ORDER OF THE
DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce repeals Comm 10.515 (5) (b) and (c) and 10.615 (5) (a) (title), 3. to 6. and Notes;

renumbers Comm 10.050 (114) (p) and (q); 10.515 (5) (d) and (6) (b) to (g) and 10.615 (5) (a) 1. and 2. and (b) to (p) and (6) (b) and (c);

renumbers and amends Comm 10.500 (9) (c) 14. Note;

amends Comm 2.43 (title) and (1); 10.050 (15) and (114) (k); 10.100 (1) (b) 6.; 10.130 (3) (b) 3. Note; Tables 10.200-2 and 10.200-9; 10.300 (2) (b) Note and (h); 10.330 (4) (c); 10.340 (5) and (6) (a) (title), (a), (b) (title) and (b); 10.350 (2) (a) to (c); 10.370; 10.400 (2) (b) (title) and (intro.) to 3. and (3) (g) 2. and 3.; 10.410 (6) (c) and (9); 10.420 (5); 10.465 (1) Note; 10.500 (1) (b) 3. and 4., (5) (a) 2. a. and (f) 2. and 3., (6) (b) 2. a. and (9) (c) 14.; 10.503 (1) and (2) (intro.) and (c); 10.505 (2) (a) 2.; 10.510 (2) (title), (c) and Note; 10.515 (2) (b) 3. b.; 10.520 (1) (b) 1.; 10.545 (1) (a) 2. b., (2) (b) and (c), (3) (title), and (3); 10.615 (1); and 10.740 (2) (a);

repeals and recreates Comm 10.250 (3) and 10.445;

and creates Comm 10.050 (51m), (114) (f) Note and (p), and (117) Note [2]; 10.150 (2) (e); 10.220 (2) (d); 10.225; 10.230 (4) Note; 10.250 (2) (d); 10.300 (9); 10.340 (6) (c); 10.400 (3) (e); 10.500 (9) Note; 10.503 Notes; 10.515 (6) (b); 10.520 (2) (b) 4.; 10.530 (1) (c); 10.535 (9); 10.545 (2) (d) and Note; 10.575 (2) (intro.); 10.580 (3) (a) Note [1]; 10.605 (1) (f) (title) and (g) (title); and subchapter VIII, relating to flammable, combustible and hazardous liquids, and affecting small businesses.

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Rule Summary

1. Statutes Interpreted

Sections 101.02 (15), 101.09 (3), 101.11 (2), 101.14 (1) (a), 101.19 and 168.16 of the Statutes.

2. Statutory Authority

Sections 101.02 (15), 101.09 (3), 101.11, 101.14 (1) (a), 101.19, 168.16 (4) and 227.11 (2) (a) of the Statutes.

3. Explanation of Agency Authority

Under the statutes listed above, the Department has a responsibility to adopt and administer rules for safe storage, handling and use of flammable, combustible and hazardous liquids. The rules

in this order encompass fire safety, life safety and environmental safety aspects for flammable, combustible and hazardous liquids. The Department also has authority under section 227.11 (2) (a) of the Statutes to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

4. Related Statute or Rule

The rules in this order are related to rules in chapter Comm 14, which addresses fire prevention; chapter Comm 47, which addresses Petroleum Environmental Cleanup Fund Awards; and chapter Comm 48, which addresses grade specifications and inspection criteria for petroleum products.

5. Plain Language Analysis

The rules in this order are primarily intended to implement the operator-training criteria issued by the United States Environmental Protection Agency (EPA) in response to the federal Energy Policy Act of 2005. These criteria apply to all underground storage tank systems (USTs) that are federally regulated under Part 280 of Title 40 of the *Code of Federal Regulations*. These tank systems coincide with the underground storage tank systems that are required by section Comm 10.145 to have a permit to operate from the Department.

The rules also include several miscellaneous changes in chapters Comm 2 and 10 that are needed primarily for clarification purposes as a follow-up to repealing and recreating chapter Comm 10 in 2008. These changes include (1) adopting updated versions of two standards for aboveground steel tanks, with the consent of the Attorney General; (2) allowing used-oil tanks at scrap recycling and automobile recycling facilities to meet alternate, specified standards for construction and use; (3) clarifying that overfill-protection requirements apply to existing (not just new) aboveground storage tanks having both a fill point outside a diked area and either a tight-connect delivery or latch-open filling; (4) extending secondary-containment requirements to apply to new safe-suction systems and new tank-manifold piping, to be consistent with overriding EPA regulations; (5) clarifying that inventory-verification requirements apply only to retail tank systems, and that they apply there regardless of the capability of an automatic tank gauge; (6) extending underground storage tank tightness testing to tanks that are inspected internally because of having a failing sacrificial anode system, tanks that have periodic internal inspections because of being previously lined, and tanks that have a lining which is being repaired; (7) requiring installation of an access way from the tank interior to finished grade (if not already provided) when lining a tank or inspecting a lined tank, so that an inspector can readily enter the tank during subsequent inspections; and (8) making underground storage tank systems comply with the aboveground storage tank system requirements for double-poppet emergency shut-off valves at dispensers, and for monthly monitoring of the water level in the tank.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations

The operator-training requirements in Section 9010(a) of the federal Solid Waste Disposal Act that was enacted as part of the 2005 Energy Policy Act, and the EPA criteria issued in conjunction with Section 9010(a), establish three classes of operators for federally regulated underground storage tank systems – i.e., Class A operators have primary responsibility for on-site operation and maintenance of the systems, Class B operators have daily on-site responsibility for the

operation and maintenance of the systems, and Class C operators have daily on-site responsibility for addressing emergencies presented by spills or releases from the systems. The EPA criteria, as published in EPA-510-R-07-005, further specify (1) which facilities are subject to the training criteria, (2) who is subject to the training criteria, (3) minimum components of the training programs for each class of operator, (4) a 3-year timeframe for completing the training of all the operators, (5) establishment of a state-level system for ensuring all operators are trained in accordance with the criteria, (6) methods for states to demonstrate compliance with the criteria, and (7) methods the EPA will use to enforce state-level compliance with the criteria.

The operator-training rules in this order consist of no more than – and no less than – the EPA criteria, with the following exceptions:

A. Wherever the EPA criteria refer to a "release," other than for reporting, the text is clarified to also refer to leaks. This clarification is consistent with the text in chapter Comm 10 that recognizes and distinguishes between these two circumstances. Consequently, for example, the rules (1) require a Class B operator to receive training in operation and maintenance requirements that address leak detection – not just release detection, and (2) require a Class C operator to be trained to take action in response to an alarm caused by a leak – not just an alarm caused by a release. The EPA references to reporting of releases are not expanded to include reporting of leaks, except where a Class C operator reports to a Class B operator, because chapter Comm 10 does not require reporting leaks. However, the references to reporting of releases are clarified to include both suspected and obvious releases, to be consistent with the text in chapter Comm 10 that recognizes and distinguish between these two types of releases.

B. For a facility at which the owner and operator are separate persons, additional text makes them equally responsible for ensuring that the Class A, Class B and Class C operators are designated.

C. The responsibilities for the Class B operator, in section Comm 10.830 (2) (e), are expanded to include providing the Class C operator with specified, written instructions for fulfilling the Class C responsibilities; and those Class C responsibilities are described in greater detail in the specified instructions than in the EPA criteria. Similarly, additional text in section Comm 10.830 (2) (f) clarifies that the Class B operator is responsible for ensuring that the Class C operator is present during all operating hours of typical tank systems for fueling facilities; and the circumstances where that presence is not required are specified. Further, section Comm 10.842 (2) clarifies that the Class C operator must be trained to understand the required written instructions.

D. In the prescribed acceptable training, in section Comm 10.850 (2) (b), additional text clarifies that the training for a Class C operator must be provided by, or authorized by, an accredited Class A or Class B operator for the facility where the Class C operator is employed. Consequently, a Class C operator could move from one facility to another that is operated by the same Class A or Class B operator – but would need new training and accreditation to be a Class C operator at another facility that is operated by a different Class A or Class B operator.

E. In the retraining requirements, in section Comm 10.880, a definition is included for "significant compliance," which applies beyond EPA's referenced guidance for release prevention and release detection. This definition is intended to foster consistency in enforcement, and is essentially copied from the definition of "substantial compliance" in the Wisconsin Fire Protection

Code, chapter Comm 14, where it has been helpful for the past several years in auditing local fire departments.

The rules include selection of the following options that are allowed in the EPA criteria:

A. For the deadline for having a Class A, Class B and Class C operator, in section Comm 10.820, a phase-in schedule is established that (1) applies EPA's August 8, 2012, deadline only to small businesses; and (2) applies an earlier, January 1, 2012, deadline to all other facilities. This phase-in would be consistent with the requirements in section 227.22 (2) (e) of the Statutes for allowing small businesses extra time to comply with new rules that have a significant economic impact, and could be helpful not only to small businesses but also to the Department and its regulatory and training partners in implementing this portion of the training program.

B. In section Comm 10.841 (2) (a), an option is included for any Class B operator to have site-specific training that is focused only on equipment used at the operator's facility.

C. Section Comm 10.850 (2) (a) 1. specifies a Wisconsin-based International Code Council® training and certification process for Class A and Class B operators, as the base-level process. Discussions with ICC staff indicate several advantages of using this approach – particularly in combination with the equivalent, alternate training programs that are permitted for Class A and Class B operators in section Comm 10.850 (2) (a) 2. The ICC process could include evaluation and certification of individuals who skip the training because they already have adequate knowledge about operating underground storage tank systems.

D. Section Comm 10.850 (4) includes, for Class A and Class B operators, reciprocity acceptance of training verification from other states that have equivalent training programs.

E. The recordkeeping requirements in section Comm 10.870 include keeping documentation of compliance only at each facility or at another, readily available site – rather than reporting that compliance to the Department or authorized agent.

The rules do not include an EPA-referenced option of requiring renewal of the training.

7. Comparison With Rules in Adjacent States

Michigan

Michigan is currently updating their 1998 rules for their UST program. They are working with stakeholders on the rules package and plan to have new rules promulgated by March 2010. They have included a mandate for operator training in the code update, which will mostly mirror the EPA requirements, and they have designed the training. They are planning to require ICC certification and to require renewals every 2 years, and plan to limit the number of facilities that a Class B operator can oversee to 45. For facilities that are routinely attended, at least one Class C operator is expected to be present during all operating hours – and at unmanned facilities, fuel delivery personnel are expected to fulfill the Class C operator responsibilities, for the purpose of fuel deliveries. The draft rules include substantially greater detail than the EPA criteria, for the training that Class C operators must receive.

Minnesota

Minnesota has developed a UST rule-revision draft that includes operator-training requirements. They expect to have the rule finalized by August 2009 to meet the EPA deadline for having the revised rule in place.

Some key points that Minnesota has included in their revised rule are as follows:

1. Training for operators will not always be mandatory. The operator will have the choice of taking only a test. If the operator fails the test, training by a State-approved trainer will be mandatory.
2. Trainers must be approved by the State in order to provide operator training.
3. Only Class A and Class B operators must pass a test.
4. Class B operators must be employees of the company that owns the facility. Class B operators will also be tested on site-specific equipment and functions. (No third-party contractors are permitted.)
5. An outside party likely will create an on-line testing platform.
6. The operator training is expected to be phased in over a 3-year period, with sequential deadlines that are based on telephone area codes.
7. For facilities that are routinely attended, at least one Class C operator is expected to be present during all operating hours – and at unmanned facilities, a sign must be posted showing the emergency shut-off procedures and the name, address and telephone number of the owner, operator or local emergency response personnel.
8. If a facility is found to have a significant-operational-compliance violation at the time of a State inspection, the Class B operator will be required to take training and pass another test.

Minnesota has begun meeting with a group of stakeholders that includes a wide spectrum of tank owners, to help develop the test questions for the operators.

Further information about the rule revision is available at http://www.pca.state.mn.us/rulesregs/ust-rules.html, and the current rule draft is posted at http://www.pca.state.mn.us/publications/rule-ch7150-draft2-0908.pdf.

Iowa

Iowa has begun their rulemaking process for the operator-training requirements and has held internal meetings for developing draft rules. A stakeholder meeting was held in February to discuss options and get input.

Illinois

Illinois is in the preliminary stages of rulemaking, and has not yet developed draft rules. The State Fire Marshall's office has contacted Wisconsin to survey our experiences with stakeholder meetings and to obtain a copy of our rules. They have met with three training vendors and the Illinois Petroleum Marketers Association.

8. Summary of Factual Data and Analytical Methodologies

The information from which the operator-training rules were developed consisted of (1) the EPA criteria published in EPA-510-R-07-005, (2) existing and proposed rules from about 15 other states, and (3) personal contacts with staff from the International Code Council and with private-sector trainers for operators of underground storage tank systems.

The miscellaneous changes to chapters Comm 2 and 10 were developed primarily from six regional training sessions the Department conducted statewide in January and February of 2009 in conjunction with implementing a comprehensive update of chapter Comm 10 that became effective on February 1, 2009.

The rules were also developed with assistance from the Department's advisory committee for flammable, combustible and hazardous liquids. The organizations represented on that advisory committee are as follows:

Wisconsin Fire Inspectors Association
Wisconsin Petroleum Council
Wisconsin Federation of Cooperatives
Wisconsin Transportation Builders Association
Wisconsin Petroleum Equipment Contractors Association
Wisconsin Fire Chiefs Association
Wisconsin Aviation Trades Association
Wisconsin Utilities Association
Wisconsin Insurance Alliance
Wisconsin Airport Management Association
Wisconsin Innkeepers
Wisconsin Paper Council
Wisconsin Petroleum Marketers and Convenience Store Association

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report

The Department derived the cost estimates in the following section from input from the International Code Council and private-sector trainers for operators of underground storage tank systems.

10. Anticipated Costs Incurred by Private Sector

The base-level, International Code Council certification service has been adopted by California and Wyoming. The cost is about $150 per person – which covers the cost of the State and EPA reference material, and a test. The ICC service is a self-directed process where individuals purchase the State and federal regulations and pertinent publications, and then go to a test center to take the test. The cost for taking the ICC test, without the training, is $75.

If a private-sector group such as Petroleum Training Solutions (PTS) provides open-to-the-public training, like they currently provide in Oregon and other States, the charge should be about $325 per person. PTS is partnering with several petroleum-marketer associations in Oregon and other States to get reductions in cost, in exchange for marketing the classes within the respective associations. In Oregon, the fee for members of the Oregon Petroleum Marketers Association is $280.

In Kansas, the State pays for the training, and the cost is about $5,000 per classroom. (PTS prefers to limit class sizes to 35, but in Kansas they accommodated rooms of 50.) These sessions would cost approximately $125 to $150 per person.

Williams & Company also provides classroom training in Kansas, with opportunities for direct questions and answers, and they bring in UST equipment for hands-on training. The company prefers to conduct a class of at least 50 persons – and does some classes back-to-back to minimize travel costs. These sessions would cost approximately $125 to $150 per person. The company provides an open-book group test, and certifies the participants at the conclusion of the class. Testing can be designed any way the State desires. The company maintains a spreadsheet of the individuals who are certified, along with the site identification, and provides the list to the State of Kansas to use to verify training, during annual renewals of UST permits.

Williams & Company also provides two types of webinars – the first is a video Web broadcast of a speaker in front of a local audience, and other participants can access the presentation over the Web. The second is a log-in to a Web site where participants have audio via a phone line and watch a PowerPoint presentation on the Web site. The second is much less costly. The first may require a TV studio and production facilities, and broadcast services can be rather expensive. Depending on the number of participants and the type of webinar, these costs could range from $50 to $225, based on production costs of $10,000. The biggest difference between in-class training and on-line webinars is that for webinars, the participants do not have travel time and associated expenses, so the savings are immediate.

In Colorado, PTS will start presenting webinars in May, that will cost $325. Under this webinar model, the webinars will be free, and the fee will be collected when the test is taken from PTS.

The State of New Mexico estimates that classroom training for their Class A and Class B operators may range from $200 to $350 per person.

Costs for training Class C operators are not expected to be significant because all Class C training will be provided by, or authorized by, the Class B operator for the facility.

11. Effect on Small Business

These rule changes may have an economic effect on any small business with at least one federally regulated underground storage tank containing a flammable, combustible or federally-regulated hazardous liquid. These economic effects are not expected to be significant, and are summarized in section 10 above.

12. Agency Contact Information

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SECTION 1. Comm 2.43 (title) and (1) are amended to read:

Comm 2.43 (title) **Storage tanks for ~~flammable and combustible~~ liquids that are flammable, combustible or federally regulated hazardous substances.**

(1) PLAN EXAMINATION AND INSPECTION FEES. Fees for the examination of plans, site inspections and reinspections for tanks used for the storage of ~~flammable and combustible~~ liquids that are flammable, combustible or federally regulated hazardous substances shall be determined in accordance with Table 2.43.

SECTION 2. Comm 10.050 (15) is amended to read:

Comm 10.050 (15) "Bulk plant" means a facility ~~used for temporary bulk storage of gasoline, diesel fuel, and similar liquid products~~ where flammable or combustible liquids are stored or blended in bulk, prior to ~~the~~ further distribution ~~of these products by tank vehicle to retail, commercial, or consumer outlets~~.

SECTION 3. Comm 10.050 (51m) is created to read:

Comm 10.050 (51m) "Hazardous liquid" means any liquid that is a federally regulated hazardous substance as defined in s. 101.09, Stats.

Note: The definition of federally regulated hazardous substances in section 101.09 (1) (am) of the Statutes corresponds to the CERCLA List of Hazardous Substances and Reportable Quantities contained in 40 CFR 302.4, Table 302.4.

SECTION 4. Comm 10.050 (114) (f) Note is created to read:

Comm 10.050 (114) (f) **Note**: See paragraph (p) for a definition of "fixed tank."

SECTION 5. Comm 10.050 (114) (k) is amended to read:

Comm 10.050 (114) (k) "Portable tank" means an aboveground closed vessel that has a liquid capacity of 110 gallons or more~~,~~; is not otherwise defined in this chapter~~,~~; is equipped with skids, mountings or accessories to facilitate handling of the tank by mechanical means; and is not intended for fixed installation or for highway vehicle fueling~~,~~; and includes intermediate bulk containers.

SECTION 6. Comm 10.050 (114) (p) and (q) are renumbered Comm 10.050 (114) (q) and (r).

SECTION 7. Comm 10.050 (114) (p) is created to read:

Comm 10.050 (114) (p) "Stationary tank" or "fixed tank" means a storage vessel intended for stationary installation and not intended for relocation, loading, unloading, or attachment to a transport vehicle, as part of its normal operation in the process of use.

SECTION 8. Comm 10.050 (117) Note [2] is amended to read:

Comm 10.050 (117) Note [2]: *Assessment and Reporting of Suspected and Obvious Releases From Underground and Aboveground Storage Tank Systems* (Publication # ERS-10874) is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's Web site at http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html.

SECTION 9. Comm 10.100 (1) (b) 6. is amended to read:

Comm 10.100 (1) (b) 6. Aboveground tank systems that store ~~liquid~~ hazardous ~~substances~~ liquids which are not also flammable or combustible liquids, if the construction is supervised by a qualified engineer.

SECTION 10. Comm 10.130 (3) (b) 3. Note is amended to read:

Comm 10.130 (3) (b) 3. **Note:** Section Comm 10.515 (5) ~~(d)~~ (b) requires automatic tank gauges to be provided with a printer that prints out the measured leak rate, and to state whether that leak rate indicates an actual leak in the system.

SECTION 11. Comm 10.150 (2) (e) is created to read:

Comm 10.150 (2) (e) A copy of the newly recorded deed showing the new owner.

SECTION 12. Comm Tables 10.200-2 and 10.200-9 are amended to read:

Table 10.200-2
(Partial Table)

API	American Petroleum Institute 1220 L Street, NW Washington, DC 20005
Standard Reference Number	**Title**
6. 653–~~01~~09	Tank Inspection, Repair, Alteration, and Reconstruction.

Table 10.200-9
(Partial Table)

STI	Steel Tank Institute 944 Donata Court Lake Zurich, IL 60047
Standard Reference Number	**Title**
6. SP031–~~06~~08	Standard for Repair of ~~In Service~~ Shop-Fabricated Aboveground Tanks for Storage of ~~Combustible and~~ Flammable and Combustible Liquids.

SECTION 13. Comm 10.220 (2) (d) is created to read:

Comm 10.220 (2) (d) NFPA 5000® – Building Construction and Safety Code®.

SECTION 14. Comm 10.225 is created to read:

Comm 10.225 Alternate standards. (1) Alternate standards that are equivalent to or more stringent than the standards referenced in this chapter may used in lieu of the referenced standards when approved by the department or if written approval is issued by the department in accordance with sub. (2).

(2) (a) Upon receipt of a fee and a written request, the department may issue an approval for the use of the alternate standard.

(b) The department shall review and make a determination on an application for approval within 40 business days of receipt of all forms, fees and documents required to complete the review.

(3) Determination of approval shall be based on an analysis of the alternate standard and the standard referenced in this chapter, prepared by a qualified independent third party or the organization that published the standard contained in this chapter.

(4) The department may include specific conditions in issuing an approval, including an expiration date for the approval. Violations of the conditions under which an approval is issued shall constitute a violation of this chapter.

(5) If the department determines that the alternate standard is not equivalent to or more stringent than the referenced standard, the request for approval shall be denied in writing.

(6) The department may revoke an approval for any false statements or misrepresentations of facts on which the approval was based.

(7) The department may reexamine an approved alternate standard and issue a revised approval at any time.

SECTION 15. Comm 10.230 (4) Note is created to read:

Comm 10.230 (4) Note: The flash point as noted in the MSDS will be used to resolve any disputes of the flammability or combustibility classification for the respective liquid product.

SECTION 16. Comm 10.250 (2) (d) is created to read:

Comm 10.250 (2) (d) Aboveground used-oil tanks at a scrap recycling or auto recycling facility that are exempted from these requirements under s. Comm 10.300 (9).

SECTION 17. Comm 10.250 (3) is repealed and recreated to read:

(3) Marking. Newly manufactured or constructed tanks shall have at least all of the following information permanently marked on the exterior of the tank by the manufacturer or the party responsible for tank construction:

(a) The name of the manufacturer or the party responsible for tank construction.

(b) The year of manufacture or construction.

(c) The standard under which the tank is manufactured or constructed.

(d) The minimum rate of any required emergency venting.

SECTION 18. Comm 10.300 (2) (b) Note and (h) are amended to read:

Comm 10.300 (2) (b) **Note:** See section Comm 10.250 for minimum marking requirements for newly manufactured or constructed ~~or erected~~ tanks.

(h) The building setback for tanks which have a capacity of less than 1,100 gallons and which store used oil may be less than the setbacks listed in NFPA 30 Table 22.4.1.6 if approved in writing by the authorized agent or the department; and that approval shall be based on consideration of the construction material for the building wall, the size of the tank, and the adjacent vehicular traffic.

SECTION 19. Comm 10.300 (9) is created to read:

Comm 10.300 (9) SCRAP RECYCLING AND AUTOMOBILE RECYCLING FACILITIES. Subsections (1) (a), (2) (a), (2) (c) to (h), (3) to (5), (6) (a), (7) and (8) do not apply to a new or existing aboveground tank which contains used oil and which is located at a scrap recycling or automobile recycling facility adequately participating in a cooperative compliance program approved by the department of natural resources, provided all of the following requirements are met:

(a) The tank is constructed of a durable material acceptable to the department.

(b) If located outside of a building, the tank has secondary containment acceptable to the department.

(c) If located inside a building, the tank has venting and fire prevention features acceptable to the department.

SECTION 20. Comm 10.330 (4) (c) is amended to read:

Comm 10.330 (4) (c) The cargo tank vehicle platform shall be supported off the vehicle wheels and landing gear, and secured against movement, by the use of blocking devices and anchoring mechanisms that are acceptable to the department.

SECTION 21. Comm 10.340 (5) and (6) (a) (title), (a), (b) (title) and (b) are is amended to read:

Comm 10.340 (5) TRANSFER OPERATIONS. In order to prevent a spill from moving beyond the loading or unloading area, any new or existing aboveground tank that has a capacity of 5000 gallons or more shall be provided with a catchment basin or treatment facility to contain the maximum capacity of ~~any single~~ the largest compartment of a tank car or tank vehicle loaded or unloaded at the facility. Existing tanks shall comply with this subsection within 2 years after December 31, 2009.

(6) (a) *Aboveground tanks at existing facilities*. Aboveground ~~tanks~~ tank systems at existing bulk plants and terminals shall comply with subch. IV.

(b) *Underground tanks at existing facilities*. Underground ~~tanks~~ tank systems at existing bulk plants and terminals shall comply with subch. V.

SECTION 22. Comm 10.340 (6) (c) is created to read:

Comm 10.340 (6) (c) *New facilities.* New bulk plants and terminals shall comply with PEI RP800; aboveground tank systems there shall also comply with ss. Comm 10.400 (3), (4), (5) and (7) to (11); and underground tank systems there shall also comply with subch. V.

SECTION 23. Comm 10.350 (2) (a) to (c) are amended to read:

Comm 10.350 (2) (a) *General.* 1. Design, construction and maintenance of tank systems for the storage of federally regulated hazardous substances shall be in accordance with good engineering practices and this chapter and shall be under the supervision of a qualified engineer, except as provided in subd. 2.

2. Construction supervision by a qualified engineer is not required where all of the following occur:

a. Plans for the tank system are approved by an authorized agent or the department.

b. Construction is by a certified installer.

c. An authorized agent or the department inspects and accepts the construction.

(b) *Notification.* The qualified engineer shall notify the department, on form ERS-9198, of an impending installation of a tank system under this section, unless this notice is provided under s. Comm 10.115 (2) (b) 3. ~~for a UST.~~

(c) *Testing.* All new tanks and pipe systems shall have pressure or vacuum testing that shall assure that all components and connections are tight, in a manner equivalent to the protocol and parameters specified in NFPA 30 section 21.5 and PEI RP 100 ~~section~~ sections 11 and 14, before the tanks and pipe systems are placed into service.

SECTION 24. Comm 10.370 is amended to read:

Comm 10.370 Emergency shut-off for transfers. An emergency electrical shut-off shall be installed in accordance with NFPA 30A section 6.7 on any new or existing system that provides for the transfer of product from a fixed storage tank system to a tank vehicle, rail tank car or vehicle fuel tank. Existing systems shall comply with this section within 2 years after December 31, 2009.

SECTION 25. Comm 10.400 (2) (b) (title) and (intro.) to 3., and (3) (a), (c) and (d) are amended to read:

Comm 10.400 (2) (b) (title) ~~*Tanks*~~ *Tank systems*. Any portion of an aboveground tank system that is in contact with the ground shall be protected from corrosion by one of the following methods:

1. The tank system is constructed of an inherently corrosion-resistant material.

2. The tank system is isolated from the ground by a method acceptable to the department.

3. The tank system is protected by a sacrificial anode or impressed current system.

(3) (a) When any underground piping is installed as part of a new tank system or when 50 percent or more of a run is replaced, the piping shall be provided with approved secondary containment with approved non-discriminating interstitial monitoring, except as specified in par. ~~(f)~~ (g).

(c) All pipe connections at a dispenser for motor vehicle fueling that are installed or replaced on or after February 1, 2009, shall be placed within a secondary containment sump at the time of installation or replacement, except as exempted in par. (e).

(d) All pipe connections at a dispenser for motor vehicle fueling that were in existence or under construction before February 1, 2009 shall be placed within a secondary containment sump by December 31 of the fifth year following February 1, 2009, except as exempted in par. (e).

SECTION 26. Comm 10.400 (3) (e) to (g) are renumbered Comm 10.400 (3) (f) to (h), and Comm 10.400 (3) (h) 2. and 3. as renumbered are amended to read:

Comm 10.400 (3) (h) 2. Piping ~~for~~ that is installed or replaced on or after [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE] at secondary containment sumps provided under this subsection may not pass through the bottom of the sump.

3. All electrical conduit and wiring that is installed or replaced on or after [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE] at secondary containment sumps provided under this subsection for dispensers shall pass over the top of the sump wall rather than through the wall or bottom of the sump.

SECTION 27. Comm 10.400 (3) (e) is created to read:

Comm 10.400 (3) (e) A secondary containment sump is not required under the pipe connections at a dispenser if the storage tank system meets all of the following conditions:

1. All piping is aboveground and readily accessible for inspection.

2. The dispenser and all the pipe connections at the dispenser are on or above a surface that is at least as impermeable as concrete.

SECTION 28. Comm 10.410 (6) (c) and (9) are amended to read:

Comm 10.410 (6) (c) The basin shall be equipped with a method to remove product or a ~~push-to-~~drain system that directs spilled product into the tank.

(9) (a) The following new and existing tanks that have a fill point not located within a diked area shall be provided with overfill prevention equipment which notifies the person filling the tank, with both an audible and a visual signal, that the liquid level has reached 90 percent of the tank's capacity, and which automatically shuts off flow when the quantity of liquid in the tank reaches 95 percent of the tank's capacity:

~~(a)~~ 1. Tanks using tight-connect delivery.

~~(b)~~ 2. Tanks located remote from the fill point, that use delivery nozzles with latch-open devices.

(b) Existing tank systems shall comply with this subsection within 2 years after [the effective date of this paragraph . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE].

SECTION 29. Comm 10.420 (5) is amended to read:

Comm 10.420 (5) TRANSFER OPERATIONS. In order to prevent a spill from moving beyond the loading or unloading area, any tank which has a capacity of 5,000 gallons or more and which is involved in transfer operations for bulk loading and unloading of tank cars or tank vehicles at facilities that refine, process, distribute or manufacture liquids regulated under this code shall be provided with a catchment basin or treatment facility to contain the maximum capacity of ~~any single~~ the largest compartment of a tank car or tank vehicle loaded or unloaded at the facility.

SECTION 30. Comm 10.445 is repealed and recreated to read:

Comm 10.445 Seldom-used and temporarily-out-of-service tanks. (1) OPERATIONAL REQUIREMENTS. Owners or operators of aboveground seldom-used and temporarily-out-of-service tanks shall comply with the applicable requirements of s. Comm 10.545 (1).

(2) PLACING A TANK BACK INTO SERVICE. (a) The respective API 653 or STI SP001 inspection cycle shall be current for a tank before it is placed back into service.

(b) All leak detection, overfill, vent and fire valve devices shall be verified as functional before being placed back into service.

(c) Tank systems out of service for more than 365 days shall have a pressure test of the ullage portion to assure that tank connections are tight before the tanks are placed back into service.

(3) NON-COMPLYING TANKS. Tanks that are placed out of service which do not comply with this section shall be permanently closed in accordance with s. Comm 10.460 within 60 calendar days.

SECTION 31. Comm 10.465 (1) Note is amended to read:

Comm 10.465 (1) Note: For further information on sampling and reporting for these assessments, see the Department's *Assessment and Reporting of Suspected and Obvious Releases From Underground and Aboveground Storage Tank Systems* (Publication # ERS-10874), which is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's Web site at http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html.

SECTION 32. Comm 10.500 (1) (b) 3. and 4., (5) (a) 2. a. and (f) 2. and 3., (6) (b) 2. a. and (9) (c) 14. are amended to read:

Comm 10.500 (1) (b) 3. Piping of safe suction systems, that is installed before [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE].

4. A pipe manifold connecting 2 or more tanks, that is installed before [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE].

(5) (a) 2. a. ~~Underground~~ Sumps for new or replacement underground fill piping that does not drop vertically into a tank may ~~have secondary containment that includes a sump which is~~ be monitored visually on a monthly basis, instead of monitored with an electronic sensor.

(f) 2. Piping ~~for~~ that is installed or replaced on or after [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE] at secondary containment sumps provided under this subsection may not pass through the bottom of the sump.

3. All electrical conduit and wiring that is installed or replaced on or after [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE] at secondary containment sumps provided under this subsection for dispensers shall pass over the top of the sump wall rather than through the wall or bottom of the sump.

(6) (b) 2. a. All new tanks and pipe systems shall have pressure or vacuum testing that shall assure that the tank, pipe and all connections are tight in accordance with NFPA 30 section 21.5 and PEI RP100 ~~section~~ sections 11 and 14 before the tanks and pipe systems are placed into service.

(9) (c) 14. Product inventory verification in accordance with s. Comm 10.503, ~~and~~ inventory control in accordance with s. Comm 10.515 (2), or statistical inventory reconciliation in accordance with s. Comm 10.515 (6) – 10 years.

SECTION 33. Comm 10.500 (9) (c) 14. Note is renumbered Comm 10.500 (9) Note [1] and amended to read:

Comm 10.500 (9) Note [1]**:** All leak detection records should be retained permanently. The documentation could be helpful to exclude the site as a possible source of contamination at a later date.

SECTION 34. Comm 10.500 (9) Note [2] is created to read:

Comm 10.500 (9) Note [2]**:** Section Comm 10.870 has recordkeeping requirements for operator training, for USTs that are required to have a permit to operate from the department.

SECTION 35. Comm 10.503 (1) and (2) (intro.) and (c) are amended to read:

Comm 10.503 Product inventory verification at retail facilities. (1) This section applies to ~~all facilities~~ any tank system from which products are offered for retail sale to the public that are subject to the requirements of ch. Comm 48.

Note: Inventory verification can be particularly effective during regulatory investigations of consumer complaints about the quality of purchased fuels.

(2) (intro.) To verify and maintain the integrity and quantity of delivered products, product inventory verification shall be conducted monthly for the life of the tank system, and reconciled on a monthly basis, in the following manner:

(c) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery. Where ~~blend pumps~~ tanks are ~~used~~ interconnected by a manifold, reconciliation may address all of the interconnected tanks as a group rather than as individual tanks.

SECTION 36. Comm 10.503 Notes are created to read:

Comm 10.503 Note: Where inventory control is used as the leak detection method, under section Comm 10.515 (2), the measurements and procedures followed there will satisfy the requirements for inventory verification in this section.

Note: Where statistical inventory reconciliation (SIR) is used as the leak detection method, under section Comm 10.515 (6), the same data may be used for the SIR and the inventory verification in this section, provided the requirements of the SIR vendor and this section are both met, including the monthly reconciliation in this section.

SECTION 37. Comm 10.505 (2) (a) 2. is amended to read:

Comm 10.505 (2) (a) 2. The basin shall be equipped with either a ~~push-to-~~drain system that directs spilled product into the tank, or a mechanism to pump product out of the basin.

SECTION 38. Comm 10.510 (2) (title), (c) and Note are amended to read:

Comm 10.510 (2) (title) ANNUAL CALIBRATION VERIFICATION.

(c) Annual monitoring equipment certification shall be made on the department's underground tank system ~~release and leak monitoring~~ prevention and detection functionality verification form (ERS-10778) and shall be maintained onsite in accordance with s. Comm 10.500 (9) (a).

Note: Form ERS-10778, Underground Tank System ~~Release and Leak Monitoring~~ Prevention and Detection Functionality Verification, is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's Web site at http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html.

SECTION 39. Comm 10.515 (2) (b) 3. b. is amended to read:

Comm 10.515 (2) (b) 3. b. Where ~~blend pumps~~ tanks are ~~used~~ interconnected by a manifold, reconciliation may address all of the interconnected tanks as a group rather than as individual tanks.

SECTION 40. Comm 10.515 (5) (b) and (c) are repealed.

SECTION 41. Comm 10.515 (5) (d) and (6) (b) to (g) are renumbered Comm 10.515 (5) (b) and (6) (c) to (h).

SECTION 42. Comm 10.515 (6) (b) is created to read:

Comm 10.515 (6) (b) The daily tank product inventory records shall be maintained current and be maintained on site.

SECTION 43. Comm 10.520 (1) (b) 1. is amended to read:

Comm 10.520 (1) (b) 1. To allow for periodic testing, new and replacement factory- or field-installed corrosion protection systems shall ~~include~~ have appropriate connections, insulated lead wires and accessible test stations, including as specified in subds. 2 and 3.

SECTION 44. Comm 10.520 (2) (b) 4. is created to read:

Comm 10.520 (2) (b) 4. After an inspection under this paragraph, if the tank is not closed under subd. 3. a., a precision tightness test shall be performed on the tank system in accordance with s. Comm 10.515 (4). The tightness test shall test 100 percent of the tank's volume.

SECTION 45. Comm 10.530 (1) (c) is created to read:

Comm 10.530 (1) (c) When lining a tank, an access way for an inspector to enter the tank shall be installed from the tank interior to finished grade, if not already provided.

SECTION 46. Comm 10.535 (9) is created to read:

Comm 10.535 (9) Prior to placing any tank back into service under this section, both of the following shall occur, in the following order:

(a) An access way for an inspector to enter the tank shall be installed from the tank interior to finished grade, if not already provided.

(b) A precision tightness test shall be performed on the tank system in accordance with s. Comm 10.515 (4). The tightness test shall test 100 percent of the tank's volume.

SECTION 47. Comm 10.545 (1) (a) 2. b., (2) (b) and (c), (3) (title) and (3) are amended to read:

Comm 10.545 (1) (a) 2. b. The tank system is empty when all liquid has been removed from the tank and the associated piping so that no more than 1 inch of residue, or 0.3 percent by weight of the total capacity of the tank system, remains in the system.

(2) (b) Tank systems out of service for more than 365 days shall have a pressure test of the ullage portion to assure that tank connections are tight and shall fully comply with this chapter before being placed back into service, except double-wall construction is not newly required for tank systems installed before February 1, 2009.

(c) ~~Tanks~~ Tank systems covered in par. (a) shall immediately have the leak detection system verified in accordance with s. Comm 10.510 (2).

(3) (title) NON-COMPLYING ~~TANKS~~ TANK SYSTEMS. ~~Tanks~~ Tank systems that are placed out of service which do not comply with this section shall be permanently closed in accordance with s. Comm 10.560 within 60 calendar days.

SECTION 48. Comm 10.545 (2) (d) and Note are created to read:

Comm 10.545 (2) (d) Tanks covered in par. (b) shall have all the respective components documented as functional on form ERS-10778.

Note: Form ERS-10778, Underground Tank System Release and Leak Monitoring Functionality Verification, is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's Web site at http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html.

SECTION 49. Comm 10.575 (2) (intro.) is amended to read:

Comm 10.575 (2) (intro.) ASSESSMENT. The owner or operator shall evaluate and confirm all suspected or obvious releases by taking one or all of the following actions ~~at the direction~~ and shall also do so in accordance with any corresponding directive of the department:

SECTION 50. Comm 10.580 (3) (a) Note [1] is amended to read:

Comm 10.580 (3) (a) **Note** [1]**:** For further information on sampling and reporting for these assessments, see the Department's *Assessment and Reporting of Suspected and Obvious Releases From Underground and Aboveground Storage Tank Systems* (Publication # ERS-10874), which is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's Web site at http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html.

SECTION 51. Comm 10.605 (1) (f) (title) and (g) (title) are created to read:

Comm 10.605 (1) (f) (title) *Emergency shut-off valve.*

(g) (title) *Water level in tanks.*

SECTION 52. Comm 10.615 (1) is amended to read:

Comm 10.615 (1) GENERAL. ~~Fixed-tank~~ Aboveground fixed-tank fuel dispensing facilities shall comply with NFPA 30, NFPA 30A, PEI RP200, ss. Comm 10.445 to 10.470 and this section.

SECTION 53. Comm 10.615 (5) (a) 1. and 2. are renumbered Comm 10.605 (1) (f) 1. and 2.

SECTION 54. Comm 10.615 (5) (a) (title), 3. to 6. and Notes are repealed.

SECTION 55. Comm 10.615 (5) (b) to (p) are renumbered Comm 10.615 (5) (a) to (o).

SECTION 56. Comm 10.615 (6) (b) and (c) are renumbered Comm 10.605 (1) (g) and 10.615 (6) (b).

SECTION 57. Comm 10.740 (2) (a) is amended to read:

Comm 10.740 (2) (a) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in s. Comm ~~10.743~~ 10.753, the owner or operator shall obtain alternate coverage as specified in this ~~section~~ subchapter within 60 days after receipt of the notice of termination.

SECTION 58. Comm 10 subchapter VIII is created to read:

Comm 10 Subchapter VIII – Training for Operators of Underground Storage Tank Systems

Comm 10.800 Purpose. The purpose of this subchapter is to implement the operator-training requirements issued by the U.S. environmental protection agency in response to the federal Energy Policy Act of 2005.

Note: The USEPA operator-training requirements, as contained in publication EPA-510-R-07-005, are available through the following Web site: http://www.epa.gov/OUST/fedlaws/final_ot.htm.

Comm 10.805 Scope. This subchapter applies to all underground storage tank systems that are required by s. Comm 10.145 to have a permit to operate from the department.

Note: This subchapter generally does not specify operation or maintenance requirements. For applicable operation or maintenance requirements, refer to previous sections of this chapter, such as section Comm 10.605 (1) (a), which requires fuel dispensing facilities to have periodic and annual inspections and maintenance in accordance with PEI RP500 and RP900.

Comm 10.810 Definitions. In this subchapter:

(1) "Class A operator" means an individual who has primary responsibility to operate and maintain an underground storage tank system in accordance with this chapter.

Note: In general, this individual focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to properly operate and maintain an underground storage tank system, such as the requirements in 40 CFR 280 and this chapter.

(2) "Class B operator" means an individual who implements, on-site, the day-to-day aspects of operating, maintaining and recordkeeping for an underground storage tank system.

Note: This individual generally focuses on field implementation of applicable UST requirements and the day-to-day aspects of operating, maintaining, and recordkeeping for USTs at one or more facilities.

(3) "Class C operator" means an individual who has on-site responsibility to respond to emergencies or alarms relating to spills, leaks or releases from an underground storage tank system.

Note: This individual typically is the first line of response to alarms and to events indicating emergency conditions. Not all employees of the facility are necessarily Class C operators.

Comm 10.820 Designation of Class A, Class B and Class C operators. (1) GENERAL. Beginning no later than January 1, 2012, each new or existing underground storage tank system or group of underground storage tank systems at a facility shall have a Class A operator, a Class B operator and a Class C operator, as designated by the owner or operator, and as accredited in accordance with this subchapter, except as provided in sub. (2).

(2) SMALL BUSINESS EXCEPTION. For any entity demonstrating to the authorized agent or the department that it meets the definition of small business in s. 227.114 (1), Stats., the beginning date for having an accredited Class A, Class B and Class C operator is August 8, 2012.

Note: Section 227.114 (1) of the Statutes reads in part: " 'Small business' means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than $5,000,000."

Note: This subchapter does not preclude any individual from being designated to more than one of the operator classes, provided the individual complies with the requirements for each designated class.

Note: This subchapter does not preclude any individual from being a designated operator for more than one facility that includes an underground storage tank system.

Note: This subchapter does not preclude an owner or operator from contracting with another party to provide Class A, Class B and Class C operators.

Note: There may be occasions when a Class A, Class B or Class C operator will not be present at a facility. For example, operators are frequently not present at unmanned facilities, such as emergency generators at telecommunication towers, and card lock/card access facilities. However, these operators are still responsible for

operation and maintenance activities or responding to emergencies or alarms, and are still subject to the requirements of this subchapter.

(3) If the owner and operator of the tank system are separate persons, either the owner or operator may designate the Class A, Class B and Class C operators at the facility, but both the owner and the operator are under the same responsibility under this section to ensure that Class A, Class B and Class C operators are designated.

Comm 10.830 Responsibilities of Class A, Class B and Class C operators. (1) CLASS A OPERATORS. Responsibilities of a Class A operator include all of the following:

(a) Managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

(b) Ensuring that appropriate individuals do all of the following:

1. Properly operate and maintain the underground storage tank system.

2. Maintain appropriate records.

3. Receive training to operate and maintain the underground storage tank system and keep records.

4. Properly respond to emergencies or alarms relating to spills, leaks or releases from the underground storage tank system.

5. Make financial responsibility documents available to the authorized agent or the department as required.

(2) CLASS B OPERATORS. Responsibilities of a Class B operator include ensuring that all of the following occur:

(a) Requirements for leak or release detection methods, recordkeeping and reporting are met.

(b) Requirements for leak or release prevention equipment, recordkeeping and reporting are met.

(c) All relevant equipment complies with performance standards.

(d) Appropriate individuals are trained to properly respond to emergencies or alarms relating to spills, leaks or releases from the underground storage tank system.

(e) All Class C operators are provided with written instructions that include all of the following:

1. Emergency response procedures, including all of the following:

a. Procedures for overfill protection during delivery of regulated substances.

b. Operation of emergency shut-off systems.

c. Appropriate responses to all alarms.

d. Reporting of leaks, spills and releases.

e. Any site-specific emergency procedures.

2. The name and other information needed for contacting appropriate parties if a leak, spill, release or alarm occurs.

(f) 1. A Class C operator is present during all operating hours of the underground storage tank system, except as provided in subd. 2.

2. a. For fueling facilities which are attended as specified in s. Comm 10.605 (5) (a) and which include hours of operation when no attendant is on duty, a sign shall be posted in a conspicuous place, stating the emergency shut-off procedures and the name, address and telephone number of the Class B operator, along with the name and telephone number of the local emergency responders, including 911 personnel.

Note: Section Comm 10.605 (5) (a) reads as follows: "To be considered as being an attended fueling facility, there shall be at least 1 attendant regularly on duty on a daily basis, but not necessarily during all hours of operation, to supervise, observe and control the actual dispensing of fuel."

b. For fueling facilities that are not attended as specified in s. Comm 10.605 (5) (a), signage shall be posted in accordance with the location and information requirements in subd. 2. a.

c. For facilities which are not addressed in subd. 2. a. or b. and which typically are unmanned, such as emergency generators, signage shall be posted in accordance with the location and information requirements in subd. 2. a.

(3) CLASS C OPERATORS. Responsibilities of a Class C operator include all of the following:

(a) Initially responding to alarms, spills, leaks or releases.

(b) Notifying the Class B or Class A operator and appropriate emergency responders, including 911 personnel, when necessary.

(c) Controlling or monitoring the dispensing or sale of regulated substances.

Comm 10.840 Training elements for Class A operators. Each Class A operator shall be trained in all of the following:

(1) Basic underground storage tank system requirements, so that he or she can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance, and recordkeeping requirements and standards of this chapter regarding all of the following:

(a) Spill prevention.

(b) Overfill prevention.

(c) Leak and release detection.

(d) Corrosion protection.

(e) Emergency response.

(f) Product compatibility.

(2) Financial responsibility documentation requirements.

(3) Notification requirements.

(4) Requirements for reporting obvious and suspected releases.

(5) Requirements for permanently closing a tank system and for placing a tank system temporarily out of service.

(6) Operator training requirements.

Comm 10.841 Training elements for Class B operators. (1) Compared with training for a Class A operator, training for a Class B operator shall provide a more in-depth understanding of operation and maintenance aspects, but may cover a more narrow breadth of applicable regulatory requirements.

(2) Each Class B operator shall receive either of the following:

(a) Site-specific operator training that is focused only on equipment used at the operator's underground storage tank system facility.

(b) Broader training regarding regulatory requirements that encompass all of the following:

1. Components of underground storage tank systems.

2. Materials of underground storage tank system components.

3. Methods of leak and release detection, and leak and release prevention applied to underground storage tank system components.

4. Operation and maintenance requirements of this chapter which apply to underground storage tank systems and which address each of the following:

a. Spill prevention.

b. Overfill prevention.

c. Leak and release detection.

d. Corrosion protection.

e. Emergency response.

f. Product compatibility.

5. Reporting and recordkeeping requirements.

6. Class C operator training requirements.

Comm 10.842 Training elements for Class C operators. (1) Each Class C operator shall be trained to take appropriate action in response to both of the following:

(a) Emergencies, including situations which pose an immediate danger or threat to the public or to the environment and which require immediate action.

(b) Alarms caused by spills, leaks or releases from an underground storage tank system.

(2) Each Class C operator shall be trained to understand the instructions specified in s. Comm 10.830 (2) (e).

Comm 10.850 Acceptable training and certification processes. (1) Operator training shall include evaluation and accreditation of the operator's knowledge of the applicable requirements in ss. Comm 10.840 to 10.842.

(2) Acceptable methods for meeting the requirements in sub. (1) and ss. Comm 10.840 to 10.842 include all of the following:

(a) *Class A and Class B Operators.* Class A and Class B operators shall obtain either of the following, except as provided in sub. (4):

1. A certificate issued by the International Code Council® showing that the individual has passed the Wisconsin UST operator examination for the class the individual is designated to.

2. a. Written proof of successfully completing an equivalent, alternate operator training program that has received prior written approval from the department.

b. Any alternate program under subd. 2. a. shall include an evaluation and accreditation of operator knowledge through testing, practical demonstration or other tools that the department determines are acceptable.

(b) *Class C Operators.* Class C operators shall obtain a certificate issued by an accredited Class A or Class B operator showing that the Class C operator has successfully completed training conducted or authorized by an accredited Class A or Class B operator for the facility where the Class C operator is employed.

(3) For a Class B training program that focuses on the site-specific training specified in s. Comm 10.841 (2) (a), the written proof in sub. (2) (a) shall also include identification of the type of tank system addressed in the training.

(4) (a) To address Class A and Class B operators who are responsible for underground storage tank systems in multiple states, the department may accept operator training verification from other states that have equivalent operator training requirements.

(b) Class A and Class B operators who choose to proceed under this subsection shall obtain written proof of their training verification and the department acceptance, as specified in par. (a).

Comm 10.860 Documentation deadlines. (1) CLASS A, CLASS B AND CLASS C OPERATORS. All Class A, Class B and Class C operators shall obtain the documentation specified in s. Comm 10.850 before assuming their responsibilities under this subchapter, except as provided in sub. (2).

(2) EXISTING, COMPLIANT FACILITIES. An incoming Class A or Class B operator for a facility that was complying with section Comm 10.820 immediately before that personnel change may obtain the documentation specified in s. Comm 10.850 no later than 30 days after assuming the responsibilities under this subchapter.

Comm 10.870 Recordkeeping. (1) The owner or operator shall maintain the documentation specified in s. Comm 10.850 at the underground storage tank system site and have it immediately available for inspection by the authorized agent or the department, except as provided in sub. (2).

(2) For fueling facilities that are not attended as specified in s. Comm 10.605 (5) (a), and facilities that typically are unmanned, such as emergency generators, the owner or operator shall maintain the documentation specified in s. Comm 10.850 at a readily available site and provide it for inspection to the authorized agent or the department upon request.

Note: Section Comm 10.605 (5) (a) reads as follows: "To be considered as being an attended fueling facility, there shall be at least 1 attendant regularly on duty on a daily basis, but not necessarily during all hours of operation, to supervise, observe and control the actual dispensing of fuel."

(3) The documentation referenced in sub. (1) or (2) shall be accompanied with contact information for each designated operator, including a telephone number and mailing address.

Comm 10.880 Retraining. (1) (a) If the authorized agent or the department determines that an underground storage tank system is not in significant compliance with this chapter, the Class B operator shall be retrained within either 60 days or another time period prescribed by the department, in the areas that are determined to not be in compliance, except both the Class A and Class B operators shall be retrained if so directed by the department.

(b) Retraining under this section shall be in accordance with a directive by the department.

Note: Significant operational compliance performance measures for release prevention and release detection, as developed by the U.S. environmental protection agency, are available at the following Web site: http://www.epa.gov/oust/cmplastc/soc.htm.

(2) In this section, "significant compliance" means, in addition to release prevention and release detection efforts, that an ample amount of the required activity is performed through a concerted effort aimed at total compliance. A determination of significant compliance is obtained through a common-sense approach to evaluating whether enough effort was made to comply with the applicable requirements. Substantial compliance is not a specific number or percent of compliance.

Note: Section Comm 10.115 (3) (c) allows shutdown of any underground storage tank system for which there is a continuing violation of the requirements in this chapter.

(END)

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EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after the date of publication in the Wisconsin administrative register.

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File reference: Comm 10-OpTn/rules 2009LR

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