informational Note has been added to further convey this difference.

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		5j. Comm 10.115 (2) (b) 2. and 3.: Understands installers would be required to notify Commerce five days prior to installing a pipeline and/or tank, to schedule an inspector to be on site; and a minimum of three inspections would be required (pre-construction, line tightness testing and pre-commissioning start-up). Believes having the contractor schedule the inspector to be on site three times during the project would slow the project down and ultimately increase project costs. Recommends (1) reducing the five-day prior notice requirement to simply a notice requirement for the pre-construction and line tightness testing meetings, and (2) having a five-day notice requirement only for final pre-commissioning inspection, where the line tightness test results are provided to the inspector.	5j. All of these requirements are currently in chapter Comm 10. Contractors appear satisfied with them and may be opposed to any of the recommended changes. For example, the pre-construction meetings were started in response to input from contractors about costly communication problems. Feedback from contractors indicates the meetings have improved communications and expectations between contractors and inspectors. The meeting only applies to installations where underground tanks or pipe are being installed. All of the subject site visits are scheduled and performed when the contractor is on the site and in the process of tank installation. The minimum system inspection points are (1) soap test, (2) pipe test and (3) pre-operational final inspection. There is no slow down to the project, or negative impact on construction costs. Instead, costs originating from non-compliance corrections or from misunderstandings are significantly reduced.
		5k. Estimates over 60 outside standards are either directly or indirectly referenced in the proposed code, and states the adoption of those standards by reference is an unacceptable burden on the regulated community. States this adoption results in an excessive volume of regulation that even the most sophisticated tank owner/operator can neither comprehend nor afford (it would cost each owner/operator thousands of dollars to purchase copies of every referenced standard). Although one of the intents of the new code was simplification, the new code adds even more reference documents to Comm 10, as well as an 86-page Compendium. Believes requiring tank owners and operators to locate, obtain and understand this volume of outside referenced standards is an impossibility for over 99.9% of all regulated parties. Suggests clearly writing all requirements into the code and only using incorporation by reference for the most common and available standards, such as those by PEI, APT, and NFPA.	5k. Standards and recommended practices exist in many industries, and represent best practices through the sharing of experiences and knowledge from an assortment of qualified professionals. Such documents are part of a body of knowledge used by manufacturers, distributors, installers, owners, regulators and service providers alike to achieve certain goals or events in a satisfactory manner. Federal UST regulations require that industry codes and standards be followed for design and construction of all UST systems, including protection from corrosion, and for upgrading, repairing and closing USTs. The proposed rules would eliminate 7 currently adopted standards, update 7 standards to their current edition, and add

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			25 new standards. The majority of the 63 directly referenced standards apply to engineering- and contractor-related functions. Many of the standards apply to specific, narrow applications, and will likely not be used by owners and operators. For example, a corrosion protection standard (RP 0169-96) addresses design of sacrificial-anode systems for underground steel tanks, and that standard would be used primarily by the designers of those systems. Eight of the referenced standards apply directly to the operational function of the WPMCA constituency who are marketers; one standard applies directly to WPMCA constituency with delivery trucks; and one standard applies directly to WPMCA constituency with bulk plants. In contrast, the *International Building Code*® and the *International Energy Conservation Code*®, which apply to commercial buildings in Wisconsin through chapters Comm 61 to 65, directly reference over 500 industry standards. Copyright laws generally prevent reprinting the standards in the code.
		5L. Comm 10.230 (8) (b): Opposes the proposed requirement that sumps and secondary containment systems be maintained free of liquid. While most owners prefer the tanks sumps to be free of liquids, the reality is the design of the sumps manufactured in the past did not prevent precipitation from entering the sumps. It would be a significant expense for owners to replace the existing sumps to exclude precipitation in these cases. Suggests that instead of replacing these sumps, allow the owner/operator to periodically collect and manage for disposal of the water from the sumps after a period of precipitation.	5L. The rule text is not intended to require the referenced replacement, and has been changed to more clearly convey that (1) sumps and secondary containment systems must be inspected at least monthly, and any liquid or debris which is present then must be removed; and (2) any deficiencies that allow for liquid release or water intrusion must be repaired or corrected.
		5m. Comm 10.240: Recommends certifying persons and firms that provide spray lining services, based on owner/operator experiences with linings falling apart within one year after application because of poor application technique. For similar reasons, recommends requiring these linings to undergo the materials-approval process.	5m. The Department's credential rules already require a certified tank system liner to perform or supervise lining or relining of underground tanks, which must be in compliance with detailed application practices in API 1631, and the firm must

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			be registered. Newly adopted credential rules provide suspension and revocation penalties for failing to maintain or submit accurate records and reports, which are required in proposed section 10.530. Experience indicates that failures of linings result from improper application and from the difficulty of inspecting in such confined spaces, rather than from inadequacies of materials.
		5n. Comm 10.310 (3) (b): States experience has shown that few heating oil tanks corrode, and the purpose of not requiring costly tightness testing on small heating oil tanks is to avoid making the continued use of heating oil cost-prohibitive. Recommends extending the exemption for residential heating oil tanks of less than 1,100-gallon capacity to all heating oil tanks of less than 1,100-gallon capacity. Many small businesses also have small heating oil tanks, and there is no difference between a heating oil tank used for residential versus business applications. Recommends not limiting this exemption to tanks installed before 1999 – at the very least, the exemption should apply to tanks installed prior to the effective date of this code revision because newer tanks have even less propensity to corrode than older tanks.	5n. Disagree. Residential heating oil tanks which were installed prior to October 29, 1999, and which have a capacity of less than 1,100 gallons are exempt from tightness testing only because that exemption is mandated by section 101.09 (2) (cm) of the Statutes. As of July 31, 2007, the Department's Petroleum Environmental Cleanup Fund Award (PECFA) program had reimbursed 1,287 claims for cleanup of discharges from home heating oil tanks, at a cost of over $7 million.
		5o. Comm 10.400 (1) (c): Recommends referring to a "standard practice for the industry" for Class IIIB tank construction, instead of stating that designs "shall be listed or shall be acceptable to the department."	5o. No standard specifications, such as from API, NFPA, PEI or STI, have been submitted for this tank construction. The recommended reference would be more ambiguous than the rule text in Comm 10.400 (1) (c), and this rule text provides flexibility to the Department for accommodating alternate designs.
		5p. Comm 10.400 (2) (b) 4.: Suggests changing the required distance of 3 to 12 inches above grade, for tanks subject to corrosion, to a distance of at least 3 inches.	5p. The rule text has been changed to allow a distance of greater than 12 inches, where structural fire resistance is provided that complies with NFPA 30 section 22.5.2.4.
		5q. Comm 10.400 (3) (a): Requests a definition of "non-discriminating interstitial monitoring," for secondary containment that would be required when new and replacement piping is installed.	5q. The rule text has been changed to define non-discriminating as detecting any liquid, without discriminating as to the type of liquid.
		5r. Comm 10.400 (3) (b): States no definition is provided for "vapor tight," and there is no electronic leak detection or volumetric leak detection that is certified to	5r. The vapor-tight requirement is intended to apply to the material from which the secondary

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		detect below 0.05 gph for vapor leaks. Believes the requirement in this section to have vapor-tight containment would necessitate enhanced vapor leak detection, and it has the potential to result in significant compliance costs.	containment is fabricated, rather than to the secondary containment. The rule text has been changed to more clearly convey this intent.
		5s. Comm 10.400 (3) (c) and (d): Believes these requirements would apply only to aboveground storage tank (AST) systems used for fueling, and they seem to imply that for terminal and bulk plants, anywhere a pipe goes from underground to aboveground, that area of piping has to be placed in a sump. Suggest either moving these two items into a separate section dealing solely with fueling operations, or delete them.	5s. Agree. The rule text has been revised to more clearly require a secondary containment sump only when newly installing piping transitions from underground to aboveground.
		5t. Comm 10.400 (4) (c): Recommends not requiring terminals to install isolation valves in piping runs, because most terminals can "blank" a line for testing. Recommends applying the leak-detection requirements in this section only to systems with 50% or more of their piping runs underground.	5t. The rule text has been revised to accept in-service evaluations for piping that are performed in accordance with API Standard 570, by organizations that maintain or have access to an authorized inspection agency, a repair organization, and technically qualified piping engineers, inspectors and examiners, all as defined in API 570.
		5u. Comm 10.400 (5) (c): Recommends clarifying that use of saddle supports for horizontal , cylindrical tanks is consistent with and meets the intent of enabling the "full visual inspection" referenced in this section.	5u. The rule text has been changed to not require visibility of the shell where the shell is in contact with its support.
		5v. Comm 10.410 (1): States that although all owners and operators have a goal of ensuring that releases due to spilling or overfilling do not occur, this is an impossible standard to meet. Recommends instead requiring owners and operators to prevent spills and overfilling, to the extent practicable.	5v. The rule text in this section, and in Comm 10.505 (1) (a), has been moved to 10.230 (3) and changed to state that owners and operators may not allow releases to occur from spilling or overfilling.
		5w. Comm 10.410 (7) (b): Believe owners who have recently installed a catch basin of less than five gallons for an AST – in compliance with the current code – should not be required to now install a catch basin of at least five gallons (at a cost of approximately $150). Recommends either deleting the retroactive aspect of this section, so that the five-gallon minimum size would apply only to catch basins installed after the effective date of the proposed rule, or applying the requirement retroactively only to affected tanks that do not currently have a catch basin.	5w. The 5-gallon minimum is not intended to apply retroactively, and the rule text has been changed to more clearly convey this intent.
		5x. Comm 10.410 (10) (a) and (b): Strongly recommends retaining the current requirement that allows tank owners to choose either a visual, audible or automatic shut-off overfill prevention device. States the cost to instead equip a tank with the automatic shutoff device proposed in this section would be over $1,000, which	5x. NFPA 30 requires overfill prevention for tanks. This section was written at the request of the industry to provide clarification and to address criticism that the former overfill requirement and

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		does not include the costs of audible or visual devices, which are also proposed. Many new AST tank installations would need an electrical source and new electronic components to meet these requirements, increasing costs even more. Believes this section would apply to all ASTs, even though Comm 10.615 (5) (n) l. indicates that application was not intended.	national standard did not take into consideration the various delivery practices and logistics that occur – and in many situations inspectors were not uniform in compliance expectations, and often the inspector requirement was excessive. The proposed language makes it clearer what is minimally acceptable, than the language of the current requirement. For example, a 1,000 gallon AST that is filled via a hand-held nozzle is only required to have a product-level site gauge. A tank in a basement must have an audible and visual signal to the delivery driver who is outside the building. The requirement for automatic shut-off is required only for tanks that are filled via a tight fill, which are the larger tanks that either are too tall for manual filling and/or are filled by high capacity transfer. Economical overfill alarms powered by 9-volt batteries have been in use for many years. A visual device is a site gauge that indicates product level based upon a float mechanism. Tanks that are addressed under Comm 10.615 are required by Comm 10.615 (5) (m) to comply with the spill and overfill requirements in Comm 10.410.
		5y. Comm 10.420: Asserts that the requirement to install synthetic liners or poured concrete has the potential to close several bulk plant and terminal facilities in the state. Given that no new terminals and few bulk plant facilities have been built in the state within the last 15 years, this would have an extremely negative effect on motor fuel supplies in the state, and would in all likelihood result in even higher prices to consumers. Believes the requirement that only synthetic liners or poured concrete could be used would be extremely onerous for operators of bulk plants with aboveground storage tank farms. The required installation of a synthetic liner within existing secondary containment areas at tank farms – when triggered by an upgrade, such as adding a new tank to the existing containment area – is technically impossible in many circumstances, and cost-prohibitive in nearly all other circumstances. For	5y. This requirement for synthetic liners or poured concrete is intended to apply only to new dike systems rather than to both new and existing dike systems, and therefore the referenced upgrading of existing tanks would not be required. The rule text has been changed to more clearly convey this intent. The proposed rules have also been changed to provide additional options for installing new tanks within existing or new dike systems and for expansion of existing dike systems. These options include allowing existing dike systems to be extended with similar materials, and allowing use of

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		example, tanks at bulk plants can be as large as one million gallons and weigh up to 140 tons. Estimates that the effort to jack up a tank of this size and to attempt to place a liner under it would be cost-prohibitive. Believes that because of the amount of equipment that would be necessary to lift the tank and the extreme weights involved, the integrity of the liner would most likely be compromised during installation, resulting in an essentially useless liner. Synthetic liners can also be damaged and lose their integrity in any application where a service vehicle could enter, as pointed out by Phillip Meyers in his book *Aboveground Storage Tanks*, McGraw Hill, 1997. Clay works better in such circumstances as it is self-healing. Clay has been a proven effective barrier for decades and should not be banned. States the revised code should provide for the inclusion of clay or asphalt liners for AST secondary containment, as these systems can provide just as effective of a secondary containment function as poured concrete or synthetic liners, and are much less expensive for owners and operators to install and maintain. Although the proposed rules would allow clay liners in certain situations, the conditions placed on that use guarantee that clay can never be used. First, only tanks with double bottoms and interstitial monitoring can be placed in such secondary containment areas. This would require upgrading every tank within a secondary containment dike to a double-bottom tank before clay could be used. Furthermore, the permeability restrictions are overly conservative given the temporary function of secondary containment dikes. States that notwithstanding the crippling effect that this requirement would have on the industry, the requirement may not be justified from an environmental protection standpoint. Secondary containment is not meant to hold spilled liquid for any significant period of time; it is meant only for temporary containment of spilled liquids until appropriate response can be taken to stop the release and remove the spilled liquid (per the EPA definition under SPCC rule). The proposal for synthetic liners transforms this temporary-containment function into more of a permanent-containment requirement, which is over-burdensome and unnecessary. Facilities already must comply with NFPA 30 requirements for diking around ASTs. Furthermore, existing ASTs that have the potential to impact waters of the U.S. (nearly all aboveground tanks in Wisconsin) are already required to have secondary containment under the federal SPCC requirements. Believes that the existing regulations already provide sufficient regulatory control for secondary	a clay dike liner with new single-bottom tanks that are constructed to ensure that any leaks from the bottom will drain to a conspicuous location and be contained there. The Department has found that clay liners, by themselves, are not adequately effective. As of July 31, 2007, the Department's PECFA program had reimbursed 882 claims for cleanup of discharges from aboveground tanks, and 28 claims for cleanup of discharges from terminals, at costs of over $141 million and $14 million, respectively. However, the proposed rules do not ban use of clay liners, and the additional options referenced should accommodate continued installation of clay liners. The 10^{-6} permeability standard is commonly used for earthen containment throughout the country, including in Michigan and Minnesota. Requiring this impermeability for 35 years is not intended for containing a leak for that entire time period, but instead is intended to result in having an adequate barrier in place if a leak occurs later in the life of a dike system. The federal Spill Prevention and Control Countermeasure (SPCC) regulations only address threats to surface waters, and under section 101.09 (3) (a) of the Statutes, the proposed rules must protect Wisconsin's groundwater as well. "Sufficiently impervious" for surface water protection has not always proven to be sufficient for groundwater protection, as evidenced by the PECFA claims cited above. See comment and response 1d on page 1.

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		containment of ASTs, and the proposed requirement to provide liners to secondary containment areas when either a new tank is added to an existing tank farm or an upgrade requirement is otherwise triggered is unreasonable and duplicative, given regulations already in place. Believes that clay or asphalt liners can be just as effective a means of secondary containment as synthetic liners, and at a price that is significant, but much more reasonable than synthetic liners. Furthermore, the vast majority of bulk plants and terminals in Wisconsin already utilize clay liners in their existing tank farms because the use of clay is specified in the SPCC rule as an acceptable form of secondary containment. EPA requires that the floor and walls of secondary containment systems be "sufficiently impervious" to contain the product being stored in the associated tank(s). EPA does not specify permeability or retention-time performance standards, but instead requires that a Professional Engineer design the system, and gives the certifying Professional Engineer flexibility in determining how best to design the containment system to prevent discharge. The SPCC rules require that the SPCC Plan for a facility contain a "complete description of how secondary containment is designed, implemented, and maintained to meet the standard of sufficiently impervious." Asserts that EPA has also stated that in certain geographic locations, the native soil (e.g., clay) may be determined as sufficiently impervious by the Professional Engineer. States this point is well taken in southeastern Wisconsin, where a high number of bulk-plant tanks and terminals are located and where the local geology generally consists of over one hundred feet of clay soils. This underscores the unreasonableness of not allowing for consideration of site-specific factors in designing secondary containment systems. Recommends adopting a standard similar to EPA's in defining what constitutes an adequate secondary containment system. This approach would allow for site-specific design of secondary containment systems by Professional Engineers using best engineering practices, instead of implementing prescriptive requirements that are neither cost-effective nor based on site-specific factors. This approach would also greatly simplify compliance for operators of tank farms, all of whom must already comply with the SPCC rules. A requirement for different secondary containment standards under Comm 10 versus the federal SPCC regulations would create confusion and is not justified by science or experience.	

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		Believes that the clay liner issue is critical to the future of bulk fuel storage facilities, and that if no allowance is made for clay liners, not only will several facilities be forced to close, but motor-fuel secondary storage capacity in the state will materially decrease over time, resulting in higher fuel cost fluctuations for consumers.	
		5z. Comm 10.420 (2): States the reference to ACI 350.2R seems to mandate concrete walls for dike systems. Recommends removing this reference because this standard is already referenced in the code, in section Comm 10.200.	5z. The rule text has been changed to more clearly apply this standard only where concrete is used. Although the standard is adopted in section Comm 10.200, and applied in Comm 10.210, this reference in Comm 10.420 (2) is desired for improving the readability of the code, by specifically showing where to apply the standard.
		5aa. Comm 10.420 (2) (b): Believes that the language requiring walls on a secondary containment system be constructed of earth, solid masonry, steel, pre-cast concrete, or engineered poured concrete may preclude use of an alternative material which could be considerably cheaper to construct, and just as effective. Requests modifying the language to allow for alternative materials, such as clay, for the dike walls.	5aa. The rule text has been changed to allow use of these alternative materials.
		5bb. Comm 10.420 (2) (i): Recommends also not applying the liner-seam visibility requirement beneath new tanks that sit directly on the ground, and where a liner is covered with stone.	5bb. The rule text has been changed to not apply this requirement where a liner is covered with any earthen material, including stone.
		5cc. Comm 10.420 (5): States this requirement goes beyond the federal requirement to have containment at loading racks, and it should be changed to apply only to areas with loading racks.	5cc. Section 101.09 (3) (a) of the Statutes requires the Department to protect all waters of the State from these liquids, not just at loading racks.
		5dd. Comm 10.430: Recommends exempting terminals from this section, because dikes at terminals are designed for vehicle entrance.	5dd. The vehicle-collision protection in this section would be required only where vehicle impact "is likely to occur." An informational Note has been added to illustrate that the Department does not consider such impact is likely to occur at a terminal where roadways are clearly defined, access is restricted to authorized personnel, and vehicle drivers are familiar with the layout of the facilities.

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		5ee. Comm 10.440 (1) (b): Recommends re-inserting, rather than referencing, the AST upgrade standards that were in a previous version of Comm 10, so the regulated public does not need to refer to the previous version.	5ee. The rule text that referred to compliance with the upgrade standards has been deleted to avoid inferring a need to refer to the standards.
		5ff. Comm 10.440 (3): Recommends returning to the previous threshold of 5,000 gallons and larger, for requiring all steel ASTs to be inspected according to the 2006 edition of standard STI SP001. Indicates not all owners of steel ASTs are familiar with STI SP001, which is more stringent than NFPA 395, and owners of smaller tanks will have greater difficulty complying.	5ff. Comm 10 no longer has the 5,000 gallon threshold because STI SP001 now satisfies federal Spill Prevention Control and Countermeasure inspection requirements in 40 CFR 112 for facilities within the scope of that rule which have tank capacities larger than 1320 gallons. The rule text has been changed to not require these inspections for (1) tanks smaller than 1,100 gallons; (2) tanks for heating oil and at farms and construction projects; and (3) tank wagons, movable tanks and tank vehicles. An informational Note has been added for (1) explaining the STI SP001 inspection frequency and recordkeeping; (2) noting that for almost all tanks of 5000 gallons or less, these inspections are only required to be visual; and (3) referencing optional checklists and guidance that are available on the Department's Web site. NFPA 395, which had addressed tanks only at farms and construction sites, no longer exists as a national standard.
		5gg. Comm 10.440 (3) (b) 2.: Recommends implementing the required inspections of steel ASTs within 10 years of the rule becoming effective, rather than within 4 years.	5gg. Disagree. Tanks inspected during the 4th year of the compliance period could be in use for 12 years without inspection. Extending the 4-year period to 10 years would lengthen that non-inspected period to 18 years.
		5hh. Comm 10.440 (4) (a) 3. and 4.: Recommends allowing contractors to perform the required inspections of non-metallic ASTs, rather than only an owner or operator. Asserts that most tanks of less than 5000 gallons do not have manways, and questions how tanks without manways are to be inspected internally.	5hh. The rule text has been changed to more clearly convey that the monthly and annual inspections can also be performed by contractors. Disagree that most small tanks do not have manways. Tanks without manways can be inspected with a video camera or borescope through a piping connection if necessary. This requirement for an internal

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			inspection every 5 years is based on a review of inspection guidelines developed by the plastic-container industry, some of which recommend annual or more frequent, internal inspections. Due to the nature of many of the chemicals that are stored in these tanks, and the potential for environmental degradation, a periodic internal inspection is necessary to find any internal degradation that can lead to sudden catastrophic failure.
		5ii. Comm 10.445: Recommends not applying the requirements for non-complying tanks, in Comm 10.545 (3), to seldom-used and temporarily out-of-service ASTs.	5ii. Disagree. Seldom-used and temporarily out-of-service ASTs that do not comply with Comm 10.545 should be closed because of the significant environmental or fire-safety threats that they pose.
		5jj. Comm 10.460 (2) (a) 2.: Recommends not requiring cleaning and removal by certified persons, for all aboveground heating oil tanks for consumptive use where located, no matter what the service (rather than only at one- and two-family dwellings).	5jj. Disagree. Heating oil tanks beyond one- and two-family dwellings typically pose significantly greater fire-safety or environmental threats. This threshold is also consistent with the more restrictive sludge disposal requirements that apply to commercial heating oil tanks.
		5kk. Comm 10.465 (1) (b): Recommends clarifying how a closure assessment is to be conducted without first removing tanks and lines that would block access where samples need to be taken.	5kk. Agree. Detailed site-assessment guidelines have been developed to provide this clarification, and the rule text has been changed in several locations to be consistent with this clarification.
		5LL. Comm 10.465 (2): Recommends not requiring closure assessment for closure of double wall piping for an AST, when modification or upgrading is conducted on an existing system that will remain in operation – which would be similar to the exemption in Comm 10.565 (2) (c) for UST piping.	5LL. Agree. An exemption has been added to Comm 10.465 (2) that matches the exemption in Comm 10.562 (2) (c).
		5mm. Comm 10.500: States that the proposed requirements for secondary containment for tank and piping for new and replacement installations exceed the requirements of the federal Energy Policy Act of 2005. Understands that as mentioned in the Note accompanying this section, the relevant provision of the Act only applies to tanks and piping within 1,000 feet of a potable water system, but these requirements would apply to all new and replacement USTs. Furthermore, the Act only requires secondary containment if the State decides to not require	5mm. Based on the broad federal definition of a potable water supply system, and on input from the Department of Natural Resources, few if any UST systems are expected to be more than 1,000 feet from those systems. The Department had substantial dialog with industry stakeholders, the Department of Natural Resources, the American Petroleum

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		financial responsibility/certification for manufacturers and installers. Indicates Commerce should have obtained outside input before proposing to not require financial responsibility/certification. Strongly believes that this provision should not exceed the requirements of the Act, because it is a costly requirement that can widen a retailer's competitive disadvantage, especially in state-border areas.	Institute, and representatives from adjacent and numerous other States – which uniformly led to concluding that financial responsibility (FR) would not be a viable option. Of particular concern is that although FR would need to be in place for the life of a system, which could be 30 to 50 years, insurance policies generally must be renewed on a yearly basis – and would need to be carried, at a typical regulated facility, by several different manufacturers and installers of numerous different components. USEPA data indicate that 95% of the States are choosing to not use the FR option – and the States which are attempting to use the option are funding it through their Leaking Underground Storage Tank programs, because no insurance provider is yet offering such policies. No substantiated cost data has been submitted to show that the FR option would be cheaper. See response 5c on page 4 for exceeding federal requirements and for rules in adjacent States.
		5nn. Comm 10.500 (4): Recommends not requiring access for elbows in underground piping runs and vent connections.	5nn. An informational Note has been added that cites elbows as an example of a connection that does not need access because typically they do not need maintenance or inspection. The Note also includes an example of connections that need this access.
		5oo. Comm 10.500 (5) (b): Doubts that any sump manufacturer can guarantee that their sumps comply with the proposed requirement to be "vapor tight." States there is no electronic leak detection or volumetric leak detection that is certified to detect below 0.05 gph for vapor leaks. Believes the requirement in this section to have vapor-tight containment would necessitate enhanced vapor leak detection, and it has the potential to result in significant compliance costs. Believes dispenser containment by design cannot be made "vapor tight" because they have an open top to catch drips or leaks from the dispenser.	5oo. The vapor-tight requirement is intended to apply to the material from which a sump is fabricated, rather than to the sump. The rule text has been changed to more clearly convey this intent.

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		5pp. Comm 10.500 (5) (d): Believes there will be significant expense for owners to install sumps on existing UST systems, for all existing pipe connections at the top of tanks and beneath all free standing pumps and dispensers. States the federal Energy Policy Act of 2005 only requires sumps for *new* installations within 1,000 feet of a potable water source, and only if the State decides not to require financial responsibility/certification for manufacturers and installers. Believes the sump requirements should not be more restrictive than the Act. Furthermore, the code does not provide a definition for what materials or products will be allowed (e.g., dispenser pans, spray-on liners, brushed-on liners, or complete sumps). In order to comply with Comm 10.500 (5) (b), owners/operators would have to install full containment, thus not allowing for dispenser pans, spray-on liners or brushed-on liners. States this requirement alone has the ability to put several smaller marketers statewide out of the retail fuel business given the tremendous cost to comply. Believes the Department's cost estimate for this section is not accurate, and the Department has not delineated the cost to the industry because the agency cannot accurately estimate the number of existing dispensers affected by this requirement.	5pp. Agree there will be some expense – however, USEPA data indicate over 34% of releases from components for UST systems occur where connections are made in piping and at dispensers. Installing containment sumps will allow for detection of leaks, and repair of piping- or component-connection failures before a significant, costly environmental release occurs. See response 5c on page 4, for retroactivity. An informational Note has been added to clarify that the proposed rules do not prohibit dispenser pans, spray-on liners, brushed-on liners, or other effective secondary containment practices which are currently in use. The Department presented its cost estimates, which were generated by industry representatives, to the Wisconsin Small Business Regulatory Review Board, and no substantiated, conflicting cost estimates have been submitted.
		5qq. Comm 10.500 (8): Believes the proposed recordkeeping requirements would result in unnecessary duplication and a significant burden on small businesses. For example, there is duplication of effort between the "tank use permit application" and the "annual UST inspection form." The inspection form is enhanced to include additional leak detection and corrosion protection data. The financial responsibility information could be sent to Commerce on an annual basis, and the tank use permit could be eliminated. Believes the requirements of Comm 10.500 (7) and (8) are too broad and encompassing, in addition to being duplicative, and need to be removed from the code. In many instances, there is no need to retain copies of documents which will never be reviewed or which contain information that can be obtained from other documents currently maintained and/or submitted to Commerce (work order, receipts, and invoices). All of this information can be maintained in a property file but not necessarily maintained on-site and can be retrieved with a 72-hour notice period.	5qq. The UST inspection form was created with contractor input, and is completed by a service contractor, rather than an owner or operator, for use by the contractor and the Department's inspection staff in expediting field inspections, rather than for review by office permit staff. The tank-use permit application does not substantially repeat information from the UST inspection form. Permits are renewed annually, and a renewal may occur several months after a field inspection, because inspections generally occur biennially. Renewing a permit signifies that a facility, at that point in time, complies with chapter Comm 10. Up-to-date proof of adequate leak detection practices and financial responsibility is vital to demonstrating that compliance, in part because leak detection practices have a high rate of failure, and insurance policies

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			for financial responsibility can easily be discontinued. All records under the subject code sections are required either federally or by national standards. Receipts and invoices are acceptable records in many situations. Records need to be maintained on site because inspections commonly occur without advance notice, and an inspector often needs to visually refer to the records to perform an effective and efficient inspection. The records may be kept electronically, provided they are in a format acceptable to the department.
		5rr. Comm 10.505 (2) (b): States this section would require USTs to be equipped with an overfill alarm or flow restrictor that would engage at 90% of tank capacity and automatic shutoff at 95%, which would be costly for the industry to implement. Comm 10.51 currently requires only one of the following: flow restriction, an audible alarm or automatic shutoff. According to the rule summary, this is already required by NFPA 30, but has often been overlooked. However, this requirement hasn't always been required by NFPA 30, so the impact of this proposal is actually quite significant. States this provision is retroactive and would apply to tank systems which Commerce apparently let slip through the cracks or systems which never needed to meet the proposed requirement as Commerce implies. Both the current requirements in Comm 10.51 and the proposed requirements in this section are more restrictive than federal requirements. Finally, the proposed one-year deadline to install the required equipment is too short.	5rr. The federal rule requires only one mechanism of overfill prevention, and numerous overfill accidents throughout the country have demonstrated the lack of reliability of one overfill-prevention mechanism. In one incident, five occupants of three vehicles were killed when an overfill resulted in flowing fuel that ignited and impinged on the vehicles. Additionally, feedback from internal tank inspections performed by service personnel has identified a significant number of tanks where the ball float overfill prevention device dissolved or the cage became broken, due to compatibility issues with ethanol or motor fuel additives. This provision would be applied retroactively because of the high level of danger posed by this condition. However, the rule text has been revised to double the compliance period for existing facilities, from one year to two years.
		5ss. Comm 10.510 (2) (b): Recommends changing the definition of qualified person to instead read “a person having knowledge of the equipment by training or by certification from the equipment manufacturer.”	5ss. Disagree. The term “training” is ambiguous and provides no indication of quality. Electronic leak detection equipment is quite sophisticated, and models within manufacturer lines vary along with versions of software. It is very unlikely that an

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			individual who is not certified by the manufacturer will have the necessary competency to perform problem solving, calibration and programming functions. Industry tank contractors and equipment manufacturers have reported that there are various levels of competency necessary for the different equipment and models. Certification by the manufacturer assures that an individual has met the manufacturer's competency expectations to trouble-shoot and service and correct problems with the respective equipment. Individuals certified by the manufacturer will also be apprised of manufacturer-initiated update information, such as service bulletins. The contractors and manufacturers have been adamant that an individual who is not certified by the manufacturer may be performing testing and assessment well beyond their competency, with improperly calibrated test equipment or without the proper equipment.
		5tt. Comm 10.515: Recommends specifically allowing vapor monitoring leak detection methodologies. Contrary to the discussion in the compendium, vapor monitoring is designed to detect "vapor" leaks from a system before a liquid release has occurred. This methodology is much more sensitive than other currently available techniques and should be allowed as on option.	5tt. Vapor monitoring that relies on detection of tracer elements, rather than detection of hydrocarbons, can be allowed under the "other methods" which are addressed in Comm 10.515 (9), which provides latitude to approve any leak detection methodology that is equivalent to the criteria in Comm 10.130.
		5uu. Comm 10.515 (2) (c): Suggests referring to paragraph (b) instead of (d).	5uu. Agree. The cross-reference has been changed.
		5vv. Comm 10.515 (2) (b): Believes inventory requirements should remain as they are now (consistent with federal requirements) at 1% +/- 130 gallons. The proposed limit of 0.5% of throughput on a monthly basis does not take into account thermal contraction – the temperature difference between the fuel in the tanker and the temperature of the ambient air can make a significant difference on volumes. For example, for every degree of temperature change on an 8,800 gallon tanker, the fuel contracts or expands approximately eight gallons – the site could potentially be out of compliance as soon as the load is dropped. Tanks with	5vv. The proposed requirements in Comm 10.515 (2) for inventory control would make this method of leak detection equivalent to other methods of leak detection, and are intended to apply only where inventory control is used as the leak detection method – which is uncommon and becoming increasingly more so. The rule text has been revised to more clearly convey this intent, and to clarify that

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		minimal product throughput are especially susceptible to these fluctuations; the proposed threshold would trigger a tightness-testing requirement for many low-volume tank systems that are not leaking. Also, the requirement that tightness testing be performed if a site is out of variance for two consecutive months will generate costly and unnecessary testing, especially in light of the above facts.	the statistical inventory reconciliation method of leak detection does not include use of this 0.5% threshold.
		5ww. Comm 10.520 (2) (b) 1.: States the 60-day window may not be enough time to have repairs made to the system. This is a function of the availability of certified persons who are qualified to do the work necessary to bring the system into compliance. A 90-day window is more realistic.	5ww. The rule text has been changed to allow a 90-day repair period.
		5xx. Comm 10.600 (5) (c): States the addition of this paragraph would have a significant cost impact on many tank system operators who have unattended-fueling operations at any time. This provision would require most unattended operations to be upgraded because most are not equipped with an automatic shutoff and with inline and sump leak-detection monitors. This is a significant expense, especially for operators who would need to install wiring for the monitoring equipment and to purchase a new tank monitor capable of performing the functions proposed under this new section. States this requirement could cost $8,000 to $10,000 for a typical station.	5xx. The requirements in Comm 10.600 (5) for unattended facilities are intended to apply only to facilities that do not regularly have an attendant on duty on a daily basis, rather than to retail stations which continue to operate dispensers after closing each day. The rule text has been changed to more clearly convey this intent; and existing facilities are allowed to send an alarm to a facility staffed 24 hours/day, 7 days/week, instead of shutting down.
		5yy. Comm 10.610 (1) (e) 2.: Recommends changing the maximum tank capacity for Class I liquids from 300 to 330 gallons, because 330 gallons is the standard tank size.	5yy. Although the 300-gallon maximum came from industry input, the rule text has been changed to allow a maximum of 330 gallons.
		5zz. Comm 10.610 (1) (e) 12.: Recommends also requiring electrical bonding where Class II liquids are dispensed from a tank wagon to equipment.	5zz. Agee. The rule text has been changed to also apply this bonding requirement where Class II liquids are dispensed.
		5aaa. Comm 10.610 (3) (b) 2. and (3) (c) 1.: Believes the requirements to obtain approval from the local fire department prior to fueling from a tank vehicle are not needed because Comm 10.610 (3) provides an acceptable level of protection without those approvals. And, since Comm 10 is a minimum code, local authorities can always adopt ordinances that are more restrictive.	5aaa. Disagree. Wet-hose fueling has long been prohibited by national standards and Comm 10. However, the standards allow the Authority Having Jurisdiction (AHJ) to be more or less restrictive. Since this fuel-transfer practice has significant local fire safety, emergency response and logistic influences that cannot be determined by the Department, the local fire department is recognized as the AHJ. Comm 10 includes the language in an effort to provide some basic guidelines for the fire service to apply uniformly.

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		5bbb. Comm 10.610 (3) (e) 7.: Believes blocking wheels during fueling from tank vehicles is not practical – and is not needed because placing the tank vehicle's transmission in park and locking the parking brake provides adequate protection, especially since fueling generally takes place on level surfaces.	5bbb. This requirement has been deleted. This topic is addressed by the federal Motor Carrier Safety Administration and Occupational Safety and Health Administration.
		5ccc. Comm 10.615 (5) (n) 1.: States that requiring a vent whistle or similar device conflicts with Comm 10.410 (8), which requires a visual overfill prevention device. Believes the intent was to exclude tanks regulated under Comm 10.615 (5) (n) from the requirements of Comm 10.410 – and that either type of device provides an appropriate level of protection.	5ccc. Comm 10.615 (5) (n) 1., 10.630 (3) (h) and 10.410 (8) have all been changed to read the same.
		5ddd. Comm 10.680 (3) (a): Indicates most oil companies would see no need to clean a tank before filling it with ethanol-based fuel, after gasoline was stored in the tank. Believes this cleaning makes sense if the previous fuel was other than gasoline. Suggests exempting the cleaning requirement if non-ethanol based gasoline was previously in the tank or if the prior product is compatible with the changed use.	5ddd. Disagree. This suggestion is contrary to what the ethanol industry recommends in its *Handbook for Handling, Storing, and Dispensing E85*, and to what is known from experience with transitioning to ethanol or bio blends. In October 2005 and again in March 2006, the Department responded to numerous vehicle-owner complaints resulting from a marketer not cleaning a storage tank prior to transitioning from a non-ethanol gasoline to gasoline with 10% or less ethanol. Transitioning to fuels with more than 10% ethanol, without cleaning the tank, is expected to result in more severe problems. The E85 handbook can be viewed and obtained at the following Web site: *http://www.eere.energy.gov/afdc/pdfs/40243.pdf*
		5eee. Comm 10.900: Suggests expanding the code to include tank wagons that store used oil.	5eee. The rule text has been expanded beyond the initial workgroup's focus, to have Comm 10 regulate tank wagons that store used oil or other Comm 10 liquids, in addition to tank wagons which store motor vehicle fuel. This regulation includes requiring financial responsibility protection for these tanks.
6	Tim Clay	6a. Supports many of the proposed changes, and recognizes the need to stay current with federal requirements.	6a. Support is noted.

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	Wisconsin Federation of Cooperatives Madison, Wisconsin	6b. Believes the Hearing draft goes well beyond what other states require, contains numerous changes that exceed federal requirements, and would add additional costs for operating existing facilities and for constructing new systems.	6b. See responses 5c on page 4, 5mm on page 18, and 5pp on page 19.
		6c. States the level of knowledge needed to fully understand the proposal is significant, and that even for the most knowledgeable persons in their industry, there continues to be a knowledge gap for what is being proposed, due to the numerous standards that would be adopted by reference.	6c. See responses 5b and 5k, on pages 4 and 7.
		6d. Believes the federal Energy Policy Act of 2005 does not establish any retroactive design provisions for existing dispensers or tanks. Suggests modifying the sections of Comm 10 that are affected by the Act so that they only apply to new installations or when an existing system is replaced. Believes applying these requirements retroactively exceeds the scope of the Act, and adds additional costs that other marketers in other states do not have to incur. States these and many other proposed retroactive provisions – that operators in other states do not have to comply with – would widen the regulatory gap between operators located in Wisconsin and those located nearby in other states. States that as an alternative to enhanced design specifications for sumps and for double-walled tanks and piping, the Act provides a financial-responsibility option for manufacturers and installers. Believes the Department should have sought input from the industry about whether financial responsibility is a viable option, prior to proposing rejection of that option.	6d. See responses 5c on page 4, 5mm on page 18, and 5pp on page 19.
		6e. States that maintaining Wisconsin's existing petroleum infrastructure and expanding storage capacity and outlets for products is key to a strong economy in Wisconsin. Adequate storage helps lessen the financial impact when petroleum is in tight supply. Intensive regulation translates to extra costs, and has an impact on business decisions relating to when and which storage facilities are retired. Additionally, investment in new storage will target operations that are the most profitable. Other pressures, such as the Governor's proposal to tax oil companies on their gross petroleum receipts without an ability to pass on the cost, will amplify this.	6e. Concern is noted. The proposed rule text has been clarified to be more clearly commensurate with the high fire safety and environmental contamination threats posed by the liquids being stored or dispensed.
		6f. Believes the proposed rules would create barriers to building infrastructure for the emerging biofuels industry. Some of the proposed restrictions and retroactive provisions establish a cost differential between traditional motor fuels and bio-based fuels. Numerous retailers across the state have invested in biofuels	6f. The proposed rules relating to biofuels were developed in concert with standards and best practices that are promoted by the national biofuels

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		infrastructure that will be out-of-date if the alternative fuels section is adopted as proposed. The risks a business takes in investing in a developing biofuels market are significant; and since the economics of retailing E85 are extremely tight, additional retroactive requirements for this segment of the industry will discourage rather than encourage continued investments for building biofuels infrastructure.	industry. These rules include protecting the biofuels industry by protecting the quality of biofuels.
		6g. States the proposed changes to Comm 10 will be costly; and is concerned that the Department could not provide a better cost estimate for the proposed sump requirement, because of not knowing how many dispensers will be affected. Believes the low-end sump installation cost estimate only accounts for the cost of the sump, and does not, for example, account for the cost of plan approval, down-time, or cost of installation. Understands that a significant percentage of dispensers will be impacted by this proposed requirement.	6g. See response 5pp on page 19, which addresses costs for sumps at dispensers. No plan review is required for upgrading a station to include these sumps. Industry sources indicate downtime should not be significant because the upgrades typically occur on a dispenser-by-dispenser basis.
		6h. Indicates the rule analysis should have also addressed other retroactive provisions, such as replacing existing E85 dispensers with listed dispensers when they become available, and equipping unattended UST systems with leak sensors and an automatic shut-off. Disagrees with the Department's assessment that automatic shut-off has been required for a long time, and disagrees with the proposal to make this section retroactive. States there are numerous systems installed prior to the Phase I rulemaking that do not have automatic shut-off. This can be a very expensive upgrade, especially if the tank monitor is inadequate for this purpose.	6h. The proposed rules are not intended to require replacing existing, approved E85 dispensers with listed dispensers when listed dispensers become available. No listing is currently available, and when listings will become available is currently unknown, so the Department has approved installation of individual, unlisted dispensers as an interim practice for enabling use of this new fuel. This Commerce policy reflects a strong partnering and proactive effort to expanding the use of biofuels. The rule text has been changed to more specifically allow continued use of existing, approved unlisted dispensers after listed dispensers become available – and allow further installation of unlisted dispensers that are approved by the department. The requirements for unattended UST systems are intended to apply only to facilities that do not regularly have an attendant on duty on a daily basis, rather than to retail stations which continue to operate dispensers after closing each day. The rule text has been changed to more clearly convey this intent, and to allow an automatic alarm to 24/7

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			remote staff, for existing facilities. See response 5rr on page 20 for automatic shut-off with overfills.
		6i. States that a review of records by several marketers suggests that the adoption of a 0.5 percent leak detection rate for tanks with low throughput will result in a number of false positives.	6i. The 0.5% rate and other inventory-control requirements would make this method of leak detection equivalent to other methods of leak detection, and are intended to apply only where inventory control is used as the leak detection method – which is uncommon and becoming increasingly more so. The rule text has been revised to more clearly convey this intent, and to clarify that the statistical inventory reconciliation method of leak detection does not include use of this 0.5% threshold.
		6j. Supports cost-effective solutions to provide a reasonable level of environmental protection and to ensure system users remain safe, and states the Federation's members have spent hundreds of thousands of dollars to meet earlier UST and AST upgrade deadlines – but remains skeptical of the merits of additional upgrade requirements that are not predicated on federal mandates.	6j. See responses 6e and 5d on pages 24 and 5.
		6k. Agrees with above comments 5f to 5mm, 5oo to 5xx, 5zz, 5aaa, and 5ccc to 5eee.	6k. See above responses to comments 5f to 5mm, 5oo to 5xx, 5zz, 5aaa, and 5ccc to 5eee.
7	Jerry L. Waller Modern Welding Company, Inc. Milton, Wisconsin	7a. States the number-one argument for secondary containment instead of financial responsibility is that secondary containment requires measures to be taken to prevent leaking underground storage tanks, whereas financial responsibility (FR) only requires provisions for paying for the cleanup of a release after the release has already happened. Believes some may argue that mandating FR would entice installers to be more responsible in installations and cause manufacturers to be more quality-conscious in production, but this argument is insignificant in light of the threat of litigation that already exists for these companies.	7a. Agree – support is noted.
		7b. Questions the feasibility of installers obtaining FR. While installers already have access to this insurance, the cost will most assuredly increase. This insurance is only available on a year-to-year basis – there is no-ten year policy. Questions what would happen when a different installer or a service company or the UST owner makes a major or even minor modification to the system, that results in a leak, and what would happen when the original installer goes out of business. Questions whether the Department would have the resources (legal and	7b. Agree – concerns are noted.

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		administrative manpower) to pursue resolution of who is financially responsible. Indicates the federal guidelines do not require the manufacturers of ancillary equipment or components to have this insurance – and if their product is the cause of a release, and they don't have the coverage – more than likely, the installer's insurance would be the target of the lawsuit. The increase of frivolous lawsuits would undoubtedly result in higher installer insurance costs. States some installers are considering only installing secondary containment tanks regardless of whether or not the Department mandates secondary containment. If this happens, those installers would still have to have the insurance and therefore would pass the cost of this insurance along to the tank owner. The result would be that the tank owner would have a much higher cost and still have to put in secondary containment tanks. The Petroleum Equipment Institute has already predicted that this would also cause some smaller installer companies to go out of business. Fewer installers would equate to higher costs to the owner, and could result in delays in installations as well as in response to installation problems.	
		7c. States the ability of manufacturers to obtain this insurance is a completely separate and much bigger problem. Relays comments from Wayne Geyer of the Steel Tank Institute, and from Brian Donovan of the Steel Tank Insurance Company, that include the following: • Most tank manufacturers are seriously considering ceasing the production of single wall tanks for fear that a single wall tank built for an FR state will end up in a secondary containment state. • EPA has mandated that defense costs be included within the limits of the pollution policy, which is contrary to the norm. This will result in a 20-30% increase in rates. • Such insurance will be difficult to obtain and possibly impossible to maintain for a thirty-year time frame. It is assumed (and not denied) that EPA came up with the 30-year time frame because some tank manufacturers offer a 30-year limited warranty on their tanks. A limited warranty does not correlate to a 30-year full financial liability insurance policy. • The Steel Tank Institute will not recommend that its tank fabricating members do business in states that impose FR. • EPA wants tank manufacturers to carry insurance on a tank for 30 years beyond its manufacture date – even if the manufacturer goes out of business. However, if the tank owner, who is also supposed to have financial responsibility,	7c. Agree – concerns are noted.

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		drops their coverage because of selling the UST facility, the owner/operator is no longer covered for leaks that occur or are discovered after that date. Why would EPA require manufacturers and installers to have far more extensive coverage than the tank owner/operator who is legally liable for clean-up? • Companies who stop manufacturing underground tanks would no longer be able to procure insurance because insurance premiums are based upon sales generated during the policy period, thus insurance carriers will have to "create" a new product and a new mechanism to price this product. Further, these manufacturers will not be motivated to pay premiums and maintain their insurance, thereby making it burdensome for states to enforce. What happens to manufacturers that no longer produce tanks and do not maintain their insurance? • Companies must predict that such insurance will be available for the next 30 years, even if they intend to stay in the underground storage tank business. The insurance industry is subject to turbulent cycles, just as any other industry. In 1988, such insurance was nearly unavailable. In 1993, such insurance was not available to tank owners, except through State programs. • Tanks manufactured and installed for today's fuels and operative technologies may be subject to different fuels and operating parameters of tomorrow that cause failures. Also, a tank manufacturer has no control over how this product is installed or how it is maintained, or if it is installed correctly. Some product manufacturers do not even know what product is going through their equipment or who ultimately owns the equipment. It is unreasonable to expect an equipment manufacturer to provide financial responsibility under these circumstances, much less for 30 years. • We expect that companies will frequently re-incorporate their businesses to remove their 30-year exposure to the rule. • By imposing this long-term unobtainable imposition on tank manufacturers, the weight of the law places the manufacturer as a primary target of the plaintiff in future disputes. If a release occurs over 10 years after the tank system is installed or if the release occurs from a non-tank or non-pipe component manufactured by a company that does not have the same 30-year financial responsibility, the tank and pipe manufacturer will be blamed due to the 30-year financial responsibility insurance that only they are required by law to hold. • While tank manufacturers are not objecting to carrying insurance of $1 million per occurrence and $2 million aggregate to cover releases caused by improper	

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		manufacturing, the 30-year time commitment is unworkable. It would cause many prominent tank and piping manufacturers to stop doing business in States that mandate the EPA FR Guidelines. It would cause other manufacturers to change their business name on a frequent basis. It would increase the cost of single-wall tanks such that single-wall tanks may become more expensive than secondary containment tanks.	
		7d. States the burden on the Department alone to administer and police such a program as would be required by Financial Responsibility makes FR unfeasible. Under FR, EPA mandates that insurance companies are required to notify the insured and the State of cancellation or non-renewal of policies, and EPA also mandates that this has to be done within a certain time frame. Believes the administrative maintenance for this amount of records is unfathomable.	7d. Agree – support and concerns are noted.
		7e. States the increased cost to go to steel secondary-containment tanks will not double the cost of the tanks. In some cases it would increase the cost by as little as 25%, and it may add as little as 2-3% to a new, ground-up, convenience store.	7e. Agree – cost estimates are consistent with the Department's estimates. No substantiated comparison cost data has been submitted for the FR option.
		7f. Indicates that under FR, potentially only secondary-containment tanks would be available, and installers would only install secondary-containment tanks – and the costs for this to the manufacturers and installers and thus the tank owners would be much higher than if the Department mandated secondary containment to begin with. Also, the Department would have the extraordinary burden and cost of maintaining records and policing such a system.	7f. Agree – concern is noted.
8	Tina Ball Xcel Energy Eau Claire, Wisconsin	8a. Comm 10.600 (1) (b): Questions whether the requirement to test Class I motor fuel dispensers for electrical continuity applies to suction pumps, as opposed to pressurized pumps.	8a. The referenced requirement, in PEI RP400, covers continuity testing for any dispenser that dispenses Class I or II motor fuels, because the danger of a static-induced fire while fueling is not dependent upon the type of pumping system.
		8b. Comm 10.400 (3) (d): Questions whether the department has determined that there is a higher rate of releases at transitions between aboveground and underground piping. States each of their facilities have at least 10 of these transitions, and their systems have been in place for over 30 years with no instances of releases at these points. States Xcel routinely inspects their piping for the appearance of leaks from the aboveground piping and for the presence of dead vegetation around the underground piping. Requests that secondary containment be required for these existing transitions only when a new tank system is installed	8b. The rule text has been revised to more clearly require secondary containment only when newly installing piping transitions from underground to aboveground.

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		or when 50 percent or more of a run in replaced, since digging around an existing pipe may increase the chances of damaging the pipe.	
		8c. Comm 10.510 (4): States the leak detection requirements for piping in this section are not feasible due to the limitations of "precision tightness testing" technology. States they have reviewed the various third party certified line-tightness testing technology as evaluated by the National Work Group on Leak Detection Evaluations and found that all the available technology either is not certified to work on piping with Xcel's large quantities of fuel, or the methodology required introduction of chemicals (such as tracers) that could cause metallurgical changes inside the combustion turbines thereby damaging equipment and creating a safety hazard for plant personnel. (Notes the referenced report is on-file with the Minnesota Pollution Control Agency and is titled *Long-Term Mechanical Integrity Management of Underground Fuel Supply Piping from Fuel Oil Forwarding House to Combustion Turbines*.) Recommends expanding the allowable methodologies for integrity management of underground piping to include the American Petroleum Institute Recommended Practice 570 inspection process.	8c. The rule text has been revised to accept in-service evaluations for piping that are performed in accordance with API Standard 570, by organizations that maintain or have access to an authorized inspection agency, a repair organization, and technically qualified piping engineers, inspectors and examiners, all as defined in API 570.

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Oral	Randy Meffert Meffert Oil Company and WPMCA Waunakee, Wisconsin	M1a. Believes there is too much grey area in the proposed rules that could be interpreted unfavorably by an adverse regulator. Requests more clarity to reduce that potential.	M1a. The proposed rules have been changed in several places to be more clear, especially where misinterpretation of retroactivity has resulted in overestimating the financial and operational impacts.
		M1b. Indicates the cross-references to adopted standards and related reference materials are very numerous, and burdensome for installers and small oil companies to follow and understand.	M1b. See responses 5b and 5k on pages 4 and 7. Where Hearing comments identified specific rule text that was problematic, the text generally has been clarified or otherwise revised.
		M1c. States there are some issues that will have a financial impact of some members of the Association.	M1c. Agree there will be some financial impacts, and the rule text has been clarified to be more clearly commensurate with the high fire safety and environmental contamination threats posed by the liquids being stored or dispensed.

Clearinghouse Rule Number: 07-029			Hearing Location: Eau Claire
Rule Number: Chapters Comm 2, 10, 47 and 48			Hearing Date: May 2, 2007
Relating to: Flammable, Combustible and Hazardous Liquids			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Oral	Troy Batzel Kwik Trip, Inc. LaCrosse, Wisconsin	EC1a. Comm 10.500 (5): States there is no clear definition of what the required secondary-containment sumps could consist of, and there is too much uncertainty of what would meet the requirements for those sumps – such as whether the sumps must be liquid-tight against rain. If full containment would be required, and other options such as brushed-in liners would not be allowed, the financial impact on owners and operators could be huge, and corresponding cost estimates should be developed for a typical station.	EC1a. The rule text has been changed to (1) convey that the sumps must be fabricated and installed in a manner that prevents release of liquids, and (2) to include the leakage-test requirement that previously was in Comm 10.230 (9). An informational Note has also been added to clarify that the proposed rules do not prohibit dispenser pans, spray-on liners, brushed-on liners, or other effective secondary containment practices which are currently in use. These sumps are intended to provide containment of leaking product, and they cannot do that if they are full of rainwater. Consequently, the rule text has been changed in Comm 10.230 (9) to more clearly convey that (1) sumps and secondary containment systems must be inspected at least monthly, and any liquid or debris which is present then must be removed; and (2) any deficiencies that allow for liquid release or water intrusion must be repaired or corrected.
		EC1b. Comm 10.500 (8): States there is a large duplication of recordkeeping, due to maintaining compliance records at each site, for inspectors, and then annually submitting the same documents to the Department for yearly tank permits. After an inspector finds a site to be in compliance, submitting the same records in order to receive a tank permit does not seem to make sense. Suggests having inspectors issue the permits when the inspection is completed.	EC1b. Up-to-date proof of financial responsibility, which is vital to demonstrating compliance with chapter Comm 10, is not kept on site, and verification of it is an office-intensive process that would be inefficient for field inspectors to perform. Permits are renewed annually, due in part to high failure rates of leak detection practices – and each renewal includes review of the 3 most-recent months of leak detection records, due to that high failure rate. Field inspections generally occur biennially, due to the limited number of inspectors available, so permit renewals usually occur more than 3 months after a field inspection, and consequently include review of subsequent, rather than the same, leak-detection records.
		EC1c. Comm 10.515 (2) (b): Suggests studying how many tanks would be out of compliance if the currently permitted inventory variance of 1% of throughput	EC1c. The 0.5% threshold and other inventory-control requirements would make this method of leak

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		plus or minus 130 gallons, is reduced as proposed, to 0.5% of throughput. Believes this change could result in a lot of unnecessary follow-up testing.	detection equivalent to other methods of leak detection, and are intended to apply only where inventory control is used as the leak detection method – which is uncommon and becoming increasingly more so. The rule text has been revised to more clearly convey this intent, and to clarify that the statistical inventory reconciliation method of leak detection does not include use of this 0.5% threshold.
Oral	Mark Bejin Chippewa Falls, Wisconsin Bejin Pump Service	EC2a. Comm 10.310 (3): Questions why corrosion protection is not required for underground heating oil tanks of 4000 gallons or less, since it is required for tanks larger than that.	EC2a. The rule text has been changed to clarify that corrosion protection is also required for tanks of 4000 gallons or less, if installed after October 1994.
		EC2b. Comm 10.500 (3) (d) 2.: States recertifying multiple used tanks in a contractor's yard would be more economical than waiting until a tank is moved to a new site and then recertifying only that tank.	EC2b. The rule text has been changed to allow multiple certifications in a contractor's yard.

Clearinghouse Rule Number: 07-029			Hearing Location: Green Bay
Rule Number: Chapters Comm 2, 10, 47 and 48			Hearing Date: May 3, 2007
Relating to: Flammable, Combustible and Hazardous Liquids			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Oral	Don Johnston US Oil and WPMCA Combined Locks, Wisconsin	GB1a. Opposes increasing the level of regulation of tanks storing Class IIIB liquids: the increase is unnecessary and goes beyond federal requirements and requirements in nearby States.	GB1a. Some federal requirements exceed the proposed rules – and where the proposed rules may appear to exceed the federal requirements, the purpose generally is for fire prevention that is regulated less specifically, but not less restrictively, by those requirements for Class IIIB liquids, such as the Occupational Safety and Health Administration's general duty clause in 29 USC 654 section 5 (a) (1). In adjacent States, similar requirements typically apply to these liquids, but at the local level.
		GB1b. Recommends fully allowing clay or asphalt liners for AST secondary containment. Properly installed clay liners are an effective and far less costly alternative than synthetic liners. Agrees with adding performance requirements for clay liners, but recommends not requiring the tank to have a double-bottom. Recommends exempting exiting, large, field-constructed tanks from ever needing a liner beneath them, unless they are dismantled for moving. Although it is possible to raise those tanks, it would be very expensive, it would be dangerous to work underneath a raised tank, and it would be too likely for the tank to be damaged. Believes that if clay liners must meet a 35-year performance standard, all other types of liners should also have to meet that standard. States a current, commonly-used synthetic liner has only a 5-year warranty.	GB1b. See response 5y on page 12, and comment and response 1d on page 1. Also, a clay liner has no warranty from a manufacturer.
		GB1c. Recommends allowing a 3- to 5-year period for installing secondary containment under fuel dispensers and around submersible pumps – instead of 1 year – to allow for planning and budgeting, and because there may not be enough qualified contractors to get the work done within 1 year.	GB1c. Agree – the proposed rules would allow 5 years to comply with this requirement.
		GB1d. Recommends allowing repair during operation, instead of applying immediate shutdown to a facility, if a cathodic protection system is operating at somewhat less than the minimum required performance level.	GB1d. The rule text authorizes immediate shutdown of tank systems that do not have corrosion protection "installed" – so immediate shutdown is *not* authorized where corrosion protection is installed but operating improperly. An informational Note has been added to further convey this difference.
Oral and 9	Michael L. Helgesen Jacobus Energy, Inc. Cedarburg, Wisconsin	GB2a. Believes many in the petroleum industry do not realize the operational demands and potential costs that the proposed Comm 10 would demand – and that if more people understood the potential impact, many more people would have attended the hearings and submitted written comments. Believes the	GB2a. See response 5b on page 4. The proposed rules have been changed in several places to be more clear, especially where misinterpretation of

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		Department may have rushed the hearing process, and thereby compromised the ability of the regulated community to understand and properly respond to the issues. Indicates that because the WPMCA Comm 10 review committee struggled with the meaning and intent of some of the proposed rules and with the very long process, it may not be reasonable to expect smaller petroleum marketers to follow the progress of this rule. States the limited amount of time allowed from the point of the "final" red-lined draft to the time of the public hearings compromised the ability of WPMCA to get any summary information to its membership.	retroactivity has resulted in overestimating the operational or financial impacts.
		States having all three of the public Hearings in one week and not having one in the Milwaukee area, where so many businesses would be impacted, may have significantly compromised the effectiveness of the Hearings.	The Hearing process includes opportunity to submit written comments, and those comments carry the same weight as oral comments. In scheduling three, geographically distributed Hearings, the Department did not expect individuals to attend more than one Hearing.
		Recommends understanding that many (perhaps the majority of) businesses impacted by Comm 10 are often small "mom & pop" operations and often are people who are not native to this country – and those operators may not understand the complexity of government regulations. It is equally as important to understand that in the petroleum industry (at least at the local distribution level) profit margins are very slim – at times pennies per gallon. Regulations that may cost several thousand dollars can be the difference between making a profit or suffering a loss	Agree there will be some financial impacts, and the rule text has been clarified to be more clearly commensurate with the threats posed by the liquids being stored or dispensed. Owners and operators who are not familiar with the requirements may want to, and often do, rely on industry professionals or Department staff for assistance.
		GB2b. States some of the regulations could and likely will force petroleum markets to limit storage or even close down facilities that offer marginal profit. Fuel prices are driven in part by available supply reserves. The $3.00 plus cost of fuel at the retail dispenser is a reflection in part of a short supply. If retail facilities close, and more importantly, if bulk storage facilities close (as a result of costly regulatory compliance, such as installing a synthetic dike liner because of upgrading an existing facility), the fuel supply in Wisconsin could be compromised. Not only could this impact motorists at the pump, it could also impact people who heat with oil. However, the impact could be more far-reaching than that. If home heating oil costs rise, natural gas costs will rise. If motor fuel cost rises, so will the cost of all the consumer goods and services that depend on	GB2b. The rule text has been clarified to (1) more clearly convey where requirements are intended to apply to new construction, rather than both new and existing conditions; (2) allow further flexibility for bulk storage facilities; and (3) be more clearly commensurate with the high fire safety and environmental contamination threats posed by the liquids being stored or dispensed.

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		transportation (from groceries to hardware, and from cabs to airplanes). The working poor could suffer more than the owners of petroleum businesses.	
		GB2c. States most of proposed Comm 10 is fine work – but questions whether the Department has a solid understanding of the costs of certain sections, and cites the following as examples of requirements that may be cost-prohibitive: • Comm 10.420: Both clay and asphalt can serve effectively as dike liners – the important thing to consider is that a dike should be a temporary containment. Clay and asphalt can achieve temporary containment. For a relatively small, existing dike that contains 2 ASTs, the cost to install a synthetic liner is estimated at $60,000. However, this would require "heat welding" the liner to the bottom of the tank, which is not a reasonable option since that would prevent an inspection of the exterior tank bottom; so lifting the tanks would be needed to place the liner under the tanks. If lifting would cost at least as much as the liner – the total would be at least $120,000 for one small dike. • Comm 10.515: The inventory control of 0.5% of monthly throughput may be overly restrictive and could result in numerous, costly ($400) third party tests. • Comm 10.520: Negative 0.85 volts for corrosion protection should be considered an ideal condition, rather than a pass or fail number. Corrosion protection still occurs at less than 0.85, and using this as an absolute standard could result in very costly upgrades to anode systems that are working. • Comm 10.600 (5): Unattended facilities that do not already have auto shut-offs in place could face significant costs to upgrade existing piping. Of particular concern is 3-inch piping (commonly used at truck stops and card locks to allow a faster flow for diesel). Based on discussions with suppliers, there is only one manufacturer who can provide an auto shut-off device for 3-inch piping, and that is limited to a relatively short pipe run (which would likely eliminate it as an option for many truck stops). At the very least, the rule should have a 3-year compliance period, to allow the equipment manufacturers to develop the required technology. In essence, Comm 10 requires something that cannot be done at this time. Installing auto shut-off devices in an existing system that does not have them would cost $10,000 per facility.	GB2c. The Department presented its cost estimates, which were generated by industry representatives, to the Wisconsin Small Business Regulatory Review Board, and no substantiated, conflicting cost estimates have been submitted. • See response 5y on page 12 for dike liners. • The 0.5% threshold and other inventory-control requirements would make this method of leak detection equivalent to other methods of leak detection, and are intended to apply only where inventory control is used as the leak detection method – which is uncommon and becoming increasingly more so. The rule text has been revised to more clearly convey this intent, and to clarify that the statistical inventory reconciliation method of leak detection does not include use of this 0.5% threshold. • Negative 850 millivolts is an industry standard established and used by the National Association of Corrosion Engineers, the Steel Tank Institute, and the Petroleum Equipment Institute; and its use is federally mandated in 40 CFR 280. The proposed rules would relax the frequency of testing to this threshold from 1 year to 3 years, for tanks that are 10 years old or newer. • The requirements in Comm 10.600 (5) for unattended facilities are intended to apply only to facilities that do not regularly have an attendant on duty on a daily basis, rather than to retail stations which continue to operate dispensers after closing each day. The rule text has been changed to more clearly convey this intent, and to allow an automatic alarm to 24/7 remote staff, for existing facilities.

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		GB2d. Comm 10.310 (3) (b): Recommends that the exemption from tightness testing for residential heating oil tanks of less than 1,100-gallon capacity be extended to all heating oil tanks of less than 1,100-gallon capacity. Numerous small businesses, and combinations of small businesses and residences, also have small heating oil tanks and should be exempted.	GB2d. Disagree. Residential heating oil tanks which were installed prior to October 29, 1999, and which have a capacity of less than 1,100 gallons are exempt from tightness testing only because that exemption is mandated by section 101.09 (2) (cm) of the Statutes. As of July 31, 2007, the Department's Petroleum Environmental Cleanup Fund Award (PECFA) program has reimbursed 1,287 claims for cleanup of discharges from home heating oil tanks, at a cost of over $7 million.
		GB2e. Comm 10.420 (2) (d): Indicates petroleum marketers would not allow their product to remain within a clay- or asphalt-diked area long enough to seep away, because the product is too valuable. States the requirement for a 35-year permeability is unreasonable and would defeat the intent and purpose of a dike liner as a temporary containment. Petroleum marketers would not allow a product release to sit in a dike for 35 hours (let alone 35 years). Believes this permeability would be very difficult to achieve, and would be similar to a landfill liner, which is for permanent storage. It is highly unlikely a manufacturer or vendor of a synthetic liner would offer a 35-year warranty. Also, synthetic liners can be subject to damage, e.g., if certain tank repairs or upgrades needed use of heavy equipment, and if that equipment entered the dike area and drove over the dike floor, a synthetic liner could be compromised (torn, punctured, etc.). Clay (and even asphalt) would be much less likely to be compromised. States the allowance to use clay liners for double-bottom tanks does not help much because most ASTs do not have double bottoms. Recommends allowing qualified engineers to approve the design and application of clay and asphalt dike liners, with the level of permeability established on a facility-specific basis, rather than using a set numeric standard. Use of API inspection standards (and inspection standards under SPCC requirements), combined with a clay liner approved by a qualified engineer, should provide reasonable leak detection controls.	GB2e. See comment and response 1d on page 1, and response 5y on page 12. Also, manufacturers of synthetic liners typically require a covering over their liners to protect against ultraviolet degradation and damage from vehicular traffic, and a clay liner has no warranty from a manufacturer.
		GB2f. Comm 10.515 (2) (b): States a release-detection rate of 0.5% of monthly throughput is prohibitive and could result in unneeded and costly third party testing, including loss of business while testing is conducted. Many petroleum marketers already have redundant controls (such as auto leak detection and statistical inventory control), with inventory controls used primarily as an asset	GB2f. The 0.5% rate and other inventory-control requirements would make this method of leak detection equivalent to other methods of leak detection, and are intended to apply only where inventory control is used as the leak detection

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		control. The 0.5% could be of particular concern with low throughput fuels, such as premium and/or mid-grade gasoline. Recommends increasing the 0.5% to 1.0%.	method – which is uncommon and becoming increasingly more so. The rule text has been revised to more clearly convey this intent, and to clarify that the statistical inventory reconciliation method of leak detection does not include use of this 0.5% threshold.
		GB2g. Comm 10.520 (2) (b) 1. Believes corrosion protection continues to occur at less than negative 0.85 volts, so using 0.85 as an absolute (and emptying a tank system based on that absolute) is not reasonable or logical. There can be any number of reasons why a reading may not reflect the 0.85 (including temperature issues, moisture issues and soil conditions), and corrosion protection may still be taking place. In addition, if the readings reflect a concern in winter (which in Wisconsin is at least ¼ of the year) it may not be practical to excavate to remove/install anodes, etc.	GB2g. Negative 0.85 volts is an industry standard established and used by the National Association of Corrosion Engineers, the Steel Tank Institute, and the Petroleum Equipment Institute; and its use is federally mandated in 40 CFR 280. The proposed rules would relax the frequency of testing to this threshold from 1 year to 3 years, for tanks that are 10 years old or newer. Also, the repair period for anode systems has been extended from 60 days to 90 days.
		GB2h. Comm 10.610 (3) (d) 2. States fueling from a larger (7,500 gallon) capacity vehicle can be completed as safely as from a 5,500 gallon truck, and there are other fueling situations besides airports that need larger-delivery-capacity fueling trucks (such as for fueling locomotives and large fleets of transportation vehicles). Suggests eliminating the capacity restriction (as is eliminated for aircraft fueling) or increasing the maximum size to 7,500 gallons, or giving locomotive fueling the same exemption as airport fueling.	GB2h. Agree. The capacity restriction has been deleted – NFPA 385 adequately addresses fabrication of the tank and chassis, regardless of the size of the tank.
		GB2i. Comm 10.610 (3) (e) 7. States the requirement to block wheels of fueling trucks is not reasonable or practical. At a large trucking company, there may be dozens of trucks, and the fueling vehicle must move numerous times while at a single facility (fuel a few trucks, move the fueling vehicle – repeat as needed). Blocking the wheels of the fueling vehicle would add significant time to the fueling process. Fueling trucks are placed in park and the parking brake is engaged (two operational/mechanical safety precautions). The majority of truck-to-truck fueling is conducted in parking lots, where transportation companies park their trucks – and these facilities are normally flat, which would eliminate the potential for a fueling truck to roll. Recommends deleting this requirement.	GB2i. This requirement has been deleted. This topic is addressed by the federal Motor Carrier Safety Administration and Occupational Safety and Health Administration.
Oral	Bernard R. Nowicki Quality State Oil Co. and the over 50 dealers they supply, and	GB3a. Feels the code is somewhat ambiguous, and believes many of his retail customers, who are individual dealers, do not have any comprehension of it. Believes they would be testifying in opposition if they knew of the potential	GB3a. The proposed rules have been changed in several places to be more clear, especially where misinterpretation of retroactivity has resulted in overestimating the financial impacts.

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	WPMCA Sheboygan, Wisconsin	financial impacts. Indicates most stations are individually owned and operated, and have very low profit margins – so any financial burden is significant.	
		GB3b. Has concerns for newly required double-wall tanks and lines, which is not required in some of the neighboring States. Stations bordering those States would be significantly disadvantaged. Currently has single-wall facilities which are routinely tested and which are not having problems.	GB3b. As described in the rule analysis that accompanies the rules, adjacent States have or are soon adopting similar, rather than less restrictive rules.
		GB3c. Believes requiring automatic shut-offs at unattended stations would create financial burdens, especially at stations that provide fueling for police and fire departments while being otherwise closed. Cannot recall any accidents or leak problems with unattended stations.	GB3c. The requirements in Comm 10.600 (5) for unattended facilities are intended to apply only to facilities that do not regularly have an attendant on duty on a daily basis, rather than to retail stations which continue to operate dispensers after closing each day. The rule text has been changed to more clearly convey this intent, and to allow an automatic alarm to 24/7 remote staff, for existing facilities.
		GB3d. States reducing the current inventory control rate of 1.0% of throughput to 0.5% would be impractical for low-flow stations, such as those with 30,000 of monthly throughput. Putting another system in place to address the 0.5% would be costly, and being out of compliance with the reduced rate could interfere with insurance coverage.	GB3d. The 0.5% threshold and other inventory-control requirements would make this method of leak detection equivalent to other methods of leak detection, and are intended to apply only where inventory control is used as the leak detection method – which is uncommon and becoming increasingly more so. The rule text has been revised to more clearly convey this intent, and to clarify that the statistical inventory reconciliation method of leak detection does not include use of this 0.5% threshold.
		GB3e. Believes the rules go way beyond what is required federally and by other States, and the financial burdens should be carefully considered.	GB3e. See responses 5c on page 4, 5mm on page 18, and 5pp on page 19.
Oral	Edward H. Wolf EH Wolf & Sons, Inc. Slinger, Wisconsin	GB4. Believes not enough time was allowed for petroleum marketers to address the issues in the rules – which is why the Hearing attendance was so low, particularly by small station owners.	GB4. The Department held numerous meetings with industry representatives, including WPMCA, throughout the 7-year period of developing the proposed rules. Over a month in advance of the deadline for submitting Hearing comments, the Department gave WPMCA detailed identification and description of the changes that were made to achieve the Hearing draft, after the previous draft was circulated in December 2006.

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Oral	Tom Reinsch Condon Oil Company, its retailers, and WPMCA Ripon, Wisconsin	GB5a. States a WPMCA task force – which generally is comprised of the most knowledgeable members of the Association – has found significant changes in the Hearing draft, during the short period available to review it, and the task force has struggled to understand the draft. Believes there are misunderstandings about the code, it is ambiguous and complex, and compliance will be hard to obtain and maintain. Believes his retailers do not realize the financial implications, and would not be able to comply with the code without relying on someone else for help. Believes the accompanying 84-page compendium for Comm 10 indicates people are struggling with serious issues in the code. The included referenced standards and the secondary references in those standards add to the difficulty, in part because of not having copies of all of those standards. Was disappointed with the short time period for reviewing the draft, and believes the revisions that occurred subsequent to the previous draft go beyond what was expected, as based on previous understandings. Recommends finding middle ground.	GB5a. Agree that storage and dispensing of flammable and combustible liquids is regulated extensively. However, the regulations are commensurate with the high fire safety and environmental contamination threats posed by the widespread and pervasive use of these liquids. The extensiveness of the proposed rule changes partly arises because these rules have not been substantially updated in 16 years, despite ongoing, substantial changes in federal requirements, national standards, and industry practices. Owners and operators who are not familiar with the requirements may want to, and often do, rely on industry professionals or Department staff for assistance. The proposed rules have been changed in several places to be more clear, especially where misinterpretation of retroactivity has resulted in overestimating the operational or financial impacts, and a summary of significant retroactive requirements will be posted on the Department's Web site. See response 5k on page 8, which addresses the standards that are referenced in Comm 10; and see response GB4 on page 39, which addresses the review time.
		GB5b. Recommends including the alternative in the federal Energy Act for owners, installers, and manufacturers to have financial responsibility – instead of uniformly mandating double-wall containment, which is overkill.	GB5b. See comment 3 on page 2, response 5mm on page 18, and 7a-f comments and responses on pages 26 to 30.
		GB5c. Believes changing to an inventory control of 0.5% of monthly throughput is unobtainable for tanks with lower throughput and will result in numerous, costly ($400) third party tests. Recommends finding middle ground.	GB5c. The 0.5% threshold and other inventory-control requirements would make this method of leak detection equivalent to other methods of leak detection, and are intended to apply only where inventory control is used as the leak detection method – which is uncommon and becoming increasingly more so. The rule text has been revised to more clearly convey this intent, and to clarify that

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			the statistical inventory reconciliation method of leak detection does not include use of this 0.5% threshold.
		GB5d. States virtually every Wisconsin retail station with a card reader would be affected by the requirement to provide automatic line leak detection, with automatic shut-off, at unattended sites. If automatic shut-off means killing the power to a submersible pump, or having a positive shut-off valve other than a flow restrictor, system modifications would be needed that would impose a huge financial burden.	GB5d. The requirements in Comm 10.600 (5) for unattended facilities are intended to apply only to facilities that do not regularly have an attendant on duty on a daily basis, rather than to retail stations which continue to operate dispensers after closing each day. The rule text has been changed to more clearly convey this intent, and to allow an automatic alarm to 24/7 remote staff, for existing facilities.
		GB5e. States they do not have any automatic shut-off devices at any of their spill and overfill protection locations. Knows of one such valve that costs about $1200, plus installation costs, or about $2500 per tank – and they have over 100 tanks, so requiring these devices would impose another financial burden. Believes the end does not justify the means.	GB5e. See response 5x on page 12, which addresses shut-off devices for aboveground tanks, and 5rr on page 20, which addresses shut-off devices for underground tanks.
		GB5f. States requiring at least a 5-gallon spill container for an AST without a containment dike would make all of their current, approximately 4-gallon containers noncompliant, at $150 each. Believes replacing all of those containers with a slightly larger container would be ludicrous at best.	GB5f. The 5-gallon minimum is not intended to apply retroactively, and the rule text has been changed to more clearly convey this intent.
		GB5g. Comm 10.520 (2) (b): States having to empty a tank if a sacrificial anode system falls below negative 850 millivolts would be an excessive burden, because leak detection and inventory control could otherwise continue, and testing and modifying cathodic protection systems during winter conditions has problems.	GB5g. Emptying the tank would only be required if other corrective actions are not taken to repair the equipment. Also, the repair period for anode systems has been extended from 60 days to 90 days.
		GB5h. Comm 10.440 (3): Believes ASTs smaller than 5000 gallons would no longer be exempt from inspections, and the exemption should be reinstated. If this inspection is otherwise not required, the code should more clearly convey that.	GB5h. Comm 10 no longer has the 5,000 gallon threshold because STI SP001 now satisfies federal Spill Prevention Control and Countermeasure inspection requirements in 40 CFR 112 for facilities within the scope of that rule which have tank capacities larger than 1320 gallons. The rule text has been changed to not require these inspections for (1) tanks smaller than 1,100 gallons; (2) tanks for heating oil and at farms and construction projects; and (3) tank wagons, movable tanks and tank vehicles. An informational Note has been added for (1) explaining the STI SP001 inspection frequency

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			and recordkeeping; (2) noting that for almost all tanks of 5000 gallons or less, these inspections are only required to be visual; and (3) referencing optional checklists and guidance that are available on the Department's Web site.
		GB5i. Believes the rules will impose an extreme financial burden on most marketers and retailers.	GB5i. The proposed rules have been changed in several places to (1) be more clear, especially where misinterpretation of retroactivity has resulted in overestimating the financial impacts; and (2) be more clearly commensurate with the high fire safety and environmental contamination threats posed by the liquids being stored or dispensed.
		GB5j. States insurance underwriters use noncompliance to negate insurance coverage. Indicates there are issues in the rules that will cause noncompliance, despite hard attempts to be in compliance – and has extreme fears that the insurance will be jeopardized.	GB5j. Concern is noted; however, no specific issue is cited that can be reviewed for improvement.
		GB5k. States current high gas prices are partly due to low inventory and stocks, and the low stocks are due to needing to empty tanks for converting to summer fuels that have a different vapor pressure than winter fuels. Fears federal and State rules are also reducing inventories by regulating some facilities out of business, where operators cannot afford to continue running the facility. Storage is then lost, such as when bulk plants close in small communities and new bulk plants are too expensive to build and maintain under today's rules. A bulk plant with 150,000 gallons of secondary storage may seem small, but when it exists with numerous other small plants, substantial inventory is available. Taking clay liners away and adding all of the new requirements for spill containment and leak detection will regulate some more of those bulk plants out of business. Gasoline inventories are at an all time low, in part because of an EPA regulation for vapor pressure, and are a huge part of why gas is $3 a gallon. Recommends finding middle ground, which previously seemed near but now seems to have been lost.	GB5k. The proposed rules have been changed in several places to be more clear, especially where misinterpretation of retroactivity has resulted in overestimating the operational or financial impacts. Also see response 5y on page 12, which addresses dike liners.
Oral	Craig Wolf EH Wolf & Sons Slinger, Wisconsin	GB6a. Is very concerned about the code's impact on his diversified petroleum marketing business – such as his 20-tank bulk plant that stores many different products because it borders counties which have differing gasoline requirements relating to air quality. Believes storing the more marginal of those products will no longer be profitable under the new rules and will be eliminated.	GB6a. The proposed rules have been changed in several places to be more clear, especially where misinterpretation of retroactivity has resulted in overestimating the operational or financial impacts. No information was submitted identifying which new

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			requirements would impose new costs, and identifying what those costs would be.
		GB6b. Is concerned that the investments needed for meeting the new requirements will be especially problematic for up-and-coming, but currently low-sales-volume renewable fuels, such as E-85 and soy biodiesel.	GB6b. Concern is noted; however no information was submitted identifying which new requirements would impose new costs, and identifying what those costs would be.
Oral	William Noel STS Consultants Green Bay, Wisconsin	GB7a. States he has not found any corresponding regulation of Class IIIB liquids in Michigan.	GB7a. In adjacent States, similar requirements typically apply to Class IIIB liquids, but at the local level.
		GB7b. Suggests clarifying the extent of retroactivity.	GB7b. The proposed rules have been changed in several places to be more clear, especially where misinterpretation of retroactivity has resulted in overestimating the operational or financial impacts, and a summary of significant retroactive requirements will be posted on the Department's Web site.
		GB7c. Questions whether hazardous-liquid stakeholders are adequately aware of the proposed rules.	GB7c. Concern is noted – however, the Department assembled a representative industry advisory group for this topic, and relied on their input.
		GB7d. Indicates some of the requirements for hazardous liquids may be overly lengthy and redundant if good engineering practices are followed, under the supervision of a qualified engineer, which is an overall code requirement for those liquids.	GB7d. Although good engineering practices are generally required, specific requirements are also included to provide clarity and minimize misunderstandings.

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