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# ROB SUMMERFIELD

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STATE REPRESENTATIVE • 67<sup>th</sup> ASSEMBLY DISTRICT  
MAJORITY CAUCUS CHAIR

January 11, 2024

Representative Oldenburg, Chair  
Members of the Assembly Committee on Environment

## **Testimony on 2023 Assembly Bill 798**

*Relating to: petroleum products, storage of dangerous substances, and granting rule-making authority*

Chairman Oldenburg and Committee Members:

Thank you for providing me with the opportunity to testify at today's public hearing on Assembly Bill 798. I appreciate your time and consideration of this legislation.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates storage tank systems in Wisconsin. About 7 years ago, DATCP underwent a review that found that the department did not have the correct statutory authority to regulate above-ground storage tanks for petroleum products between 110 and 5,000 gallons. The department then stopped regulation of any tank under 5,000 gallons in 2019 because of this lack of authority.

In an effort to restore the program to what it once was, this bill changes the tank capacity of regulation for aboveground storage tanks to 110 gallons or more and includes the following exemptions: a tank has a capacity of less than 110 gallons, a tank has a capacity of less than 1,100 gallons and is installed at a fleet vehicle motor fuel dispensing facility or is used to store certain types of liquids, it is a portable tank, or it is an asphalt plant tank. This subchapter does not apply to farm tanks other than for reporting inventory information.

Because of the current lack of oversight and regulation from DATCP, aboveground storage tanks run the risk of causing various public safety hazards such as petroleum fuel leaks that can cause contamination to local soil and water. Leaks can also be a serious fire hazard. It is important that we bring the statutory authority back to DATCP and allow them to resume regulation of these tanks.

I ask that you join me in supporting this bill.



January 11<sup>th</sup>, 2024

Representative Oldenburg, Chair  
Members of the Assembly Committee on Environment

**Testimony on 2023 Assembly Bill 798**

***Relating to: petroleum products, storage of dangerous substances, and granting rule-making authority.***

Thank you, Chairman Oldenburg and other members of the committee, for hearing my testimony on Assembly Bill 798 today. This issue of aboveground storage regulations for petroleum products was brought to me by Chippewa Falls Fire and Emergency Services last session, but this has been an issue for the Department of Agriculture, Trade and Consumer Protection (DATCP) for over a decade.

The Department's 2017 Wisconsin Act 108 review found that the Department lacked specific statutory authority to fulfill its longstanding mission to regulate aboveground storage tanks between 110 and 5,000 gallons. Because of the lack of statutory authority, the Department ceased regulation of any tank under 5,000 gallons on October 1, 2019. To help restore the program to what it was once, DATCP, along with fire departments, local program operators, and stakeholders, helped draft this bill, which would change the tank capacity of regulation for aboveground storage tanks to 110 gallons or more, with the following exemptions: a tank has a capacity of less than 110 gallons, a tank has a capacity of less than 1,100 gallons and is installed at a fleet vehicle motor fuel dispensing facility or is used to store certain types of liquids, it is a portable tank; or it is an asphalt plant tank.

Except for reporting inventory information, this subchapter does NOT apply to farm tanks. Since October 2019 when DATCP ended its regulation of tanks under 5,000 gallons, the state has exposed itself to various potential threats to the environment and the community. Over 18,000 aboveground storage tanks in Wisconsin are no longer inspected by DATCP, leading to potential public safety hazards. This is a matter of protecting our community and our environment. Petroleum fuel leaks can contaminate local soil and water, be costly to clean up, and increase fire hazard risks. Allowing DATCP to resume regulation of these tanks could act as a preventive measure to avoid these accidents.

In April of 2021, Eau Claire had a diesel and fuel tank spill because of improperly stored tanks. This contaminated the soil and groundwater, and the tanks were not grounded which is an explosion hazard. These are the incidents this bill is trying to avoid. This is both an environmental and a public safety issue. Let's restore the program to what it once was able to do. Thank you, and I will take any questions at this time.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jesse James'.

Senator Jesse James  
23<sup>rd</sup> Senate District  
[Sen.James@legis.wisconsin.gov](mailto:Sen.James@legis.wisconsin.gov)



State of Wisconsin  
Governor Tony Evers

**Department of Agriculture, Trade and Consumer Protection**  
Secretary Randy Romanski

January 11, 2024

Chair Oldenburg and Members of the Assembly Committee on Environment:

Thank you for the opportunity to provide information in support of 2023 Assembly Bill 798, relating to petroleum products, storage of dangerous substances, and granting rule-making authority.

The agency supports this bill for four main reasons:

First, 2013 Wisconsin Act 20 (the biennial budget bill) moved the storage tank system inspection program from the Department of Safety and Professional Services (DSPA) to the Department of Agriculture, Trade and Consumer Protection (DATCP). At that time, the budget bill simply had DATCP continue to use the statutory, prosecutorial, and fee authority granted to DSPA in Chapter 101. Now that the program has been at DATCP for more than ten years, to eliminate confusion, this bill removes DSPA from the equation and places all relevant statutory, prosecutorial, and fee authority in Chapter 168 with DATCP where the program resides.

Second, the bill makes remedial language changes to the statute. For example, DATCP not only inspects tanks, it inspects the piping and equipment with the tank. Therefore, this bill creates a definition for a tank *system*—a term that more accurately describes the inspection and the program itself. It also more specifically and accurately refers to “regulated product” rather than “petroleum product” since the materials regulated are more than just petroleum. Additionally, the term combustible liquid has been updated to incorporate Class IIIB liquids stored in underground storage tank systems.

Third, this bill proposes to change the 5,000-gallon threshold for aboveground storage tank systems to 110 gallons for all aboveground tank systems with a few exceptions. Exceptions to the 110-gallon aboveground tank size include fleet vehicle motor fuel dispensing facilities with an aboveground tank system less than 1,100 gallons in size as well as aboveground tank systems that are newly defined in the bill as a portable tank, an asphalt plant tank, or a farm tank.

Until October 1, 2019, aboveground storage tanks with a tank size of 110 gallons and higher were regulated by DATCP through the regulatory framework of ATCP 93 and by its predecessor agencies through their rulemaking authority. However, during its recent rule review pursuant to Wis. Stat. § 227.29, DATCP identified it did not have the statutory authority to regulate aboveground storage tanks between 110 and 5,000 gallons per Wis. Stat. § 168.22 (3). Therefore, commencing October 1, 2019, DATCP ceased regulating these aboveground tanks and told local program operators under contract with DATCP to cease those inspections.

The cessation of regulating aboveground tanks sized 110 gallons and higher has impacted DATCP’s programmatic standards, the environment, and the regulated community in the following ways:

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- DATCP's regulatory framework no longer meets the high expectation for fire prevention and environmental protection that, for decades, Wisconsin citizens have come to expect.
- Over 18,000 previously inspected aboveground storage tanks in Wisconsin are no longer inspected by DATCP. Aboveground tanks smaller than 5,000 gallons typically have more compliance deficiencies and should be included in the storage tank regulatory program.

Fourth, the program had long worked with both public and private Local Program Operators (LPOs) to conduct storage tank inspections. Our rule revision pursuant to Wis. Stat. § 227.29 also revealed that the law does not permit DATCP to contract with private LPOs. This provision of the bill makes explicit that DATCP may contract for the services if the need arises.

Thank you again for the opportunity to provide comment and for your consideration of 2023 Assembly Bill 798.





**Testimony in Support of Assembly Bill 798**

**Assembly Committee on Environment**

January 11, 2024

Chairman Oldenburg, Vice-Chair Kitchens, and members of the committee, I appreciate the opportunity to testify in support of Assembly Bill 798.

As you know, Wisconsin regulates aboveground and underground petroleum and hazardous material storage systems in order to ensure that petroleum products and other volatile substances are stored safely. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has been the agency in charge of the aboveground storage system inspection program for a decade, before which it existed in the Department of Commerce and the Department of Safety and Professional Services (DSPS). Unfortunately, through reorganizations and shifts between the agencies that oversee the program, our state statutes have failed to keep pace with its needs.

This issue gained urgency when the Department's 2017 Wisconsin Act 108 review discovered that the Department lacked specific statutory authority to fulfill its longstanding mission to regulate aboveground storage tanks between 110 and 5,000 gallons. As a result, on October 1, 2019, the Department ceased regulation of these tanks. DATCP proactively worked with legislators and the Legislative Reference Bureau to draft legislation to fix these problems before the deadline arrived. Since the 2019-20 legislative session, I have worked with legislators in both parties to rectify this issue, and we have an opportunity now to make these overdue and necessary statutory adjustments.

Assembly Bill 798, which we drafted in collaboration with DATCP, makes a number of changes in order to update our state statutes and bring them in line with current best practices and the needs of the program. Primarily, the bill revises and more accurately characterizes certain terms, restores DATCP's authority to regulate tanks from 110-5,000 gallons, resolves other issues of authority, and authorizes DATCP to contract with Local Program Operators (LPOs) to administer or implement aboveground storage tank requirements.

While the changes made by the bill are mainly technical, the impact will be significant. Over 18,000 aboveground storage tanks in our state are no longer inspected by DATCP, which leaves our state exposed to a number of potential threats to the environment, first responders, public safety and health, and the regulated community. It's also important to know that DATCP's historical data shows that tanks with fewer than 5,000 gallons have a higher non-compliance rate. Without this bill, our regulatory framework no longer meets industry, EPA, or our surrounding states' standards for aboveground storage tank regulation, and when spills occur, the damage and related cleanup efforts can be very costly. We've also heard from local fire departments about the hazard posed by unregistered and poorly placed or poorly managed tanks and the lack of opportunities to educate tank owners to ensure they are utilizing their storage tank systems safely.

Aboveground storage is not a Democratic or Republican issue; it's a public health and safety issue. This bill will support fire prevention, protect our natural resources and public health, and provide certainty for DATCP and the regulated community. Thank you for your consideration, and I welcome any questions you may have.