

Chapter Comm 10

FLAMMABLE AND COMBUSTIBLE LIQUIDS

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Note: Chapter Ind 8 as it existed on March 31, 1982 was repealed and a new chapter Ind 8 was created effective April 1, 1982; Chapter Ind 8 as it existed on April 30, 1991 was repealed and recreated as chapter Comm 10 effective May 1, 1991; corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, October, 1996, No. 490;

chapter ILHR 10 was renumbered chapter Comm 10 under s. 13.93 (2m) (b) 1., Stats. and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, February, 1999, No. 518.

Subchapter I — Purpose and Application

Comm 10.001 Purpose. (1) The purpose of this chapter is to provide for safe storage, display, installation, operation, use, maintenance and transportation of flammable and combustible liquids and the equipment, facilities and buildings that are used to store, transfer and dispense them.

(2) (a) The rules of this chapter are intended to comply with s. 101.09 (3), Stats.

Note: Section 101.09 (3), Stats., reads in part: “The department shall promulgate by rule construction, maintenance and abandonment standards applicable to tanks for the storage, handling or use of liquids that are flammable or combustible or are federally regulated hazardous substances, and to the property and facilities where the tanks are located, for the purpose of protecting the waters of the state from harm due to contamination by liquids that are flammable or combustible or are federally regulated hazardous substances.”

Note: The definition of federally regulated hazardous substances as defined under s. 101.09, Stats., corresponds to the CERCLA List of Hazardous Substances and Reportable Quantities contained in 40 CFR part 302.4, Table 302.4.

(b) The rules of this chapter are intended to comply with the flammable and combustible liquid related provisions of Subtitle I of the Hazardous and Solid Waste Amendments of 1984, Public Law 98–616 which extended and strengthened the provisions of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA) of 1976 [42 USC 6912, 6991 (a) to 6991 (h)].

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91; CR 01–087: am. (1), r. and recr. (2) (a) Register July 2002 No. 559, eff. 8–1–02.

Comm 10.002 Application. (1) NEW FACILITIES AND STRUCTURES. The provisions of this chapter shall apply to all new facilities and structures involving flammable and combustible liquids, and also to additions to existing facilities and structures involving flammable and combustible liquids.

(2) ALTERATIONS TO FACILITIES AND STRUCTURES. (a) The provisions of this chapter shall apply to remodeling or alterations in any flammable and combustible liquid facility or structure which is integral to the flammable and combustible liquid storage or dispensing including those which affect fire hazard or replacement of major equipment.

(b) The provisions of this chapter do not apply to general maintenance of any flammable and combustible liquid facility or structure.

(3) CHANGE IN OPERATION. If the operation of an existing facility or structure is changed to an operation regulated by this chapter, the facility or structure shall be made to comply with the requirements for the new operation as provided in this chapter.

(4) GROUNDWATER PROTECTION PROVISIONS. Pursuant to s. 101.09, Stats., each groundwater protection provision of this chapter shall apply, as specified in that provision, to all flammable and combustible liquid facilities and structures in existence on May 1, 1991, even if the flammable and combustible liquid facility or structure is not undergoing remodeling, alteration or change of operation.

Note: See ss. Comm 10.13 to 10.17 and subchs. VI and VII for specific requirements.

(5) CONFLICTING RULES. Where different sections of this chapter specify different requirements, the most restrictive requirement shall govern.

(6) RETROACTIVITY. The provisions of this chapter are not retroactively applied to existing facilities unless specifically stated in the administrative rule.

Note: In addition to the requirements of this chapter, all frequenters and employers in public buildings and places of employment and employees in public sector places of employment are protected by the provisions of ch. Comm 32—Safety and Health Standards for Public Employees. Employees in private sector places of employment are protected by the regulations of 29 CFR 1910, of the U.S. department of labor, occupational safety and health administration (OSHA).

Note: The Wisconsin department of natural resources and the U.S. environmental protection agency administer statutes and administrative rules and regulations which also pertain to flammable and combustible liquids. The regulated areas include discharges of hazardous substances and wastes, air emissions, discharges to ground and surface waters, and disposal of solid and hazardous wastes. Chapters 160 and 280 to 299, Stats., should be consulted in addition to rules adopted by the department of nat-

ural resources. The federal Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act and Code of Federal Regulations should also be consulted. This rule is intended to satisfy the requirements of 40 CFR Parts 280 and 281 for Underground Storage Tanks: Technical Requirements and State Program Approval.

Note: Flammable and combustible liquid facilities and structures may be subject to compliance with additional requirements in applicable building codes, local zoning and similar ordinances.

Note: See Chapter Comm 5 for rules pertaining to the credentials required relative to tank systems.

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91.

Subchapter II — Definitions

Note: The following subsections are definitions included in federal regulations: subs. (1), (2), (6), (7), (10), (11), (13), (23) to (25), (29), (31) to (36), (39) to (44), (54), (57), (58), (61) to (64), (66), (68) to 70), (80), (84), (85), (87) to (90), (96), (97) and (103).

Comm 10.01 Definitions. In this chapter, the following definitions shall apply:

Note: For definitions of technical terms not included in this code, the Petroleum Equipment Lexicon is a helpful source. It is available from PEI at the address in Table 10.25–6.

(1) “Above ground release” means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above ground portion of an underground storage tank system and above ground releases associated with overfills and transfer operations as the regulated substance moves to and from an underground storage tank system.

(2) “Ancillary equipment” means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an underground storage tank.

(3) “Approved” means acceptable to the department.

Note: The department will ordinarily accept items approved by a nationally recognized testing laboratory.

(4) “Authority having jurisdiction” means the department or its authorized deputies responsible for approving equipment, installations or procedures.

(5) “Authorized agent” means either the LPO, or the department in areas of the state where there is no LPO.

Note: See s. Comm 10.01 (51m) for the definition of LPO.

(6) “Below ground release” means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the below ground portions of an underground storage tank system and below ground releases associated with overfills and transfer operations as the regulated substance moves to and from an underground storage tank.

(7) “Beneath the surface of the ground” means beneath the ground surface or otherwise covered with earthen materials.

(8) “Bulk plant” means that portion of a property where liquids are received by tank vessel, pipelines, tank car, or tank vehicle, and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank, or container.

(9) “Business day” means any day Monday to Friday, excluding legal holidays.

(10) “Cathodic protection” means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. A tank system may be cathodically protected through the application of either galvanic anodes or impressed current.

(11) “Cathodic protection tester” means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied [to] buried or submerged metal piping and tank systems. At a minimum, such persons shall have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

(12) “Centralized oil distribution system” means a system of piping through which oil is supplied from a separate central supply tank or tanks.

(13) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(15) "Certified inspector" means a person certified by the department to inspect storage tank systems.

(16) "Certified installer" means a person who is certified by the department to install and repair storage tank systems.

(17) "Certified liner" means a person certified by the department to install an interior lining to a storage tank.

(18) "Certified remover-cleaner" means a person certified by the department to remove storage tank systems and to remove accumulated sludges and remaining product from tanks which are to be closed, undergo a change-in-service, or otherwise completely emptied and inerted.

(19) "Certified site assessor" means a person certified by the department to conduct a site assessment and collect samples necessary for that site assessment.

(20) "Certified tightness tester" means a person who is certified by the department to perform tightness testing to determine the presence of leaks in storage tank systems.

(21) "Change-in-service" means continued use of a storage tank system in another status or continued use of a tank that previously stored a regulated substance to store a non-regulated substance.

Note: An example of change-in-service resulting from another status is an in-use tank that moves to temporary-out-of-service status. An example of change-in-service resulting from a previously stored regulated substance to storage of a non-regulated substance is a tank storing heating oil converted to a storage tank for water.

(22) "Combustible liquid" means a liquid having a flash point at or above 100° F. Combustible liquids are subdivided as follows:

(a) "Class II liquids" means those having flash points at or above 100° F and below 140° F.

(b) "Class IIIA liquids" means those having flash points at or above 140° F and below 200° F.

(c) "Class IIIB liquids" means those having flash points at or above 200° F.

(23) "Compatible" means the ability of 2 or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the underground storage tank system.

(24) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow.

Note: For the purpose of determining how much piping is connected to any individual underground storage tank system, the piping that joins 2 underground storage tank systems should be allocated equally between them.

(25) "Consumptive use," with respect to heating oil, means consumed on the premises where the UST system is located.

(26) "Control, primary safety" means a safety control responsive directly to flame properties, sensing the presence or absence of flame and, in the event of ignition failure or unintentional flame extinguishment, causing safety shutdown.

(27) "Control, safety" means automatic controls, including relays, switches and other auxiliary equipment used to form a safety-control system, that are intended to prevent unsafe operation of the controlled equipment.

(28) "Contractor or farm fuel tanks" means tanks having a total aggregate capacity not greater than 200 gallons mounted on a pick-up truck or similar vehicle.

(29) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. The person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has educa-

tion and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(30) "Department" means the department of commerce.

(31) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the underground storage tank system, such as the tank from piping.

(32) "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

(33) "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

(34) "Existing" means installed or in place on or prior to May 1, 1991.

(35) "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or prior to May 1, 1991 or other specified date. Installation is considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the tank system site or installation of the tank system and a continuous on-site physical construction or installation program has begun.

(36) "Farm tank" means a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank shall be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

Note: See also s. 102.04 (3), Stats., for the definition of a farm operation.

(37) "Flammable liquid" means a liquid having a flash point below 100° F and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100° F. These materials are also known as Class I liquids. Class I liquids are subdivided as follows:

(a) "Class IA" means those liquids having flash points below 73° F and having a boiling point below 100° F.

(b) "Class IB" means those liquids having flash points below 73° F and having a boiling point at or above 100° F.

(c) "Class IC" means those liquids having flash points at or above 73° F and below 100° F.

(38) "Flash point" means the minimum temperature at which a liquid will give off sufficient vapor to form an ignitable mixture with air near the surface of the liquid or within the test vessel.

Note: See NFPA 30 for the appropriate test method for a specific liquid.

(39) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(40) "Free product" means a regulated substance that is present as a nonaqueous phase liquid, such as a liquid not dissolved in water.

(41) "Gathering lines" means any pipeline, equipment, facility or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(42) "Hazardous substance underground storage tank system" means an underground storage tank system that contains a hazardous substance defined in section 101 (14) of CERCLA, but not including any substance regulated as a hazardous waste under Subtitle C, or any mixture of such substances and petroleum, and which is not a petroleum underground storage tank system.

(43) "Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(44) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(45) "Important building" means a building occupied by one or more persons for other than incidental use or a building that has a high hazard use or a building that is sited with respect to a UST system so that it will have a detrimental effect on release response or fire control activities.

(47) "Interstitial monitoring" means a leak detection method which entails the surveillance of the space between a UST system's walls and the secondary containment system for a change in steady state conditions. In a double-walled tank, this change may be indicated by a loss of vacuum, a drop in pressure, a drop in the fluid level in a visible reservoir, or the detection of the regulated substance or water in the interstitial space or both. In a secondary containment system consisting of a natural or synthetic liner or a vault, the surveillance consists of frequent or continuous sampling from a monitoring well or interstitial monitor between the UST and the liner to detect the presence of regulated substance or water.

(48) "Inventory controls" means techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

(49) "Liquid" means a substance which is neither solid nor gas at standard conditions of temperature, 60° F, and pressure, 14.7 pounds per square inch absolute.

(50) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations including gas production plants, for the purpose of collecting oil, water, and other liquids. The liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(51) "Listed and labeled" means equipment or materials to which has been attached a label or identifying mark by, and which is included in a list published by, an organization acceptable to the department that is concerned with product evaluation, that maintains periodic inspections of listed and labeled equipment or materials and by whose labeling the manufacturer indicates compliance with appropriate standards or performance for a specified purpose.

Note: The department accepts the following listing organizations: Underwriters Laboratories (UL).

(51m) "LPO" or "Local program operator" means an entity, either public or private, under contract with the department to enforce the provisions of this chapter and provide tank system plan review and inspection services in a specific region of the state.

(52) "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

(54) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

(55) "Motor vehicle" means a self-propelled motor-driven vehicle which is used for moving people or products on land, water or air.

(57) "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which

installation has commenced after May 1, 1991, or other specified date.

Note: See also "existing tank system."

(58) "Noncommercial purposes" with respect to motor fuel means not for resale.

(59) "Oil burner" means a device for burning oil, including, but not limited to, boilers, furnaces, water heaters, or ranges. A burner of this type may be furnished with or without a primary safety control; and it may be a pressure atomizing gun type, a horizontal or vertical rotary type, or a mechanical or natural draft vaporizing type.

(60) "Oil-burning equipment" means an oil burner of any type together with its tank, piping, wiring, controls and related devices and including all oil burners, oil-fired units and heating and cooking appliances.

(61) "On the premises where stored" with respect to heating oil means storage tank systems located on the same property, or contiguous property of the same owner, where the stored heating oil is used.

(62) "Operational life" means the period beginning when installation of the tank system has commenced until the time the tank system is properly closed.

(63) "Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank system.

(64) "Overfill release" means a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(65) "Owner" means:

(a) In the case of an in-use storage tank system, any person who owns at least the tank storage portion of a storage tank system used for storage or dispensing of regulated substances or the person owning the property on which the storage tank system is located.

(b) In the case of a storage tank system not in use, any person who owned at least the tank storage portion of the storage tank system immediately prior to the discontinuation of its use, or the person owning the property on which the storage tank system is located.

(66) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

(67) "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels.

(68) "Petroleum underground storage tank system" means an underground storage tank system that contains petroleum or a mixture of petroleum with insignificant quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(69) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonferrous materials.

(70) "Pipeline facilities", including gathering lines, means new and existing pipe rights-of-way and any equipment, facilities, or buildings.

(71) "Place of employment" means any location within the jurisdiction of the department pursuant to s. 101.02, Stats., at which flammable and combustible liquid tanks, their products and attached pumping systems are considered to be integral and indispensable parts of the place of employment or public building.

(72) "Positive sampling, test, or monitoring results" means the results of sampling testing, or monitoring using a method described in part 4 of subch. VI that indicate a release from an underground storage tank system has occurred.

(73) “Product” means a substance stored in an underground or aboveground storage tank.

(74) “Public building” means any structure, including exterior parts of the building, such as a porch, exterior platform or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants.

Note: This definition is taken from s. 101.01 (2) (g), Stats.

(75) “Pump, automatic oil” means a pump which is not an integral part of an oil burner that automatically pumps oil from the supply tank and delivers the oil by gravity under a constant head to an oil-burning appliance. The pump is designed to stop pumping automatically in case of total breakage of the oil supply line between the pump and the appliance.

(76) “Pump, oil transfer” means an oil pump, automatically or manually operated, that transfers oil through continuous piping from a supply tank to an oil-burning appliance or to an auxiliary tank and is not designed to stop pumping automatically in case of total breakage of the oil supply line between the pipe and the appliance.

(77) “Readily accessible” means capable of being reached easily and quickly for operation, maintenance and inspection.

(78) “Regulated substance” means any flammable or combustible liquid and any liquid that is a federally regulated hazardous substance as defined under s. 101.09, Stats.

Note: The definition of federally regulated hazardous substances as defined under s. 101.09, Stats., corresponds to the CERCLA List of Hazardous Substances and Reportable Quantities contained in 40 CFR part 302.4, Table 302.4.

(79) “Release” means any discharge, including, but [not] limited to, spilling, leaking, pumping, pouring, emitting, emptying, leaching, dumping or disposal of a flammable or combustible liquid into groundwater, surface water or subsurface soils.

(80) “Release detection” means determining whether a release of regulated substance has occurred from the underground storage tank system into the environment or into the interstitial space between the underground storage tank system and its secondary barrier or secondary containment around it.

(81) “Remodeling or alteration” means a change or modification.

(82) “Repair” means to restore a tank or storage tank system component that has caused a release or may cause a release of product from the underground storage tank system.

(83) “Residential marine service station” means that portion of a one- or 2-family residential property where liquid fuels are stored in or dispensed for nonretail purposes from fixed equipment on land into the fuel tanks of self-propelled marine craft, including all facilities used for the storage, dispensing, and handling of flammable and combustible liquids.

(84) “Residential tank” means a tank located on the same property as a one- or 2-family dwelling or on the same property as a residential building that falls under the scope of chs. Comm 61 to 65 and used only by the residents of the property or for the maintenance of the property.

(85) “SARA” means the Superfund Amendments and Reauthorization Act of 1986.

(86) “Secondary containment” means a system installed around an UST that is designed to prevent a release from migrating beyond the secondary containment system outer wall in the case of a double-walled tank system or excavation area in the case of a liner or vault system before the release can be detected. Such a system may include, but is not limited to, impervious natural and synthetic liners, double-walls or vaults.

(87) “Septic tank” means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal

through the soil. Settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(88) “Stormwater or wastewater collection system” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance.

(89) “Surface impoundment” means a natural topographic depression, diked area, or man-made excavation other than an injection well formed primarily of earthen materials, although it may be lined with man-made materials.

(90) “Tank” means a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel or plastic, that provide structural support.

(90m) “Tank system” means a tank, connected piping, ancillary equipment and containment system, if any.

(91) “Tank, auxiliary” for an oil-burning appliance, means a tank having a capacity of 60 gallons or less listed for installation in the supply piping between a burner and its main fuel supply tank. It may be included as an integral part of an automatic pump or a transfer pump, or may be a separate tank.

(92) “Tank, gravity” means a supply tank from which the product is delivered directly by gravity.

(93) “Tank, storage” means a separate tank that is not connected to an appliance for consumption.

(94) “Tank, supply” means a separate tank connected directly or by pump to an appliance for consumption.

(95) “Tightness testing” means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment or, in the case of a UST system, intrusion of groundwater into a tank system.

(96) “Underground area” means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(97) “Underground release” means any below ground release.

(98) “Underground storage tank” or “UST” means any one or combination of tanks, including connected pipes, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of connected underground pipes, is 10% or more beneath the surface of the ground. The term does not include any of the following or pipes connected to any of the following:

- (a) Septic tank;
- (b) Pipeline facility, including gathering lines, regulated under:
 1. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.), or
 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.), or
 3. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subd. 1. or 2.;
- (c) Surface impoundment, pit, pond, or lagoon;
- (d) Storm water or waste water collection system;
- (e) Flow-through process tank;
- (f) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (g) Storage tank situated in an underground area, such as but not limited to a basement, cellar, mineworking, drift, shaft, or tun-

nel, if the storage tank is situated upon or above the surface of the floor.

(99) "Underground storage tank system" or "UST system" means an underground storage tank, connected piping, underground ancillary equipment, and containment system, if any.

(100) "Unsaturated zone" means the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil and containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation or the water table.

(101) "Upgrade" means the addition or retrofit of some systems such as cathodic protection of tanks or piping, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of product.

(101m) "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

(101p) "Used product" means a flammable, combustible or hazardous liquid that is no longer suitable for its original use, has been contaminated, or has been mixed with other products.

(102) "Valve, manual oil shutoff" means a manually operated valve in an oil line for the purpose of turning on or shutting off the oil supply to a burner.

(102m) "Vehicle collision protection" means a structure or mechanism to protect a tank or system component from vehicle impact.

(103) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

Note: Also see definition of terms as listed in the standards adopted by reference as part of this chapter in subch. IV.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; cr. (90m), Register, January, 1993, No. 445, eff. 2-1-93; cr. (101m), (101p), Register, October, 1994, No. 466, eff. 11-1-94; r. (14), (46), (53) and (56), r. and recr. (18), Register, October, 1996, No. 490, eff. 11-1-96; CR 01-087: r. and recr. (5), (21), (38), (51), (65) and (78), am. (22) (c) and (101p), cr. (51m) and (102m) Register July 2002 No. 559, eff. 8-1-02; correction in (84) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559.

Subchapter III — Administration and Enforcement

Comm 10.10 Approval of proposed construction, installation or operation. (1) **GENERAL.** (a) Plan review and written approval from the authorized agent shall be obtained before any of the following activities are performed on storage tanks used to store a regulated substance:

1. Commencing any construction of new or additional above-ground or underground tank installation or piping installation.
2. Changing the operation of an installation from storage of a non-regulated substance to a regulated substance.
3. Adding or modifying tank or pipe corrosion protection.
4. Adding vapor or groundwater monitoring wells.
5. Adding leak detection.
6. Adding spill or overflow protection.
7. Tank lining.
8. Converting a full-service station to a self-service station or converting to the use of key-, card- or code-operated dispensing devices.

(b) Approval is not required for either of the following:

1. Oil-burning installations for one- and 2-family dwellings located aboveground or in basements.
2. Integral fuel supply tanks of a motor vehicle, aircraft, watercraft, mobile power plant or mobile heating plant.

(2) **AUTHORIZED AGENT APPROVAL.** (a) *Exercise of jurisdiction.* With the approval of the chief elected municipal official, the municipality shall determine if a municipal department or other

authorized agent approved by the department will exercise jurisdiction over the provisions of this chapter.

(b) *Plan review and approval.* 1. Plans for installations in which all tanks for the storage, handling or use of flammable or combustible liquids have an individual capacity of less than 5000 gallons shall be submitted for review and approved in writing by the authorized agent.

2. The review of plans and the installation inspection for compliance with the provisions of this chapter shall be performed by a certified tank inspector as designated by the department.

(3) **DEPARTMENTAL APPROVAL.** (a) Departmental approval shall be obtained as follows:

1. Installations of tank and piping systems, as specified in sub. (2), but located in areas where the authority to approve has not been granted to the fire chief or authorized agent shall be approved in writing by the department.

2. Installations in which one or more tanks for storage, handling or use of flammable or combustible liquid will have individual capacity of 5,000 gallons or larger.

(b) The department shall review and make a determination on an application for installation approval and for plan review within 15 business days of receiving the required information and fees.

(4) **PLANS, SPECIFICATIONS AND INFORMATION.** (a) Plans, specifications and information submitted to the department or fire chief or other authorized agent for review and approval shall contain the following:

1. At least 4 sets of plans, which are clear, legible and permanent copies, and one copy of specifications, fees and a completed application.

2. The name of the owner; the name of the person, firm or corporation proposing the construction or installation, if other than the owner; the address of the facility including the names of adjacent streets and highways;

3. A plot plan, drawn to a minimum scale of 1 inch equals 20 feet, indicating the location of the installation with respect to property lines, lot lines, adjoining streets or alleys, fences including those installed over or through any part of the system, and other buildings on the same lot or property. The plot plan shall indicate the location of buildings, other tanks, loading and unloading docks, underground utilities, sanitary sewers, storm sewers, water mains, private water mains, water service piping, water wells, water reservoirs and any stream or body of water which is within 200 feet of the tank. The class of construction of each building shall also be indicated;

Note: See s. Comm 10.342 for additional rules and information regarding separation from water wells and reservoirs.

4. The location, size and capacity of each tank and the class of liquid to be stored, the location of all piping runs and spacing between all tanks and piping;

5. The type of tank supports, clearances including clearances between tanks, type of venting and pressure relief used and combined capacity of all venting and relief valves on each tank for aboveground storage;

6. The location of fill, gauge and vent pipes and other openings for underground storage tanks;

7. Additional data and information regarding storage, handling or use of flammable or combustible liquids within buildings or enclosures to demonstrate compliance with the requirements of this chapter;

8. Location of burners, tanks, pumps, piping and control valves and the elevations of buildings and the lowest floor or pit in relation to the installation for oil-burning equipment;

9. The distances to dispensers, sizes of islands and traffic flow patterns or vehicle routes around or through the facility;

10. Information and specifications describing the design and placement of leak detection systems including the results of any site assessments conducted in accordance with s. Comm 10.61 (6)

(f) or (5) (f) for groundwater monitoring or vapor monitoring, if used;

11. Information regarding the type and operation of corrosion protection systems for tanks and piping, if used;

12. Information regarding the type of secondary containment system, if used;

13. Specifications describing the spill and overfill protection devices;

14. Information regarding the compatibility of the tank and piping system with flammable and combustible liquids;

15. A copy of an easement that reflects any property not owned by the system operator on which any portion of the system is located or any vehicle is parked while fueling;

16. Information and specifications on materials, equipment and devices to be used in the project that do not have material approval numbers;

17. Any material approval numbers issued in accordance with s. Comm 10.125 for materials to be used in the project; and

18. Any other information requested on the installation application form (ERS-9).

(b) In addition to the provisions specified in par. (a), plans for service stations involving the use of automatic dispensing units shall indicate the location of emergency controls and shall include the following, if applicable:

1. The location and details of the key, card, coin, code or remote operated dispensing devices;

2. A copy of the agreement between the key, card, coin, or code-holder and the station owner; and

3. A copy of the description of the program used to train those persons who will operate the key, card, coin, code or remote dispensing devices.

Note: See Appendix for a sample format dispensing equipment agreement form/training program.

(5) **LOCAL REGULATIONS.** This chapter may not limit the power of cities, villages and towns to make, or enforce, additional or more stringent regulations, provided the regulations do not conflict with this chapter, or with any other rule of the department, or law.

(6) **APPLICATION FOR APPROVAL.** (a) A Flammable and Combustible Liquid Tanks Installation and Plan Review Application form shall be included with each application for approval.

Note: Copies of the department forms required in this chapter are 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 www.commerce.state.wi.us/ER-BSTR-Comm10%20Forms.html.

(b) If, upon examination, the department or an authorized deputy determines that the plans and the application for approval substantially conform to the provisions of this chapter, a conditional approval, in writing, will be granted. All noncomplying code conditions stated in the conditional approval shall be corrected before or during construction or installation. A conditional approval issued by the department or authorized deputy shall not be construed as an assumption of any responsibility for the design or construction of a flammable and combustible liquid facility. The fire chief or authorized agent shall be notified at least 5 days prior to commencement of installation.

(c) A letter shall be sent to the designer and the owner of record with a statement relating to the examination of the plans and citing the conditions of approval or denial. The plans shall be dated and stamped "Conditionally Approved" or "Not Approved" whichever applies. The department shall retain one copy of the plans for all projects. The department shall forward one copy of the plans and approval letter and Form ERS-9 to the fire department or authorized deputy having jurisdiction. The remaining 2 sets of plans shall be returned to the person designated on the plans approval application. The owner shall be responsible for maintaining one set of plans on site during all phases of installation.

(d) If the department or authorized deputy having jurisdiction determines that the plans or application do not substantially conform to the provisions of this chapter, the application for conditional approval will be denied, in writing.

(e) In the event of a dispute as to whether the information submitted to a local official having jurisdiction shows compliance with the provisions of this chapter, the application shall be submitted to the department for review and the decision of the department shall govern.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. and recr. (1) and (2) Register July 2002 No. 559, eff. 8-1-02.

Comm 10.105 Plan revision. Any change in the initial installation which deviates from original approved or conditionally approved plans shall be submitted for review as a revision. Changes to facilities which shall be submitted for review as a revision include changes in tank placement, size of tank, length of piping run, and changes in monitoring equipment. Additions or modifications to systems after the closing of the excavation and commencement of system operation shall be submitted for review as a new installation.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.11 Revocation of approval. The department or authorized deputy may revoke any approval issued under the provisions of this chapter for any false statements or misrepresentation of facts upon which the approval was based.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.12 Department limitation and expiration of plan approval. Plan approval by the department or its authorized agent shall expire 2 years after the date indicated on the approved plans, if construction or installation has not commenced within that 2 year period.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.125 Specific approval of materials, equipment, concepts, technology and devices. (1) **SPECIFIC APPROVAL REQUIRED.** Specific approval shall be obtained in writing from the department for the following items:

(a) Any leak detection method for tanks or piping used to comply with a leak detection requirement under this chapter or federal law.

(b) Flexible non-metallic piping.

(c) Synthetic flexible dike liners.

(2) **DISCRETIONARY APPROVAL.** (a) The department may require specific, written approval in accordance with sub. (3) for the use of new or unproven materials, equipment, concepts, technology or devices. This approval may specify conditions or limitations.

(b) Any person may request specific, written approval in accordance with sub. (3) for uses or new or unproven materials, equipment, concepts, technology or devices not specified in this code.

(3) **APPLICATION FOR APPROVAL.** (a) *General.* 1. Application for approval shall include sufficient test results or other evidence from an independent third party to prove that the material, equipment, concept, technology or device meets the requirements or the intent of this chapter.

2. Application for approval shall include information on inspection, testing and maintenance of the product.

3. Upon receipt of a completed application, the fee specified in ch. Comm 2, and all information and documentation needed to complete the review, the department will review and make a determination on an application for approval within 60 business days.

(b) *Leak detection methods.* The application for approval of leak detection methods specified in sub. (1) (a) shall include certification from an independent third party that the method has been

evaluated in accordance with the applicable USEPA standard test procedure for evaluating the method.

(c) *Flexible non-metallic piping.* The application for approval of flexible non-metallic piping shall include certification from an independent third party that the material has been evaluated in accordance with UL 971 – Nonmetallic Underground Piping for Flammable Liquids or an equivalent standard.

(d) *Synthetic flexible dike liners.* 1. The application for approval of synthetic flexible dike liners shall include certification from an independent third party that the material has been evaluated according to a protocol acceptable to the department, along with information on product compatibility, construction methods and specifications, field installation, seam testing procedures, bedding specifications and any required soil cover.

2. For flexible dike liners that do not require a soil cover, information shall be submitted that assesses the fire hazard of the exposed liner material.

(4) PRODUCTS REQUIRING LISTING AND LABELING. The following products or materials shall be listed and labeled to show compliance with a standard developed by a nationally recognized association or independent testing laboratory that is recognized by the department:

(a) Shop-built tanks and metallic flex connectors.

(b) Any product or material required to be listed or labeled by a standard adopted under s. Comm 10.25.

Note: Copies of the department forms required in this chapter are 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>

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. and recr. Register July 2002 No. 559, eff. 8-1-02.

Comm 10.13 Tank registration. (1) GENERAL. (a) Except as provided in par. (b), all storage tanks used to store a regulated substance shall be registered with the department.

(b) The following tanks do not require registration with the department:

1. Dedicated breakout tanks at pipeline facilities.
2. Any aboveground tanks of 110 gallons or less capacity.
3. Farm and residential aboveground tanks of 1,100 gallons or less capacity.
4. Aboveground tanks of 660 gallons or less capacity storing heating oil for consumptive use on the premises.
5. Aboveground tanks of 660 gallons or less capacity located inside a building used for industrial processes.

Note: Per Wisconsin Statutes, eligibility for Petroleum Environmental Cleanup Fund Act (PECEFA) funds requires prior tank registration.

(2) REGISTRATION DEADLINES AND RESPONSIBLE PARTIES. (a) The owner of a newly-installed storage tank shall register the tank within 15 days of completion of the installation.

(b) The new owner of an existing storage tank undergoing a change in ownership shall register within 15 days of the change.

(c) The owner of an existing tank at a facility that undergoes a name change or an owner who undergoes a change of name or mailing address shall register the change within 15 days.

(d) The owner of an existing tank system that undergoes any of the following changes or modifications shall register the change or modification within 15 days of completion:

1. A storage tank undergoing a change in service.
2. Temporary or permanent closure.
3. The addition of release detection, spill or overflow control or corrosion protection for any part of the system.
4. Interior tank lining.

(e) The owner of a permanently closed or removed tank shall register within 15 days of closure or removal.

(f) The owner of land on which unregistered tanks are discovered, including any that were permanently closed or removed, shall register the tanks within 15 days of discovery.

(3) REGISTRATION PROCEDURE. One storage tank registration form for each tank shall be completed and submitted to the department by the owner.

Note: Form ERS-7437 – Underground Storage Tank Registration and form ERS-8731 – Aboveground Storage Tank Registration required under this section are 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>

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. and recr. Register July 2002 No. 559, eff. 8-1-02.

Comm 10.14 Registration—existing aboveground and underground storage tanks. **History:** Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. Register July 2002 No. 559, eff. 8-1-02.

Comm 10.15 Registration—permanently closed or removed aboveground and underground storage tanks. **History:** Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. Register July 2002 No. 559, eff. 8-1-02.

Comm 10.16 Tank permits. (1) GENERAL. (a) Except as provided in par. (b), all in-use and temporarily out-of-service storage tanks used to store a regulated substance shall obtain a permit to operate from the department.

(b) The following tanks do not require a permit to operate from the department:

1. Any aboveground tank.
2. Farm and residential underground storage tanks of 1,100 gallons or less capacity used for storing motor fuel.
3. Underground storage tanks of 4,000 gallons or less capacity storing heating oil for consumptive use on the premises.

(2) PERMIT APPLICATION TIMELINE. The tank owner shall obtain a permit to operate after all requirements for plan approval under s. Comm 10.10 and registration under s. Comm 10.13 are completed and the tank is installed, but before the tank is placed in service.

(3) PERMIT APPLICATION PROCEDURE. The owner shall complete one permit application form for each tank and submit it to the department together with all of the following:

- (a) For all permit applications and renewals:
 1. The most recent test report for any cathodic protection or impressed current system.
 2. Proof of financial responsibility as specified in subch. VIII of this code.
 3. Proof of compliance with leak detection requirements.
- (b) For the initial permit application only, also submit the following:
 1. A completed tank installation inspection checklist, completed by the installer.
 2. A tank locator diagram, map or plot plan drawn to scale specifying the exact individual tank location in relation to streets, buildings, and compass direction, unless previously submitted to the department as part of the plan review process under s. Comm 10.10.

Note: Forms ERS-7658 – Storage Tank Use Permit Application and ERS-6294 – Storage Tank Installation Inspection Checklist required under this section are 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>

(4) PERMIT PROCESSING. (a) The department will review and make a determination on the permit application within 30 business days of receipt of the completed forms and required information.

(b) Upon review and acceptance of the required forms and information specified in sub. (3), the department will issue an underground storage tank use permit for each storage tank.

(5) PERMIT EXPIRATION AND RENEWAL. (a) The underground storage tank use permit will expire 1 year from the date of issuance.

(b) The tank owner of record will be sent a permit renewal notice by the department before the expiration of the current permit.

(c) The tank owner shall follow the procedure under sub. (3) to renew the permit.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. and recr. Register July 2002 No. 559, eff. 8-1-02.

Comm 10.17 Existing underground storage tank use permit procedure. **History:** Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. Register July 2002 No. 559, eff. 8-1-02.

Comm 10.18 Enforcement and inspections.

(1) **ENFORCEMENT.** The rules in this chapter shall be enforced by the department or its deputies or authorized agents, and by all local officials or bodies having jurisdiction to approve plans or specifications or issue permits for construction, alterations or installations within the scope of this chapter or having authority to investigate and eliminate related fire hazards.

(2) **INSPECTIONS.** (a) *New and replacement installations.* 1. Inspections shall be conducted during the installation of new or replacement storage tanks or piping systems within the scope of subch. VI and aboveground tanks of capacity greater than 5000 gallons under the scope of subch. V and heating oil tanks of greater than 4000 gallon capacity under the scope of subch. VII. Inspections shall be conducted by an authorized deputy or agent of the department to ascertain whether or not the construction or installations conform to the conditionally approved plans, the conditional approval letter, and the provisions of this chapter.

2. a. After review and approval is granted, the installer shall notify the chief of the local fire department or authorized deputy or agent, in writing within 5 days, before starting an installation.

b. The chief of the fire department or authorized deputy or agent shall inspect the installation and give written notice of approval or disapproval to the owner on a completed, signed Underground Storage Tank Installation Inspection Checklist (ERS-6294).

Note: See Appendix A for example of Underground Storage Tank Installation Inspection Checklist (ERS-6294). The original copy is to be given to the owner and copies furnished to and retained by the department and the fire department or authorized agent as part of their permanent file.

c. The certified tank installer who installs a tank may complete the Underground Storage Tank Inspection Checklist (ERS-6294) if the certified inspector is unable to do so.

(b) *Existing installations.* Inspections at existing installations shall be conducted periodically by an authorized deputy of the department to determine if the installation remains in conformance with the provisions of this chapter.

Note: Inspection staff from the Division of Environmental and Regulatory Services will conduct inspections as part of their petroleum product sampling inspections. Local certified inspectors will conduct inspections of tank facilities.

(c) *Written notice.* When the tank is inspected by a certified inspector, all violations of the rules shall be specifically listed including the allotted time to correct the violation.

(3) **SYSTEM SHUTDOWN.** Persons with enforcement authority under this chapter shall have the authority to shut down tank systems or components of tank systems under the following conditions:

(a) *Immediate shutdown.* Tank systems or their components which pose an immediate danger to life, safety or health shall be subject to immediate shutdown. Conditions which cause immediate danger to life, safety, or health include, but are not limited to: visual evidence of leakage of flammable or combustible liquid; immediate human exposure to flammable or combustible liquids, such as presence in drinking water or vapors in buildings; broken equipment resulting in uncontrolled release of flammable or combustible liquids; or free flammable or combustible liquid product going to surface water.

(b) *Shutdown after investigation.* Tank systems or their components for which there is clear and present evidence of a release to the environment shall be subject to shutdown. Clear and present evidence of a release to the environment includes, but is not limited to: inventory records, precision tank integrity testing results,

leak detection system results or other specific physical evidence associated with a particular tank or system.

(c) *Shutdown after long term violation.* Tank systems or components for which there is a continuing code violation under this chapter will be subject to shutdown if the following conditions are met:

1. An order is issued with a specific compliance date and a period for compliance;

2. The first reinspection made after the specified compliance date shows that compliance has not been achieved;

3. A second compliance date is set with a period for compliance;

4. Reinspection after the second compliance date shows that compliance is still not achieved; and

5. The owner has not filed a written appeal with the department within 15 days of receiving the order.

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

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; am. (3), Register, October, 1994, No. 466, eff. 11-1-94; emerg. am. (3) (intro.), cr. (3) (d), eff. 12-11-98; am. (3) (intro.), cr. (3) (d), Register, August, 1999, No. 524, eff. 9-1-99.

Comm 10.19 Groundwater protection inspections.

All inspections for enforcement of the groundwater protection provisions of this chapter shall be conducted by inspectors certified by the department.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.20 Fees.

Fees shall be submitted to the department as specified in s. Comm 2.43. Fees shall be submitted at the time the application for approval is submitted. No plan examinations, approvals or inspections may be made until the fees are received.

Note: See s. Comm 2.43 for distribution of fees to authorized agents for providing inspection services. Distribution of fees to authorized agents will occur after the inspection is completed and a completed and signed Underground Storage Tank Installation Inspection Checklist (ERS-6294) is submitted to the department.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466, eff. 11-1-94.

Comm 10.21 Appeals.

As specified in s. 227.12, Stats., any municipality, corporation or any 5 or more persons having an interest in a rule may appeal to the department requesting the adoption, amendment or repeal of the rule.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.22 Petition for variance. (1) PROCEDURE.

The department shall consider and may grant a variance to an administrative rule upon receipt of a completed petition for variance form from the owner and a position statement from the fire department having responsibility, provided an equivalency is established in the petition for variance which meets the intent of the rule being petitioned. The department shall charge a fee for processing the petition for variance. The department may impose specific conditions in a petition for variance to promote the protection of the health, safety or welfare of the employees or the public. Violation of those conditions under which the petition is granted shall constitute a violation of this chapter.

(2) **PETITION PROCESSING TIME.** Except for priority petitions, the department shall review and make a determination on a petition for variance within 30 business days of receipt of all calculations, documents and fees required to complete the review. The department shall process priority petitions within 10 business days.

Note: Section 101.02 (6), Stats., and ch. Comm 3 outline the procedure for submitting petitions to the department and the department's procedures for hearing petitions. Copies of the department forms required in this chapter are 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 www.commerce.state.wi.us/ER-BSTR-Comm10%20Forms.html.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.23 Penalties. Penalties for violations of the rules of this chapter shall be assessed in accordance with s. 101.09 (5), Stats., or 40 CFR 281.41 of US EPA regulations or both.

Note: Section 101.09 (5), Stats., states "(5) Penalties. Any person who violates this section or any rule or order adopted under this section shall forfeit not less than \$10 nor more than \$1,000 for each violation. Each violation of this section or any rule or order under this section constitutes a separate offense and each day of continued violation is a separate offense." Section 281.41 of 40 CFR, US EPA regulations requires the department to assess fines of up to \$5,000 or more for each tank for each day of violation.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Subchapter IV — Standards

Comm 10.25 Adoption of standards by reference.

(1) CONSENT TO INCORPORATE. Pursuant to s. 227.21, Stats., the attorney general and the revisor of statutes have consented to the incorporation by reference of the standards listed in Tables 10.25 - 1 to 10.25-8.

Note: Copies of the adopted standards are on file in the offices of the department, the secretary of state and the revisor of statutes. Copies of the standards may be purchased through the respective organizations listed in Tables 10.25 - 1 to 10.25 - 8.

(2) ALTERNATE STANDARDS. Alternate standards that are equivalent to or more stringent than the standards incorporated by reference in this code may be used in lieu of incorporated standards if the alternate standard is approved by the department, or if written approval is issued by the department in accordance with s. Comm 10.125 (2) (a), under all of the following conditions:

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

(b) 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 code.

(c) If the department determines that the alternate standard is not equivalent to or more stringent than the standards incorporated by reference, the request for approval will be denied in writing.

(d) The department may revoke an approval for any false statements or misrepresentations of facts on which the approval was based. The department may re-examine an approved alternate standard or issue a revised approval at any time.

Table 10.25-1

| | |
|---|---|
| API | American Petroleum Institute 1220 L Street, NW Washington, DC 20005 |
| Standard Reference Number | Title |
| 1. API 650 - 98 | Welded Steel Tanks For Oil Storage. |
| 2. API 651 - 97 | Cathodic Protection of Aboveground Petroleum Storage Tanks. |
| 3. API 652 - 97 | Lining of Aboveground Petroleum Storage Tank Bottoms. |
| 4. API 653 - 2001 | Tank Inspection, Repair, Alteration, & Reconstruction. |
| 5. API 1604 - 96 | Closure of Underground Petroleum Storage Tanks. |
| 6. API 1615 - 96 | Installation of Underground Petroleum Storage Systems. |
| 7. API 1621 - 93 | Bulk Liquid Stock Control at Retail Outlets. |
| 8. API 1631 - 2001 | Interior Lining & Periodic Inspection of Underground Storage Tanks. |
| 9. API 1632 - 96 | Cathodic Protection of Underground Petroleum Storage Tanks & Piping Systems. |
| 10. API 1637 - 95 | Using the API Color-Symbol System to Mark Equipment & Vehicles for Product Identification at Service Stations & Distribution Terminals. |
| 11. API 2000 - 98 | Venting Atmospheric & Low-Pressure Storage Tanks. |
| 12. API 2015 - 2001 | Requirements for Safe Entry & Cleaning of Petroleum Storage Tanks. |
| 13. API 2200 - 94 (Reaffirmed in 1999) | Repairing Crude Oil, LP Gas and Product Pipelines. |
| 14. API 2350 - 96 | Overfill Protection for Storage Tanks in Petroleum Facilities. |
| 15. API 2610 - 94 | Design, Construction, Operation, Maintenance and Inspection of Terminal and Tank Facilities. |

Table 10.25-2

| | |
|----------------------------------|--|
| KWA | Ken Wilcox Associates 1125 Valley Ridge Drive Grain Valley, MO 64029 |
| Standard Reference Number | Title |
| | Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera. |

Table 10.25-3

| | |
|----------------------------------|--|
| NACE | NACE International P.O. Box 218340 Houston, TX 77218 |
| Standard Reference Number | Title |
| 1. RP 0169-96 | Recommended Practice, Control of External Corrosion on Underground or Submerged Metallic Piping Systems. |
| 2. RP 0188-99 | Discontinuity (Holiday) Testing of Protective Coatings. |
| 3. RP 0190-95 | External Protective Coatings for Joints, Fittings & Valves on Metallic Underground or Submerged Pipelines & Piping Systems. |
| 4. RP 0193-2001 | External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms. |
| 5. RP 0285-95 | Recommended Practice, Control of External Corrosion of Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems. |
| 6. RP 0286-97 | Electrical Isolation of Cathodically Protected Pipelines. |
| 7. TM 0497-97 | Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems. |

Table 10.25-4

| | |
|----------------------------------|--|
| NFPA | National Fire Protection Association 1 Batterymarch Park Quincy, MA 02269 |
| Standard Reference Number | Title |
| 1. 30 - 2000 | Flammable and Combustible Liquids Code. |
| 2. 30A - 2000 | Code for Motor Fuel Dispensing Facilities & Repair Garages. |
| 3. 30B - 1998 | Code for the Manufacture & Storage of Aerosol Products. |
| 4. 31 - 2001 | Standard for the Installation of Oil-Burning Equipment. |
| 5. 33 - 2000 | Standard for Spray Application Using Flammable and Combustible Materials. |
| 6. 34 - 2000 | Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids. |
| 7. 35 - 1999 | Standard for the Manufacture of Organic Coatings. |
| 8. 37 - 1998 | Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines. |
| 9. 45 - 2000 | Standard on Fire Protection for Laboratories Using Chemicals. |
| 10. 68 - 1998 | Standard for Venting of Deflagrations. |
| 11. 326 - 1999 | Standard for Safeguarding Tanks & Containers for Entry, Cleaning or Repair. |
| 12. 385 - 2000 | Standard for Tank Vehicles for Flammable and Combustible Liquids. |
| 13. 395 - 1993 | Standard for Storage of Flammable & Combustible Liquids on Farms & Isolated Sites. |
| 14. 407 - 2001 | Standard for Aircraft Fuel Servicing. |
| 15. 415 - 1997 | Standard for Airport Terminal Buildings, Fueling Ramp Drainage and Loading Walkways. |

Table 10.25-5

| | |
|----------------------------------|---|
| NLPA | National Leak Prevention Association 7685 Fields Ertel Road Cincinnati, OH 45241 |
| Standard Reference Number | Title |
| 1. 632 - 1990 | Internal Inspection of Steel Tanks for Upgrading With Cathodic Protection Without Lining. |

Table 10.25-6

| | |
|----------------------------------|--|
| PEI | Petroleum Equipment Institute P.O. Box 2380 Tulsa, OK 74101 |
| Standard Reference Number | Title |
| 1. RP100, 2000 | Recommended Practices for Installation of Underground Liquid Storage Systems. |
| 2. RP200, 1999 | Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling. |
| 3. RP300, 1997 | Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites. |
| 4. Lexicon, 1995 | Petroleum Equipment Lexicon. |

Table 10.25-7

| | |
|----------------------------------|---|
| SSPC | Society for Protective Coatings 40 24 th Street Pittsburgh, PA 15222 |
| Standard Reference Number | Title |
| 1. VIS 2 | Standard Method of Evaluating Degree of Rusting On Painted Steel Surfaces. |

Table 10.25-8

| | |
|----------------------------------|---|
| STI | Steel Tank Institute 570 Oakwood Road Lake Zurich, IL 60047 |
| Standard Reference Number | Title |
| 1. SP001-00 | Standard for Inspection of In-Service Shop-Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids. |

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; renum. (1) (g) 5. to 12. to be 6. to 13., cr. (1) (g) 5., Register, October, 1994, No. 466, eff. 11-1-94; **CR 01-087: r. and recr. Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.26 Secondary references. For the purposes of this chapter, the department will enforce the applicable provisions of the following Wisconsin administrative codes in lieu of the indicated standards that are referenced in the adopted NFPA standards:

(1) **BOILERS AND PRESSURE VESSELS.** Chapter Comm 41 in lieu of the ASME Boiler and Pressure Vessel Code.

(2) **BUILDING ELEMENTS.** Chapters Comm 61 to 65 in lieu of the following NFPA standards:

- (a) NFPA 101 – Life Safety Code.
- (b) NFPA 220 – Standard on Types of Building Construction.
- (c) NFPA 221 – Standard for Fire Walls and Fire Barrier Walls.

(3) **ELECTRICAL INSTALLATIONS.** Chapter Comm 16 in lieu of NFPA 70 – National Electrical Code.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; **CR 01-139: am. (2) (intro.); CR 01-087: r. and recr. Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.27 Application of standards. (1) Except as otherwise provided in this chapter, all flammable and combustible liquids, and equipment, facilities, and the buildings that are used to store them shall be designed, constructed, installed, operated, inspected, tested and maintained as specified in the standards adopted in s. Comm 10.25, as they apply to the specific liquid, equipment, facility or building.

(2) All fire detection, prevention, suppression and isolation features required by a standard adopted under s. Comm 10.25 shall be provided as specified in the standard.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; am. (6), Register, October, 1994, No. 466, eff. 11-1-94; **CR 01-087: r. and recr. Register July 2002 No. 559, eff. 8-1-02.**

Subchapter V — General Requirements for Fire Prevention and Protection

Part 1—Miscellaneous Applications

Comm 10.28 General provisions for sale, purchase, dispensing or use of flammable and combustible liquids. (1) **LABELING.** No sale or purchase of any Class I, II or III liquid may be made in containers, unless such containers are clearly marked with the name of the product.

(2) **CONTAINERS.** (a) A Class I flammable liquid when used in starting an engine or as fuel for a small heating appliance, lighting appliance, power tool or gasoline engine shall be dispensed only from an approved, properly identified safety can or screwed cover spout can approved for that specific use.

(b) Liquids having a flash point of less than 100°F may not be dispensed into a portable container or portable tank unless both of the following conditions are met:

- 1. The container or tank is substantially bright red in color.
- 2. The container or tank has a listing mark from an independent testing agency.

(c) No kerosene, fuel oil or similar liquids having a flash point of 100° F or more may be filled into any portable container or portable tank colored red.

Note: See s. 168.11, Stats., for additional requirements.

(3) **REPAIR AND MAINTENANCE, SOURCES OF IGNITION.** Repair and maintenance work involving a possible source of ignition shall not be performed in a room or area containing or likely to contain an ignitable mixture of hydrocarbon vapors and air.

(4) **DEGREASING AND CLEANING.** (a) Except as provided in par. (b), a Class I flammable liquid shall not be used for degreasing or cleaning any engine, machine, equipment or part thereof, or for cleaning a floor, pit, or any part of a building or premises.

(b) Industrial processes requiring use of class I flammable liquids for degreasing or cleaning shall incorporate a ventilation system to reduce and maintain vapor concentration to less than 25% of the lower explosive limit.

(5) **SATURATED CLOTHING.** Clothing saturated with a Class I or II liquid shall not be worn longer than the time required for removal and shall not be worn or taken into a building where a source of ignition exists.

(6) **DISPENSING FROM TANK VEHICLE TO SUPPLY TANK.** Class I flammable liquids shall not be dispensed from a tank vehicle into the fuel supply tank of the internal combustion engine for the tank vehicle.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; **CR 01-087: r. and recr. (2) (b), am. (4) (b) Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.29 Racetrack fueling stations. Tanks of racing vehicles shall be filled from safety cans, fixed pumping facilities or from properly mounted contractor tanks. During a race in which a vehicle is competing, the vehicle may be refueled while its engine is running. Signs prohibiting smoking in fueling areas shall be posted and an approved fire extinguisher of at least 20 B:C classification shall be provided at each fueling location.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; **CR 01-087: am. Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.30 Motor vehicle exhibition. Vehicles with internal combustion engines may be exhibited in buildings, other than in those where the vehicles are normally serviced or sold or both, provided the following requirements are satisfied:

(1) **AREA SPECIFIED.** A specific area shall be designated for display of the vehicles.

(2) **EXITS.** The vehicles shall not be displayed in any required passageway, corridor or exit way leading to an exit.

(3) **RUNNING OF ENGINES.** The vehicle engine shall not be started or run, except that the vehicle may be driven in and out of the building under its own power but only when the building is not occupied by the general public.

(4) **FUEL IN TANKS.** The fuel supply in tanks shall be limited to not more than 5 gallons of fuel per vehicle when entering the building.

(5) **DRAINING OF FUEL.** When it is necessary to drain the excess fuel from the tank, the draining operation shall take place outside of the building.

(6) **FUEL TANK CAP SECUREMENT.** The fill cap shall be of a lock type or the cap shall be securely taped with a material that is not soluble in a petroleum fuel.

(7) **BATTERY.** The grounding cable shall be disconnected from the battery terminal. The grounding cable and exposed battery terminal shall be completely covered with tape to be electrically insulated.

(8) **CARBURETOR.** The throttle linkage to the carburetor shall be disconnected or the accelerator shall be blocked so that it cannot be depressed.

(9) **ATTENDED OR UNATTENDED EXHIBITION.** When the exhibition is unattended, the vehicle doors shall be locked.

(10) **FIRE EXTINGUISHER.** One approved hand fire extinguisher of at least a 20 B:C rating shall be located within 75 feet travel distance of any displayed vehicle.

(11) **FIRE DEPARTMENT NOTIFICATION.** The local fire department shall be notified in writing 5 days in advance of the date the vehicle is to be displayed.

(12) **INSPECTION.** The local fire department having jurisdiction shall inspect the vehicles before the general public is permitted to occupy the building.

(13) **SMOKING PROHIBITED.** (a) Smoking shall not be permitted in the posted vicinity of the vehicles being displayed.

(b) "No Smoking" signs shall be posted in the vicinity of the vehicle display.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.31 Fueling of motor vehicles. (1) **GENERAL.** (a) The fueling of motor vehicles shall be in accordance with NFPA 30 and 30A as adopted in s. Comm 10.25 unless otherwise specified in this chapter.

(b) Emergency fueling of a motor vehicle from a portable container is allowed only with a container not exceeding 5-gallon capacity.

(2) **APPLICATION.** The provisions of this section shall apply to all fueling facilities in existence on May 1, 1991 and to facilities constructed after May 1, 1991.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; correction in (2) made under s. 13.93 (2m) (b) 14., Stats., Register, October, 1994, No. 466; **CR 01-087: am. (1) (a) Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.32 Vehicle-mounted contractor tanks and vehicle-mounted farm fuel tanks. **History:** Cr. Register, April, 1991, No. 424, eff. 5-1-91; **CR 01-087: r. Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.33 Public used oil and used product collection points. Used oil and used product collection points shall comply with the applicable sections of NFPA 30, NFPA 31 and this section.

(1) **OUTDOOR ABOVEGROUND TANKS.** (a) *General.* All new and replacement outdoor aboveground used oil and used product collection points that are used by the public shall comply with the requirements of this section.

Note: Also see ch. NR 183 for additional rules pertaining to used oil collection points.

(b) *Tank construction and installation requirements.* 1. The tank may be of any size.

2. The tank shall be equipped with an approved vent pipe and fill opening.

3. The fill opening shall be located in a waterproof enclosure of noncombustible construction and shall be screened to prevent the passage of solid objects into the tank.

4. The tank shall be listed for use with the liquid it contains.

5. The placement of tanks shall be in accordance with NFPA 30.

(c) *Diked area.* The tank shall be placed in the center of a dike that conforms to s. Comm 10.345 (1). The fill opening shall be located within the diked area.

(d) *Signage.* 1. A permanent sign, of durable material, shall be installed at the used oil or used product collection point.

2. The sign shall include the following information:

a. "NO SMOKING"; and

b. "USED OIL COLLECTION ONLY" or a description of other allowable products.

3. Other signs including substantially similar wording may be accepted by the department.

(e) *Vehicle collision protection.* Vehicle collision protection shall be provided in accordance with s. Comm 10.415 (8) unless the department determines the tank system is not accessible to vehicles.

(2) **INDOOR ABOVEGROUND TANKS.** (a) *General.* All new and replacement indoor aboveground used oil or used product collection points that are used by the public shall comply with the requirements of this section.

(b) *Tank construction and installation requirements.* 1. The tank shall be listed for use with the liquid it contains.

2. The fill opening shall be screened to prevent the passage of solid objects into the tank. If the fill opening is located outdoors, the opening shall be located in a waterproof enclosure of noncombustible construction and shall be provided with spill containment.

(3) **UNDERGROUND TANKS.** (a) All new and replacement underground used oil or used product collection points shall comply with the applicable portions of NFPA Standard 30 and subch. VI for underground tanks, including the provisions for groundwater protection.

(b) The fill opening to the tank shall comply with sub. (1) (b) 3.

Note: See ch. 291, Stats., for additional information.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; cr. (intro.), r. and recr. (1), renum. (2) to be (3), cr. (2), Register, October, 1994, No. 466, eff. 11-1-94; **CR 01-087: r. and recr. (1) (b) 5. Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.335 Used motor vehicle engine crankcase oil. (1) **TANK STORAGE.** When installed in the lowest story, cellar or basement of a building, a storage tank for used motor vehicle engine crankcase oil may be no larger than 660 gallons. The total aggregate capacity may not exceed 1320 gallons unless a 2-hour separation is provided for each 660 gallons of capacity.

(2) **USE AND HANDLING.** Other aspects of use and handling of used motor vehicle engine crankcase oil not described in sub. (1) shall comply with the requirements of this chapter for Class IIIB combustible liquids.

(3) **HEATING FUEL.** Used motor vehicle engine crankcase oil used as fuel for a heating device shall comply with s. Comm 10.47 and NFPA 31.

History: Cr. Register, October, 1994, No. 466, eff. 11-1-94; **CR 01-087: am. (2) Register July 2002 No. 559, eff. 8-1-02.**

Part 2—Tank Storage

Comm 10.34 Tanks used as pressure vessels. Tanks used as pressure vessels shall be constructed of steel and shall comply with the applicable provisions of ch. Comm 41.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; **CR 01-087: am. Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.342 Location of new and replacement underground storage tanks. All new and replacement underground storage tanks shall be located to provide a separation from a water well or reservoir as specified in s. NR 812.08 (4).

Note: Section NR 812.08 (4) (b) 12. requires a separating distance of 25 feet between a well or reservoir and buried fuel oil tanks serving single-family dwellings, including any associated buried piping. Section NR 812.08 (4) (d) 1. requires a separating distance of 100 feet between a well or reservoir and any bulk surface storage

tank with a capacity greater than 1,500 gallons or any bulk buried storage tank and associated buried piping, not including those specified in s. NR 812.08 (4) (b) 12.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466.

Comm 10.345 Impounding around outside above-ground storage tanks by diking. (1) NEW AND REPLACEMENT TANKS. In addition to the requirements in NFPA 30, dike systems for new and replacement outside aboveground storage tanks shall comply with this subsection.

(a) The capacity of the dike system shall be 25% larger than required by NFPA 30.

(b) The dike system shall have provisions for the removal of rainwater. Drainage systems which breach the dike shall have self-closing valves.

(c) The walls and floor of the diking system shall be designed to withstand all foreseeable loading conditions including the tank load and the full hydrostatic head of any discharged liquid.

(d) 1. The walls of the dike system shall be constructed of earth, solid masonry, steel, or poured or precast concrete.

2. Dikes with the walls and floor made of steel or poured or precast concrete shall have all cracks, seams and joints sealed to be liquid-tight.

3. Dikes with the walls or floor made of earth or masonry shall be lined with a synthetic material having a maximum permeability of 10⁻⁶ centimeters per second for the substance stored.

4. Synthetic liners shall be installed under the direct supervision of a qualified representative of the manufacturer.

5. All synthetic liners and their seams shall be tested and maintained in accordance with the manufacturer's recommendations.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: am. (1) (intro.) and (a), r. and recr. (1) (d), r. (1) (e) and (2) Register July 2002 No. 559, eff. 8-1-02.

Comm 10.347 Vehicle collision protection.

(1) Except for tanks covered under part 5 of this subchapter, vehicle collision protection is required for any tank or system component that could result in a release of product when damaged, in any area where impact due to speed, turning, or backing of any type of motorized or self-propelled vehicle is likely to occur.

(2) There shall be at least 24 inches of clearance between a vehicle impact barrier and the tank or system component to be protected.

(3) Except as provided in sub. (4), impact barriers shall be designed to protect the tank from impact damage by the force of the largest vehicle routinely in the traffic area traveling at 5 miles per hour or at the average traveling speed, if higher than 5 miles per hour.

(4) For impact barriers designed primarily to protect from impact of automobiles, the barrier shall be capable of withstanding a minimum horizontal live load of 1000 pounds per lineal foot acting at 18 inches above grade level.

Note: For many applications, the department will accept either D.O.T. guardrails or 4-inch steel posts filled with concrete, set at least 3 feet into the ground and spaced no more than 4 feet on center.

History: CR 01-087: cr. Register July 2002 No. 559, eff. 8-1-02.

Comm 10.35 Aboveground tank labels. Aboveground tanks for Class I liquids, other than at refineries, or marine, pipeline or transport terminals or waste oil storage facilities shall have painted conspicuously thereon in letters of a contrasting color at least 5 inches high with a minimum stroke width of one inch, the wording "FLAMMABLE—KEEP FIRE AWAY".

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.355 Aboveground tank design. Tanks that are used for aboveground storage shall be listed for aboveground use. Tanks designed and built for underground use shall not be installed for aboveground use.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.36 Closure of aboveground tanks.

(1) TEMPORARY CLOSURE. (a) When an aboveground storage tank system is temporarily closed, owners and operators shall continue operation and maintenance of any corrosion protection or release detection systems. Parts 5 and 6 of subch. VI shall be complied with if a release is suspected or confirmed. However, the operation and maintenance of a release detection system is not required as long as the aboveground tank system is empty. The tank system is empty when all materials have been removed using commonly employed practices so that no more than one inch of residue, or 0.3% by weight of the total capacity of the tank system, whichever is less, remains in the system.

(b) When an aboveground tank system is temporarily closed for 3 months or more, owners and operators shall also comply with the following requirements:

1. Leave vent lines open and functioning; and

2. Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an aboveground storage tank system is temporarily closed for more than 12 months, owners and operators shall permanently close the system in accordance with sub. (3) unless the department provides an extension of the 12-month temporary closure period in writing.

(2) SELDOM USED TANKS. Except for oil tanks used for emergency and backup fuel or overflow tanks, tank systems shall be considered to be abandoned and therefore subject to closure in accordance with sub. (1) or (3) unless product transfers are made to or from the system periodically.

(a) Transfers shall be made to and from motor fuel tanks at least once in any 180-day period to be considered in use.

(b) Transfers shall be made to and from heating oil tanks at least once in any one-year period to be considered in use.

(c) Inventory records, manifests, or paid receipts for product received will be acceptable to the department as proof that transfers are being made.

(d) Tank system owners and operators may make written requests to the department for approval for less frequent use if it is justified as a part of the tank's purpose.

(3) PERMANENT CLOSURE AND CHANGES-IN-SERVICE. At least 30 days before beginning either permanent closure or a change-in-service or within another reasonable time period determined by the department, owners and operators shall notify the authorized agent of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action.

(a) 1. To permanently close an aboveground storage tank system, owners and operators shall empty and clean it in accordance with API 2015.

2. Cleaning of the tank shall be performed by a certified cleaner. If removed, removal of tanks and other portions of storage tank systems shall be performed by a certified remover, except that certification need not be obtained for individuals performing cleaning and removal of heating fuel tanks located aboveground or in basements at one- and two-family dwellings.

(b) Continued use of an aboveground storage tank system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators shall empty and clean the tank in accordance with API 2015.

(c) Parts 5 and 6 of subch. VI shall be complied with if a release is suspected or confirmed.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; r. and recr. (3) (a), Register, February, 1993, No. 446, eff. 3-1-93; CR 01-087: am. (3) (a) 1. and (b) Register July 2002 No. 559, eff. 8-1-02.

Part 3—Bulk Plants and Terminals

Comm 10.37 General requirements for bulk plants and terminals. (1) LESSER CLEARANCES AT BULK PLANTS THAT WERE IN EXISTENCE BEFORE MAY 1, 1991. Bulk plant facilities that

were in existence before May 1, 1991 may be renovated or updated, but no additional storage capacity is permitted in violation of the clearances specified in NFPA 30.

(2) CONNECTIONS TO TANKS INSIDE BUILDINGS. (a) Each connection to a tank inside of buildings through which liquid can normally flow shall be provided with an internal or an external valve located as close as practical to the shell of the tank.

(b) External valves and their connections to the tank shall be of steel except when the chemical characteristics of the liquid stored are incompatible with steel.

(c) When materials other than steel are necessary, they shall be suitable for the pressures, structural stresses and temperatures involved, including fire exposures.

(3) HEAT-ACTIVATED VALVES. (a) Except as provided in par. (b), flammable or combustible liquid tanks located inside of buildings shall be provided with an automatic closing heat-actuated valve on each withdrawal connection below the liquid level to prevent continued flow in the event of fire in the vicinity of the tank.

(b) 1. Connections for emergency disposal need not comply with par. (a).

2. Flammable or combustible liquid tanks in one-story buildings designed and protected for flammable or combustible liquid storage need not comply with par. (a).

(4) INCORPORATION OF VALVES. Valves specified in sub. (3) shall be incorporated in the valves required by sub. (2), or shall be located adjacent to the valves required by sub. (2).

(5) MANUAL OPENINGS. Manual openings, if independent of the fill pipe, shall be provided with a vapor-tight cap or cover. Each opening shall be protected against liquid overflow and possible vapor release by means of a spring-loaded check valve or other approved device.

(6) FILL PIPES FOR CLASS IB AND CLASS IC LIQUIDS. For Class IB and Class IC liquids other than crude oils and asphalts, the fill pipe shall be so designed and installed as to minimize the possibility of generating static electricity by terminating within 6 inches of the bottom of the tank.

(7) FILL PIPE VIBRATION. The fill pipe inside of the tank shall be installed to avoid excessive vibration of the pipe.

(8) FILL PIPE INLETS. The inlet of the fill pipe shall be located outside of buildings at a location free from any source of ignition and not less than 5 feet away from any building opening. The inlet of the fill pipe shall be closed and liquid-tight when not in use. The fill connection shall be properly identified. The fill pipe shall be removed when the tank is disconnected or removed.

(9) OVERFLOW DEVICES FOR TANKS INSIDE BUILDINGS. Tanks inside buildings shall be equipped with a device, or other means shall be provided, to prevent overflow into the building.

(10) INSIDE STORAGE TANKS FOR CLASS III LIQUIDS. Inside storage tanks for Class III combustible liquids shall be provided with draw-off or drain openings. Tanks shall be installed so that the bottom pitches to the draw-off or drain openings at a slope of not less than 1/4 inch per foot of length. The draw-off or drain opening shall be provided with suitable connection to provide a sump from which water or sediment can be readily drained.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. and recr. (1) Register July 2002 No. 559, eff. 8-1-02.

Comm 10.38 Bulk plant product color coding.

(1) STANDARD COLOR CODE. All piping at bulk plants shall be identified by the following standard color coding:

- (a) Leaded gasoline.
 - 1. Highest Octane Red circle with the word "Gas"
 - 2. Mid-grade Octane Blue circle with the word "Gas"
 - 3. Lowest Octane White circle with the word "Gas"
- (b) Unleaded gasoline:
 - 1. Highest Octane Red circle with white cross and the word "Gas"

- 2. Mid-grade Octane Blue circle with white cross and the word "Gas"
- 3. Lowest Octane White circle with black cross and the word "Gas"
- (c) Diesel Fuel Yellow hexagon with the word "Diesel"
- (d) #1 Fuel Oil Purple hexagon with yellow stripe and the words "#1 Oil"
- (e) #2 Fuel Oil Green hexagon with the words "#2 Oil"
- (f) Kerosene Brown hexagon with the word "Kerosene"

(g) Products containing extenders such as ethanol shall be designated by the addition of a boarder around the symbol: black around white symbols and white around other color symbols. Gasohol shall be designated with the word "Gasohol" as well.

(h) Vapor recovery connections and manholes shall be marked with orange circles and the word "Vapor."

(i) Observation and monitoring wells shall be marked with a black triangle on a white background. The well shall be provided with a durable label warning against the accidental or intentional introduction of petroleum products into the well.

(2) TYPE OF IDENTIFICATION. The product identification shall be accomplished by the use of a disc type tag of nonsparking material, not less than 6-inches diameter bearing the color code and the name of the product.

(3) LOCATION OF IDENTIFICATION. Tags shall be permanently affixed to the valve at the unloading riser, the pump control valves, the valve of a storage tank and load rack and on the product pipe lines in at least 3 locations equally spaced between terminating points or valves.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.39 Care and attendance of property. Plant and tank yards shall be kept free from weeds, high grass, rubbish and litter, and shall be kept neat, clean and orderly throughout.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Part 4—Service Stations

Comm 10.395 Overfill protection. Prior to the delivery of product to a bulk tank, the driver, operator, or attendant of the tank vehicle shall measure the available capacity of the tank to which product is to be delivered. The available capacity shall be more than the volume of the product to be delivered.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.40 Separation and color coding of dispensing equipment. (1) EXISTING EQUIPMENT. (a) No kerosene may be dispensed from multiple nozzle dispensing equipment where flammable liquids are also dispensed.

(b) Dispenser nozzles which deliver diesel fuel shall be color coded yellow.

(c) Within one year of May 1, 1991 existing equipment at service stations shall comply with pars. (a) and (b). All existing equipment at service stations shall comply with the requirements of sub. (2) within 5 years after May 1, 1991.

(2) NEW EQUIPMENT. New and replacement dispensing equipment shall comply with this subsection.

(a) Dispensing equipment for kerosene shall be placed at least 10 feet away from dispensing equipment for Class I liquids.

(b) Dispenser nozzles which deliver diesel fuel shall be color coded yellow.

(3) CHANGE IN PRODUCT. When the product dispensed from a tank system is changed from a Class I liquid to a Class II or Class III liquid, the local petroleum inspector shall be notified and the product tested and approved prior to dispensing any of the new product.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.41 Service station product color coding.

(1) STANDARD COLOR CODE. All fuel tank fill pipe caps and manhole covers shall be identified by the following standard color and symbol coding:

- (a) Leaded gasoline.
 - 1. Highest Octane Red circle
 - 2. Mid-grade Octane Blue circle
 - 3. Lowest Octane White circle
- (b) Unleaded gasoline:
 - 1. Highest Octane Red circle with white cross
 - 2. Mid-grade Octane Blue circle with white cross
 - 3. Lowest Octane White circle with black cross
- (c) Diesel Fuel Yellow hexagon
- (d) #1 Fuel Oil Purple hexagon with yellow stripe
- (e) #2 Fuel Oil Green hexagon
- (f) Kerosene Brown hexagon
- (g) Products containing extenders such as ethanol shall be designated by the addition of a boarder around the symbol: black around white symbols and white around other color symbols.
- (h) Vapor recovery connections and manholes shall be marked with orange circles.
- (i) Observation and monitoring wells shall be marked with a black triangle on a white background. The well shall be provided with a durable label warning against the accidental or intentional introduction of petroleum products into the well.

(2) LOCATION OF IDENTIFICATION. (a) The entire fill pipe cap and manhole cover shall be color coded as specified in sub. (1). The color coding shall also extend at least 12 inches beyond the edge of the cap or cover on adjacent concrete or paving.

(b) If concrete or paving does not exist adjacent to the cap or cover, the cap or cover shall be identified by a disc-type tag of nonsparking material, not less than 6 inches in diameter bearing the color code as specified in sub. (1) and the name of the product.

(3) EFFECTIVE DATE. All service stations shall comply with the requirements of this section within 180 days after May 1, 1991.
 History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.415 Vehicle fuel dispensing from above-ground tanks.

(1) APPLICATION. (a) Aboveground tanks may not be used for vehicle fueling at residences except as provided in s. Comm 10.42 (3).

(b) Commercial and residential marine service stations shall also comply with s. Comm 10.42.

(c) Tanks for motor fuels at farms and construction projects shall comply with part 5 of this subchapter.

(2) DESIGN, CONSTRUCTION AND INSTALLATION. (a) The design, construction and installation of aboveground tanks for motor vehicle fueling shall comply with NFPA 30A and this subsection.

(b) Tanks shall be listed and labeled for aboveground use.

(4) LOCATION. (a) The setbacks specified in Table 10.415 shall be maintained at all times.

(b) 1. The setback distances for vaulted tanks shall be measured from the outer perimeter of the vault.

2. The setback distances for tanks that are placed in dikes shall be measured from the inner edge of the dike wall.

3. The setback distances for all tanks other than vaulted or diked tanks shall be measured from the outermost surface of the tank.

**TABLE 10.415
Setbacks for Aboveground Tanks Used for Motor Vehicle Fueling**

| Type of Tank | Individual Tank Capacity (gal) | Setback from nearest important building on same property (ft) | Setback from nearest retail dispenser (ft) | Setback from lot line that can be built upon, including the far side of a public way (ft) | Setback from near side of a public way (ft) | Minimum distance between tanks (ft) |
|-------------------------------|--------------------------------|---|--|---|---|-------------------------------------|
| Vaulted ¹ | 0-15,000 | 0 | 0 | 0 | 0 | Separate compartment for each tank |
| Protected ² | 0-6,000 | 5 | 25 | 15 | 5 | 3 |
| | 6,001-12,000 | 15 | 25 | 25 | 15 | 3 |
| Fire - Resistant ³ | 0-2,000 | 25 | 25 | 25 | 25 | 3 |
| | 2,001-12,000 | 25 | 25 | 50 | 25 | 3 |
| Other Code Complying Tanks | 0-2,000 | 25 | 30 | 50 | 50 | 3 |
| | 2,001-12,000 | 50 | 50 | 100 | 50 | 3 |

¹ A vaulted tank is one placed in a liquid-tight concrete enclosure consisting of 4 walls, a top and a bottom that completely encloses the tank and provides protection from physical damage and limits heat transfer from a high intensity liquid pool fire.

² A protected tank is a listed and labeled system that consists of a primary tank along with integral secondary containment that provides protection from physical damage and limits heat transfer from a high intensity liquid pool fire. Systems listed as complying with UL 2085 or an equivalent standard are considered protected tanks.

³ A fire-resistant tank is a listed and labeled primary tank with or without integral secondary containment that provides protection from heat transfer from a high intensity liquid pool fire. Systems listed as complying with UL 2080 or an equivalent standard are considered fire-resistant tanks.

(5) ABOVEGROUND TANK ENCLOSURES. (a) The area around an aboveground motor vehicle fuel tank and its secondary containment shall be secured by a 6-foot high noncombustible building or by a 6-foot high noncombustible fence with a gate. Gates or doors shall be normally locked. If the property on which the tanks are located has a perimeter security fence, additional enclosure of the tank and its secondary containment are not required.

(b) Buildings or fences for the enclosure of tanks shall be made entirely of noncombustible materials and have a minimum of one exit conforming to IBC ch. 10. Buildings constructed to comply

with this subsection shall comply with IBC chs. 10 and 16, but are otherwise exempt from the provisions of the Wisconsin Commercial Building Code, chs. Comm 61 to 65. Buildings and fences shall not be supported by the tanks they enclose. Buildings or fenced enclosures shall not be used for occupancy, storage or any other use.

(c) Buildings for tank enclosure shall be ventilated. Ventilation may be provided by openings in outside walls. The openings shall be unobstructed except for louvers or course screens. Where natural ventilation is inadequate, mechanical ventilation shall be pro-

vided. Ventilation shall be a minimum of 150 cubic feet per minute, or 1 cubic foot per minute per square foot, whichever is greater. Exhaust air shall be taken from within 12 inches from the floor.

Note: A natural ventilation system incorporating a roof siphon ventilator ducted to take exhaust air from within 12 inches of the floor, assuming no more than 300 feet per minute vent duct air velocity and a separate make-up air inlet will be acceptable to the department.

(d) Fences surrounding tanks shall be of chainlink design or other open fencing approved by the department.

(e) Tank connections shall be piped or closed so that neither vapors nor liquid may escape inside the enclosure.

(f) All electrical equipment installed in enclosures or near tanks shall comply with ch. Comm 16.

(6) TANKS IN VAULTS. Tanks placed in vaults shall comply with the requirements of NFPA 30, NFPA 30A and all of the following:

(a) The interior of any vault containing a tank that stores a Class I liquid shall be designated a Class I, Division 1 location, as defined by ch. Comm 16.

(b) Pipe penetrations through the enclosure shall be located above the level of the highest tank. Pipes that penetrate the enclosures shall be sloped back to the tanks.

(c) Access for manual gauging of tanks may be provided by a hatch in the vault if secure against vandalism.

(d) No other items shall be stored in the vault. The vault shall not be used for any other purpose.

(7) SECONDARY CONTAINMENT. (a) Diking used to provide secondary containment for aboveground motor fuel tanks shall comply with NFPA 30 and s. Comm 10.345 (1).

(b) Other forms of secondary containment may be substituted for dikes if all of the design requirements of s. Comm 10.345 (1) (c) and (d) are met and provisions are made to protect tanks and the secondary containment from vehicle collision and to protect the secondary containment from projectiles and weathering.

(8) VEHICLE COLLISION PROTECTION. (a) Aboveground motor fuel tanks shall be protected from vehicle impact by a barrier which is located at least 24 inches away from the tanks. The barrier shall be capable of withstanding a minimum horizontal live load of 1000 pounds per lineal foot acting at 18 inches above grade level.

(b) Dikes, fences and enclosures may be used to provide vehicle collision protection for aboveground motor fuel tanks if they meet the provisions of par. (a).

(9) PIPING. (a) Piping, valves and fittings shall comply with NFPA 30 and this subsection.

(b) Piping shall be allowed to be aboveground within the dike or to go over the dike wall and enter the ground within 10 feet of the dike wall. All other piping shall be belowground.

(c) All aboveground piping shall be of steel and be coated to inhibit corrosion.

(d) Where aboveground piping goes over a dike wall or through an enclosure, it shall be provided with collision protection. Collision protection shall be provided on all sides of the piping not protected by the structure, buildings or dike wall. Collision protection shall be capable of resisting a horizontal impact load of 1000 pounds per lineal foot at 18 inches above grade.

(e) All underground piping shall be protected against corrosion as specified in s. Comm 10.51 (2). Corrosion protection systems shall be operated and maintained in accordance with s. Comm 10.55.

(f) A check valve shall be installed in the piping at a point where connection and disconnection is made for tank vehicle unloading. The valve shall be protected from tampering.

(11) VENTS AND FILL OPENINGS. Vents and other openings in aboveground vehicle fueling tanks shall be provided in accordance with NFPA 30 and this subsection.

(a) Fill and vent openings shall be separate.

(b) Tanks shall be provided with bottom loading or a fill pipe that terminates within 6 inches of the bottom of the tank.

(c) All fill pipes for aboveground fueling tanks shall be locked, labeled and color coded as specified in s. Comm 10.41.

(12) SPILL AND OVERFILL PREVENTION. (a) *Spill prevention.* Spill prevention shall be provided in accordance with subd. 1. or 2.

1. Tanks shall be provided with spill containment basins or other equipment that will prevent the release of product to the environment when the transfer hose is detached from the fill pipe; or

2. The tank shall be placed in a dike and shall be filled via a nozzle with positive shut-off.

(b) *Overflow prevention.* 1. Prior to product delivery to an aboveground tank for vehicle fueling, the driver, operator, or attendant of the tank vehicle shall measure the available capacity of the tank to which product is to be delivered. The available capacity shall be more than the volume of product to be delivered to the tank.

2. Tanks which are filled via hand-held nozzles shall be constantly attended during product delivery and shall be provided with a vent whistle.

3. Tanks which are filled by means of a tight connection between the delivery hose and the fill pipe shall be provided with overflow protection equipment that complies with s. Comm 10.51 (5) (b)

(13) LEAK DETECTION. (a) *Tanks.* 1. Where diking is provided, at least one foot of space shall be provided between the tank and the dike walls and between the tank bottom and the dike floor to allow for visual inspection of the exterior tank surface; or

2. Where double-walled tanks are used or where clearances for visual inspection of the primary containment surface are not provided as specified in subd. 1., interstitial monitoring shall be provided as specified in s. Comm 10.61 (7).

(b) *Piping.* Any underground piping shall comply with the leak detection requirements for pressurized piping specified in ss. Comm 10.59 and 10.60.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: am. (1) (a), (2), (7) (a), (9) (a), and (11) (intro.), r. (3), (6) (a) to (i), (n) to (o) and (10), r. and recr. (4), (6) (intro.) and Table, renum. (6) (j) to (m) to be (6) (a) to (d) Register July 2002 No. 559, eff. 8-1-02; corrections in (5) (b) and (12) (b) 3. made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559.

Comm 10.42 Fuel dispensing for marine craft.

(1) GENERAL. Except as otherwise provided in this section, the dispensing of Class I or II liquids into the tanks of self-propelled marine craft having a fuel capacity of less than 10,500 gallons shall comply with the requirements of NFPA 30A.

Note: Dispensing of Class I or II liquids into the tanks of self-propelled marine craft having a fuel capacity of 10,500 gallons or larger is regulated by Parts 154 and 156 of Title 33 of the code of federal regulations.

(2) MARINE SERVICE STATIONS. Marine service stations shall comply with the requirements of NFPA Standard 30A except that aboveground tanks for vehicle fueling shall comply with s. Comm 10.415 and with this subsection.

(a) Where vehicle fuel is dispensed from aboveground tanks, hoses and hose reels shall be used for dispensing and shall be located on land.

(b) Existing marine service stations shall be brought into compliance with par. (a) within 10 years after May 1, 1991.

(3) RESIDENTIAL ABOVEGROUND MARINE SERVICE STATIONS. Aboveground tanks for marine vehicle fueling for noncommercial purposes may be used at residential marine service stations in accordance with s. Comm 10.415 and this subsection.

(a) No more than one aboveground vehicle fuel tank shall be located at a residential marine service station. The tank size shall be limited to a maximum of 560 gallons.

(b) The tanks shall be used for fueling marine vehicles used only by the residents or for maintenance of the property.

(c) The tank shall be located on land, at least 25 feet from important buildings and 10 feet from a navigable waterway, public roadway, property line or vegetation. All setbacks shall be measured from the inside of the dike wall to the important building, navigable waterway, public roadway, property line or vegetation.

(d) A means shall be provided to prevent the release of liquid due to a siphoning effect.

(e) Transfer of product shall be from tanks by means of a fixed pump listed by Underwriters Laboratories or otherwise approved by the department. The pump shall be designed and equipped to allow control of the flow and prevent leakage or accidental discharge. Gravity dispensing systems shall not be used.

(f) Vents shall be located so that vapors are discharged upward or horizontally away from any walls within 3 feet and that vapors are not trapped under eaves or other obstructions. Vents shall not be less than 1 1/4 inch nominal inside diameter. Fill and vent openings shall be separate.

(4) DISPENSING DIRECTLY FROM A TANK VEHICLE. Where fixed dispensing facilities are not available, dispensing of Class I or II liquids directly from a tank vehicle into permanently installed fuel tanks of self-propelled marine craft shall be permitted for emergency fueling, provided the following conditions are satisfied:

(a) The tank vehicle owner obtains an annual permit from the fire department or other authority having jurisdiction for the area where the dispensing operation is to take place.

1. The permit is on a form acceptable to the department.
2. The owner of the tank vehicle displays a current permit in the driver's compartment of the tank vehicle.

(b) An inspection of the premises and operations has been made and approval granted by the fire department or other authority having jurisdiction.

(c) The tank vehicle complies with NFPA 385.

(d) The dispensing nozzle is a listed manual or automatic-closing type with or without a latch-open device.

(e) The entire tank vehicle is in clear view of the operator during dispensing.

(f) A fire extinguisher having at least a 2-A:20-B:C rating is readily accessible.

(g) Not more than 75 feet of hose is deployed during dispensing.

(h) Dispensing operations are located at least 20 feet horizontally from any source of ignition, smoking or open flame.

(i) Minimum 3 feet high by 2 feet wide double faced signs are placed over the hose line as close as possible to the point of transfer and in a conspicuous location to the public.

1. The signs have black letters at least 2 inches high with a minimum stroke width of 1/2 inch on yellow background.
2. The signs say:

“NO SMOKING
FUELING IN PROGRESS
AUTHORIZED PERSONNEL ONLY”

Note: See Appendix for an illustration of a sign meeting the requirements of this section.

(j) The tank vehicle flasher lights are in operation while dispensing.

(k) Nighttime deliveries are made only in lighted areas.

(L) The following precautions are observed before opening tanks and during the entire fueling process:

1. All engines, motors, and fans are shut down;
2. All open flames are extinguished;
3. Smoking materials used by any person in or upon the marine craft are extinguished; and
4. Precautions are taken to prevent fuel vapors from entering the marine craft.

(m) The fuel delivery nozzle is put in contact with the fill pipe before the flow of fuel is commenced and this contact is continuously maintained until the flow has stopped.

(n) The operator remains in attendance at the dispensing nozzle while fuel is flowing.

(o) Fuel expansion space is left in each fuel tank to prevent overflow in the event of temperature increase.

(p) The fire department having jurisdiction and the department of natural resources or an appropriate unit of emergency government are immediately notified in the event of a spill.

Note: Federal regulations 33 CFR 154 and 156 require notification of spills to federal officials. Notification can be made by calling 1-800-424-8802.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; **CR 01-087: am. (1) and (4) (c) Register July 2002 No. 559, eff. 8-1-02.**

Part 5—Farms and Construction Projects

Comm 10.43 Farms and construction sites. The storage and handling of flammable and combustible liquids at farms and at temporary, isolated construction sites shall comply with the requirements of NFPA 395 and s. Comm 10.455.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; emerg. r. and recr. eff. 4-30-92; r. and recr. Register, January, 1993, No. 445, eff. 2-1-93; **CR 01-087: r. and recr. Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.44 General requirements for tank storage. **History:** Cr. Register, April, 1991, No. 424, eff. 5-1-91; emerg. r. and recr. eff. 4-30-92; r. and recr. Register, January, 1993, No. 445, eff. 2-1-93; **CR 01-087: r. Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.445 Individual containers of 60 gallons or less capacity each. **History:** Cr. Register, April, 1991, No. 424, eff. 5-1-91; emerg. r. and recr. eff. 4-30-92; r. and recr. Register, January, 1993, No. 445, eff. 2-1-93; **CR 01-087: r. Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.45 Tanks of 61 to 1,100 gallons capacity each. **History:** Cr. Register, April, 1991, No. 424, eff. 5-1-91; emerg. r. and recr. eff. 4-30-92; r. and recr. Register, January, 1993, No. 445, eff. 2-1-93; **CR 01-087: r. Register July 2002 No. 559, eff. 8-1-02.**

Comm 10.455 Tanks of more than 1,100 gallons capacity or located less than 40 feet from buildings. Aboveground tanks at farms and construction projects that exceed 1,100 gallons capacity or that are located less than 40 feet from buildings shall conform to this section.

(1) TANK LISTING. The tank shall be listed and labeled for aboveground use.

(2) SYSTEM DESIGN AND LOCATION. The design, capacity and location of the tank fueling system shall comply with s. Comm 10.415 with the following exceptions:

(a) In lieu of the setback requirements specified in s. Comm 10.415, the fueling tank system may be located in accordance with the setbacks specified in Table 10.455. The setbacks shall be measured from the inside of the dike wall or other secondary containment. In addition, tanks shall be so located or additional setback distances shall be provided, to ensure that any vehicle, equipment or container being filled from the tank will be located in accordance with the setbacks specified in Table 10.455.

TABLE 10.455
Tank System Setbacks For Tanks
Constructed and Diked per Comm 10.455 (2)

| Aggregate Capacity Gallons | Distance to Nearest Building, Haystack or Combustible Structure or Nearest Side of Any Public Way | Distance to Property Line Which is or Can be Built Upon, Including the Opposite of a Public Way |
|----------------------------|---|---|
| 275 or less | 5 feet | 5 feet |
| 276–750 | 5 feet | 10 feet |
| 751–12,000 | 5 feet | 15 feet |
| 12,001–30,000 | 5 feet | 20 feet |
| Any size. | The minimum setback between multiple tank fueling systems shall be 200 feet. | |

(b) The fence or enclosure specified in s. Comm 10.415 (5) may be omitted.

(c) The vehicle collision protection specified in s. Comm 10.415 (8) may be omitted when a dike is provided for secondary containment in accordance with s. Comm 10.415 (7) (a).

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91; emerg. r. and recr. eff. 4–30–92; r. and recr. Register, January, 1993, No. 445, eff. 2–1–93; **CR 01–087: am. (1) Register July 2002 No. 559, eff. 8–1–02.**

Comm 10.46 Marking of tanks and containers. History: Cr. Register, April, 1991, No. 424, eff. 5–1–91; emerg. r. and recr. eff. 4–30–92; r. and recr. Register, January, 1993, No. 445, eff. 2–1–93; **CR 01–087: r. Register July 2002 No. 559, eff. 8–1–02.**

Part 6—Oil burning

Comm 10.47 Approved equipment. (1) PUBLIC BUILDINGS AND PLACES OF EMPLOYMENT. Oil-burning equipment serving public buildings or places of employment shall comply with chs. Comm 61 to 65 and NFPA 31.

(2) ALL OTHER LOCATIONS. Oil-burning equipment in all other locations not described in sub. (1) shall be listed by an approved listing agency and shall comply with NFPA 31.

(3) UNDERGROUND STORAGE TANKS. Underground storage tank systems serving oil-burning equipment shall comply with subch. VII.

(4) ABOVEGROUND STORAGE TANKS. Aboveground storage tank systems serving oil-burning equipment shall comply with this chapter and NFPA 31.

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91; r. and recr. Register, October, 1994, No. 466, eff. 11–1–94; **correction in (1) made under s. 13.93 (2m) (b) 7., Stats. Register July 2002 No. 559.**

Comm 10.475 Heating oil tanks that are removed from service. (1) APPLICATION. This section applies to heating oil storage tanks that are connected to heating appliances and that store heating oil that is consumed on the premises.

(2) GENERAL. A heating oil storage tank that is placed out of service for any reason other than immediate repair or replacement shall follow the procedure in either par. (a) or (b):

(a) The tank and all connected piping, including the vent and fill piping, shall be emptied, cleaned and removed from the premises.

(b) 1. The tank and all connected piping shall be emptied and purged of all vapors.

2. If the tank is not removed, the tank vent shall remain intact and open.

3. If the outside fill pipe is not removed, it shall be filled with concrete to the top of the pipe and capped.

4. Any piping that is not removed, other than a tank vent, shall be capped or otherwise sealed.

(3) RESPONSIBLE PARTIES. (a) Contractors. A person who is under contract, with the person who owns or controls a property,

to remove a heating oil storage tank or to place a heating oil storage tank out of service shall be responsible for complying with the requirements under sub. (2).

(b) *Owners.* If there is no contractor, the person who owns or controls a property from which a heating oil storage tank is removed, or on which a heating oil storage tank is placed out of service, shall be responsible for complying with the requirements under sub. (2).

(4) NOTIFICATION REQUIREMENT. The person who owns or controls property from which a heating oil storage tank has been removed, or on which a heating oil storage tank has been placed out of service, shall provide written notice to the current heating oil vendor within 7 days after removing the tank or placing the tank out of service. If there is a scheduled delivery in less than 7 days, notification may be given verbally provided it is followed by written notification within 7 days after verbal notification.

History: **CR 01–087: cr. Register July 2002 No. 559, eff. 8–1–02.**

Part 7—Shut Down of Noncomplying Tanks

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

History: Emerg. cr. eff. 12–11–98; cr. Register, August, 1999, No. 524, eff. 9–1–99.

Subchapter VI — General Requirements for Groundwater Protection

(All Underground Storage Tanks Except Farm and Residential Tanks of 1100 Gallons or Less Capacity Used for Storing Motor Fuel for Noncommercial Purposes and Underground Storage Tanks Used for Storing Heating Oil for Consumptive Use on the Premises Where Stored)

Part 1—Program Scope and Interim Prohibition

Comm 10.50 Applicability. (1) GENERAL. The requirements of this subchapter apply to all owners and operators of an UST system as defined in s. Comm 10.01 except as otherwise provided in subs. (2) to (3). Any UST system listed in sub. (3) shall meet the requirements of s. Comm 10.505.

(2) EXCLUSIONS. The following UST systems are excluded from the requirements of this subchapter:

(a) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307 (b) of the Clean Water Act.

(c) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(d) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(e) Any farm or residential UST system of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(f) Any UST system used for storing heating oil for consumptive use on the premises where stored.

(3) PARTIAL EXCLUSIONS. Parts 2, 3, 4, 5 and 7 do not apply to any of the following types of UST systems:

(a) Wastewater treatment tank systems;

(b) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following);

(c) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A;

(d) All portions of airport hydrant fuel distribution systems except for the underground storage tanks included in those systems; and

(e) UST systems with field-constructed tanks.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.505 Interim prohibition for deferred UST systems. (1) **GENERAL.** No person may install an UST system listed in s. Comm 10.50 (3) for the purpose of storing regulated substances unless the UST system, whether of single- or double-wall construction:

(a) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(b) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(c) Is constructed or lined with material that is compatible with the stored substance.

(2) **NONCORROSIVE SITES.** Notwithstanding sub. (1), an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators shall maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the tank.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Part 2—UST Systems: Design, Construction, Installation and Notification

Comm 10.51 Performance standards for UST systems installed after December 22, 1988. (1) **GENERAL.** (a) Owners and operators of UST systems shall meet the requirements of this part.

(b) Tanks and piping shall be installed, maintained and operated in accordance with this section and ss. Comm 10.52 to 10.58.

(2) **CORROSION PROTECTION.** (a) Any portion of a tank and piping that is in contact with the ground shall be protected from corrosion by one of the following methods:

1. The tank and piping shall be constructed of an inherently corrosion-resistant material.

2. The tank and piping shall be protected from corrosion in accordance with a standard developed by a nationally recognized association or independent testing laboratory that is acceptable to the department.

3. The tank and piping shall be protected with a cathodic protection system designed by a NACE-certified corrosion specialist or cathodic protection specialist.

4. The tank and piping shall be installed at a site that is determined by a NACE-certified corrosion specialist or cathodic protection specialist to be non-corrosive during the operational life of the system.

Note: See s. Comm 10.25, Table 10.25-3 for information on contacting NACE.

(b) Specialists retained for the purpose of complying with the options under par. (a) 3. or 4. shall make at least one personal visit to each tank site during the design stage.

(3) **FLEXIBLE CONNECTIONS.** Flexible piping approved under s. Comm 10.125 or listed metallic flex connectors shall be used in all of the following locations:

(a) At the top of the tank.

(b) Between the tank and the vent pipe.

(c) Below the dispenser.

(d) In fiberglass pipe, where there are sections less than 4 feet long between turns.

(4) **SYSTEM ACCESS.** (a) All underground storage tank systems shall be designed and constructed to allow access to all connections between the tank and piping, venting, and appurtenances that require maintenance or replacement.

(b) The means of access shall be sufficient in size to allow for installation, maintenance and inspection of all system appurtenances.

(5) **SPILL AND OVERFILL PREVENTION.** All underground storage tank systems shall be provided with the following equipment:

(a) A catch basin or similar equipment to contain spillage.

(b) Overfill prevention equipment that does at least one of the following:

1. Restricts flow 30 minutes prior to overflow.

2. Alerts the operator with a high-level alarm at least one minute prior to overflow.

3. Automatically shuts off flow so that no fittings on top of the tank are exposed to product.

(6) **INSTALLATION.** (a) All tanks and piping shall be installed by an installer who has been certified in accordance with ch. Comm 5.

(b) All installation shall be according to the manufacturer's instructions, the applicable national standards adopted under s. Comm 10.25 and this code.

(7) **CERTIFICATION OF INSTALLATION.** Upon completion of any installation of new or replacement tanks or piping, or any system modification or upgrade that requires plan approval or registration or permitting, the contractor shall provide the owner, the inspector and the department with a completed tank installation checklist.

Note: Form ERS-6294 - Underground Storage Tank Installation Inspection Checklist required under this section 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>

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. and recr. Register July 2002 No. 559, eff. 8-1-02.

Comm 10.52 Upgrading of existing UST systems.

(1m) **EXCEPTION FOR EXISTING TANKS OF AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS.** Existing underground storage tanks of airport hydrant fuel distribution systems shall comply with upgrading requirements under subs. (2) and (3), performance standards under s. Comm 10.51 or the closure and corrective action requirements under ss. Comm 10.63, 10.64 and 10.73 to 10.738 no later than 10 years after May 1, 1991.

(2) **TANK UPGRADING REQUIREMENTS.** (a) *General.* Steel tanks that are upgraded with interior lining or cathodic protection shall follow the applicable national standard adopted under s. Comm 10.25 and the requirements of this section.

(b) *Interior lining.* A tank may be upgraded by internal lining if:

1. The lining is installed by a certified tank liner in accordance with the applicable requirements of s. Comm 10.57 and the site is assessed in accordance with s. Comm 10.734; and

2. Within 10 years after lining and at least every 5 years thereafter, the lined tank is internally inspected either by manned entry or in accordance with the standard adopted in Table 10.25-2 and found to be structurally sound with the lining still performing in accordance with original design specifications.

(c) *Cathodic protection.* A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of s. Comm 10.51 (2) and the integrity of the tank is ensured using one of the following methods:

1. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system;

2. The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with s. Comm 10.61 (4) to (8);

3. The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting 2 tightness tests that meet the requirements of s. Comm 10.61 (3). The tests shall be performed by a certified UST system tightness tester. The first tightness test shall be conducted prior to installing the cathodic protection system. The second tightness test shall be conducted between 3 and 6 months following the first operation of the cathodic protection system; or

4. The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than subs. 1. to 3.

(d) *Internal lining combined with cathodic protection.* A tank may be upgraded by both internal lining and cathodic protection if:

1. The lining is installed by a certified liner in accordance with the applicable requirements of s. Comm 10.57 and the site is assessed in accordance with s. Comm 10.734; and

2. The cathodic protection system meets the requirements of s. Comm 10.51 (2).

(3) PIPING UPGRADING REQUIREMENTS. Metal piping that routinely contains regulated substances and is in contact with the ground shall be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and shall meet the requirements of s. Comm 10.51 (2). The codes and standards listed in Table 10.25-3 shall be used to comply with this subsection. The system upgrade shall be designed by a corrosion expert.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. (1), (2) (intro.), (d) and (4), renum. (2) (a) to (c) to be (2) (b) to (d) and am. (2) (b) 2., cr. (2) (a) Register July 2002 No. 559, eff. 8-1-02; corrections in (1m), (2) (c) (intro.), (d) 2. and (3) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559.

Part 3—General Operating Requirements

Comm 10.54 Spill and overfill control. (1) GENERAL. Owners and operators shall ensure that releases due to spilling or overfilling do not occur. The owner and operator shall ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

Note: The transfer procedures described in NFPA 385 may be used as guidelines for compliance with this subsection. API publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets" and NFPA 30 provide further guidance on the matter of spill and overfill prevention.

(2) RESPONSE. The owner and operator shall report, investigate and clean up any spills and overfills in accordance with ss. Comm 10.66 and 10.67.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.55 Operation and maintenance of corrosion protection. All owners and operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(1) GENERAL. All corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(2) CATHODIC PROTECTION SYSTEMS. (a) All cathodic protection for UST systems shall comply with NACE RP 0285.

(b) All cathodic protection for UST systems shall be tested by a NACE-certified corrosion technologist or a NACE-certified corrosion technician directly supervised by a certified corrosion technologist within 6 months of installation and at least annually thereafter.

Note: Under s. Comm 10.25 (2), the department may accept cathodic protection testing by a technician certified under an equivalent national standard.

(3) IMPRESSED CURRENT SYSTEMS. UST systems with impressed current cathodic protection systems shall also be inspected every 60 days to ensure the equipment is running properly.

(4) RECORDS. For UST systems using corrosion protection, records of the operation of the cathodic protection shall be maintained in accordance with s. Comm 10.58 to demonstrate compliance with the performance standards in this section. These records shall provide the following:

(a) The results of the last 3 inspections required in sub. (3); and

(b) The results of testing from the last 2 inspections required in sub. (2).

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. and recr. (2) Register July 2002 No. 559, eff. 8-1-02.

Comm 10.56 Compatibility. Owners and operators shall use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.57 Repairs allowed. Owners and operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs shall meet the following requirements:

(1) STANDARDS. Repairs to UST systems shall be made by the manufacturer's authorized representative or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

(2) METAL PIPE. Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(3) SITE ASSESSMENT. A site assessment of the piping run is required when repairs are made to the piping or fittings to correct a breach in the integrity of the system.

(4) TANK SYSTEM TESTING. Repaired tanks and piping shall be tightness tested in accordance with ss. Comm 10.61 (3) and 10.615 (2) within 30 days following the date of the completion of the repair except as provided in pars. (a) to (c):

(a) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;

(b) The repaired or replaced portion of the UST system is monitored monthly for releases in accordance with a method specified in s. Comm 10.61 (4) to (8); or

(c) Another test method is used that is determined by the department to be no less protective of human health and the environment than those listed above.

(5) CATHODIC PROTECTION TESTING. Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with s. Comm 10.55 (2) and (3) to ensure that it is operating properly.

(6) RECORDS. UST system owners and operators shall maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; CR 01-087: r. and recr. (1), r. (2), renum. (3) and (3m) to be (2) and (3) Register July 2002 No. 559, eff. 8-1-02.

Comm 10.58 Reporting and recordkeeping. Owners and operators of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

Note: The recordkeeping and reporting requirements listed below have been approved by the Office of Management and Budget of the Federal Government and have been assigned OMB Control No. 2050-0068.

(1) REPORTING TO THE DEPARTMENT. Owners and operators shall submit the following information to the department:

(a) Notification for all UST systems, which includes certification of installation for new UST systems within 30 days of installation; and

Note: Completion and submittal of the Underground Storage Tank Registration Form (ERS-7437) and the Underground Storage Tank Inspection Checklist (ERS-6294) is sufficient for compliance with par. (a). Copies of the department forms required in this chapter are 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 www.commerce.state.wi.us/ER-BSTR-Comm10%20Forms.html.

(b) A notification before permanent closure or change-in-service shall be made to the authorized agent.

Note: Owners and operators must submit the following information to the department of natural resources: reports of all releases including suspected releases, spills and overfills, and confirmed releases; and corrective actions planned or taken including initial abatement measures, initial site characterization, free product removal, investigation of soil and groundwater cleanup, and corrective action plan.

(2) RECORDKEEPING. Owners and operators shall maintain the following information:

(a) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used;

(b) Documentation of operation of corrosion protection equipment;

(c) Documentation of UST system repairs;

(d) Compliance with release detection requirements; and

(e) Results of the site investigation conducted at permanent closure.

(3) AVAILABILITY AND MAINTENANCE OF RECORDS. Owners and operators shall keep the required records at the UST site and immediately available for inspection by the department.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Part 4—Release Detection

Comm 10.59 General requirements for all UST systems. (1) GENERAL. Owners and operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that:

(a) Can detect a release from any portion of the tank and the connected underground piping that would routinely contain product if the tank were 95% full;

(b) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(c) Meets the performance requirements in s. Comm 10.61 or 10.615, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. Manufacturers of leak detection methods shall specify what threshold test result obtained with their test methods indicates that a release may have occurred.

Note: When a release detection method operated in accordance with the performance standards in ss. Comm 10.61 and 10.615 indicates a release may have occurred, owners and operators must notify the department of natural resources in accordance with Part 5.

(2) COMPLIANCE DATES. Owners and operators of all UST systems shall comply with the release detection requirements of this part by December 22 of the year listed in Table 10.59. Except that USTs of airport hydrant fuel distribution systems and UST systems which store fuel solely for use by emergency power generators shall comply with the release detection requirements of this part by the dates specified in Table 10.773 (1).

(3) CLOSURE OF TANKS WITHOUT RELEASE DETECTION. Any existing UST system that cannot apply a method of release detection that complies with this part shall complete the closure procedures in Part 7 by the date on which release detection is required for that UST system under sub. (2).

TABLE 10.59
Schedule for Phase-in of Release Detection

| Year System Was Installed | Year When Release Detection is Required (by December 22 of the year indicated) | | | | |
|--------------------------------|--|------|------|------|------|
| | 1989 | 1990 | 1991 | 1992 | 1993 |
| Before 1965 or date unknown | RD | P | | | |
| 1965-1969 | | P/RD | | | |
| 1970-1974 | | P | RD | | |
| 1975-1979 | | P | | RD | |
| 1980-1988 | | P | | | RD |
| Tanks Installed After 12/22/88 | Immediately upon installation | | | | |

P = Shall begin release detection for all pressurized piping in accordance with ss. Comm 10.60 (2) (a) and 10.605 (2) (d).

RD = Shall begin release detection for tanks and suction piping in accordance with ss. Comm 10.60 (1), 10.60 (2) (b) and 10.605.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.60 Requirements for petroleum UST systems. Owners and operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(1) TANKS. Tanks shall be monitored at least every 30 days for releases using one of the methods listed in s. Comm 10.61 (4) to (8) except that:

(a) UST systems that meet the performance standards in s. Comm 10.51 or 10.52, and the monthly inventory control requirements in s. Comm 10.61 (1) or (2), may use tank tightness testing conducted in accordance with s. Comm 10.61 (3) at least every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded under s. Comm 10.52 (2), whichever is later;

(b) UST systems that do not meet the performance standards in s. Comm 10.51 or 10.52 may use monthly inventory controls conducted in accordance with s. Comm 10.61 (1) or (2) and annual tank tightness testing conducted in accordance with s. Comm 10.61 (3) until December 22, 1998, when the tank shall be upgraded under s. Comm 10.52 or permanently closed under s. Comm 10.732; and

(c) Tanks with capacity of 1,000 gallons or less may use weekly tank gauging conducted in accordance with s. Comm 10.61 (2).

(d) Release detection systems for compartmentalized tanks shall be capable of detecting releases between compartments.

(2) PIPING. Underground piping that routinely contains regulated substances shall be monitored for releases in a manner that meets one of the following requirements:

(a) *Pressurized piping.* Underground piping that conveys regulated substances under pressure shall:

1. Be equipped with an automatic line leak detector in accordance with s. Comm 10.615 (1); and

2. Have an annual line tightness test conducted in accordance with s. Comm 10.615 (2) or have monthly monitoring conducted in accordance with s. Comm 10.615 (3).

(b) *Suction piping.* Underground piping that conveys regulated substances under suction shall either have a line tightness test conducted at least every 3 years and in accordance with s. Comm 10.615 (2), or use a monthly monitoring method conducted in accordance with s. Comm 10.615 (3). No release detection is required for suction piping that is designed and constructed to meet the following standards:

1. The below-grade piping operates at less than atmospheric pressure;

2. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

3. Only one check valve is included in each suction line;

4. The check valve is located directly below and as close as practical to the suction pump; and

5. A method is provided that allows compliance with subds. 2. to 4. to be readily determined.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.605 Requirements for hazardous substance UST systems. Owners and operators of hazardous substance UST systems shall provide release detection that meets the following requirements:

(1) **GENERAL.** Release detection at existing UST systems shall meet the requirements for petroleum UST systems in s. Comm 10.60. By December 22, 1998, all existing hazardous substance UST systems shall meet the release detection requirements for new systems in sub. (2).

(2) **HAZARDOUS SUBSTANCE UST SYSTEMS.** Release detection at new hazardous substance UST systems shall meet the following requirements:

(a) Secondary containment systems shall be designed, constructed and installed to:

1. Contain regulated substances released from the tank system until they are detected and removed;

2. Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

3. Be checked for evidence of a release at least every 30 days.

Note: The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements.

(b) Double-walled tanks shall be designed, constructed, and installed to:

1. Contain a release from any portion of the inner tank within the outer wall; and

2. Detect the failure of the inner or exterior wall.

(c) External liners, including vaults, shall be designed, constructed, and installed to:

1. Contain 100% of the capacity of the largest tank within its boundary;

2. Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

3. Surround the tank completely and be capable of preventing lateral as well as vertical migration of regulated substances.

(d) Underground piping shall be equipped with secondary containment that satisfies the requirements of par. (a), such as trench liners and jacketing of double-walled pipe. In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with s. Comm 10.615 (1).

(e) Other methods of release detection may be used if owners and operators:

1. Demonstrate to the department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in s. Comm 10.61 (2) to (8) can detect a release of petroleum;

2. Provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

3. Obtain approval from the department to use the alternate release detection method before the installation and operation of the new UST system.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.61 Methods of release detection for tanks. Each method of release detection for tanks used to meet the requirements of s. Comm 10.60 shall be conducted in accordance with this section. All volumetric tank tightness test methods, nonvolumetric tank tightness test methods, automatic tank gauging systems, liquid-phase out-of-tank product detectors, vapor-phase out-of-tank product detectors, and statistical inventory reconciliation methods shall be evaluated in accordance with the appropriate EPA standard test procedure for evaluating leak detection methods and shall be approved by the department in accordance with s. Comm 10.125.

(1) **INVENTORY CONTROL.** Product inventory control or another test of equivalent performance shall be conducted monthly and reconciled to detect a release of at least 1.0% of flow-through plus 130 gallons on a monthly basis in the following manner:

(a) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(b) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

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

(d) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(e) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and

(f) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

Note: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this subsection.

(2) **MANUAL TANK GAUGING.** Manual tank gauging shall meet the following requirements:

(a) Tank liquid level measurements shall be taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(b) Level measurements shall be based on an average of 2 consecutive stick readings taken at both the beginning and ending of the period;

(c) The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(d) A leak is suspected and subject to the requirements of Part 5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

| Nominal Tank Capacity | Weekly Standard (one test) | Monthly Standard (average of four tests) |
|-----------------------|----------------------------|--|
| 550 gallons or less | 10 gallons | 5 gallons |
| 551-1000 gallons | 13 gallons | 7 gallons |
| 1001-2000 gallons | 26 gallons | 13 gallons |

(e) Only tanks of 1000 gallons or less nominal capacity may use manual tank gauging as the sole method of release detection. Tanks of 1001 to 2000 gallons may use manual tank gauging in place of manual inventory control in sub. (1). Tanks of greater than 2000 gallons nominal capacity may not use manual tank gauging to meet the leak detection requirements of this part.

(3) **TIGHTNESS TESTING.** (a) Tightness testing, or another test of equivalent performance, shall be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely

contains product when the tank is 95% full with a probability of detection of 0.95 and probability of false alarm of 0.05.

(b) The test methods shall be capable of detecting the minimum leak rate with the required probability of detection under false alarm, while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. Tightness testing shall be conducted by a certified tightness tester.

(4) AUTOMATIC TANK GAUGING. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control shall meet the following requirements:

(a) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product with a probability of detection of 0.95 and probability of false alarm of 0.05;

(b) Inventory control, or another test of equivalent performance, is conducted in accordance with the requirements of sub. (1); and

(c) The system shall be certified as operable prior to being placed in service.

(5) VAPOR MONITORING. Testing or monitoring for vapors in the soil gas of the excavation zone shall meet the following requirements:

(a) The materials used as backfill are sufficiently porous, such as gravel, sand and crushed rock, to readily allow diffusion of vapors from releases into the excavation area;

(b) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile, such as gasoline, to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(c) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(d) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(e) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(f) An assessment is made of the excavation zone to determine the presence of existing soil contamination including free product, absorbed product, and vapors;

(g) The monitoring wells are placed in the backfill around the tanks and piping. All portions of the tank bed are within a 25-foot radius of a monitoring well. One monitoring well is located at the lowest point within the tank bed;

(h) All portions of piping are within the 25-foot detection radius of a vapor monitoring well;

(i) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

(j) A tightness test of the tanks and piping shall be conducted in accordance with sub. (3) prior to placing tanks in service.

(6) GROUNDWATER MONITORING. Testing or monitoring for liquids in the groundwater shall meet the following requirements:

(a) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(b) Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec;

Note: For example, the soil should consist of well-sorted gravel and coarse sands. Hydraulic conductivity should be measured through the use of pump tests, slug tests or permeaters.

(c) Groundwater monitoring wells shall comply with the construction requirements of ch. NR 141;

(d) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(e) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;

(f) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in pars. (a) to (e) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product. The assessment shall determine the following:

1. Soil layering and classification of each soil layer capable of affecting product flow.

2. Primary and secondary permeability.

3. Effective porosity of saturated and unsaturated zone.

4. Current depth to water table and the extent of seasonal fluctuations in the water table as evidenced by soil gleying or mottling, nearby monitoring wells, or regional water table information.

5. Presence of utility trenches or other natural or manmade features capable of influencing product movement.

6. Existing soil contamination including free product, absorbed product, and vapors.

7. Groundwater flow directions and method of determination.

(g) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

(h) A tightness test shall be conducted in accordance with sub. (3) for the tank and piping prior to placing the tank in service.

(6m) UNSATURATED ZONE MONITORING. Approval for the use of unsaturated zone monitoring will be considered by the department on a case-by-case basis in accordance with sub. (8).

(7) INTERSTITIAL MONITORING. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(a) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

Note: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

(b) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier and detection system is constructed as follows:

1. The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable, at least 10-6 cm/sec for the regulated substance stored, to direct a release to the monitoring point and permit its detection;

2. The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

3. For cathodically protected tanks, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;

4. The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

5. The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain,

unless the barrier and monitoring designs are for use under such conditions; and

6. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(c) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored; and

(d) The monitoring system shall be certified as operable prior to being placed in service.

(8) OTHER METHODS. Any other type of release detection method, or combination of methods, can be used if:

(a) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(b) The department may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subs. (3) to (7). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.615 Methods of release detection for piping. Each method of release detection for piping used to meet the requirements of s. Comm 10.60 shall be conducted in accordance with this section. Pipeline leak detection systems shall be approved by the department in accordance with s. Comm 10.125.

(1) AUTOMATIC LINE LEAK DETECTORS. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.

(2) LINE TIGHTNESS TESTING. (a) A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure with a probability of detection of 0.95 and a probability of false alarm of 0.05. The test shall be performed by a certified tightness tester.

(b) Where a leak detector is installed on the piping that has the same leak detection capability as the tightness test specified in s. Comm 10.61 (8) (a), the tightness test may be omitted.

(3) APPLICABLE TANK METHODS. Any of the methods in s. Comm 10.61 (5) to (8) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.625 Release detection recordkeeping. All UST system owners and operators shall maintain records in accordance with s. Comm 10.58 demonstrating compliance with all applicable requirements of this part. These records shall include the following:

(1) RELEASE DETECTION SYSTEM PERFORMANCE. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for 10 years from the date of installation;

(2) TEST RESULTS. The results of any sampling, testing, or monitoring shall be maintained for at least 10 years and the results of tightness testing conducted in accordance with s. Comm 10.61 shall be retained until the next 2 tests are conducted; and

Note: It is suggested that owners and operators retain copies of all release detection recordkeeping. The documentation may be necessary to exclude the site as a possible source of contamination at a later date.

(3) MAINTENANCE. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for 10 years from the date of installation.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Part 5—Suspected Release Investigation and Confirmation

Comm 10.63 Conditions indicating suspected releases. Owners and operators of storage tank systems shall follow the procedures in s. Comm 10.635 when any of the following conditions exist:

(1) OPERATING CONDITIONS. Unusual operating conditions observed by owners or operators, such as the erratic behavior of product dispensing equipment, the sudden loss of product from the tank system or an unexplained presence of water in the tank; or

(2) MONITORING RESULTS. Monitoring results from a release detection method required under ss. Comm 10.60 and 10.605 indicate that a release may have occurred; or

(3) OTHER. When ordered by the department.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.635 Confirming suspected releases.

(1) GENERAL. Owners and operators shall immediately investigate and confirm all suspected releases within 7 days of discovery of any of the conditions described in s. Comm 10.63, unless:

(a) System equipment or the monitoring device is found to be defective but not leaking and is immediately repaired, recalibrated or replaced and additional monitoring does not confirm the initial result; or

(b) If inventory control is the method of leak detection, a second month of data does not confirm the initial results; or

(c) Corrective action is initiated in accordance with ch. 292, Stats.

(2) INVESTIGATION. Unless action under sub. (1) has been taken, owners and operators shall immediately investigate and confirm all suspected releases within 7 days of discovery of any of the conditions described in s. Comm 10.63 by taking one of the following actions or both at the direction of the department:

(a) *System test.* Owners and operators shall conduct tests according to the requirements for tightness testing in ss. Comm 10.61 (3) and 10.615 (2) that determine whether a leak exists in that portion of the tank or of the delivery system which routinely contains product, or both.

(b) *Site check.* Owners and operators shall measure for the presence of a release where contamination is most likely to be present at the tank site. In selecting sample types, sample locations and measurement methods, owners and operators shall consider the nature of the substance stored, the type of initial alarm or cause for suspicion, the type of backfill, the depth to groundwater and other factors appropriate for identifying the presence and source of the release.

(3) INVESTIGATION DUE TO OFF-SITE IMPACTS. Owners and operators of tank systems which are suspected of releasing a regulated substance due to off-site impacts such as the presence of contaminated soils or free product, dissolved phase product or vapors in soils, basements, sewer or utility lines or nearby surface or ground waters, shall follow the procedures of sub. (2) when required to do so by the department or the department of natural resources.

(4) NEGATIVE RESULTS. If the results from the system test or site check do not indicate that a release has occurred, further

investigation of the incident triggering the suspected release investigation is not required.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.64 Release confirmation and reporting.

(1) **GENERAL.** Owners and operators shall immediately report any release of a regulated substance to the department of natural resources in accordance with s. 292.11 (2), Stats., and investigate the extent of contamination and undertake corrective action in accordance with s. 292.11 (3), Stats. Releases which must be reported to the department of natural resources under s. 292.11 (2), Stats., include the discovery of contaminated soils or free product, dissolved phase product or vapors in soils, basements, sewer or utility lines or surface or groundwaters at the tank site or in the surrounding area and spills or overfills.

Note: Releases of substances defined in section 101 (14) of CERCLA that are not flammable or combustible liquids must also be reported to the department of natural resources in accordance with ch. 292, Stats.

(2) **REPORTING UNDER CERCLA.** The release of a regulated substance to the environment which equals or exceeds its reportable quantity under CERCLA (40 CFR Part 302) shall immediately be reported to the U.S. environmental protection agency.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Part 6—Emergency Release Response

Comm 10.66 Emergency release response and abatement measures. Upon confirmation and reporting of a release, owners and operators shall immediately:

(1) **FIRE HAZARD RESPONSE.** Identify, mitigate and monitor fire, explosion and vapor hazards such as the presence of free product or vapors in subsurface structures and handle all flammable products in a safe and competent manner to prevent fires or explosion;

(2) **PREVENTION OF FURTHER RELEASE.** Take action to prevent any further release of the regulated substance to the environment including:

(a) Remove as much of the regulated substance from the tank system as is necessary to prevent further release to the environment;

(b) Repair, replace, upgrade or permanently close the tank system if a leak exists;

(c) Visually inspect the tank system and any area where a spill or overflow occurred; and

(d) Identify any free product and remove it to the maximum extent practicable so as to minimize the migration of contamination. The removal shall be conducted in a manner which minimizes the spread of contamination and is appropriate for the hydrogeologic conditions at the site and which properly treats, discharges or disposes of recovered by-products in compliance with all applicable federal, state and local requirements.

(3) **RELEASE CONTAINMENT.** Take action to contain the release to prevent migration including managing any contaminated soils that are excavated or exposed in accordance with ch. 292, Stats., and department of natural resources guidelines and any other applicable state or local requirements; and

(4) **DETERMINATION OF CONTAMINATION.** Measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations and measurement methods, owners and operators shall consider the nature of the substance stored, the type of initial alarm or cause for suspicion, the type of backfill, the depth to groundwater and other factors appropriate for identifying the presence and source of the release.

Note: NFPA Standard 329, Recommended Practice for Handling Underground Leakage of Flammable and Combustible Liquids may be used for guidance in the investigation of releases. All tightness testing must be performed in accordance with ss. Comm 10.61 (3) and 10.615 (2).

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1999, No. 524.

Comm 10.67 Investigation and corrective action.

Upon confirmation of a release, owners and operators shall immediately report the release to the department of natural resources in accordance with s. 292.11 (2), Stats., and take the actions determined to be necessary by the department of natural resources to investigate and remediate the impacts of the release in accordance with s. 292.11 (3), Stats.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1996, No. 490.

Part 7—Out-of-service UST Systems, Closure and Site Assessment

Comm 10.73 Temporary closure. (1) GENERAL. When an UST system is temporarily closed, owners and operators shall continue operation and maintenance of corrosion protection in accordance with s. Comm 10.55, and any release detection in accordance with Part 4. Parts 5 and 6 shall be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than one inch of residue, or 0.3% by weight of the total capacity of the UST system, remain in the system.

(2) **EXTENDED TEMPORARY CLOSURE.** When an UST system is temporarily closed for 3 months or more, owners and operators shall also comply with the following requirements:

(a) Leave vent lines open and functioning; and

(b) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(3) **LEAK DETECTION.** Any leak detection testing requirement which was required during closure should be complied with prior to placing the tank back in service.

(4) **PERMANENT CLOSURE.** When an UST system is temporarily closed for more than 12 months, owners and operators shall permanently close the UST system if it does not meet either performance standards in s. Comm 10.51 for new UST systems or the upgrading requirements in s. Comm 10.52, except that the spill and overflow equipment requirements of s. Comm 10.51 (5) do not have to be met. Owners and operators shall permanently close the substandard UST systems at the end of this 12-month period in accordance with ss. Comm 10.732 to 10.738, unless the department provides an extension of the 12-month temporary closure period. Owners and operators shall complete a site assessment in accordance with s. Comm 10.734 before such an extension can be applied for.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559.

Comm 10.731 Seldom used tanks. Except for oil tanks used for emergency and backup fuel or overflow tanks, UST systems shall be considered to be abandoned and therefore subject to closure in accordance with s. Comm 10.73 or 10.732 unless product transfers are made to or from the system periodically.

(1) **MOTOR FUEL TANKS.** Transfers shall be made to and from motor fuel tanks at least once in any 180 day period to be considered in use.

(2) **HEATING OIL TANKS.** Transfers shall be made to and from heating oil tanks at least once in any one year period to be considered in use.

(3) **RECORDS.** Inventory records, manifests, or paid receipts for product received will be acceptable to the department as proof that transfers are being made.

(4) **LESS FREQUENT TRANSFERS.** UST system owners and operators may make written requests to the department for approval for less frequent use if it is justified as a part of the tank's purpose.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.732 Permanent closure and changes-in-service. (1) NOTIFICATION. At least 15 days before beginning

either permanent closure or a change-in-service under sub. (2) or (3) or within another reasonable time period determined by the department, owners and operators shall notify the authorized agent of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. A site assessment of the excavation zone in accordance with s. Comm 10.734 shall be performed after notifying the authorized agent but before completion of the permanent closure or a change-in-service.

(2) **CLEANING AND REMOVAL.** (a) To permanently close a UST system, owners and operators shall empty and clean it by removing all liquids and accumulated sludges and remove it from the ground. Cleaning of the tank shall be performed by a certified cleaner. Removal of tanks and other portions of UST systems shall be performed by a certified remover. Tanks shall be made inert so that the composition of the atmosphere inside the tank is 10% of the lower explosive limit for the stored product prior to bringing the tank aboveground or performing any other work on the tank.

(b) If removal of the tanks from the ground would affect the structural integrity of a building or the fire chief or authorized agent determines a condition of hardship to exist, the tank may be abandoned in place and filled with an inert solid material after emptying and cleaning in accordance with par. (a).

(3) **CHANGE-IN-SERVICE.** Continued use of an UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with s. Comm 10.734. Cleaning of tanks and site assessments shall be performed by persons certified by the department.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.734 Site assessment. (1) **GENERAL.** When a site assessment is required by this chapter, or when directed by the department, owners and operators must measure for the presence of a release where contamination is identified or is most likely to be present at the UST site.

(2) **EXCEPTIONS.** (a) A site assessment shall not be required for tanks that are closed or undergo a change-in-service if one of the external release detection methods allowed in s. Comm 10.61 (5) and (6) is operating in accordance with the requirements of s. Comm 10.61 at the time of closure and indicates that no release has occurred.

(b) A site assessment shall not be required for tanks which are lined if a visual internal inspection is made and no holes and no rust plugs are found during the lining process.

(3) **SAMPLING AND MEASUREMENTS.** In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Site assessments shall be performed by persons certified by the department.

Note: Use of the closure assessment procedures specified in the Appendix will be acceptable to the department as compliance with this subsection.

(4) **DETECTION OF RELEASE.** If contaminated soils, contaminated groundwater or free product as a liquid or vapor is discovered while assessing the site, or by any other manner, owners and operators must begin corrective action in accordance with Part 6.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.736 Applicability to previously closed UST systems. (1) **GENERAL.** When directed by the department, the owner and operator of an UST system permanently closed before December 22, 1988, shall assess the excavation zone and close the UST system in accordance with this part if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

(2) **SYSTEMS PREVIOUSLY CLOSED WITHOUT SOLID INERT FILL.** (a) The owner and operator of an UST system which was permanently closed before September 1, 1971, without removing the tank from the ground but by filling the tank with water, shall bring the closed system into compliance with s. Comm 10.732 except that the site assessment specified by s. Comm 10.734 is not required. Written documentation shall be provided to prove closure with water prior to September 1, 1971. Compliance with this section shall be completed within 3 years after May 1, 1991.

Note: Prior to September 1, 1971, Ch. Ind 8, Flammable and Combustible Liquids Code allowed UST systems to be filled with water when closed or abandoned in place.

(b) Empty or improperly closed or abandoned tanks which do not meet the requirements of par. (a) shall be permanently closed in accordance with all of the provisions of this part.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.738 Closure records. Owners and operators shall maintain records in accordance with s. Comm 10.58 that are capable of demonstrating compliance with closure requirements under this part. The results of the excavation zone assessment required in s. Comm 10.734 shall be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

(1) By the owners and operators who took the UST system out of service; or

(2) By the current owners and operators of the UST system site.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Subchapter VII — Groundwater Protection for Small Farm and Residential Motor Fuel USTs and for Heating Oil USTs

(Farm and Residential Underground Storage Tanks of 1100 Gallons or Less Capacity Used For Storing Motor Fuel for Noncommercial Purposes; Underground Storage Tanks for Storing Heating Oil for Consumptive Purposes on the Premises Where Stored)

Part 1—Program Scope

Comm 10.74 Scope. This subchapter applies to the following:

(1) Farm and residential underground storage tank systems of 1100 gallons or less capacity used for storing motor fuel for non-commercial purposes; and

(2) Underground storage tank systems used for storing heating oil for consumptive use on the premises.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Part 2—Notification and Registration

Comm 10.75 New and replacement storage tank system registration. The owner of all new and replacement storage tanks within the scope of this subchapter shall register the storage tank as specified in s. Comm 10.13.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.76 Existing storage tank system registration. The owners of existing storage tanks within the scope of this subchapter who have not registered their tanks as of May 1, 1991 shall register the storage tanks as specified in s. Comm 10.13.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; correction made under s. 13.93 (2m) (b) 7., Stats.

Part 3—UST System Design, Construction, Installation, Release Detection, Maintenance and Repair

Comm 10.77 Performance standards for new UST systems. New and replacement UST systems included in the scope of this subchapter shall comply with the performance standards of s. Comm 10.51, except that spill and overfill equipment specified under s. Comm 10.51 (3), shall not be required for heating oil UST systems of 4000 gallons or less capacity. Vent whistles

shall be provided for heating oil UST systems of 4000 gallons or less capacity.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.771 Upgrading of existing UST systems.

(1) FARM AND RESIDENTIAL USTs AND HEATING OIL USTs OVER 4,000 GALLONS CAPACITY. No later than 10 years after May 1, 1991 all existing farm and residential motor fuel UST systems and all existing heating oil UST systems greater than 4000 gallons in capacity included in the scope of this subchapter shall comply with the performance standards under s. Comm 10.51 or the upgrading requirements under s. Comm 10.52 (2) and (3) or be permanently closed.

(2) HEATING OIL USTs OF 4000 GALLONS OR LESS CAPACITY. All heating oil UST systems of 4000 gallons or less capacity included in the scope of this subchapter shall no later than 10 years after May 1, 1991 start a release detection program which complies with the minimum standards established in s. Comm 10.773 (2) (a) or be permanently closed or upgraded no later than 15 years after May 1, 1991.

Note: 1999 Wis. Act 9 exempts tanks with capacities of 1100 gallons or less from these requirements.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; **corrections made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559.**

Comm 10.772 General operating requirements.

All UST systems included in the scope of this subchapter shall comply with the general operating requirements of ss. Comm 10.54 to 10.58.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.773 Release detection. (1) RELEASE DETECTION FOR HEATING OIL UST SYSTEMS OF MORE THAN 4000 GALLONS CAPACITY.

Heating oil UST systems that are more than 4000 gallons capacity shall comply with the release detection requirements of ss. Comm 10.59 to 10.625 except that the compliance dates for the installation of required release detection systems shall be those specified in Table 10.773.

(2) RELEASE DETECTION FOR HEATING OIL UST SYSTEMS OF 4000 GALLONS OR LESS CAPACITY. (a) *Existing systems.* Existing heating oil UST systems of 4000 gallons or less capacity shall comply with either:

1. No later than 10 years after May 1, 1991, the owner of a heating oil UST system of 4000 gallons or less capacity shall implement a program of tightness testing with testing beginning in the 10th year and every 2 years thereafter; or

2. May implement a release detection program in accordance with ss. Comm 10.59 to 10.625 beginning in the 10th year; or

3. If the owner elects not to conduct release detection specified under subd. 1. or 2., all heating oil UST systems of 4000 gallons or less capacity shall be permanently closed or upgraded no later than 15 years after May 1, 1991. If the requirement for release detection as specified in subd. 1. or 2. is not met, the system shall be permanently closed or upgraded by the end of the 15th year.

(b) *New systems.* Heating oil UST systems of 4000 gallons or less capacity that are installed on or after May 1, 1991 shall comply with the release detection requirements of ss. Comm 10.59 to 10.625.

Note: The tightness testing methods used for heating oil UST systems, other than release detection programs specified in ss. Comm 10.59 to 10.625, must be specifically approved for that use in accordance with s. Comm 10.125 or 10.61 (8).

TABLE 10.773

Schedule for Phase-in of Release Detection of Wisconsin Regulated Tanks

| Year System Was Installed | When Release Detection is Required (by May 1st of the year indicated) | | | | |
|-----------------------------------|---|------|------|------|------|
| | 1991 | 1992 | 1993 | 1994 | 1995 |
| Before 1965 or date unknown | RD | P | | | |
| 1965-1969 | | P/RD | | | |
| 1970-1974 | | P | RD | | |
| 1975-1979 | | P | | RD | |
| 1980-May 1, 1991 | | P | | | RD |
| Tanks Installed After May 1, 1991 | Immediately Upon Installation | | | | |

P = Shall begin release detection for all pressurized piping in accordance with ss. Comm 10.60 (2) (a) and 10.605 (2) (d).

RD = Shall begin release detection for tanks and suction piping in accordance with ss. Comm 10.60 (1), 10.60 (2) (b) and 10.605.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; correction in (2) (a) 1. made under s. 13.93 (2m) (b) 14., Stats., Register, October, 1994, No. 466; **corrections in (2) (a) 3. made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559.**

Part 4—Suspected Release Investigation and Confirmation

Comm 10.78 General. All owners of new, replacement and existing storage tank systems within the scope of this subchapter shall comply with the rules of Part 5 of subch. VI as they relate to suspected release investigation and confirmation.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Part 5—Emergency Release Response

Comm 10.79 General. All owners of storage tank systems within the scope of this subchapter shall comply with the rules of Part 6 of subch. VI as they relate to emergency release response.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Part 6—Out-of-service Storage Tank Systems, Closure and Site Assessment

Comm 10.80 Temporary and permanent closure and change-in-service. All owners of storage tank systems within the scope of this subchapter shall comply with ss. Comm 10.73, 10.731, 10.732 and 10.738 as they relate to changes-in-service, out-of-service storage tank systems and closure of storage tank systems.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.805 Site assessment. All owners of underground heating oil tanks of more than 4000 gallons capacity shall comply with ss. Comm 10.734 and 10.736 as they relate to site assessment.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Subchapter VIII — Financial Responsibility

Comm 10.81 Applicability. (1) This subchapter applies to owners and operators of all petroleum underground storage tank systems except as otherwise provided in this section.

(2) Owners and operators of petroleum UST systems are subject to this subchapter if they are in operation on or after the date for compliance established in s. Comm 10.812.

(3) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from this subchapter.

(4) This subchapter does not apply to owners and operators of any UST system described in s. Comm 10.50 (2) or (3).

(5) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in s. Comm 10.812.

(6) The requirements of this subchapter do not apply to owners and operators of farm and residential underground storage tanks of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(7) The requirements of this subchapter do not apply to owners and operators of underground storage tanks used for storing heating oil for consumptive use on the premises.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.812 Compliance dates. Owners of petroleum underground storage tanks are required to comply with the requirements of this subchapter by the following dates:

(1) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. securities and exchange commission, Dun and Bradstreet, the energy information administration, or the rural electrification administration; January 24, 1989.

(2) All petroleum marketing firms owning at least 100 but not more than 999 USTs; October 26, 1989.

(3) All petroleum marketing firms owning at least 13 but not more than 99 USTs at more than one facility; April 26, 1991.

(4) All petroleum UST owners not described in sub. (1), (2) or (3), including all local government entities; October 26, 1991.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.814 Definition of terms. In this subchapter:

(1) "Accidental release" means any release of petroleum from an underground storage tank that results in a need for compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator or corrective action, or both.

(2) "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(3) "Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

(4) "Department" means the department of commerce.

(5) "Financial reporting year" means the latest consecutive 12-month period for which any of the following reports is prepared:

(a) A 10-K report submitted to the US securities and exchange commission;

(b) An annual report of tangible net worth submitted to Dun and Bradstreet; or

(c) Annual reports submitted to the energy information administration or the rural electrification administration.

Note: "Financial reporting year" may thus comprise a fiscal or a calendar year period.

(6) "Legal defense cost" means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(a) By EPA or the department to require corrective action or to recover the costs of corrective action;

(b) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(c) By any person to enforce the terms of a financial assurance mechanism.

(7) "Occurrence" means an accident or a continuous or repeated exposure to conditions, which result in a release from an underground storage tank.

Note: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

(8) "Owner or operator," when the owner or operator are separate parties, means the party that is obtaining or has obtained financial assurances.

(9) "Petroleum marketing facilities" means all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(10) "Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(11) "Property damage" shall have the meaning given this term by administrative rules of the office of commissioner of insurance. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(12) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in ss. Comm 10.82 to 10.836, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(13) "Substantial business relationship" means the extent of a business relationship necessary under Wisconsin law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(14) "Tangible net worth" means the tangible assets that remain after deducting liabilities; the assets do not include intangibles such as goodwill and rights to patents or royalties. In this subsection, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.816 Amount and scope of required financial responsibility. (1) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(a) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that throughput an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.

(b) For all other owners or operators of petroleum underground storage tanks; \$500,000.

(2) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(a) For owners or operators of one to 100 petroleum underground storage tanks; \$1 million.

(b) For owners or operators of 101 or more petroleum underground storage tanks; \$2 million.

(3) For the purposes of subs. (2) and (6) only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(4) Except as provided in sub. (5), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility [the amount shall be] in the full amount specified in subs. (1) and (2) for:

(a) Taking corrective action;

(b) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(c) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases.

(5) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(6) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined, other than a financial test or guarantee, to provide assurance.

(7) The amounts of assurance required under this section exclude legal defense costs.

(8) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.818 Allowable mechanisms and combinations of mechanisms. (1) Subject to the limitations of subs. (2) and (3), an owner or operator may use any one or combination of the mechanisms listed in ss. Comm 10.82 to 10.836 to demonstrate financial responsibility under this subchapter for one or more underground storage tanks.

(2) An owner or operator may use a guarantee or surety bond to establish financial responsibility only if the attorney general has submitted a written statement to the department that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in this state.

(3) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this subchapter, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.82 Financial test of self-insurance.

(1) An owner or operator, or guarantor, or both, may satisfy the requirements of s. Comm 10.816 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, or guarantor, or both, shall meet the criteria of sub. (2) or (3) based on year-end financial statements for the latest completed fiscal year.

(2) (a) The owner or operator, or guarantor, or both, shall have a tangible net worth of at least 10 times:

1. The total of the applicable aggregate amount required by s. Comm 10.816, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department;

2. The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the department; and

3. The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the department.

(b) The owner or operator, or guarantor, or both, shall have a tangible net worth of at least \$10 million.

(c) The owner or operator, or guarantor, or both, shall have a letter signed by the chief financial officer as specified in sub. (4).

(d) The owner or operator, or guarantor, or both, shall either:

1. File financial statements annually with the U.S. securities and exchange commission, the energy information administration, or the rural electrification administration; or

2. Report annually the firm's tangible net worth to Dun and Bradstreet, if Dun and Bradstreet has assigned the firm a financial strength rating of 4A or 5A.

(e) The firm's year-end financial statements, if independently audited, may not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(3) (a) The owner or operator, or guarantor, or both, shall meet the financial test requirements of 40 CFR 264.147 (f) (1), substituting the appropriate amounts specified in s. Comm 10.816 (2) (a) and (b) for the "amount of liability coverage" each time specified in that section.

(b) The fiscal year-end financial statements of the owner or operator, or guarantor, or both, shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(c) The firm's year-end financial statements may not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(d) The owner or operator, or guarantor, or both, shall have a letter signed by the chief financial officer as specified in sub. (4).

(e) If the financial statements of the owner or operator or guarantor, or both, are not submitted annually to the U.S. securities and exchange commission, the energy information administration or the rural electrification administration, the owner or operator, or guarantor, or both, shall obtain a special report by an independent certified public accountant stating that:

1. He or she has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, or guarantor, or both, with the amounts in such financial statements; and

2. In connection with that comparison, no matters came to his or her attention which caused him or her to believe that the specified data should be adjusted.

(4) To demonstrate that the financial test is met under sub. (2) or (3), the chief financial officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are pre-

pared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," or "guarantee" or both] to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or both] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating underground storage tanks.

Underground storage tanks at the following facilities are assured by this financial test or a financial test under an authorized State program by this [insert: "owner or operator", or "guarantor" or both]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted.]

A [insert: "financial test," or "guarantee" or both] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

| EPA Regulations | Amount |
|--|----------|
| Closure (ss. 264.143 and 265.143) | \$ _____ |
| Post-Closure Care (ss. 264.145 and 265.145) | \$ _____ |
| Liability Coverage (ss. 264.147 and 265.147) | \$ _____ |
| Corrective Action (s. 264.101 (b)) | \$ _____ |
| Plugging and Abandonment (s. 291.21) | \$ _____ |
| Closure | \$ _____ |
| Post-Closure Care | \$ _____ |
| Liability Coverage | \$ _____ |
| Corrective Action | \$ _____ |
| Plugging and Abandonment | \$ _____ |
| Total | \$ _____ |

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of s. Comm 10.82 (2) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of s. Comm 10.82 (3) are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual UST aggregate coverage being assured by a financial test, or guarantee, or both \$ _____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee, or both \$ _____

3. Sum of lines 1 and 2 \$ _____
 4. Total tangible assets \$ _____
 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$ _____
 6. Tangible net worth [subtract line 5 from line 4] \$ _____
- | | | |
|--|-------|-------|
| | Yes | No |
| 7. Is line 6 at least \$10 million? | _____ | _____ |
| 8. Is line 6 at least 10 times line 3? | _____ | _____ |
| 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? | _____ | _____ |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? | _____ | _____ |
| 11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? | _____ | _____ |
| 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer Yes only if both criteria have been met] | _____ | _____ |

Alternative II

1. Amount of annual UST aggregate coverage being assured by a test, or guarantee, or both \$ _____
 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee, or both \$ _____
 3. Sum of lines 1 and 2 \$ _____
 4. Total tangible assets \$ _____
 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$ _____
 6. Tangible net worth [subtract line 5 from line 4] \$ _____
 7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] \$ _____
- | | | |
|---|----------|-------|
| | Yes | No |
| 8. Is line 6 at least \$10 million? | _____ | _____ |
| 9. Is line 6 at least 6 times line 3? | _____ | _____ |
| 10. Are at least 90 percent of assets located in the U.S.? If No, complete line 11] | _____ | _____ |
| 11. Is line 7 at least 6 times line 3? [Fill in either lines 12-15 or lines 16-18] | _____ | _____ |
| 12. Current assets | \$ _____ | |
| 13. Current liabilities | \$ _____ | |
| 14. Net working capital [subtract line 13 from line 12] | \$ _____ | |
| 15. Is line 14 at least 6 times line 3? | _____ | _____ |
| 16. Current bond rating of most recent bond issue | \$ _____ | |

- 17. Name of rating service \$ _____
- 18. Date of maturity of bond \$ _____
- 19. Have financial statements for the latest fiscal year been filed with the US Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration? _____

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4–18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II, complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in s. Comm 10.82 (4) as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(5) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year–end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(6) The department may require reports of financial condition at any time from the owner or operator, or guarantor, or both. If the department finds, on the basis of such reports or other information, that the owner or operator, or guarantor, or both, no longer meet the financial test requirements of subs. (2) or (3) and (4), the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

(7) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year–end financial statements, or within 30 days of notification by the department that he or she no longer meets the requirements of the financial test, the owner or operator shall notify the department of such failure within 10 days.

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91.

Comm 10.822 Guarantee. (1) An owner or operator may satisfy the requirements of s. Comm 10.816 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

- (a) A firm that:
 - 1. Possesses a controlling interest in the owner or operator;
 - 2. Possesses a controlling interest in a firm described under subd. 1.; or
 - 3. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator;

or
(b) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(2) Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of s. Comm 10.82 based on year–end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in s. Comm 10.82 (4) and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee,

notice to the owner or operator. If the department notifies the guarantor that he or she no longer meets the requirements of the financial test of s. Comm 10.82 (2) or (3), the guarantor shall notify the owner or operator within 10 days of receiving such notification from the department. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in s. Comm 10.85 (3).

(3) The guarantee shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of Wisconsin, herein referred to as guarantor, to the department and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals

1. Guarantor meets or exceeds the financial test criteria of s. Comm 10.82 (2) or (3) and (4) and agrees to comply with the requirements for guarantors as specified in s. Comm 10.822 (2).

2. [Owner or operator] owns or operates the following underground storage tanks covered by this guarantee: [List the number of tanks at each facility and the names and addresses of the facilities where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to s. Comm 10.13, and the name and address of the facility.] This guarantee satisfies ch. Comm 10, subch. VIII requirements for assuring funding for [insert: "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; or "taking corrective action"; or both. If coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above–identified underground storage tanks in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

3. [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the department, shall fund a standby trust fund in accordance with the provisions of s. Comm 10.846, in an amount not to exceed the coverage limits specified above.

In the event that the department determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above–identified tanks in accordance with ch. Comm 10, subch. VI, part 6, the guarantor upon written instructions from the department shall fund a standby trust in accordance with the provisions of s. Comm 10.846, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" or "nonsudden" or both] accidental releases arising from the operation of the above–identified tanks, or fails to pay an amount agreed to in settlement of a

claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the department, shall fund a standby trust in accordance with the provisions of s. Comm 10.846 to satisfy such judgments, awards, or settlement agreements up to the limits of coverage specified above.

4. Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of s. Comm 10.82 (2) or (3) and (4), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11, U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

6. Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to ch. Comm 10.

7. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of ch. Comm 10, subch. VIII for the above-identified tanks, except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

8. The guarantor's obligation does not apply to any of the following:

- a. Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- b. Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- d. Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- e. Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of s. Comm 10.816.

9. Guarantor expressly waives notice of acceptance of this guarantee by the department, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in s. Comm 10.822 (3) as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

(4) An owner or operator who uses a guarantee to satisfy the requirements of s. Comm 10.816 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will

be deposited directly into the standby trust fund in accordance with instructions from the department under s. Comm 10.846. This standby trust fund shall meet the requirements specified in s. Comm 10.836.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.824 Insurance and risk retention group coverage. (1) An owner or operator may satisfy the requirements of s. Comm 10.816 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(2) "Termination" under sub. (3) means only those changes that would result in a gap in coverage as where the insured has not obtained required coverage or has obtained required coverage with a different retroactive date than the retroactive date of the original policy.

(3) Each insurance policy shall be amended by an endorsement worded as specified in par. (a), or evidenced by a certificate of insurance worded as specified in par. (b), except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

(a) *Endorsement.*

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured: _____

Address of Insured: _____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the names and addresses of the facilities where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to s. Comm 10.13, and the name and address of the facility.]

for [insert: "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; or "taking corrective action"; or both, in accordance with and subject to the limits of liability, exclusions, conditions and other terms of this policy. If coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for differ-

ent types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage or for each underground storage tank or location], exclusive of legal defense costs which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections a. through e. of this Paragraph 2 are hereby amended to conform with subsections a. through e.

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in ss. Comm 10.82 to 10.834.

c. Whenever requested by the department, the ["Insurer" or "Group"] agrees to furnish to the department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in s. Comm 10.824 (3) (a) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(b) *Certificate of Insurance.*

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured: _____

Address of Insured: _____

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the names and addresses of the facilities where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to s. Comm 10.13, and the name and address of the facility.]

for [insert: "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; or "taking corrective action"; or both in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy. If coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in s. Comm 10.82 to 10.834.

c. Whenever requested by the department, the ["Insurer" or "Group"] agrees to furnish to the department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] except for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in s. Comm 10.824 (3) (b) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(4) Each insurance policy shall be issued by an insurer or a risk retention group that is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.826 Surety bond. (1) An owner or operator may satisfy the requirements of s. Comm 10.816 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. department of the treasury.

(2) The surety bond shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

Performance Bond

Date bond executed: _____

Period of coverage: _____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation [if applicable]:

Sureties: [names and business addresses]

Scope of Coverage: [List the number of tanks at each facility and the names and addresses of the facilities where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to s. Comm 10.13, and the name and address of the facility. List the coverage guaranteed by the bond: "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank", or "taking corrective action", or both].

Penal sums of bond:

Per occurrence \$ _____

Annual aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Sureties, hereto are firmly bound to the Department of Commerce, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases", or "taking corrective action", or both. If coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden" accidental releases arising from operating the tanks identified above; or "take corrective action, in accordance with ch. Comm 10, subch. VI, part 6"; or both] or if the Principal shall provide alternate financial assurance, as specified in ch. Comm 10, subch. VIII, within 120 days after the date the notice of cancellation is received by the Principal from the Sureties, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of s. Comm 10.816.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the department that the Principal has failed to ["take corrective action, in accordance with ch. Comm 10, subch. VI, part 6" or "compensate injured third parties" or both] as guaranteed by this bond, the Sureties shall either perform ["corrective action in accordance with ch. Comm 10" or "third-party liability compensation" or both] or place funds in an amount

up to the annual aggregate penal sum into the standby trust fund as directed by the Regional Administrator or the department under s. Comm 10.846.

Upon notification by the department that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Sureties and that the department has determined or suspects that a release has occurred, the Sureties shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the department under s. Comm 10.846.

The Sureties hereby waive notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate their obligation on this bond.

The liability of the Sureties shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Sureties may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation of the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Sureties.

In Witness Whereof, the Principal and Sureties have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Sureties and that the wording of this surety bond is identical to the wording specified in s. Comm 10.826 (2) as such regulations were constituted on the date this bond was executed.

Principal
 [Signatures]
 [Names]
 [Titles]
 [Corporate seal]

Corporate Sureties
 [Name and address]
 State of Incorporation: _____

Liability limit: \$ _____
 [Signatures]
 [Names and titles]
 [Corporate seal]

[For every co-surety, provide signatures, corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

(3) Under the terms of the bond, the surety shall be liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(4) The owner or operator who uses a surety bond to satisfy the requirements of s. Comm 10.816 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the department under s. Comm 10.846. This standby trust fund shall meet the requirements specified in s. Comm 10.836.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.828 Letter of credit. (1) An owner or operator may satisfy the requirements of s. Comm 10.816 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be authorized to issue letters of credit in each state where the letters are used and the institution's letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The letter of credit shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[Name and address of issuing institution]
 The Department of Commerce
 P. O. Box 7837, Madison, WI 53707

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$ [insert dollar amount]), available upon presentation of:

- (1) your sight draft, bearing reference to this letter of credit, No. _____, and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert:"compensating third parties for bodily injury and property damage caused by" either"sudden accidental releases" or "nonsudden accidental releases" or "accidental releases", or "taking corrective action", or both] arising from operating the underground storage tanks identified below in the amount of [in words] (\$ [insert dollar amount]) per occurrence and [in words] (\$ [insert dollar amount]) annual aggregate:

[List the number of tanks at each facility and the names and addresses of the facilities where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to s. Comm 10.13, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a worker's compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of s. Comm 10.816.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this

letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in s. Comm 10.828 (2) as such regulations were constituted on the date shown immediately below. [Signatures and titles of officials of issuing institution][Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(3) An owner or operator who uses a letter of credit to satisfy the requirements of s. Comm 10.816 shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department under s. Comm 10.846. This standby trust fund shall meet the requirements specified in s. Comm 10.836.

(4) The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date the owner or operator receives the notice, as evidenced by the return receipt.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.834 Trust fund. (1) An owner or operator may satisfy the requirements of s. Comm 10.816 by establishing a trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(2) The wording of the trust agreement shall be identical to the wording specified in s. Comm 10.836 (2) (a), and shall be accompanied by a formal certification of acknowledgment as specified in s. Comm 10.836 (2) (b).

(3) The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage.

(4) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the department for release of the excess.

(5) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the department for release of the excess.

(6) Within 60 days after receiving a request from the owner or operator for release of funds as specified in sub. (4) or (5), the department will instruct the trustee to release to the owner or operator such funds as the department specifies in writing.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.836 Standby trust fund. (1) An owner or operator using any one of the mechanisms authorized by s. Comm 10.822, 10.826 or 10.828 shall establish a standby trust fund when

the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(2) (a) The standby trust agreement or trust agreement shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the names and addresses of the facilities where the tanks are located that are covered by the standby trust agreement.

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)]

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the department's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the department.

Section 4. Payment for ["Corrective Action" or "Third-Party Liability Claims," or both]

The Trustee shall make payments from the Fund as the department shall direct, in writing, to provide for the payment of the costs of [insert: "compensating third parties for bodily injury and property damage caused by "either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; or "taking corrective action"; or both] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of s. Comm 10.816.

The Trustee shall reimburse the Grantor, or other persons as specified by the department, from the Fund for corrective action expenditures or third-party liability claims, or both, in such amounts as the department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the department specifies in writing. Upon refund, such funds shall no longer constitute part of the fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the department to the Trustee shall be in writing, signed by the department, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or the department, or both except as provided for herein.

Section 14. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the trustee and the department if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the state of Wisconsin, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in s. Comm 10.836 (2) (a) as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of the Witness]

[Title]

[Seal]

(b) The standby trust agreement, or trust agreement shall be accompanied by a formal certification of acknowledgment similar to the following. State requirements may differ on the proper content of this acknowledgment.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she or he resides at [address], that she or he is [title] of [corporation], the corporation described in and which executed the above instrument; that she or he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she or he signed her or his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

(3) The department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the department determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(4) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.838 Substitution of financial assurance mechanisms by owner or operator.

(1) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter, provided that at all times an effective financial assurance mechanism or combination of mechanisms is maintained that satisfies the requirements of s. Comm 10.816.

(2) After obtaining alternate financial assurance as specified in this subchapter an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.84 Cancellation or nonrenewal by a provider of financial assurance.

(1) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(a) Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) Termination of insurance or risk retention group coverage or state-funded assurance, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the owner or operator received notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in s. Comm 10.842, the owner or operator shall obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall notify the department of such failure and submit:

- (a) The name and address of the provider of financial assurance;
- (b) The effective date of termination; and
- (c) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with s. Comm 10.844 (2).

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.842 Reporting by owner or operator.

(1) An owner or operator shall submit the appropriate forms listed in s. Comm 10.844 (2) documenting current evidence of financial responsibility to the department:

(a) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under s. Comm 10.64;

(b) If the owner or operator fails to obtain alternate coverage as required by this subchapter, within 30 days after the owner or operator receives notice of:

1. Commencement of a proceeding under Title 11, U.S. Code, naming a provider of financial assurance as a debtor;
 2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
 3. Failure of a guarantor to meet the requirements of the financial test;
 4. Other incapacity of a provider of financial assurance; or
- (c) As required by ss. Comm 10.82 (7) and 10.84 (2).

(2) An owner or operator shall certify compliance with the financial responsibility requirements of this subchapter as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under s. Comm 10.13.

(3) The department may require an owner or operator to submit evidence of financial assurance as described in s. Comm 10.844 (2) or other information relevant to compliance with this subchapter at any time.

Note: The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050-0066.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91; **correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559.**

Comm 10.844 Recordkeeping. (1) Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank until released from the requirements of this subchapter under s. Comm 10.848. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of business.

Records maintained off-site shall be made available upon request of the department.

(2) An owner or operator shall maintain the following types of evidence of financial responsibility:

(a) An owner or operator using an assurance mechanism specified in ss. Comm 10.82 through 10.828 or 10.834 shall maintain a copy of the instrument.

(b) An owner or operator using a financial test or guarantee shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

(c) An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(d) An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(e) An owner or operator covered by a state fund or other state assurance shall maintain on file a copy of any evidence of coverage supplied by or required by the state under ch. Comm 47.

(f) An owner or operator using an assurance mechanism specified in ss. Comm 10.82 through 10.834 shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of ch. Comm 10, subch. VIII.

The financial assurance mechanisms used to demonstrate financial responsibility under ch. Comm 10, subch. VIII are as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers: "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; or "taking corrective action"; or both.]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

(g) The owner or operator shall update this certification whenever the financial assurance mechanisms used to demonstrate financial responsibility change.

Note: The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050-0066.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.846 Drawing on financial assurance mechanisms. (1) The department shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the department, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(a) 1. The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

2. The department determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the department pursuant to parts 5 or 6 of subch. VI of a release from an underground storage tank covered by the mechanism; or

(b) The conditions of sub. (2) (a) or (b) 1. or 2. are satisfied.

(2) The department may draw on a standby trust fund when:

(a) The department makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under subch. VI, part 6; or

(b) The department has received one of the following:

1. Certification from the owner or operator and the third-party liability claimants and from attorneys representing the owner or operator and the third-party liability claimants that a third-party liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury or property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank, or both, should be paid in the amount of \$[_____].

[Signatures]

Owner or Operator

Attorney for Owner or Operator

[Notary] Date

[Signatures]

Claimants

Attorneys for Claimants

[Notary] Date

2. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subchapter and the department determines that the owner or operator has not satisfied the judgment.

(3) If the department determines that the amount of corrective action costs and third-party liability claims eligible for payment under sub. (2) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The department shall pay third-party liability claims in the order in which the department receives certifications under sub. (2) (b) 1. and valid court orders under sub. (2) (b) 2.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.848 Release from the requirements. An owner or operator is no longer required to maintain financial responsibility under this subchapter for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by subch. VI, part 7.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.85 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.

(1) Within 10 days after commencement of a proceeding under Title 11, U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the department by certified mail of such commencement and submit the appropriate forms listed in s. Comm 10.844 (2) documenting current financial responsibility.

(2) Within 10 days after commencement of a proceeding under Title 11, U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in s. Comm 10.822.

(3) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator shall obtain alternate financial assurance as specified in this subchapter within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he or she shall notify the department.

(4) Within 30 days after receipt of notification that the state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.852 Replenishment of guarantees, letters of credit, or surety bonds.

(1) If at any time after a standby trust is funded upon the instruction of the department with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(a) Replenish the value of financial assurance to equal the full amount of coverage required; or

(b) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(2) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by s. Comm 10.816. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.