

CR 91-9

# RULES CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPT. OF INDUSTRY, )  
LABOR & HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carol Skornicka, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to the petroleum product fund were duly approved and adopted by this department on May 28, 1991.  
*(Subject)*  
*(Date)*

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 11:00 a.m. in the city of Madison, this 28th day of May A.D. 1991.

*Carol Skornicka*

Secretary

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11:30 am  
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# ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 20.445 (1)(j), 101.19 (1)(b), 101.143 (2) and 168.12, Stats.; the Department of Industry, Labor and Human Relations  creates;  amends;  repeals and recreates;  repeals and adopts rules of Wisconsin Administrative Code chapter (s):

Ind 69

Fee Schedule

(Number)

(Title)

The attached rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register pursuant to section 227.22, Stats.

Adopted at Madison, Wisconsin, this

date: May 28, 1991

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN  
RELATIONS



Secretary

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# RULES in FINAL DRAFT FORM

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Rule: SECTION IND 69.11

Relating to: PETROLEUM PRODUCT FUND

Clearinghouse Rule No. 91-9

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to repeal and recreate s. Ind 69.11, relating to the petroleum product fund.

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Analysis of Proposed Rule

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Statutory Authority: Sections 20.445 (1)(j), 101.19 (1)(b), 101.143 (2) and 168.12

Statutes Interpreted: Sections 20.445 (1)(j), 101.19 (1)(b), 101.143 (2) and 168.12

The proposed rule consists of a complete revision of section Ind 69.11, relating to the collection of fees for the inspection of petroleum products. Under the current rule, separate fees are specified for each program that is funded. The total fee currently collected is 20 cents per 50-gallon barrel of petroleum product inspected. The proposed rule consolidates the separate fees into one amount and increases the total fee from 20 cents to 50 cents per barrel.

The revenue generated from the fee is used to fund the following programs: Petroleum Product Inspection Program; Petroleum Environmental Cleanup Fund; Unfair Sales Enforcement Program and purchase of testing equipment in the Department of Agriculture, Trade and Consumer Protection; and the Well Compensation Program and the Environmental Repair Fund in the Department of Natural Resources.

The proposed rule also contains penalties in the form of a stepped fee increase for continued violations of the statutory inspection requirements. As fees have increased over time, there has been a trend towards avoiding the inspection requirement so that the fee will not be assessed. With the fee increase being proposed, there is an even larger incentive to avoid the inspection process. The stepped fee system will clarify what fee is to be charged when non-inspected shipments are discovered and also put a penalty in place for instances where individuals attempt to avoid the inspection requirement.

The increase in the fee revenues is designed to insure adequate funding for the Petroleum Environmental Cleanup Fund and to provide funding for the regulation of petroleum product storage tank systems. The Department estimates that the current fee will not generate adequate revenues to cover the cleanup fund claim load for fiscal year 91.

The funding needed for the regulation of petroleum product storage tank systems results from the expansion of the Department's underground storage tank (UST) program under chapter ILHR 10. Chapter ILHR 10, which takes effect on May 1, 1991, consists of an update of chapter Ind 8, and it contains provisions for fire protection and prevention, as well as groundwater protection, relating to liquid petroleum products.

Originally, chapter ILHR 10 had proposed a fee to be paid by tank owners to secure a permit to maintain a federally-regulated tank in service. It was determined, however, that the permit fee would be difficult for the small owner/operator to pay in addition to the costs for the leak detection and upgrade requirements in the tank rules. Therefore, a proposed alternative for the funding of the UST inspection program was identified.

Funding of the UST inspection program through the petroleum inspection fee has a number of direct benefits, including:

1. Reserving the owner/operator's funds for leak detection and upgrade costs.
2. Reducing the handling of funds.
3. Eliminating the need for the Department to carry out collection efforts.
4. Preventing having to close tank systems because of a failure to pay the tank permit fee. Closures would be based upon releases to the environment or failure to comply with the tank rules.

The permit fee that was proposed in chapter ILHR 10 was \$200 per tank for a 3-year permit. The issuance of the permits was to be phased-in over 3 years with the oldest tanks being covered first. The Department estimates that 55,500 tanks would be issued permits over a 3-year period. At \$200 per tank, the funds generated would equal \$11,100,000 in total, or \$3,700,000 per year.

The Department estimates that 3.2 billion gallons of petroleum products will be inspected during the fiscal year. Using the proposed 1.0 cent per gallon fee level, the following cost pattern occurs:

Funds Generated	\$32,000,000
PECFA Fund/Admin.	( 25,000,000)
Petroleum Inspection	( 2,500,000)
Payments to DNR and Other Agencies	( 800,000)
UST Administration	( 3,700,000)
Balance	-0-

The proposed increase in the petroleum inspection fee will provide for the prompt payment of PECFA claims, the continued operation of the Petroleum Inspection Program and the funding of required payments to other agencies. In addition, it will result in benefits to the environment by providing monies for the regulation of petroleum product storage tank systems while also minimizing the cost impact on small owners and operators.

Under section 168.12 (1m), Stats., the Department is required to provide 60 days notice before collecting an increased petroleum inspection fee. The proposed revision to section Ind 69.11 was adopted as an emergency rule on January 25, 1991. It was published on February 1, 1991, to take effect on April 1, 1991.

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SECTION 1. Ind 69.11 is repealed and recreated to read:

Ind 69.11 PETROLEUM PRODUCT FUND. (1) GENERAL. The department shall collect a fee of \$0.50 for each 50 gallons of petroleum product from which a sample is taken for the following programs:

- (a) The administration of the petroleum product inspection program;
- (b) The administration of the petroleum product storage tank program;
- (c) The operation of the petroleum storage environmental remedial action fund to pay actual and projected awards and administrative costs;
- (d) Transfer to the department of agriculture, trade and consumer protection for the administration of the unfair sales enforcement program;
- (e) Transfer to the department of natural resources for the well compensation program; and
- (f) Other programs, including the DNR environmental repair fund, that may be specified by statute.

(2) SPECIFIED FEES AS LIENS ON PRODUCT INSPECTED. The fees specified in this section shall be a lien on the products inspected.

(3) PENALTIES FOR VIOLATION OF S. 168.05, STATS. In addition to the penalties specified under s. 168.15, Stats., when the department identifies a violation of the statutory provisions of s. 168.05, Stats., it shall charge a fee based upon the following schedule:

(a) 1. For the first violation identified during the calendar year, \$0.50 for each 50 gallons of petroleum product imported or received into the state;

2. For the second violation identified during the calendar year, twice the fee specified in subd. 1.; and

3. For the third and subsequent violations identified during the calendar year, three times the inspection fee specified in subd. 1.;

(b) If the department is notified within 60 days of the violation of s. 168.05, Stats., by the person who imported or received the petroleum product, a fee of \$0.50 for each 50 gallons of petroleum product imported or received into the state shall be charged.

(4) CERTIFICATION FEE FOR PETROLEUM PRODUCT USERS. (a) Persons applying for certification or recertification as a petroleum product user shall submit with the application for certification or recertification an annual fee, determined from the date of certification, of \$270.00 for each separate storage location.

(b) Certified petroleum product users are exempt from the payment of the segment of the \$0.50 fee which is used to fund the administration of the petroleum inspection program. The certified petroleum product user shall remit to the department the remaining segment of the \$0.50 fee. The amount of the total fee determined to be the funding for the petroleum inspection program is \$0.035.

(End)

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EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

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Tommy G. Thompson  
Governor  
Carol Skornicka  
Secretary



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## State of Wisconsin Department of Industry, Labor and Human Relations

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May 28, 1991

Gary Poulson  
Assistant Revisor of Statutes  
2nd Floor  
119 Martin Luther King Blvd.  
Madison, Wisconsin 53703

Douglas LaFollette  
Secretary of State  
10th Floor  
30 West Mifflin Street  
Madison, Wisconsin 53703

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Dear Messrs. Poulson and LaFollette:

### TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 91-9

RULE NO. Section Ind 69.11

RELATING TO: Petroleum Product Fund

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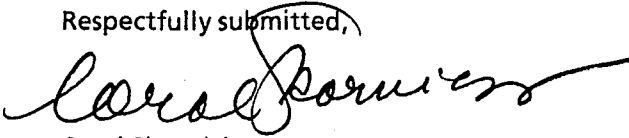
Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

  
Carol Skornicka  
Secretary