

**THE DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION'S
PROPOSED ORDER TO ADOPT PERMANENT RULES**

PROPOSED ORDER

The Wisconsin department of agriculture, trade and consumer protection proposes the following rule *to repeal* ATCP 93.050 (59), 93.440 (3) (a) 2. b., 93.465 (2) (b), 93.610 (1) (e) 1., 2., and 7. a., b., and c., and (2) (e) 3., 93.630 (1) (d), (2) (c), and (3), and 93.700 (2) (b) 1.; *to renumber and amend* ATCP 93.610 (1) (e) 7. (intro.); *to amend* ATCP 93.020 (6) (b) and (v) 2. (Note), 93.050 (1), (66), (114) (i) 1. and (k), and (119), 93.100 (1) (b) 1., 3., and 9. (Note), 93.110 (1) (a), Table 93.1605, Tables 93.200-1, -2, -3, -5, -6, -7, -9, and -10, Table 93.400, 93.400 (1) (c), 93.440 (4) (a) (intro.), 93.610 (1) (f) 9. b. and (4), 93.615 (3) (b) 3., Table 93.615-A, Table 93.615-B, 93.630 (1) (a) and (c) 1., (2) (a), and (4) (title) and (intro.), and Table 93.630; *to repeal and recreate* ATCP 93.140 (1) (a); *to create* ATCP 93.210 (2m); *relating to* storage of flammable, combustible, and hazardous liquids and affecting small businesses.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This rule implements Wis. Stat. ch. 168, subch. II, which is titled *Storage of Dangerous Substances*. That subchapter consists of Wis. Stat. ss. 168.21 to 168.28. The Department of Agriculture, Trade, and Consumer Protection (department) is responsible for administering and enforcing that subchapter per Wis. Stat. s. 168.25 (1) and (2).

Statutes Interpreted

Wisconsin Stat. ch. 168, subch. II.

Statutory Authority

Wisconsin Stat. ss. 168.23 and 168.28 (2), as well as Wis. Stat. s. 93.07 (1) and (2).

Explanation of Statutory Authority

The rule is authorized by Wis. Stat. ss. 168.23 and 168.28 (2). Subsection (1) of Wis. Stat. s. 168.23 directs the department to “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

federally regulated hazardous substances, and to the property and facilities where the tanks are located.” Subsection (3) of the statute provides that rules promulgated under sub. (1) “may require the certification or registration of persons who install, remove, clean, line, perform tightness testing on and inspect tanks and persons who perform site assessments.” Subsection (4) of the statute directs the department to promulgate rules specifying fees for plan review and inspection of tanks and for certifications and registrations required under sub. (3). Wisconsin Stat. s. 168.28 (2) directs the department to “develop uniform procedures for reporting the location of aboveground storage tanks and underground storage tanks.”

Moreover, Wis. Stat. s. 93.07 (1) imposes a duty on the department “[t]o make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department.” In addition, Wis. Stat. s. 93.07 (2) imposes a duty on the department “[t]o prescribe forms for all applications, notices and reports required to be made to the department or which are necessary in its work.”

Related Statutes and Rules

Wisconsin Admin. Code ch. ATPC 94 addresses petroleum and other liquid fuel products. Wisconsin Stat. s. 168.21 defines various terms used in both Wis. Stat. ch. 168, subch. II and Wis. Admin. Code ch. ATPC 93. Wisconsin Stat. s. 168.25 grants the department the authority to enforce the statutes for storage of petroleum products and dangerous substances. Wisconsin Stat. s. 168.28 (2) requires the department to undertake a program to inventory and determine the location of aboveground storage tanks and underground storage tanks. Wisconsin Admin. Code ch. SPS 314 (Wisconsin Fire Prevention Code) and requirements in Wis. Admin. Code chs. SPS 361 to 366 have an impact on aspects of this rule, and the proposed rule refers to those SPS rules when appropriate. The rule also refers to Wis. Admin. Code chs. NR 679, 811, and 812. Finally, Wis. Stat. s. 227.29 (1) requires the department to review the administrative rules promulgated or administered for rules that conflict with another rule, state statute, federal statute, or regulation.

Plain Language Analysis

Background

The department repealed and recreated ch. ATPC 93 in November 2019. This marked the last time the department revised the rule. The current revision is appropriate for at least two reasons. First, the department periodically updates rules to consider and usually to adopt the most recent versions of standards it incorporates into its rules by reference. Second, recent departmental reviews identified areas of the rule that lacked statutory authority and required amendment and rewrite. This rule revision achieves both goals.

Rule Content

The department considered modifications to ch. ATPC 93 in three areas:

- Incorporation of Standards by Reference
- Resolution of 2017 Wisconsin Act 108 Issues
- Forms Management

Incorporation of Standards by Reference

Chapter ATCP 93 of Wisconsin Administrative Code incorporates industry standards by reference, and those standards frequently update due to recommended changes by national and international experts in the industry. The department researched to discover which standards in Wis. Admin. Code s. ATCP 93.200 had updated since the November 2019 revision. The standards in question are generally accepted by industry and are readily available in published form through the publishers or online.

Per guidance from the Environmental Protection Agency (EPA), “Industry standards are technical guidelines created by experts in a particular industry for use throughout that industry. These guidelines assist in establishing common levels of safety and common practices for manufacture, maintenance, and repair. Standards-developing organizations use a consensus process to establish the minimum accepted industry practice.”

Wisconsin Admin. Code s. ATCP 93.200 incorporates the standards from 13 nationally and internationally recognized organizations into rule. Each organization adopts its standards after its own rigorous processes with public comment.

This rule updates 41 of the standards incorporated by reference in Wis. Admin. Code ch. ATCP 93 to the most current version of the standard. As required by Wis. Stat. s. 227.21 (2), consent has been received from the Attorney General to incorporate these standards by reference since the department has represented to the Attorney General that “... the standards are established by a technical society or organization of recognized national standing.”

Copies of these standards are kept on file with the department and with the Legislative Reference Bureau.

Per s. 1.14 (5) of the *Wisconsin Administrative Rules Procedures Manual*:

(5) AMENDMENTS AND REVISION OF INCORPORATED STANDARDS. If standards that have been adopted by reference are changed by the independent entity that is the author of the standards, an agency may adopt the changed version only by promulgating a new rulemaking order that amends the affected Administrative Code provision as necessary to identify the version of the standard adopted. Consent of the Attorney General to the adoption of the updated standard must be obtained. The changes cannot be adopted prospectively or automatically.

After reviewing the standards, the department intends to update 41 standards that have updated since the November 2019 revision. The decision alters the tables in Wis. Admin. Code s. ATCP 93.200. Due to a public comment received, the department decided to delay until July 1, 2027, the full adoption of API RP 1637, *Using the API Color–Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals* by creating Wis. Admin. Code s. ATCP 93.210 (2m).

The department does not believe any revisions to these standards will result in additional costs with existing tank systems since it does not appear any of the changes are retroactive; changes to the standards would apply only to new tank systems.

Table 93.200-1: American Concrete Institute

STANDARD	TITLE	CHANGES
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ACI PRC-350.2	Hazardous Material Containment in Concrete Structures	The standard revised the ASTM reference documents for material testing, and the standard had a name change.
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Table 93.200-2: American Petroleum Institute

STANDARD	TITLE	CHANGES
API 570	Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems	General edits have been done for grammar and readability as well as for chapter numbering and location within the document. Numerous additions include: prevention of overheating, controls for temporary facilities, and the addressing of near-miss investigations and corrosion control documentation. Certain topics have now received their own chapters. Other chapters have been expanded.
API 575	Guidelines and Methods for Inspection of Existing Atmospheric and Low-pressure Storage Tanks	The standard does not create any new requirements. The revision includes many new example photos and descriptions that expand understanding. For example, 5.2, 5.3, and 5.4 have been expanded with more examples and the addition of paragraph titles to enhance readability.
Std 650	Welded Steel Tanks for Oil Storage	General edits for grammar and clarity have been included throughout the standard. New definitions have been added as API renumbered them. Numerous removals and additions have been made to various provisions throughout that include such matters as weight-based plate specification, tensile strength, under-run thickness, and change in windspeeds.
RP 1604	Closure of Underground Petroleum Storage Tanks	Terms and definitions have been added, and safety references now have their own chapter. Renaming and reorganization occurred throughout the rule. Changes include: eliminated sources of ignition, how long a tank can remain temporarily closed, and changes to cleaning, closure, and venting guidelines. Record keeping guidelines shifted from three years to the authority having jurisdiction's guidelines.
RP 1637	Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals	It incorporates the many fuel blends and biofuels that have been introduced to the market since the last version of this standard was published. This updated practice adds colors and symbols for 19 additional fuels including gasoline-ethanol blends, racing fuels, biodiesel, renewable diesel, biofuel oil, and Diesel Exhaust Fluid (DEF).

		<p>Current owner/operators of retail motor vehicle fueling facilities currently utilize a prior version of RP 1637 which specifies color coded painted storage tank fills. The paint on these storage tank fills is often an on-going maintenance item for owner/operators of retail motor vehicle fueling operations, thus the department does not believe there will be an increase in cost to businesses.</p> <p>Note: Both the current standard and updated standard would be accepted until July 1, 2027, per a newly created Wis. Admin. Code s. ATCP 93.210 (2m).</p>
Std 2350	Overfill Protection for Storage Tanks in Petroleum Facilities	Definitions have been added. General edits to readability include the addition of subchapter titles. The minimum 5-year Level of Concern review was removed. Addition of Category 0 in Minimum High Level in response time shifted to 60 minutes. Section 4.4.5 has been moved and incorporated into Chapter 5. API removed Figure 3.
Std 2610	Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities	General edits for grammar and readability including in the naming of standards referenced. Chapter numbering and location of provisions changed within the standard. A paragraph describing mandatory and non-mandatory requirements has been removed. Disclaimers on dated references have been changed. Edits to 7.2.3, Tank Overfill Protection, include safety information and references to other standards.

Table 93.200-3: ASTM International

STANDARD	TITLE	CHANGES
G158	Standard Guide for Three Methods of Assessing Buried Steel Tanks	The new edition has been re-issued with no changes.

Table 93.200-5: NACE International

STANDARD	TITLE	CHANGES
SP0285	External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection	The revision has expanded definitions, altered instrument and measurement guidelines, changed in meter polarity setup, and expanded test procedures for stray currents.
TM0497	Measurement Techniques Related to Criteria for Cathodic Protection on Underground or	The revision has expanded definitions, altered instrument and measurement guidelines, changed in meter polarity setup, and expanded test procedures for stray currents.

	Submerged Metallic Piping Systems	
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Table 93.200-6: National Fire Protection Association

STANDARD	TITLE	CHANGES
10	Standard for Portable Fire Extinguishers	The standard does not have significant changes from the 2018 version.
20	Standard for the Installation of Stationary Pumps for Fire Protection	NFPA accounted for new technologies, and it created new requirements for manifolding of fire pump test piping and combining fire pump test piping with relief valve discharge piping.
30	Flammable and Combustible Liquids Code	<p>The standard revised the classification scheme for liquids that will be used by NFPA going forward. The term “ignitable liquid” has been introduced to initiate a process whereby the terms “flammable liquid” and “combustible liquid” will no longer be used. This stems from the existence of regulatory systems that use the terms flammable liquid and combustible liquid inconsistently, leading to confusion among regulatory authorities, such as fire officials, occupational safety officials, and transportation officials.</p> <p>The term change should not have an impact on department operations. The department already uses the flash point criteria for determining whether to regulate a liquid or not.</p> <p>Unstable liquid requirements have been removed throughout the code. Liquid storage area terms have been consolidated. Static electricity requirements have been revised. Listing (or approval) requirements have been added for overfill protection devices and pressure-vacuum vent devices. NFPA 30 adds a new chapter on petroleum production tanks to address security at petroleum production sites.</p>
30A	Code for Motor Fuel Dispensing Facilities and Repair Garages	Requirements for mobile fueling on public streets have been added to Chapter 14. Fire extinguisher requirements in Chapter 9 have been revised to align with NFPA 10 and to accommodate new provisions for alternate fuel vehicle protection. Tank overfill requirements were revised to make them consistent with federal rules. A new chapter on mobile marine refueling was added.
30B	Code for the Manufacture and Storage of Aerosol Products	Fire protection requirements have been added for two new categories: Plastic Aerosol 2 Products and Plastic Aerosol Cooking Spray Products. New

		requirements for the disposal of aerosol containers at manufacturing and storage sites have also been added. A new chapter classifies aerosol products. Compartmented container is now defined, and the definitions of aerosol propellant and flammable propellant have been amended. Requirements for allowable quantities of aerosol products in production areas have been clarified. To maintain consistency across codes, flammable and combustible liquids are now referred to as ignitable liquids.
31	Standard for the Installation of Oil-Burning Equipment	Revisions to the definition of heating fuel and the requirements for acceptable liquid fuels have been added. Heating fuel piping systems and components requirements have been revised.
35	Standard for the Manufacture of Organic Coatings	Revisions clarify construction requirements. Terminology now aligns with NFPA 30 classifications. There are no retroactive requirements.
37	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines	The standard added publications and definitions. Some testing, especially in regard to exhaust systems and leak detection, changed.
110	Standard for Emergency and Standby Power Systems	The standard added publications and definitions.
326	Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair	Updates include changes to referenced publications and information. Changes to the extract updates definitions as well.
385	Standard for Tank Vehicles for Flammable and Combustible Liquids	Updating of smoking/open flame requirements near fuel loading or unloading now defined as 25 feet away.
407	Standard for Aircraft Fuel Servicing	The updated standard provides new requirements for fire extinguishers at aviation fueling facilities and for placards to be placed on airport fueling vehicles and emergency fuel shutoff stations.
410	Standard on Aircraft Maintenance	NFPA updated the year of publication. No other changes occurred.
418	Standard for Heliports	NFPA changed some operational practices including: automatic fire suppression discharge duration and allowance for manual firefighting equipment. New chapters approach exposure threats and continuity of operations and permit the use of a performance-based design for heliports, helistops, vertiports, and vertistops. These changes increase flexibility for industry by allowing alternative approaches.
704	Standard System for the Identification of the Hazards of	No changes affect the department program.

	Materials for Emergency Response	
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Table 93.200-7: Petroleum Equipment Institute

STANDARD	TITLE	CHANGES
RP 100	Recommended Practices for Installation of Underground Liquid Storage Systems	PEI edited the standard for grammar or sentence clarity. For example, “Manufacturer’s” was replaced with “manufacturer” 19 times. Interstitial monitoring for tanks and piping have new titles. An edit allows for non-steel risers for fill pipes but ensures electrical bonding.
RP 200	Recommended Practices for Installation of Aboveground Storage Systems for Motor-Vehicle Fueling	ASTs must be labeled with NFPA 704, and fills must be color-coded or labeled. Edits of pre-calculated tank volume charts and emergency venting referencing NFPA have been placed in the Appendices.
RP 300	Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites	Like RP 100, PEI edited for grammar or sentence clarity. Chapter 14 has been added to explain Stage II piping decommissioning.
RP 400	Recommended Procedure for Testing Electrical Continuity of Fuel-Dispensing Hanging Hardware	Editing matches the standards to other current PEI standards. Photos were added to help understanding.
RP 500	Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment	Like other PEI standards, the standard reflects grammar and sentence structure changes for readability. Additions in Chapter 3 compare A/B operators to PEI Level I and II qualified persons and qualified technicians. An addition in Chapter 6 describes skimmers and an appropriate response. A Chapter 8 addition describes Stage II decommissioning.
RP 600	Recommended Practices for Overfill Prevention for Shop-Fabricated Aboveground Tanks	MSDS is edited to Safety Data Sheet (current nomenclature). A note was added to Chapter 6.6 to “verify material compatibility with overfill device manufacturer” when dealing with alternative fuels. Current 2018 standards are referenced in the Appendices.
RP 800	Recommended Practices for Installation of Bulk Storage Plants	The standard was edited for grammar and readability (manufacturer’s to manufacturer). Document references other standards that may have changed names and those are edited to the new names.
RP 900	Recommended Practices for the Inspection and Maintenance of UST Systems	Significant edits to readability and to match other current PEI documents. These edits significantly reduced the size of the standard (180 pages to 92). More photos were added to provide easier understanding. Additional items to be checked

		during operator inspections were added in the update. Daily operator checks have been removed in Chapter 6 (edited in appendix also).
RP 1000	Recommended Practices for the Installation of Marina Fueling Systems	Significant edits improved readability and matched the standards to other current PEI documents. These edits significantly reduced the size of the standard (81 pages to 44).
RP 1200	Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities	PEI edited the standard for grammar and readability. Chapter 6.6 Low Liquid Containment Sump Testing has been added and includes a checklist/form for performing Low Level Sump Testing (Appendix C-4-A). Unlike some other standards, RP 1200 is still in older format (129 pages).
RP 1300	Recommended Practices for the Design, Installation, Service, Repair and Maintenance of Aviation Fueling Systems	There was an addition of Chapter 3.4.5 Reclaim Tanks (definition). Warning was added to Chapter 6 for jet fuel filtering to refer to the filter manufacturer instructions. Chapter 7.7 Secondary Refueler adds instructions that high level shut off (definition and not to be used for normal bottom filling control – this is nonstandard equipment). While in the older format, edits for grammar occurred.
RP 1400	Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems	“Approved” has been defined in Chapter 2.2. Chapter 5.5.2 adds a note on non-metallic risers to be grounded when filling tank. 5.7.2 has been retitled "Other Considerations". A warning has been added in Chapter 6.6.2 about restricting fuel flow due to leak detection.

Table 93.200-9: Steel Tank Institute

STANDARD	TITLE	CHANGES
R012	Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks	The standard updated to the latest referenced editions of International Fire Code and NFPA 30.

Table 93.200-10: Underwriters Laboratories, Inc.

STANDARD	TITLE	CHANGES
UL 142	Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids	The standard made certain changes: revised manhole diameter and shape requirements, revised joint and height limits, removed requirements for loose bolt manways, revised tank primary leakage tests, revised calculation for venting to include vertical tank bottoms, added requirements for tanks storing liquids with a specific gravity of greater than 1.0, and added requirements for tanks with bottoms other than flat.

UL 1856	Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems	The revision included the following: Installation of Retrofit Systems in non-UL Host Tanks; Coverage of Iso-Butanol Fuel Blends; Test Fuel Revisions & Compliance Options; and Use of UL 58 Roark Formula for Equivalent Coverage of Steel Host Tanks.
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Resolution of 2017 Wisconsin Act 108 Issues

Wisconsin Stat. s. 227.29 (1) requires the department to review the administrative rules promulgated or administered for rules that conflict with another rule, state statute, federal statute, or regulation. In the department's March 31, 2021, letter to the Joint Committee on the Review of Administrative Rules (JCRAR), the department identified two areas. The first addressed issues with tank size, and the second specified authority granted by the department to those outside the agency who conduct inspections.

Until October 1, 2019, the department regulated aboveground storage tanks with a capacity of 110 gallons or more through the regulatory framework of Wis. Admin. Code ch. ATPC 93. In compliance with the department's obligations under 2017 Wisconsin Act 108, the department identified that it cannot regulate aboveground storage tanks with a capacity of less than 5,000 gallons per Wis. Stat. s. 168.22 (3). As such, the department ceased regulating such tanks on that date. This rule revision resolves the conflict.

For years, the department has not solely inspected all tank systems in Wisconsin. Instead, the department also contracted with some private entities as local program operators (LPOs) and permitted municipal entities to create their own inspection programs. Wisconsin Admin. Code s. ATPC 93.110 (1) (a) authorized private entities who had a contract with the department to act with the authority of the department. However, because Wis. Stat. s. 93.06 (11) (a) does not authorize private entities to enforce department rules, the department amended Wis. Admin. Code s. ATPC 93.110 (1) (a). Given that amendment, the definition of an LPO in Wis. Admin. Code s. ATPC 93.050 (66) was also changed to reflect that private entities cannot fulfill the function of an LPO and that only certain public entities may do so.

Forms Management

The department has adopted an internal procedure, Procedure Number 378, to fulfill its statutory forms management requirements under Wis. Stat. s. 15.04 (1) (k). Since form numbers can frequently change and those changes require rulemaking if stated in the rule, the department considered removing form numbers such as TR-WM-130 and TR-WM-133 from the rule. The *Administrative Rules Procedures Manual* states:

1.12 Notes. (3) REFERENCES TO FORMS. If a rule requires a new or revised form, include a reference to the form in a note to the rule. The note should indicate the address that a person may write to, or the telephone number that a person may call, in order to obtain the form. If the form is available on the Internet, the note should indicate the website from which the form may be obtained. [See ss. 227.01 (13) (q) and 227.14 (3), Stats., for the treatment of forms in ch. 227, Stats.]

For this reason, the department considered eliminating references to form identification numbers in the substantive provisions of Wis. Admin. Code ch. ATPC 93 and only listing form identification numbers in notes to the rules explaining how to obtain forms. However, for ease of industry compliance and clarity in

enforcement, the department elected not to remove form identification numbers from the substantive rules and will continue to reference form identification numbers within the rule. The department has kept references in the Notes explaining how to obtain these forms. In this way, readers and users of the rule will find the forms readily.

Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations

The federal government relies on many of the industry standards that the department proposes to adopt in the tables listed in Wis. Admin. Code s. ATCP 93.200.

Federal regulations for both aboveground and underground storage tank systems address groundwater and surface water protection. The planned rule changes are not expected to conflict with these federal regulations.

Summary of Comments Received during the Public Hearing on Statement of Scope

The department received no comments on the scope either at the public hearing concerning the scope on March 27, 2023, or in the ensuing comment period concerning the scope that concluded on March 28, 2023.

Comparison with Rules in Adjacent States

Illinois

Illinois has a similar program reflected in administrative rules found in the Illinois Fire Protection code section (Title 41), particularly 41 Ill. Adm. Code 172 to 180.

Iowa

Iowa has a similar program as reflected in administrative rules found in code sections pertaining to the State Fire Marshal, particularly 661 Iowa Administrative Code sections 221 to 228. Other rules governing underground storage tanks appear in 567 Iowa Administrative Code sections 134 to 136, which pertain to the Iowa Department of Natural Resources.

Michigan

Michigan has a similar program as reflected in rules within the administrative code sections pertaining to the Michigan Department of Licensing and Regulatory Affairs, particularly Mich. Administrative Code R 29.2101 to 29.2174, R 29.5601 to R 29.5917, and R29.6101 to R 29.6156.

Minnesota

In Minnesota, administrative rules governing a similar program may be found in the Minnesota Pollution Control Agency section (Minnesota rules part 7105, Underground Storage Tanks; Training; part 7150, Underground Storage Tanks; Program; and part 7151, Aboveground Storage of Liquid Substances). To a limited degree, the State Fire Marshal, working out of the Minnesota Department of Public Safety, promulgates other rules dealing with the safety of storage tanks.

Summary of Factual Data and Analytical Methodologies

To develop this rule, the department reviewed all standards that had been updated since the prior rule revision. As this is a technical rule revision, no analyses needed to be done outside review of these standards.

Summary of Comments Received during Public Hearings and Comment Period

On May 8, 2024, the department held a public hearing on the hearing draft rule. No one spoke at the hearing. After the hearing, the department accepted public comments for two weeks. It received public comments from KwikTrip, the Wisconsin Fuel & Retail Association, the Wisconsin Transportation Builders Association, and Wisconsin Manufacturers and Commerce.

Multiple public comments identified that the department, in its efforts to remove tank size references identified as part of its 2017 Wisconsin Act 108 review, proposed some changes to mobile, movable, and portable tanks that inadvertently made changes or that could create new 2017 Wisconsin Act 108 issues. The final draft rule corrects those errors.

Failure to adopt updated standards would lead industry to be required by law to build outdated tank systems using outmoded specifications. Rather than require compliance with obsolete standards, the department intends to adopt updated standards and revise the plain language analysis in the final draft rule to identify the changes made in the 41 updated standards. One exception to this general approach was made based on industry stakeholder comments about RP 1637 published by the American Petroleum Institute. The department will therefore delay the implementation date for compliance with the new standard until July 1, 2027.

The department accepted the suggested formatting changes from the Clearinghouse.

Analysis and Supporting Documents used to Determine Effect on Small Business in Preparation of an Economic Impact Analysis

Wisconsin Admin. Code ch. ATPC 93 incorporates 78 standards by reference in the tables in Wis. Admin. Code s. ATPC 93.200. This rule incorporates by reference the most recent version of 41 of those standards. Dependent on the nature of the entity, a business may need to purchase or access some of these standards but not all. Because the EPA requires many of the same standards, some businesses likely bear this cost regardless of whether Wis. Admin. Code ch. ATPC 93 requires them or not. The cost of the updated standards cannot be determined because it would depend on individual buying decisions and circumstances of the regulated businesses and industries. For regulatory purposes, the State needs to purchase two copies of all standards—one for itself and one for the Legislative Reference Bureau. The department anticipates it will spend \$15,578 plus the shipping and handling for this.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

A complete Regulatory Flexibility Analysis is attached.

The department's Regulatory Review Coordinator may be contacted by:
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Standards Incorporated by Reference

This rule updates 41 standards incorporated by reference in Wis. Admin. Code ch. ATP 93 to the most current version of each standard. As required by Wis. Stat. s. 227.21 (2), consent has been received from the Attorney General to incorporate these standards by reference. Copies of these documents will be kept on file with the department and with the Legislative Reference Bureau.

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Where Comments May Be Submitted

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After the May 8, 2024, public hearing on the draft rule, the department accepted formal written comments for an additional two calendar weeks until May 22, 2024.

RULE TEXT

SECTION 1. ATP 93.020 (6) (b) is amended to read:

(b) Aboveground storage tanks ~~and intermediate bulk containers~~ that have a capacity of less than 440 5,000 gallons.

SECTION 2. ATP 93.020 (6) (v) 2. (Note) is amended to read:

Note: Chapter SPS 314 has fire prevention requirements that may apply to tanks which are not regulated by ch. ATP 93, such as service tanks, and to portable tanks or containers which have a capacity of less than 440 5,000 gallons and which are used for flammable or combustible liquids, or for

other liquids that are hazardous. Also, in conjunction with addressing the quality and retail sales of petroleum products, ch. ATPC 94 regulates containers which have a capacity of less than 275 gallons and which are used for storing gasoline or any other petroleum product that has a flash point of less than 100°F. Chapter ATPC 94 requires these containers to be colored red and appropriately labeled and prohibits using red containers for storing petroleum products that have a flash point of 100°F or more.

SECTION 3. ATPC 93.050 (1) is amended to read:

(1) “Aboveground storage tank” or “AST” means any vessel that has a liquid capacity of ~~440~~ 5,000 gallons or more, is intended for fixed installation, is not solely used for processing and does not meet the definition of an underground storage tank.

SECTION 4. ATPC 93.050 (59) is repealed.

SECTION 5. ATPC 93.050 (66) is amended to read:

(66) “Local program operator” or “LPO” means ~~an a public 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.

SECTION 6. ATPC 93.050 (114) (i) 1. and (k) are amended to read:

(i) “Movable tank” means an aboveground storage tank that meets all of the following:

1. Has a liquid capacity of ~~440~~ 5,000 gallons or more; and is used for storing and dispensing liquid motor vehicle fuel.

(k) “Portable tank” means an aboveground closed vessel that has a liquid capacity of ~~440~~ 5,000 gallons or more; is not otherwise defined in this chapter; is equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means; and is not intended for fixed installation or for highway vehicle fueling. ~~“Portable tank” includes intermediate bulk containers.~~

SECTION 7. ATPC 93.050 (119) is amended to read:

(119) “Tank wagon” means a tank that is affixed to a trailer system with at least one axle, is constructed in accordance with s. ATPC 93.610 (1), has a liquid capacity of ~~1,100 gallons or less,~~ 5,000

gallons or more, and is used for storing and dispensing liquid motor vehicle fuel for equipment used on the site, or is used for storing other liquids regulated under this chapter. A tank wagon is not constructed to comply with NFPA 385.

SECTION 8. ATCP 93.100 (1) (b) 1. and 3. are amended to read:

1. Oil-burning installations for a 1- or 2-family dwelling which are located aboveground or in a basement, and which have a capacity of less than ~~4,400~~ 5,000 gallons.

3. Aboveground tanks which have a capacity of less than ~~4,400~~ 5,000 gallons and which store Class IIIB liquids other than used oil.

SECTION 9. ATCP 93.100 (1) (b) 9. (Note) is amended to read:

Note: See s. ATCP 93.630 ~~(3)~~ (4) for administrative requirements for ASTs located at farms and construction projects.

SECTION 10. ATCP 93.110 (1) (a) is amended to read:

(1) DEPARTMENT APPROVAL OF LPO. (a) With the approval of the chief elected municipal official, the municipality shall determine if a municipal department ~~or other agent approved by the department~~ will exercise jurisdiction over the provisions of this chapter as the local program operator.

SECTION 11. ATCP 93.140 (1) (a) is repealed and recreated to read:

(a) Aboveground tanks which have a capacity of less than 5,000 gallons.

SECTION 12. Table ATCP 93.1605 is amended to read:

Table 93.1605

Plan Examination and Inspection Fees for Liquid Storage Tanks

Tank System Category	Plan Review	Installation	Plan	Reinspection Fee
	Fee*	Inspection Fee	Revision Fee	

Aggregate capacity of aboveground storage tanks equal to or less than 1,100 gallons installed on a farm premises with inspection in 5 days or less	\$0	\$75	\$0	\$0
Aggregate capacity of aboveground storage tanks equal to or less than 1,100 gallons installed on a farm premises with inspection in 2 days or less	\$0	\$100	\$0	\$0
Aggregate capacity equal to or less than 1,100 gallons	\$60	\$100	\$100	\$100
Aggregate capacity 1,101 gallons through 48,000 gallons capacity	\$125	\$250	\$100	\$100
Aggregate capacity 48,001 gallons through 80,000 gallons capacity	\$150	\$300	\$100	\$100
Aggregate capacity 80,001 gallons through 120,000 gallons capacity	\$180	\$450	\$120	\$150
Aggregate capacity 120,001 gallons capacity or greater	\$360	\$600	\$150	\$200
Addition of corrosion protection to an existing system	\$35	\$100	\$100	\$100
Conversion of existing system to a point-of-sale (POS) type of dispensing system**	\$35	\$100	\$100	\$100

Underground storage tank pre-lining inspection	Aggregate as above	\$50/tank	\$100	\$100
Upgrade, exchange or conversion of existing leak detection methodology to another approved methodology or manufacturer***	\$35	\$100	\$100	\$100
Upgrade of secondary containment only, for tanks	\$150	\$100	\$100	\$100
Installation or modification of vent piping on existing system	\$60	\$100	\$100	\$100

SECTION 13. Tables ATCP 93.200-1, -2, -3, -5, -6, -7, -9, and -10 are amended to read:

Table 93.200–1

ACI American Concrete Institute PO Box 9094 Farmington Hills, MI 48333	
Standard Reference Number	Title
350.2R-04, except for section 6.3 <u>ACI PRC-350.2-21</u>	Concrete Structures for Containment of Hazardous Materials <u>Hazardous Material Containment in Concrete Structures</u>

Table 93.200–2

API American Petroleum Institute 1220 L Street, NW Washington, DC 20005	
Standard Reference Number	Title
1. 570 (4 th <u>5th</u> edition, 2016 <u>2024</u>)	Piping Inspection Code: In-service Inspection, Rating, Repair, <u>and</u> Alteration, and Rerating of In-service Piping Systems
2. RP 575-14 <u>575-20</u> (3 rd <u>4th</u> edition, 2014 <u>2020</u>)	Guidelines and Methods for Inspection of Existing Atmospheric and Low-pressure Storage Tanks
3. Std 650-20 <u>650-20</u> With addenda 1 and 2 (13th edition, <u>2020</u>)	Welded Steel Tanks for Oil Storage
4. RP 651 (4th edition, 2014)	Cathodic Protection of Aboveground Petroleum Storage Tanks
5. RP 652 (4th edition, 2014)	Lining of Aboveground Petroleum Storage Tank Bottoms
6. Std 653 (5th edition, 2014)	Tank Inspection, Repair, Alteration, and Reconstruction
9. RP 1604 (3 rd <u>4th</u> edition, 1996 <u>2021</u>)	Closure of Underground Petroleum Storage Tanks
10. RP 1615 (6th edition, 2011)	Installation of Underground Petroleum Storage Systems, Sixth Edition
11. RP 1621 (5th edition, 1993)	Bulk Liquid Stock Control at Retail Outlets
12. RP 1626 [2nd edition, 2010 (with errata and addendum)]	Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations

13. RP 1631 (Fifth edition, 2001)	Interior Lining and Periodic Inspection of Underground Storage Tanks
14. RP 1632 (3rd edition, 1996, R 2010)	Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems
15. RP 1637 (3rd <u>4th</u> edition, 2006 <u>2020</u>)	Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals
16. Std 2000 (7th edition, 2014)	Venting Atmospheric and Low-Pressure Storage Tanks
17. Std 2015 (8th edition, 2018)	Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks
18. RP 2200 (5th edition, 2015)	Repairing Hazardous Liquid Pipelines
19. Std 2350 (4th <u>5th</u> edition, 2012 <u>2020</u>)	Overfill Protection for Storage Tanks in Petroleum Facilities
20. Std 2610 (2nd <u>3rd</u> edition, 2005 <u>2018</u>)	Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities

Table 93.200–3

ASTM ASTM International 100 Barr Harbor Drive West Conshohocken, PA 19428	
Standard Reference Number	Title
G158–98 (2016 <u>2021</u>)	Standard Guide for Three Methods of Assessing Buried Steel Tanks

Table 93.200–5

NACE NACE International 1440 South Creek Drive Houston, TX 77084–4906	
Standard Reference Number	Title
1. SP0169–2013	Control of External Corrosion on Underground or Submerged Metallic Piping Systems
2. SP0178–2007	Design, Fabrication, and Surface Finish Practices for Tanks and Vessels to Be Lined for Immersion Service
3. SP0188–2006	Discontinuity (Holiday) Testing of New Protective Coatings on Conductive Substrates
4. SP0193–2016	Application of Cathodic Protection to Control External Cathodic Protection of Carbon Steel On–Grade Storage Tank Bottoms
5. SP0285–2011 <u>SP0285-2021</u>	External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection
6. SP0286–2007	Electrical Isolation of Cathodically Protected Pipelines
6m. TM0101–2012	Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Tank Systems
7. TM0497–2012 <u>TM0497-2022</u>	Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems

Table 93.200–6

NFPA® National Fire Protection Association® One Batterymarch Park Quincy, MA 02269	
Standard Reference Number	Title
1. 10 (2018 <u>2022</u>)	Standard for Portable Fire Extinguishers
1m. 20 (2016 <u>2022</u>)	Standard for the Installation of Stationary Pumps for Fire Protection
2. 30 (2018 <u>2021</u>)	Flammable and Combustible Liquids Code
3. 30A (2018 <u>2021</u>)	Code for Motor Fuel Dispensing Facilities and Repair Garages
4. 30B (2015 <u>2019</u>)	Code for the Manufacture and Storage of Aerosol Products
5. 31 (2016 <u>2020</u>)	Standard for the Installation of Oil-Burning Equipment
5m. 35 (2016 <u>2021</u>)	Standard for the Manufacture of Organic Coatings
6. 37 (2018 <u>2021</u>)	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines
7. 68 (2018)	Standard on Explosion Protection by Deflagration Venting
8. 110 (2016 <u>2022</u>)	Standard for Emergency and Standby Power Systems
9. 326 (2015 <u>2020</u>)	Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair
10. 385 (2017 <u>2022</u>)	Standard for Tank Vehicles for Flammable and Combustible Liquids
11. 407 (2017 <u>2022</u>)	Standard for Aircraft Fuel Servicing
12. 410 (2015 <u>2020</u>) - Chapter 6 only	Standard on Aircraft Maintenance

13. 418 (2016 <u>2021</u>)	Standard for Heliports
14. 704 (2017 <u>2022</u>)	Standard System for the Identification of the Hazards of Materials for Emergency Response

Table 93.200–7

PEI Petroleum Equipment Institute PO Box 2380 Tulsa, OK 74101	
Standard Reference Number	Title
1. RP100-17 <u>RP100-22</u>	Recommended Practices for Installation of Underground Liquid Storage Systems
2. RP200-13 <u>RP200-24</u>	Recommended Practices for Installation of Aboveground Storage Systems for Motor–Vehicle Fueling
3. RP300-09 <u>RP300-19</u>	Recommended Practices for Installation and Testing of Vapor–Recovery Systems at Vehicle–Fueling Sites
4. RP400-18 <u>RP400-23</u>	Recommended Procedure for Testing Electrical Continuity of Fuel–Dispensing Hanging Hardware
5. RP500-11 <u>RP500-19</u>	Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment
6. RP600-12 <u>RP600-18</u>	Recommended Practices for Overfill Prevention for Shop–Fabricated Aboveground Tanks
7. RP800-13 <u>RP800-20</u>	Recommended Practices for Installation of Bulk Storage Plants

8. RP900-17 <u>RP900-21</u>	Recommended Practices for the Inspection and Maintenance of UST Systems
9. RP1000-14 <u>RP1000-22</u>	Recommended Practices for the Installation of Marina Fueling Systems
10. RP1200-17 <u>RP1200-19</u>	Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities
11. RP1300-13 <u>RP1300-20</u>	Recommended Practices for the Design, Installation, Service, Repair and Maintenance of Aviation Fueling Systems
12. RP1400-14 <u>RP1400-21</u>	Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems

Table 93.200-9

STI Steel Tank Institute 944 Donata Court Lake Zurich, IL 60047	
Standard Reference Number	Title
1m. R012 (2007 <u>2016</u>)	Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks
2. R051 (2017)	Cathodic Protection Testing Procedures for sti-P3® USTs
4e. R111 (2016)	Storage Tank Maintenance

4m. R892 (2006)	Recommended Practices for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems
4s. R972 (2010)	Recommended Practice for the Addition of Supplemental Anodes to sti- P3® USTs
5. SP001 (6th Edition, 2018)	Standard for the Inspection of Aboveground Storage Tanks
6. SP031 (2018)	Standard for Repair of Shop-Fabricated Aboveground Tanks for Storage of Flammable and Combustible Liquids
7. SP131 (2014)	Standard for Inspection, Repair and Modification of Shop-Fabricated Underground Tanks for Storage of Flammable and Combustible Liquids

Table 93.200-10

UL Underwriters Laboratories Inc. 333 Pfingsten Road Northbrook, IL 60062-2096	
Standard Reference Number	Title
1. UL 142 (2006 <u>2019</u>)	Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids
2. UL 971 (1995)	Nonmetallic Underground Piping for Flammable Liquids
3. UL 1746 (2007)	Standard for External Corrosion Protection Systems For Steel Underground Storage Tanks

4. UL 1856 (2013 <u>2020</u>)	Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems
5. UL 2080 (2000)	Standard for Fire Resistant Tanks for Flammable and Combustible Liquids
6. UL 2085 (1997)	Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids
7. UL 2258 (2010)	Nonmetallic Tanks for Oil-Burner Fuels and Other Combustible Liquids

SECTION 14. ATCP 93.210 (2m) is created to read:

(2m) The requirements in API RP 1637 (4th edition, 2020), a standard adopted in s. ATCP 93.200, shall take effect July 1, 2027. Until then, an owner or operator shall comply with the requirements in API RP 1637 (3rd edition, 2006) or in API RP 1637 (4th edition, 2020).

SECTION 15. Table ATCP 93.400 is amended to read:

Tank Capacity in Gallons	Distance From Which the Label Shall Be Visible	Minimum Size of Label
Up to 5,000	75 feet	5" x 5"
5,001 to 50,000	100 feet	10" x 10"
50,001 to 250,000	200 feet	12" x 12"
Greater than 250,000	300 feet	15" x 15"

SECTION 16. ATCP 93.400 (1) (c) is amended to read:

(c) Tanks for Class IIIB liquids. Tanks which have a capacity of ~~4,400~~ 5,000 gallons or more and which are used for aboveground storage of Class IIIB liquids shall be listed or shall be acceptable to the department.

SECTION 17. ATCP 93.440 (3) (a) 2. b. is repealed.

SECTION 18. ATCP 93.440 (4) (a) (intro.) is amended to read:

(a) The owner or operator of all nonmetallic aboveground storage tanks — including concrete, tile-lined, fiber-reinforced plastic, and homogeneous plastic tanks — that have a capacity of ~~1,100~~ 5,000 gallons or more shall have the tanks inspected in accordance with all of the following:

SECTION 19. ATCP 93.465 (2) (b) is repealed.

SECTION 20. ATCP 93.610 (1) (e) 1. and 2. are repealed.

SECTION 21. ATCP 93.610 (1) (e) 7. (intro.) is renumbered ATCP 93.610 (1) (e) 7. and amended to read:

7. Tanks shall be provided with an updraft-type vent affixed to an 18-inch high standpipe, and the vent or vents shall ~~comply with one of the following:~~ be sized for normal and emergency venting conditions.

SECTION 22. ATCP 93.610 (1) (e) 7. a., b., and c. are repealed.

SECTION 23. ATCP 93.610 (1) (f) 9. b. is amended to read:

b. Where setbacks required in subd. 9. a. cannot be met, the setbacks from buildings and public ways shall be the maximum allowed by the current conditions at the site, as approved by ~~the authorized agent or~~ the department.

SECTION 24. ATCP 93.610 (2) (e) 3. is repealed.

SECTION 25. ATCP 93.610 (4) is repealed:

SECTION 26. ATCP 93.615 (3) (b) 3. is amended to read:

3. Fueling from aboveground tanks at a farm premises or a construction project, which have a capacity of ~~1,100~~ 5,000 gallons or more or which do not meet the required setbacks.

SECTION 27. Table ATCP 93.615-A is amended to read:

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 <u>5,000–15,000</u>	0	0	0	0	Separate compartment for each tank
Protected ²	0–6,000 <u>5,000–6,000</u>	5	0	15	5	3
	6,001–12,000	15	0	25	15	3
Fire-Resistant ³	0–2,000	25	25	25	25	3
	2,001–12,000	25	25	50	25	3
	<u>5,000–12,000</u>					
Other code-complying tank	0–2,000	25	30	50	50	3
	2,001–12,000	50	50	100	50	3
	<u>5,000–12,000</u>					

SECTION 28. Table ATCP 93.615-B is amended to read:

Type of Tank	Individual Tank Capacity (gal)	Setback from Nearest Important Building on Same Property (ft)	Setback from Nearest 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 <u>5,000–15,000</u>	0	0	0	0	Separate compartment for each tank
Protected ²	0–6,000 <u>5,000–6,000</u>	5	0	15	5	3
	6,001–12,000	15	0	25	15	3
Fire-Resistant ³	0–2,000	25	0	25	25	3
	2,001–12,000	25	0	50	25	3
	<u>5,000–12,000</u>					
Other code–complying tank	≤ 12,000 for Class I ≤ 20,000 for Class II or III	25	0	50	25	3

SECTION 29. ATCP 93.630 (1) (a) is amended to read:

(a) *Aboveground tanks*. This section applies to aboveground storage tank systems for fueling operations at a farm premises or construction project. ~~Such tanks shall comply with NFPA 30A chapter 13 and this section.~~

SECTION 30. ATCP 93.630 (1) (c) 1. is amended to read:

1. The tanks shall be constructed in accordance with ~~NFPA 30A chapter 13~~ s. ATCP 93.250 and this section.

SECTION 31. ATCP 93.630 (1) (d) is repealed.

SECTION 32. ATCP 93.630 (2) (a) is amended to read:

(a) *Farming operations*. For farming operations ~~using a tank without secondary containment~~, the tank and the fueling operation shall be placed outside of a building and at least 40 feet from the near side of a public way and from a building or structure used for any of the following purposes:

SECTION 33. ATCP 93.630 (2) (b) is repealed.

SECTION 34. ATCP 93.630 (3) is repealed.

SECTION 35. ATCP 93.630 (4) (title) and (intro.) is amended to read:

(4) TANKS OF ~~1,100~~ 5,000 GALLONS OR MORE, ~~OR LOCATED LESS THAN 40 FEET FROM BUILDINGS~~. Aboveground tanks which have a capacity of ~~1,100~~ 5,000 gallons or more, ~~or which are located less than 40 feet from either the buildings and structures listed in sub. (2) (a) or important buildings or structures~~, shall comply with all of the following:

SECTION 36. Table ATCP 93.630 is amended to read:

Table 93.630

Tank System Setbacks for Tanks with Secondary Containment

Aggregate Capacity (gallons)	Distance to Nearest Building, Haystack, or Combustible Structure or Nearest Side of Any Public Way	Distance to Property Line That Is or Can Be Built Upon, Including the Opposite Side of a Public Way
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275 or less	5 feet	5 feet
276-750	5 feet	10 feet
751 <u>5,000-12,000</u>	5 feet	15 feet
12,001-30,000	5 feet	20 feet
Any size <u>5,000 or more</u>	The minimum setback between multiple tank fueling systems is 200 feet.	

SECTION 37. ATP 93.700 (2) (b) 1. is repealed.

SECTION 38. EFFECTIVE DATE: This rule takes effect on the first day of the month following publication.

(END OF RULE TEXT)

Dated this _____ day of January 2025.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By:_____

Randy Romanski
Secretary