



January 10th, 2024

Senator Testin, Chair

Members of the Senate Committee on Labor, Regulatory Reform, Veterans and Military Affairs

Testimony on 2023 Senate Bill 746

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

Thank you, Chairman Testin and other members of the committee, for hearing my testimony on Senate Bill 746 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,

Senator Jesse James

23rd Senate District

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ROB SUMMERFIELD

STATE REPRESENTATIVE • 67th ASSEMBLY DISTRICT
MAJORITY CAUCUS CHAIR

January 10, 2024

Senator Testin, Chair

Members of the Senate Committee on Labor, Regulatory Reform, Veterans and Military Affairs

Testimony on 2023 Senate Bill 746

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

Chairman Testin and Committee Members:

Thank you for providing me with the opportunity to testify at today's public hearing on Senate Bill 746. 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.



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

January 10, 2024

Chair Testin and Members of the Senate Committee on Labor, Regulatory Reform, Veterans and Military Affairs:

Thank you for the opportunity to provide information in support of 2023 Senate Bill 746, 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 (DSPS) 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 DSPS in Chapter 101. Now that the program has been at DATCP for more than ten years, to eliminate confusion, this bill removes DSPS 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.

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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:

- 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 Senate Bill 746.



MEMORANDUM

TO: Members of the Senate Committee on Labor, Regulator Reform, Veterans and Military Affairs

FROM: Jordan Lamb, The Welch Group

DATE: January 10, 2024

RE: **Support for SB 746, Aboveground Storage of Petroleum Products**

On behalf of the Wisconsin Potato and Vegetable Growers Association, the Wisconsin Pork Association, the Wisconsin State Cranberry Growers Association, the Wisconsin Cattlemen's Association, the Wisconsin Soybean Association, and the Wisconsin Farm Bureau Federation, I provide the following comments in **support** of SB 746, storage of petroleum products.

Currently, aboveground farm fuel storage tanks under 5,000 gallons are exempted from regulation by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). This is, in part, due to an administrative ruling.

In July 2019, DATCP notified affected Local Program Operators that it would cease to regulate all flammable and combustible liquid aboveground storage tanks that are less than 5,000 gallons on October 1, 2019. This notification resulted from a statutory mandate in which DATCP identified that a portion of administrative rule ATCP 93 conflicted with state statute chapter 168, which regulates aboveground storage tanks. As a result, DATCP inspections of aboveground tanks less than 5,000 gallons for compliance with NFPA standards are currently suspended.

There was also a specific regulation for dispensing and storing fuel at farms prior to 2019. *See [Wis. Admin. Code. s. ATCP 93.630](#)*. The regulation provided different requirements for farm tanks based on size including a registration exemption, plan review exemption and other provisions.

This legislation aims to correct the July 2019 administrative ruling but, importantly, also preserves the special provisions for farm aboveground fuel storage tanks that existed prior to 2019. Under SB 746, aboveground fuel storage tanks on farms must register with DATCP. This will provide information about the tank to fire departments and other emergency responders. However, the bill does not subject farm tanks under 5000 gallons to most of the expensive and rigorous requirements. This preserves their treatment under current law and under the provisions in effect prior to 2019.

Accordingly, the agricultural groups listed above support SB 746 and appreciate the authors' attention to this issue.

CONTACT: Jordan Lamb - The Welch Group – jordan@thewelchgroup.org / (608) 576-5447