State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Sheila E. Harsdorf, Secretary

DATE: July 10, 2018

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Sheila Harsdorf, Secretary
Sean M. Brown, J.D., Administrator, Division of Trade and Consumer Protection

SUBJECT: Flammable, Combustible and Hazardous Liquids
Wis. Admin. Code ch. ATCP 93 (Final Draft Rule)

PRESENTED BY: Greg Bareta, Storage Tank Regulation Chief

REQUESTED ACTION:

At the July 24, 2018 DATCP Board meeting, the Department of Agriculture, Trade and Consumer Protection will ask the DATCP Board to approve a final draft rule (copy attached) related to flammable, combustible, and hazardous liquids. This rule repeals and recreates chapter ATCP 93 in its entirety.

SUMMARY:

Background

The Bureau of Weights and Measures within the Division of Trade and Consumer Protection is responsible for the administration and regulation of flammable, combustible, and hazardous liquids in Wisconsin. The Bureau's administrative and regulatory functions include:

- Reviewing system design plans for storage or dispensing system installation, modification, or upgrade.
- Permitting and registering aboveground and underground flammable, combustible, and hazardous liquid storage tanks.
- Inspecting flammable, combustible, and hazardous liquid storage tank systems.
- Maintaining the statewide aboveground and underground storage tank database.
- Adopting technical standards.
- Credentialing individuals and companies working in storage tank-related specialties.
- Administering Local Program Operator agents.

During the 1980s and early 1990s, the Wisconsin Department of Industry, Labor, and Human Relations (DILHR) housed Wisconsin's tanks and petroleum inspection programs. These programs were transferred to the Wisconsin Department of Commerce in 1996 and then to the Department of Safety and Public Services (DSPS) in 2011.

With the enactment of 2013 Wisconsin Act 20 (the biennial budget bill), the State of Wisconsin transferred the *Flammable, Combustible and Hazardous Liquids program* ("tanks inspection program"), the *Petroleum and Other Liquid Fuel Products program* ("petroleum inspection program"), and all existing administrative rules from DSPS to DATCP. The Legislative Reference Bureau renumbered Chapter SPS 310 to create Chapter ATCP 93. SPS 310 had been previously titled ILHR 10 and COMM 10 at the time it was being enforced at the previous agencies. In 2008, the Department of Commerce completed an extensive and comprehensive update to COMM 10 that established many concepts and guidelines that now appear in Wis. Admin. Code ch. ATCP 93. That retooling represents the most recent occasion upon which the rule received an extensive revision until this current effort.

Prior to the program's transfer to DATCP on July 1, 2013, the tanks inspection program personnel at DSPS and DSPS legal staff actively worked on rule changes to then-SPS 310. DSPS published an approved scope statement in January, 2011; however, following the transfer of the program to DATCP, the DATCP Board approved a new scope statement in September, 2013.[1] A working draft of the proposed DSPS rulemaking order was also transferred to DATCP.

DATCP reorganized ATCP 93 to conform to other DATCP-related chapters of the Wisconsin Administrative Code and to reduce reliance on the DSPS chapters. Generally, each DATCP chapter consists of an individual program or subject matter that is largely self-contained. In contrast, DSPS chapters were organized by function as well as by subject matter. For example, a number of individual DSPS programs (including tank inspection and petroleum inspection, formerly) rely upon SPS 302 to designate fee amounts; upon SPS 303 to establish administrative procedures; upon SPS 305 to specify required licenses, certifications, and registrations; and upon SPS 310 for the content of the program. DATCP consolidated the relevant topics into a newly reconstituted, unitary chapter ATCP 93 that is currently presented for adoption.

If the structure of the existing rules were to remain unaltered, DATCP's authority to administer the tanks and petroleum inspection programs would continue to rely on a non-statutory provision, namely Section 9138 (fm) of 2013 Wisconsin Act 20. This reliance would become increasingly impractical and confusing over time. DATCP has begun to seek statutory changes separate from the rulemaking to clarify this authority.

If DATCP does not implement the numerous technical updates reflected in the proposed rule, the rule will continue to be difficult to understand and will remain inconsistent with the latest industry standards. The rule will also fail to comply with the federal EPA changes adopted in 2015. Finally, since DSPS no longer uses the portions of its rules that affect the tank-related programs, DSPS could theoretically eliminate those provisions from its rules, thus effectively leaving no rules in place beyond those that have already transferred in SPS 310 as the current, gap-ridden ATCP 93.

[1] The September 2013 scope statement of scope also authorized rulemaking for Chapter ATCP 94 (the former SPS 348). DATCP has been reviewing that rule separately and will recommend changes to that rule separately at a later date.

Rule Content

General

The proposed rule repeals and recreates Wis. Admin. Code ch. ATCP 93, thereby updating an administrative rule that has not been significantly updated since 2008.[2] The content of the rule reflects input from various sources, including: Recommendations made by the Department of Safety and Professional Services prior to the program's relocation to DATCP; feedback provided by stakeholders and businesses regulated under ATCP 93; and agency concerns about the responsibilities of Class A, B, and C operators.

The substance of the changes to Wis. Admin. Code ch. ATCP 93 fall into six broad categories:

- Harmonizing the rule with current federal standards, especially those set out by the Environmental Protection Agency;
- Addressing the necessary changes arising from the inter-departmental transfer of the storage tank program from DSPS to DATCP;
- Updating technical standards incorporated by reference;
- Eliminating provisions that are no longer in effect as well as unnecessary explanatory notes;
- Modifying outdated terminology; and
- Clarifying ambiguous language.

Additional changes include the correction of typographical errors, form number changes, name changes to certain documents, and changed information concerning the availability of documents (hyperlinks or through Document Sales).

Fiscal Impact

On September 30, 2017, DATCP posted the draft rule on DATCP's website in order to solicit comments on the fiscal impact of the proposed rule. At that time, DATCP also emailed stakeholders to alert them that comments and suggestions should be submitted to the agency by October 30, 2017.

The bulk of the proposed rule "changes" derive from the re-organization of prior rules rather than from new policies. Therefore, the proposed rule should have a minimal economic impact, if any at all, upon state and/or local governments. However, certain provisions may have an impact on certain tank-related businesses depending on the age and technology of their tank systems. In some cases, new provisions of the rule adopt EPA (federal) standards that businesses must adopt, regardless of any changes to ATCP 93.

DATCP identified those and other changes that could bear a cost in its initial regulatory flexibility analysis. In nearly all cases, the costs are anticipated to be insignificant, and in the

[2] Although no substantive changes to the rule have been made since the 2008 update, DATCP has periodically effected numerous minor revisions to rule language pertaining to forms and hyperlinks over the years.

aggregate, will not have a major financial impact on the state's expenditures for the program or the expenditures of Wisconsin businesses. Certain changes to the rule may assist industries and DATCP in savings of expense and effort.

By and large, the amount of fees has not been changed in the proposed rule. However, some re-inspection and plan approval fees under Wis. Admin. Code § ATCP 93.115 and in Table 93.1605 could have an impact in terms of business cost.

Business Impact

The analysis of the effect on small business included internal discussions regarding whether any changes would require equipment upgrades or a significant expansion in labor costs for affected businesses. In the course of three successive releases of the draft rule to potentially affected parties, DATCP encouraged those parties to report whether certain proposed requirements would impact their business practices either financially or administratively. In cases where stakeholders expressed financial concerns about certain provisions, DATCP elected not to pursue those provisions.

The majority of the proposed rule changes pertain to updating and reorganizing provisions in the current rule. Accordingly, the rule should have a minimal economic impact, if any at all, to businesses within the state. However, conforming to required standards may have an economic impact on certain businesses within the regulated industries.

Environmental Impact

This rule will not have any environmental impact within the meaning of that term as defined by administrative rule guidelines.

Federal and Surrounding State Programs

Federal Programs

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

Federal regulations for both above-ground and underground storage tanks address groundwater and surface water protection.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), releases of hazardous materials must be reported.

Federal regulations impose financial requirements upon regulated entities.

(The proposed rule either reiterates, or at a minimum does not conflict with, federal requirements.)

Surrounding State Programs

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. Minnesota currently plans to make changes to these rules. Minnesota officials anticipate a comment period in July 2018 and an effective date in Fall 2018.

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 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. Revisions to the Natural Resources rules have been published for public comment, and Iowa expects to finalize this rulemaking in the spring of 2019.

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.

Public Hearings

DATCP shared the draft rule informally with numerous stakeholders throughout the rulemaking process. Stakeholders who received the draft rule in three increments included the Wisconsin Petroleum Council, the Wisconsin Petroleum Equipment Contractors Association, Wisconsin Petroleum Marketers and Convenience Store Association, Cooperative Network, Kwik Trip, and WE Energies. DATCP staff considered the comments and questions provided by these stakeholders and modified the draft rule in response. Staff also sought input by talking about proposed changes and the progress of the effort at various public meetings over the past three years.

DATCP received a number of comments from the Wisconsin Legislative Council Rules Clearinghouse. Some of the comments addressed errors that had been in the rule previously; others led to additional clarification of proposed changes.

DATCP held public hearings on the draft rule in Waukesha, Madison, Green Bay, and Eau Claire in early- to mid-March of 2018. DATCP staff circulated to stakeholders an email publicizing the hearings as well as the hearing draft rule itself. After the last hearing, DATCP accepted formal written comments for an additional four weeks. Few public comments were received either at the hearings or in writing, possibly because DATCP staff had already considered hundreds of stakeholder comments at earlier junctures within a multi-year process. An internal DATCP committee considered all internal and external recommended changes. At this stage, changes

from the hearing draft to the final draft included mainly clarifications of existing language. In two cases, DATCP staff discovered errors from earlier redlines sent to stakeholders that had not been reflected in the hearing draft.

Next Steps

If the DATCP Board approves this final draft rule, the Department will submit the final draft rule to the Governor for his written approval. If the Governor's office approves the rule, the Department will then submit the rule to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the month following publication.

Within rule, namely Wis. Admin. Code § ATCP 93.200, the proposed rule incorporates approximately 75 technical standards by reference. In order to incorporate a standard by reference, under Wisconsin law, DATCP must obtain specific written approval from the Wisconsin Department of Justice (DOJ), pursuant to Wis. Stat. § 227.21 (2) (b). This review and approval must also occur before the Legislature receives the final rule.

DATCP Docket No. 13-R-20
Rules Clearinghouse No. 17-092

Final Draft Rule
July 24, 2018

PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION ADOPTING RULES

The Wisconsin department of agriculture, trade and consumer protection proposes the following rule ***to repeal and recreate*** ch. ATCP 93; ***relating to*** flammable, combustible and hazardous liquids in Wisconsin.

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

This rule implements Wis. Stat. § 168.23 (1), which directs the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules related to construction, maintenance, and abandonment standards applicable to tanks for 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.

Statutes Interpreted

Wis. Stat. §§ 168.23 and 168.28 (2).

Statutory Authority

Wis. Stat. § 168.23 (1) and Section 9138 (fm) of 2013 Wisconsin Act 20.

Explanation of Statutory Authority

DATCP has specific authority, under Wis. Stat. § 168.23 (1), which directs the Department to "promulgate rules related to construction, maintenance and abandonment standards applicable to tanks for 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."

The Wisconsin State Legislature instructed the Department to update its rules in Section 9138 (fm) of 2013 Wisconsin Act 20:

(fm) *Rules and orders.* All rules promulgated, and all orders issued, by the department of safety and professional services, that are determined by the secretary of administration to relate to the storage, use, and handling of flammable or combustible liquids or federally regulated hazardous substances under section 101.09, 2011 stats., and that are in effect on the effective date of this paragraph shall remain in effect until their specified expiration date or until amended or repealed by the department of agriculture, trade and consumer protection.

Related Statutes and Rules

Wis. Admin. Code Chapter ATCP 94 addresses petroleum and other liquid fuel products. Wis. Stat. § 168.21 defines various terms that Wis. Admin. Code ch. ATCP 93 addresses. Wis. Stat. § 168.25 grants the Department the authority to enforce the statutes for petroleum products and dangerous substances. Section 9138 (fm) of 2013 Wisconsin Act 20 required DATCP to engage in rulemaking that would fully implement the transfer of program from the Department of Safety and Professional Services (DSPS). Wis. Admin. Code ch. SPS 314 (Wisconsin Fire Prevention Code) and requirements in Wis. Admin. Code chs. SPS 361 to 366 will continue to have an impact on aspects of this rule and the proposed rule refers to those SPS rules when appropriate. The new rule continues to refer to Wis. Admin. Code chs. NR 679, 811, and 812.

Plain Language Analysis

Background

During the 1980s and early 1990s, the Wisconsin Department of Industry, Labor, and Human Relations (DILHR) housed Wisconsin's tanks and petroleum inspection programs. These programs transferred to the Wisconsin Department of Commerce in 1996. The programs again transferred from Commerce to DSPS as part of the 2011-13 Biennial Budget (2011 Wisconsin Act 32).

With the enactment of 2013 Wisconsin Act 20 (the biennial budget bill), the State of Wisconsin transferred the *Flammable, Combustible and Hazardous Liquids program* ("tanks inspection program") and the *Petroleum and Other Liquid Fuel Products program* ("petroleum inspection program") from DSPS to DATCP.

2013 Wisconsin Act 20 authorized the transfer of existing administrative rules, in addition to the programs, from DSPS to DATCP (with the approval of the Secretary of the Department of Administration). The Legislative Reference Bureau renumbered ch. SPS 310 to ch. ATCP 93. SPS 310 had been previously titled ILHR 10 and COMM 10 when enforced at the previous agencies. In 2008, the Department of Commerce completed an extensive and comprehensive update to COMM 10 that established many concepts and guidelines that now appear in ATCP 93. That retooling represents the most recent occasion upon which the rule received an extensive revision until this current effort.

Prior to the program's transfer to DATCP on July 1, 2013, the tanks inspection program personnel and DSPS legal staff actively worked on rule changes to then SPS 310. DSPS published an approved scope statement in January 2011. After the program transfer to DATCP,

the DATCP Board approved an updated scope statement in October, 2013.[1] A working draft of the proposed DSPS rulemaking order also transferred to DATCP. DATCP evaluated this draft and incorporated many of those proposed changes into this proposed new ch. ATCP 93.

DATCP also sought to bring the rule into alignment with current EPA standards and current generally accepted industry practices. The new rule adds any new or updated standards, incorporated by reference, since the last major rule revision.

DATCP considered stakeholder and staff comments for changes and clarifying language throughout its process. Stakeholders who received the draft rule in three increments (June 2015, July 2016, and March 2017) included the Wisconsin Petroleum Council, the Wisconsin Petroleum Equipment Contractors Association, Wisconsin Petroleum Marketers and Convenience Store Association, Cooperative Network, Kwik Trip, and WE Energies. Staff also talked about proposed changes and the progress of the effort at various meetings over the past three years.

DATCP reorganized Wis. Admin. Code ch. ATCP 93 to conform to other DATCP chapters of the Wisconsin Administrative Code. Generally, each ATCP chapter consists of an individual program or subject matter that is largely self-contained. In contrast, SPS chapters organize by function as well as by subject matter. For example, a number of individual DSPS programs (including tank inspection and petroleum inspection) relied upon SPS 302 to designate fee amounts; upon SPS 303 to establish administrative procedures; upon SPS 305 to specify required licenses, certifications, and registrations; and upon SPS 310 for the content of the program. DATCP consolidated the relevant topics into a newly reconstituted, unitary Wis. Admin. Code ch. ATCP 93 that is currently presented for adoption.

If the structure of the existing rules were to remain unaltered, DATCP's authority to administer the tanks and petroleum inspection programs would continue to rely on a non-statutory provision, namely Section 9138 (fm) of 2013 Wisconsin Act 20. This reliance would become increasingly impractical and confusing over time. DATCP has begun to seek statutory changes separate from the rulemaking to clarify this authority.

Additionally, if DATCP does not implement the numerous technical updates reflected in the proposed rule, the rule will continue to be difficult to understand and will remain inconsistent with the latest industry standards. The rule will also fail to comply with the federal EPA changes adopted in 2015. Finally, since DSPS no longer uses the portions of its rules that affect the tank-related programs, DSPS could theoretically eliminate those provisions from its rules, thus effectively leaving no rules in place beyond those that have already transferred in SPS 310 as the current, gap-ridden ATCP 93.

[1] The 2013 scope statement of scope also authorized rulemaking for Chapter ATCP 94 (the former SPS 348). DATCP has been reviewing that rule separately and will recommend changes to that rule separately at a later date.

Rule Content

General

The proposed rule repeals and recreates ATCP 93, thereby updating an administrative rule that has not been significantly updated since 2008.[2] The content of the rule reflects input from various sources, including: Recommendations made by the Department of Safety and Professional Services prior to the program's relocation to DATCP; feedback provided by stakeholders and businesses regulated under ATCP 93; and agency concerns about the responsibilities of Class A, B, and C operators.

The substance of the changes to ATCP 93 fall into six broad categories:

- Harmonizing the rule with current federal standards, especially those set out by the Environmental Protection Agency;
- Addressing the necessary changes arising from the inter-departmental transfer of the storage tank program from DSPS to DATCP;
- Updating technical standards incorporated by reference;
- Eliminating provisions that are no longer in effect as well as unnecessary explanatory notes;
- Modifying outdated terminology; and
- Clarifying ambiguous language.

Additional changes include the correction of typographical errors, form number changes, name changes to certain documents, and changed information concerning the availability of documents (hyperlinks or through Document Sales).

DSPS Recommendations

DSPS recommended 232 changes of varying nature in the working draft of the rule that was sent to DATCP during the program transfer. Some of the suggested changes were substantive (compliance with new recommendations), and some were more cosmetic (elimination of unnecessary words). Occasionally, a DSPS recommendation may have been modified slightly. For instance, the new rule alters a DSPS recommendation on water levels in ATCP 93.605.

DSPS recommended changes to particular phrases throughout the rule. Where appropriate, the words "storage tanks," were changed to "storage tank systems" in order to be more accurate. DSPS recommended the deletion of the words, "the requirements in," wherever they appear throughout the rule. Other word changes were accepted to make the rule more succinct.

DSPS recommended an expansion of the general requirements in ATCP 93.230. In subs. (9) and (10), the safety standards increased for property and system maintenance. The new rule changes the title of sub. (13) from Deactivation of Vapor Recovery to Disconnecting and Discontinuing

[2] Although no substantive changes to the rule have been made since the 2008 update, DATCP has periodically effected numerous minor revisions to rule language pertaining to forms and hyperlinks over the years.

Vapor Recovery while creating subs. (14) and (15), Removing Water and Other Contaminants from Storage Tanks and Preparing Tanks for Changes in Fuel Type.

DSPS recommended the creation of ATCP 93.335, dealing with the manufacture of organic coatings, and the repeal of ATCP 93.020 (6) (d) 3. to coincide with the change.

DSPS suggested numerous changes to subchapter IV (General AST Storage) that have been incorporated. These changes affect: Secondary containment for piping, installation of piping, maintenance and repairs of tanks and other system components, and spill and overfill prevention.

In subchapter V (General UST Storage and Piping), DATCP accepted numerous DSPS suggestions addressing: Electronic interstitial monitoring, secondary containment, flexible connections, tanks, piping, repairs, inspection and maintenance, record keeping, and spill and overfill prevention. Most especially, in subchapter V, DSPS recommended that ATCP 93.535 (Periodic Inspection and Repair of Lined Tanks) be rewritten to eliminate an outdated table, to incorporate new accepted industry standards, and to renumber and reorganize to increase understanding.

Other DSPS recommendations adopted by DATCP relate to:

- Water level in tanks - ATCP 93.605 (1) (g).
- Irrigation operations - ATCP 93.630 (2) (d).
- Biodiesel blends - ATCP 93.680 (5) to (7).
- Financial responsibility - Subchapter VII.

Changes Dictated by New EPA Standards

Two notes in Wis. Admin. Code § ATCP 93.180 required revision to reflect new requirements and new penalties imposed by the Federal government.

EPA released new standards for airport fueling in 2015. For that reason, ATCP 93.517 has been renamed "Airport Hydrant System Requirements" from "Airport Hydrant Leak Detection Requirements" and has been revised to meet the new testing requirements and standards established by the EPA. To implement the new definitions required by these EPA changes, DATCP also repealed ATCP 93.050 (56) to create ATCP 93.050 (4m) in its place.

EPA issued new guidelines on installation of underground piping that is now reflected in ATCP 93.500 (6).

EPA also released new standards for statistical inventory reconciliation as part of its 2015 changes. For that reason, ATCP 93.515 (6) needed to match the new federal requirements. DATCP also took the opportunity to increase the data accuracy and incorporate DSPS suggestions during the ATCP 93.515 (6) rewrite.

New standards in regard to ethanol blends required 30-day provisions to be added to ATCP 93.680 (4). The same provisions altered the DSPS recommendation for ATCP 93.680 (7).

Reorganizational Changes

In ATCP 93.010, DATCP removed notes that simply quoted existing statute and were therefore not necessary.

Previously, the fee structure for the program resided in SPS 302 (Fee Schedule). In order to create a fee structure in DATCP rules, ATCP Table 93.1605 was added. However, references to SPS 302 that remained in ATCP 93 will be eliminated in the new rule. Since fees are addressed elsewhere in the proposed new rule, ATCP 93.160 will be repealed. Slight modifications to ATCP 93.1605 were made to address retesting.

SPS 302.51 included a table that described material review fees. This table transferred to ATCP 93 as Table 93.130. No modifications or increases to those fees occurred.

SPS 305.03 (Petitions for Variance) states: "An individual may submit a petition for variance to any rule in this chapter in accordance with ch. SPS 303." Chapter SPS 303.03 describes how this submission worked. DATCP altered this process slightly to match Department processes and renumbered it as ATCP 93.170.

Subchapter I of ch. SPS 305 addresses general requirements for Licenses, Certifications and Registrations. In order to incorporate those general requirements that DATCP has been using in its program, SPS 305.01 to 305.11, with the exception of SPS 305.03 as stated above, will become part of ch. ATCP 93.240 (Certifications and Enforcement). Specifically:

SPS 305.01 (Application) became ATCP 93.240 (2)
SPS 305.02 (Fees) became ATCP 93.240 (3)
SPS Table 305.02 (Fees, Subchapter VIII) became ATCP Table 93.240
SPS 305.03 (Petitions for Variance) became ATCP 93.170
SPS 305.04 (Processing Times) became ATCP 93.240 (4)
SPS 305.05 (Mailing) became ATCP 93.240 (5)
SPS 305.06 (Terms) became ATCP 93.240 (6)
SPS 305.07 (Renewal) became ATCP 93.240 (7)
SPS 305.08 (Continuing Education) became ATCP 93.240 (8)
SPS 305.09 (Examinations Administered by the Department) became ATCP 93.240 (9)
SPS 305.10 (Denial, Suspension, and Revocation) became ATCP 93.240 (11)
SPS 305.11 (Responsibilities) became ATCP 93.240 (12)

SPS 305.68 (Tank System Inspectors) has been incorporated as the new ATCP 93.240 (13).

Subchapter VIII of ch. SPS 305 addresses Licenses, Certifications and Registrations for Storage Tanks.[3] In order to incorporate ch. SPS 305 into ATCP rules, with some modifications, SPS 305.82 to 305.89 will become part of ch. ATCP 93.240. Specifically:

[3] Although the Department of Safety and Professional Services no longer regulates Storage Tanks, DATCP has been using ch. SPS 305.82 to 305.89 of their rule until adoption of a new ATCP 93 incorporates these items.

SPS 305.82 (Tank Specialty Firms) became ATCP 93.240 (14)
SPS 305.83 (Tank System Site Assessors) became ATCP 93.240 (15)
SPS 305.84 (Aboveground Tank System Installers) became ATCP 93.240 (16)
SPS 305.85 (Underground Tank System Installers) became ATCP 93.240 (17)
SPS 305.86 (Underground Tank System Liners) became ATCP 93.240 (18)
SPS 305.87 (Tank System Removers and Cleaners) became ATCP 93.240 (19)
SPS 305.88 (Tank System Tightness Testers) became ATCP 93.240 (20)
SPS 305.89 (Cathodic Protection Specialties) became ATCP 93.240 (21)

Many references in ATCP 93.1605 (Fees) reference SPS 305. Those references will change to reflect their new locations in ATCP 93.240.

Other references throughout the rule to SPS 305 have also been changed to reflect that an aspect of the program is now governed by ATCP 93. For instance, SPS 305 defined "direct supervision," and DATCP added that definition as ATCP 93.050 (37m).

For building and fire codes, DSPS retains jurisdiction. In those cases, ATCP 93 continues to refer to DSPS administrative rules as appropriate.

The program transfer from DSPS to DATCP also requires a change in the statutes. In ATCP 93.010, the Scope of the Rule now reflects that statutory authority comes from Wis. Stat. ch. 168, rather than Wis. Stat. ch. 101.[4]

Since there are no longer district offices, ATCP 93.680 (4) and its note have been changed to reflect that fact.

Clarification of Stakeholder and Business Questions

Some businesses subject to the rule have submitted information on non-DATCP forms in the past. In order for DATCP to accommodate this practice when it is able to do so, ATCP 93.165 (Alternate Forms) has been created to permit industry to use alternate forms if the business seeks Department approval.

Due to a recent stakeholder problem with marking and tank construction, ATCP 93.250 (2) has been clarified.

In response to Section 1622 of 2013 Wisconsin Act 20, the rule includes statutory exceptions to ATCP 93.400 (3) and ATCP 93.500 (5). The temporary provision delays the DATCP requirement that specifies that pipe connections at the top of a storage tank and beneath all freestanding pumps and dispensers that routinely contain a hazardous substance be placed within secondary containment sumps if the pipe connections were installed or in place on or before February 1, 2009. As per 2013 Wisconsin Act 20 and Wis. Stat. § 168.24 (2), the rule delays the provision until January 1, 2021.

[4] DATCP suggested corrective language to the Legislative Reference Bureau and hopes the correction will be made in the 2019-20 legislative session. In the meantime, the authority comes from 2013 Wisconsin Act 20.

In the past, there had been an issue about relocating a tank elsewhere on the same property. ATCP 93.400 (6) (cm) addresses that question.

ATCP 93.500 (6) (a) 3. was created to address an ongoing issue with secondary tanks.

In response to 2015 Wisconsin Act 247, ATCP 93.605 (5) (b) reflects the exception to enforcing a standard of the National Fire Protection Association in regard to telephones at pumps.

DATCP received a number of comments from the Wisconsin Legislative Council Rules Clearinghouse and considered them. Some of the comments addressed errors that had been in the rule previously; others led to additional clarification of proposed changes.

Responsibilities of Class A, B, and C Operators

DATCP has rewritten subchapter VIII (Training for Operators of Underground Storage Tank Systems) to address the following:

- The definitions of Class A, B, and C operators have been changed to match the definitions set forth by EPA.
- Wis. Admin. Code § ATCP 93.820 contained time provisions that expired in 2012.
- The subchapter was renumbered and reorganized for clarity.
- Record keeping documentation methods were changed to accommodate added provisions.

Standards Incorporated by Reference

This rule continues to incorporate multiple standards by reference. The standards may still be found in the tables in the newly proposed ATCP 93.200. Every standard that has been updated since the last rule revision has been changed to the most recent standard available for use. Some new standards have been adopted (for instance, RPI 1200, RPI 1300, and RPI 1400 from the Petroleum Equipment Institute and UL 1856 from the Underwriters Laboratories), two have been repealed (F051 and R972 from the Steel Tank Institute) as they were no longer deemed necessary, and two standards dealing with aviation fuel from the American Petroleum Institute have been transferred to the Energy Institute (EI 1529 and EI 1542). Previously, no standards from HIR Technical Services were in use. If adopted, HIR FTV RP 2007 will be incorporated by reference.

Several other Underwriters Laboratory (UL) design standards are indirectly applied by this chapter through their inclusion in other standards that are directly adopted in this chapter. For example, UL 58, 80, 142, 1316, 1746, 2080 and 2085 are included in NFPA 30, in section 21.4.2, which is adopted in Table 93.200–6. If ATCP 93 makes a specific reference to a UL standard in the rule, however, it has been added to Table 93.200-10.

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	Concrete Structures for Containment of Hazardous Materials.

Table 93.200–2

API	American Petroleum Institute 1220 L Street, NW Washington, DC 20005
Standard Reference Number	**Title**
1. 570–16	Piping Inspection Code: In-service Inspection, Rating, Repair, Alteration, and Rerating of In–service Piping Systems.
2. RP 575–14	Guidelines and Methods for Inspection of Existing Atmospheric and Low–pressure Storage Tanks.
3. Std 650–With addenda 1 and 2	Welded Steel Tanks for Oil Storage.
4. RP 651–14	Cathodic Protection of Aboveground Petroleum Storage Tanks.
5. RP 652–14	Lining of Aboveground Petroleum Storage Tank Bottoms.
6. Std 653–14	Tank Inspection, Repair, Alteration, and Reconstruction.
9. RP 1604–96	Closure of Underground Petroleum Storage Tanks.
10. RP 1615-11	Installation of Underground Petroleum Storage Systems, Sixth Edition.
11. RP 1621–93 (R 2012)	Bulk Liquid Stock Control at Retail Outlets.
12. RP 1626-10 (With errata and addendum)	Storing and Handling Ethanol and Gasoline–Ethanol Blends at Distribution Terminals and Filling Stations.
13. RP 1631–01	Interior Lining and Periodic Inspection of Underground Storage Tanks.
14. RP 1632–96 (R 2010)	Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems.
15. RP 1637–06 (R 2012)	Using the API Color–Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals.
16. Std 2000–14	Venting Atmospheric and Low–Pressure Storage Tanks.
17. Std 2015–18	Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks.
18. RP 2200–15	Repairing Hazardous Liquid Pipelines.
19. Std 2350–12	Overfill Protection for Storage Tanks in Petroleum Facilities.
20. Std 2610–05 (R 2010)	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)	Standard Guide for Three Methods of Assessing Buried Steel Tanks.

Table 93.200–3j

EI	Energy Institute 61 New Cavendish Street London W1G 7AR, UK
Standard Reference Number	**Title**
1. EI 1529-14	Aviation fuelling hose and hose assemblies, 7th edition.
2. EI 1542-12	Identification markings for dedicated aviation fuel manufacturing and distribution facilities, airport storage and mobile fuelling equipment, 9th edition.

Table 93.200–3r

HIR Technical Services	H.I.R. Technical Services P.O. Box 611 Titusville, PA 16354
Standard Reference Number	**Title**
HIR FTV RP 2007-18	In-service Inspection of Aboveground Atmospheric Fiberglass Reinforced Plastic Tanks and Vessels

Table 93.200–4

KWA	Ken Wilcox Associates 1125 Valley Ridge Drive Grain Valley, MO 64029
Standard Reference Number	**Title**
1999 Version	Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera.

Table 93.200–5

NACE	NACE International 1440 South Creek Drive Houston, TX 77084-4906
Standard Reference Number	**Title**
1. SP0169–13	Control of External Corrosion on Underground or Submerged

	Metallic Piping Systems.
2. SP0178–07	Design, Fabrication, and Surface Finish Practices for Tanks and Vessels to Be Lined for Immersion Service.
3. SP0188–06	Discontinuity (Holiday) Testing of New Protective Coatings on Conductive Substrates.
4. SP0193–16	External Cathodic Protection of On–Grade Carbon Steel Storage Tank Bottoms.
5. SP0285-11	Corrosion Control of Underground Storage Tank Systems by Cathodic Protection.
6. SP0286–07	Electrical Isolation of Cathodically Protected Pipelines.
6m. TM0101-12	Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Tank Systems.
7. TM0497–12	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. 10-18	Standard for Portable Fire Extinguishers.
1m. 20-16	Standard for the Installation of Stationary Pumps for Fire Protection.
2. 30-18	Flammable and Combustible Liquids Code.
3. 30A-18	Code for Motor Fuel Dispensing Facilities and Repair Garages.
4. 30B-15	Code for the Manufacture and Storage of Aerosol Products.
5. 31-16	Standard for the Installation of Oil–Burning Equipment.
5m. 35-16	Standard for the Manufacture of Organic Coatings.
6. 37-18	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines.
7. 68–18	Standard on Explosion Protection by Deflagration Venting.
8. 110-16	Standard for Emergency and Standby Power Systems.
9. 326-15	Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair.
10. 385-17	Standard for Tank Vehicles for Flammable and Combustible Liquids.
11. 407-17	Standard for Aircraft Fuel Servicing.
12. 410-15– Chapter 6 only	Standard on Aircraft Maintenance.
13. 418-16	Standard for Heliports.
14. 704-17	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	Recommended Practices for Installation of Underground Liquid Storage Systems.
2. RP200-13	Recommended Practices for Installation of Aboveground Storage Systems for Motor–Vehicle Fueling.
3. RP300-09	Recommended Practices for Installation and Testing of Vapor–Recovery Systems at Vehicle–Fueling Sites.
4. RP400-18	Recommended Procedure for Testing Electrical Continuity of Fuel–Dispensing Hanging Hardware.
5. RP500-11	Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.
6. RP600-12	Recommended Practices for Overfill Prevention for Shop–Fabricated Aboveground Tanks.
7. RP800–13	Recommended Practices for Installation of Bulk Storage Plants.
8. RP900–17	Recommended Practices for the Inspection and Maintenance of UST Systems.
9. RP1000-14	Recommended Practices for the Installation of Marina Fueling Systems.
10. RP1200-17	Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.
11. RP1300-13	Recommended Practices for the Design, Installation, Service, Repair and Maintenance of Aviation Fueling Systems.
12. RP1400-14	Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems.

Table 93.200–8

SSPC	The Society for Protective Coatings 40 24th Street Pittsburgh, PA 15222
Standard Reference Number	**Title**
VIS 2–01	Standard Method of Evaluating Degree of Rusting on Painted Steel Surfaces.

Table 93.200–9

STI	Steel Tank Institute 944 Donata Court Lake Zurich, IL 60047

Standard Reference Number	Title
1m. R012–07	Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks.
2. R051–17	Cathodic Protection Testing Procedures for sti–P3® USTs.
4e. R111-16	Storage Tank Maintenance.
4m. R892-06	Recommended Practices for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems.
4s. R972-10	Recommended Practice for the Addition of Supplemental Anodes to sti–P3® USTs.
5. SP001-11 (5th Edition)	Standard for the Inspection of Aboveground Storage Tanks.
6. SP031–18	Standard for Repair of Shop–Fabricated Aboveground Tanks for Storage of Flammable and Combustible Liquids.
7. SP131-14	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 142-06	Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids.
2. UL 971-95	Nonmetallic Underground Piping for Flammable Liquids.
3. UL 1746-07	Standard for External Corrosion Protection Systems For Steel Underground Storage Tanks.
4.UL 1856-13	Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems.
5. UL 2080-00	Standard for Fire Resistant Tanks for Flammable and Combustible Liquids.
6. UL 2085-97	Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids.
7. UL 2258–10	Nonmetallic Tanks for Oil–Burner Fuels and Other Combustible Liquids.

Table 93.200–11

U.S. Department of Energy	U.S. Department of Energy
Standard Reference Number	**Title**
1. DOE/GO 102016-4854, February 2016	Handbook for Handling, Storing, and Dispensing E85 and Other Ethanol-Gasoline Blends.

2. DOE/GO 102016-4875, November 2016	Biodiesel Handling and Use Guide: Fifth Edition (Revised).

In the current ATCP 93, ATCP 93.200 (2) and ATCP 93.225 both addressed alternate standards. Since this led to confusion, ATCP 93.200 (2) will be repealed, and only ATCP 93.225 will discuss alternate standards.

Clarifications or Improvements to the Rule

Certain necessary changes do not fit the first six categories. These following changes meet that criterion.

In some cases, an industry standard changed, and DATCP quotes it more directly rather than incorporate it by reference. The rule changes reflect such industry changes throughout the new rule. The rule also permits DATCP discretion with certain variance applications; the new rule clarifies the process.

The word "deputy" has been eliminated throughout the rule to eliminate delegation and increase accountability [e.g. ATCP 93.050 (13) and ATCP 93.230 (2) (a)].

In various locations throughout the rule, the term "electronic interstitial monitoring" has been changed to "electronic pressure, vacuum, or liquid-filled interstitial monitoring" in order to clarify the term and definition.

A number of definitions in ATCP 93.050 had been previously identified as needing improvement in phrasing. Therefore, changes were made to subsections (10), (13), (15), (26), (29), (31), (45), (63), (64), (68), (71), (72), (73), (78), (88), (95), (101), (104), (105), (114), (115), (117), (120), and (122). In order to define terms used but not previously defined, the rule creates these definitions under subsections (43g), (43r), (54) Note., (121m), (127), and (128).

In ATCP 93.100 (Plan Review), small changes were made to the plan adoption and the plan review processes. For example, in ATCP 93.100 (3) (a) 4., fuels impacted by the plan review requirement were made more specific. Also, the plan review time changes from 15 to 20 business days to mirror other standards of the Bureau of Weights and Measures and to create consistency, and ATCP 93.100 (2) (c) 1. Note3. became subd. 1m. to demonstrate its importance.

Throughout the rule, ATCP 93 refers to "authorized agents." Under the new rule, ATCP 93 will refer to "the authorized agent or the department." ATCP 93.115 made numerous references to code officials that have been eliminated.

ATCP 93.140 (3) (am) requires proof of ownership as part of the tank registration procedure. ATCP 93.145 (2) requires that permits actually be obtained rather than simply applied for.

Due to specific concerns about ownership of tank systems differing from ownership of property, ATCP 93.150 (Change of ownership) has been amended and clarified. Subsection (5) has been deleted since DATCP has not traditionally enforced it.

DATCP also simplified and reconfigured the fees table, ATCP Table 93.1605.

DATCP wanted to prohibit certain practices expressly (falsifying records, removing or tampering with red tags, installing or removing tank systems without department approval, altering or disabling systems, failing to maintain permits or financial responsibility, and failure to comply with administrative orders). For this reason, Wis. Admin. Code § ATCP 93.175 (Prohibited Practices) has been created.

In NIST Handbook 44, which is used for other DATCP Weights and Measures programs, DATCP can seek greater assistance from employees of the business during enforcement activities. As this is a best practice in regulation and in industry, ATCP 93 incorporates the concept as ATCP 93.230 (2) (b).

While ATCP 93.240 incorporates much of SPS 305 as mentioned under Reorganizational Changes, ATCP 93.240 (1) has been left largely unchanged; and ATCP 93.240 (10) was added to include enforcement actions for licenses, certificates, and registrations.

A cell in Table 93.260 (Setbacks) seemed ambiguous compared to other table rows and has been amended.

ATCP 93.370 (2) has been created to require annual testing of emergency electrical shutoffs.

A new note at the beginning of subchapter IV clarifies that the requirements in the subchapter are general and that more specific requirements may be found in subchapter III when applicable.

ATCP 93.400 (11) requires more documentation and better record keeping for general requirements of aboveground storage tanks.

ATCP 93.410 (1) (a) adds an extra prevention element for spill and overfill prevention.

ATCP 93.500 (8) contains clarification of sumps in underground storage tank systems.

ATCP 93.503 (2) and (3) contain clarifications of inventory verification.

ATCP 93.530 (2) (d) assures that lining should not simply be inspected but preauthorized, and paragraph (dm) makes sure a tank integrity assessment follows.

Since owners and operators may not communicate properly with contractors when closures occur, ATCP 93.560 has been changed to provide better documentation and easier inspection. This also required a change to ATCP 93.115 (Enforcement and Inspections) that would match the two.

Other safety concerns governed a number of proposed changes to the rule. ATCP 93.545 received a substantial rewrite due to the safety concerns of tanks that are not used frequently or that have been taken out of service and issues of non-compliance. Inconsistencies between ATCP 93.445 (Aboveground Storage Tanks) and ATCP 93.545 (Underground Storage Tanks) required resolution; and ATCP 93.565 creates a section on abandoned tank systems. Previously, abandoned tank systems were addressed in ATCP 93.560 (5) by requiring closure and removal, but the new rule clarifies and allows for returning to service specific types of abandoned tanks by creating and expanding the new section ATCP 93.565. To reduce risk at dispensers, ATCP 93.605 (3) (cm) proposes to ban combustible materials from being within three feet of a dispenser. ATCP 93.605 (8) states that distances from the National Fire Protection Association standards should be used. ATCP 93.615 (3) (b) 1. would now include portable containers.

In ATCP 93.680 (2) through (4), the words "for ethanol blends" have been added to the titles to provide more specificity.

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

DATCP incorporated new federal requirements and regulations from the U.S. Environmental Protection Agency (EPA). The federal government relies on many of the industry standards that DATCP proposes to adopt in the tables listed in ATCP 93.200. The EPA had a number of changes that will go into effect in October 2018. The new ATCP 93 harmonizes with the 2015 and 2018 requirements.

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

The new rule maintains the requirement that if a substance release qualifies to be reported under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that it be reported.

All federal financial requirements in the previous subchapter VII (Financial Responsibility) have been maintained.

Comparison with rules in adjacent States

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. Minnesota currently plans to make changes to these rules. Minnesota officials anticipate a comment period in July 2018 and an effective date in Fall 2018.

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 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. Revisions to the Natural Resources rules have been published for public comment, and Iowa expects to finalize this rulemaking in the spring of 2019.

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.

Summary of Factual Data and Analytical Methodologies

To develop this rule, DATCP considered multiple changes recommended by the Wisconsin Department of Safety and Professional Services before the program transfer. An internal committee made a number of recommendations that were shared and then modified in three stages: A September 2011 meeting with the Wisconsin Petroleum Marketers and Convenience Store Association and the Cooperative Network; after a November 2011 *Federal Register* notice of proposed changes by the EPA; and other changes suggested before the program transferred to DATCP in 2013.

Due to the size and complexity of this rule and the tanks inspection program, DATCP shared the draft of the proposed Wis. Admin. Code ch. ATCP 93 with numerous stakeholders in three stages. Subchapters zero through three were shared in June 2015; subchapters zero through six were shared in July 2016; and the entire rule, in draft, was shared in March 2017. Stakeholders who received the draft rule in three increments included the Wisconsin Petroleum Council, the Wisconsin Petroleum Equipment Contractors Association, Wisconsin Petroleum Marketers and Convenience Store Association, Cooperative Network, Kwik Trip, and WE Energies.

DATCP stressed that the drafts were preliminary and subject to change both from internal and external input. DATCP pointed out that the ability to comment on these drafts would not circumvent any aspect of the formal rulemaking process laid out in statute. DATCP emphasized that an opportunity to comment would continue up to and including this proposed order to adopt this rule. Consequently, DATCP received comments throughout its process, considered the suggested changes or requests for clarifications, made changes to the draft language based upon stakeholder comments, and responded to the stakeholders before release of the public hearing draft rule. After sending the final redlined version to stakeholders, DATCP received over 25 comments and acted upon them.

Where applicable, DATCP compared Wisconsin law and procedures with those of neighboring states. DATCP discussed possible changes at various conferences and training activities over the past four years throughout Wisconsin and shared the final informal draft with local program operators.

DATCP received a number of comments from the Wisconsin Legislative Council Rules Clearinghouse and considered them. Some of the comments addressed errors that had been in the rule previously; others led to additional clarification of proposed changes.

DATCP held four hearings on the draft rule in March 2018:

- Lee Dreyfus State Office Building in Waukesha on March 1, 2018;
- Prairie Oaks State Office Building in Madison on March 5, 2018;
- Green Bay State Office Building on March 15, 2018; and
- Chippewa Valley Technical College in Eau Claire on March 19, 2018.

After the final hearing, DATCP accepted formal written comments for an additional four weeks. An internal committee considered all internal and external recommended changes.

Analysis and Supporting Documents used to Determine Effect on Small Business

The analysis of the potential effect of the rule on small business included internal discussions regarding whether any changes would require equipment changes or any significant expansion in labor costs for affected businesses. In the course of three successive releases of the draft rule to potentially affected parties, DATCP encouraged those parties to report if certain proposed requirements would impact their business practices either financially or administratively. In cases where stakeholders expressed financial concerns about certain provisions, DATCP elected not to pursue those provisions.

Effect on Small Business

Although many of the businesses affected by this rule are "small businesses," the proposed rule changes will generally have a minimal impact on small businesses in the state. Conforming to standards may have an economic impact on certain businesses within the regulated industries. However, the majority of the proposed rule updates and reorganizes provisions in current rules; therefore, adoption should have a minimal, if any, economic impact on small businesses.

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SECTION 1. Chapter ATCP 93 is repealed and recreated to read:

Chapter ATCP 93

FLAMMABLE, COMBUSTIBLE AND HAZARDOUS LIQUIDS

ATCP 93.010 Purpose.

ATCP 93.020 Scope and application.

ATCP 93.050 Definitions.

Subchapter I — Administration and Enforcement

ATCP 93.100 Plan review.

ATCP 93.110 Jurisdiction over enforcement.

ATCP 93.115 Enforcement and inspections.

ATCP 93.120 Revocation and expiration of approval.

ATCP 93.130 Specific approval of materials, equipment, concepts, technology and devices.

ATCP 93.140 Tank registration.

ATCP 93.145 Tank permits.

ATCP 93.150 Change of ownership.

ATCP 93.1605 Fees relating to storage tanks for liquids that are flammable, combustible or federally regulated hazardous substances.

ATCP 93.165 Alternate forms.

ATCP 93.170 Petition for variance.

ATCP 93.175 Prohibited practices.

ATCP 93.180 Penalties.

ATCP 93.190 Appeals and hearings on enforcement decisions.

Subchapter II — Adopted Standards and General Requirements

1 ATCP 93.200 Adoption of standards.

2 ATCP 93.210 Application of standards.

3 ATCP 93.220 Secondary references.

4 ATCP 93.225 Alternate standards.

5 ATCP 93.230 General requirements.

6 ATCP 93.240 Certifications and enforcement.

7 ATCP 93.250 Tank construction and marking.

8 ATCP 93.260 Setbacks from already–installed potable water supply sources.

9 **Subchapter III — Specific Tank Storage Applications**

10 ATCP 93.300 Tanks storing used oil.

11 ATCP 93.305 Public used oil collection centers.

12 ATCP 93.310 Heating fuel storage.

13 ATCP 93.315 Heating oil tanks that are removed from service.

14 ATCP 93.320 Fuel storage for stationary combustion engines and gas turbines.

15 ATCP 93.330 Converted tanks for the storage of flammable and combustible liquids.

16 ATCP 93.335 Manufacture of organic coatings.

17 ATCP 93.340 Bulk plants and terminals.

18 ATCP 93.350 Hazardous substances.

19 ATCP 93.360 Storage of Class IA flammable liquids.

20 ATCP 93.370 Emergency shutoff for transfers.

21 **Subchapter IV — General AST Storage**

22 ATCP 93.400 General requirements.

23 ATCP 93.410 Spill and overfill prevention.

1 ATCP 93.420 Secondary containment.

2 ATCP 93.425 Tank lining of aboveground storage tanks.

3 ATCP 93.430 Vehicle collision protection.

4 ATCP 93.440 Aboveground tank inspection.

5 ATCP 93.445 Seldom–used and temporarily out of service tanks.

6 ATCP 93.450 Change in service to store a non–regulated or a regulated substance.

7 ATCP 93.460 Closure of aboveground tanks.

8 ATCP 93.465 Tank–system site assessment.

9 ATCP 93.470 Responding to a leak, spill, overfill, or release.

10 **Subchapter V — General UST Storage and Underground Piping**

11 ATCP 93.500 General requirements.

12 ATCP 93.503 Product inventory verification at retail facilities.

13 ATCP 93.505 Spill and overfill prevention.

14 ATCP 93.510 Leak detection requirements.

15 ATCP 93.515 Leak detection methods.

16 ATCP 93.517 Airport hydrant system requirements.

17 ATCP 93.520 Corrosion protection.

18 ATCP 93.530 Tank lining of underground storage tanks.

19 ATCP 93.535 Periodic inspection and repair of lined tanks.

20 ATCP 93.545 Seldom–used and temporarily out of service tanks.

21 ATCP 93.550 Change in service to store a non–regulated or a regulated substance.

22 ATCP 93.560 Tank system closure.

23 ATCP 93.565 Abandoned tank systems.

1 ATCP 93.570 Conditions indicating a release.

2 ATCP 93.575 Tank–system integrity assessment.

3 ATCP 93.580 Tank–system site assessment.

4 ATCP 93.585 Responding to a leak, spill, overfill or release.

5 **Subchapter VI — Dispensing of Motor Fuels**

6 ATCP 93.600 Applicability.

7 ATCP 93.605 General fuel dispensing requirements.

8 ATCP 93.610 Fuel dispensing systems using aboveground mobile tanks.

9 ATCP 93.615 Fuel dispensing systems using aboveground fixed tanks.

10 ATCP 93.620 Public access motor vehicle fueling operations.

11 ATCP 93.630 Fuel storage and dispensing at farms and construction projects.

12 ATCP 93.640 Watercraft, snowmobile and ATV fueling.

13 ATCP 93.650 Aircraft fuel dispensing.

14 ATCP 93.660 Racetrack and amusement vehicle fueling operations.

15 ATCP 93.680 Alternative motor fuels.

16 **Subchapter VII — Financial Responsibility**

17 ATCP 93.700 Applicability.

18 ATCP 93.703 Definitions.

19 ATCP 93.705 Amount and scope of required financial responsibility.

20 ATCP 93.707 Allowable mechanisms and combinations of mechanisms.

21 ATCP 93.710 Financial test of self–insurance.

22 ATCP 93.713 Guarantee.

23 ATCP 93.715 Insurance and risk retention group coverage.

1 ATCP 93.717 Surety bond.

2 ATCP 93.720 Letter of credit.

3 ATCP 93.723 Trust fund.

4 ATCP 93.725 Standby trust fund.

5 ATCP 93.727 Local government bond rating test.

6 ATCP 93.730 Local government financial test.

7 ATCP 93.733 Local government guarantee.

8 ATCP 93.735 Local government fund.

9 ATCP 93.737 Substitution of financial assurance mechanisms by owner or operator.

10 ATCP 93.740 Cancellation or nonrenewal by a provider of financial assurance.

11 ATCP 93.743 Reporting by owner or operator.

12 ATCP 93.745 Record keeping.

13 ATCP 93.747 Drawing on financial assurance mechanisms.

14 ATCP 93.750 Release from the requirements.

15 ATCP 93.753 Bankruptcy or other incapacity of owner or operator or provider of financial

16 assistance.

17 ATCP 93.755 Replenishment of guarantees, letters of credit, or surety bonds.

18 **Subchapter VIII — Training for Operators of Underground Storage Tank Systems**

19 ATCP 93.800 Purpose.

20 ATCP 93.805 Scope.

21 ATCP 93.810 Definitions.

22 ATCP 93.820 Designation of Class A, Class B, and Class C operators.

23 ATCP 93.830 Responsibilities of Class A, Class B, and Class C operators.

ATCP 93.840 Training elements for Class A operators.

ATCP 93.841 Training elements for Class B operators.

ATCP 93.842 Training elements for Class C operators.

ATCP 93.850 Acceptable training and certification processes.

ATCP 93.860 Documentation deadlines.

ATCP 93.870 Record keeping.

ATCP 93.880 Retraining.

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. Chapter Comm 10 as it existed on January 31, 2009 was repealed and a new Chapter Comm 10 was created Register November 2008 No. 635, effective February 1, 2009. Chapter Comm 10 was renumbered chapter SPS 310 under s. 13.92 (4) (b) 1., Stats., Register December 2011 No. 672. Chapter SPS 310 was renumbered Chapter ATCP 93 under s. 13.92 (4) (b) 1., Stats., Register October 2013 No. 694, pursuant to 2013 Wis. Act 20, section 9138 (3) (fm) and (4) (f).

ATCP 93.010 Purpose. The purpose of this chapter is as follows:

(1) In accordance with ss. 101.02 (15) (a) and 101.14 (1) (a), Stats., to provide fire and life safety through the safe storage, display, installation, operation, use, maintenance and transportation of flammable, combustible and hazardous liquids and the equipment, facilities, buildings and premises that are used to store, transfer and dispense them.

(2) To comply with s. 168.23 (1), Stats.

Note: Section 168.23 (1), 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 in section 168.21 (3), Stats., corresponds to the CERCLA List of Hazardous Substances and Reportable Quantities contained in 40 CFR 302.4, Table 302.4.

Note: The definition of "waters of the state," as used in s. 168.21, Stats. is found in s. 281.01 (18), Stats., and reads as follows:

"Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

(3) To comply with the flammable and combustible liquid related provisions of subtitle I of the federal 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, also known as RCRA, of 1976 as contained in 42 USC 6912 and 6991.

(4) In accordance with s. 168.16, Stats., to establish standards for storing and dispensing motor fuel in a manner that does not compromise any minimum product grade specifications achieved under ch. ATCP 94.

ATCP 93.020 Scope and application. (1) NEW FACILITIES AND STRUCTURES. The provisions of this chapter apply to all new facilities and structures and to new additions to facilities and structures that involve storage, transfer or dispensing of flammable, combustible or hazardous liquids.

(2) ALTERATIONS TO FACILITIES AND STRUCTURES. The provisions of this chapter apply to new remodeling and alterations — for any flammable, combustible or hazardous liquid facility or structure — that are integral to storage, transfer or dispensing of flammable, combustible or hazardous liquids, including remodeling and alterations which affect fire hazard, release mitigation or replacement of major equipment.

(3) EXISTING FACILITIES AND STRUCTURES. All elements, systems or components of an existing facility or structure that are integral to storage, transfer or dispensing of flammable, combustible or hazardous liquids shall be maintained to conform with the requirements of this chapter that applied when the facility, structure, element, system or component was constructed, unless specifically stated otherwise in this chapter.

(4) 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.

(5) GROUNDWATER PROTECTION AND FIRE SAFETY PROVISIONS. (a) Under ss. 101.14 (1) (a), 168.21 to 168.26, Stats., the groundwater protection and fire safety provisions of this chapter apply to all new and existing flammable, combustible or hazardous liquid facilities and structures even if the facility or structure is not undergoing remodeling, alteration or a change of operation.

Note: Examples of groundwater protection provisions include requirements for leak detection, secondary containment, corrosion protection, and spill and overfill protection. Some of these provisions, such as the spill and overfill protection requirements, are also fire safety provisions.

Note: Existing facilities are affected in this manner by these provisions because under s. 168.23 (1), Stats., this chapter "may include different standards for new and existing tanks, but all standards shall provide substantially similar protection for the waters of the state;" and because s. 101.14 (1) (a), Stats., addresses dangerous conditions at both new and existing facilities.

(b) The rules of this chapter apply to tanks located at EPA superfund sites.

(6) EXCLUSIONS. The following tanks, containers, tank systems and facilities are not regulated under this chapter:

(a) Underground storage tanks that have a capacity of less than 60 gallons.

(b) Aboveground storage tanks and intermediate bulk containers that have a capacity of less than 110 gallons.

(c) Tanks storing products regulated under ch. ATCP 33 that are located either at facilities which are also regulated under ch. ATCP 33 or on farm premises.

Note: Chapter ATCP 33 addresses bulk storage of pesticides and fertilizers.

(d) Aboveground storage tanks storing liquids that are used in processes covered in any of the following standards:

1. NFPA 33 Spray Application Using Flammable or Combustible Materials.

2. NFPA 34 Dipping & Coating Processes Using Flammable or Combustible Liquids.

4. NFPA 45 Fire Protection for Laboratories Using Chemicals.

(e) Dedicated breakout tanks that are located at pipeline facilities.

(f) Odorant or other additive injection tanks that are directly connected to a pipeline.

(g) Contractor tanks that are mounted on pickup trucks.

(h) Oil–filled electrical equipment and transformers.

(i) Accumulator tanks.

(j) Process tanks.

(k) Product recovery tanks.

(L) Service tanks.

(m) Marine fueling facilities where fuel is stored and dispensed into the fuel tanks of marine craft of 300 gross tons or more.

(n) Aboveground or underground tank systems that store nonflammable and noncombustible hazardous liquids in concentrations of less than 1 percent by volume.

Note: Safety Data Sheets should be consulted for flash point and concentration.

(o) Aboveground tank systems which have a capacity of less than 5,000 gallons and which store nonflammable and noncombustible hazardous liquids in concentrations of 1 percent or more by volume.

Note: Safety Data Sheets should be consulted for flash point and concentration.

(p) Tank systems that store a hazardous waste which is listed or identified under subtitle C of the federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances that is nonflammable and noncombustible.

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

(r) Underground storage tank systems that contain radioactive material which is regulated under the federal Atomic Energy Act of 1954.

Note: The Atomic Energy Act of 1954 is contained in 42 USC 2011 et seq.

(s) Underground storage tank systems that are part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR part 50.

(t) Asphalt plant AC tanks which are used as burner or material–supply tanks in the process of making asphalt and which comply with all of the following:

1. Tank configurations are single–wall or double–wall, with or without heating coils.

2. The products stored in the tank are Class II or III liquids ranging from heating oil to used oil, to #4 or #5 heavy oils.

3. The asphalt process equipment and the tank are typically located at an isolated location, such as a quarry, and are generally relocated from year to year or every couple of years.

(u) 1. Facilities located on Indian reservation land that is held either in trust by the United States or in fee by the tribe or a tribal member.

2. Facilities which are located on off–reservation Indian land that is held in trust by the United States, and which is held either in trust by the United States, or in fee by the tribe or a tribal member.

(v) 1. A pipeline facility, including gathering lines, that is regulated under USC 49 chapters 601 and 603.

2. An intrastate pipeline facility, including gathering lines that is regulated under state laws as provided in USC 49 chapters 601 and 603 and which is determined by the United States secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure, or as an integral part of a pipeline.

Note: Chapter SPS 314 has fire prevention requirements that may apply to tanks which are not regulated by ch. ATCP 93, such as service tanks, and to portable tanks or containers which have a capacity of less than 110 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. ATCP 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 ATCP 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.

(7) DIFFERING RULES. (a) Where any department–written rule in this chapter differs from a requirement within a standard referenced in this chapter, the department–written rule shall govern.

(b) Where a rule prescribes a general requirement and another rule prescribes a specific or more detailed requirement regarding the same subject, the specific or more detailed requirement shall govern, except as provided in par. (a).

(c) Where different sections of this chapter specify conflicting requirements, the most restrictive requirement, as determined by the department, shall govern, except as provided in pars. (a) and (b).

(8) LOCAL REGULATIONS. (a) This chapter does not limit the power of municipalities 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, except as provided in par. (b).

(b) A first class city may apply different requirements for administering plan review and inspections by the city.

Note: As of the effective date of this section ... [LRB inserts date], only the City of Milwaukee is a first class city.

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

(10) INTERPRETATIONS. Under s. 168.23, Stats., the department reserves the right to interpret the requirements in this chapter and in all adopted codes and standards.

ATCP 93.050 Definitions. In this chapter:

(1) "Aboveground storage tank" or "AST" means any vessel that has a liquid capacity of 110 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.

(2) "Accessible to the public" means any whole or part of property that due to its location and commercial or public purpose, the public or a section of the public has or may reasonably be expected to have access.

(3) "Aircraft" has the meaning given in s. 114.002 (3), Stats.

Note: Section 114.002 (3), Stats., reads as follows:
"Aircraft" means any contrivance invented, used or designed for navigation of or flight in the air, but does not include spacecraft.

(4) "Airport" means any area of land or water that is designed for the landing and takeoff of aircraft, regardless of whether buildings are provided for the shelter, servicing, or repair of aircraft or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for aircraft, and all appurtenant rights of way, whether new or existing, which are either public, private, or federal.

(4m) "Airport hydrant system" means an underground storage tank system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

(5) "Alteration" means any modification to an installed tank system that involves cutting, drilling or welding on the tank shell or associated piping.

(6) "Ancillary equipment" means any device, including such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of regulated substances to and from a storage tank.

(7) "Annual" means a period of time less than or equal to 365 calendar days.

(8) "Approved" means acceptable to the department.

(9) "ATV" or "all–terrain vehicle" means a self–propelled motor–driven vehicle with wheels or tracks, used to transport people on land, snow, ice or water for purposes of sport or recreation and which cannot be licensed through the department of transportation for highway use.

(10) "Authorized agent" means either a local program operator or a first class city or the authorized representatives of a first class city.

Note: See sub. (66) for a definition of local program operator. As of the effective date of this section ... [LRB inserts date], only the City of Milwaukee is a first class city.

(11) "Automatic leak detection" means a release or leak detection or monitoring system that will provide continuous 24 hour monitoring for the detection of a release or leak of vapor or product and immediately communicate the detection of the release or leak to an electronic signaling device.

(12) "Automatic line leak detection" means a method of leak detection which alerts the operator to the presence of a leak without any manual effort on the part of the operator, including a device or mechanism that signals the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and which detects leaks of 3 gallons per hour at 10 psi line pressure within one hour.

(13) "Authority having jurisdiction" means the department or an authorized agent responsible for approving equipment, installations or procedures.

(14) "Biodiesel fuel" means a fuel that is comprised of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

Note: Under s. 168.14 (2m) (b) 2., Stats., pure biodiesel fuel is generally identified with the alphanumeric B100, and does not contain any petroleum product, any additive, or other foreign material. A fuel that is a blend of biodiesel and petroleum–based fuel generally has a volume percentage of the biodiesel fuel to the petroleum–based fuel of at least 2 percent. B20 would identify a blend as being 20 percent biodiesel and 80 percent petroleum–based fuel, by volume.

(15) "Bulk plant" means that portion of a facility where flammable, combustible or hazardous liquids are stored or blended in bulk for the purpose of subsequently distributing such liquids beyond that portion of the facility. This term does not include a facility where such liquids are stored or blended only in intermediate bulk containers.

(16) "Business day" means any day Monday to Friday, excluding Wisconsin legal holidays.

1 **(17)** "CERCLA" means the federal Comprehensive Environmental Response,
2 Compensation, and Liability Act of 1980, as amended.
3 **(18)** "Certified cathodic protection tester" means a person certified in accordance with this
4 chapter who demonstrates an understanding of the principles and measurements of all common
5 types of cathodic protection systems as applied to buried or submerged metal piping systems and
6 metal tanks.
7 **(19)** "Certified corrosion expert" means a person certified in accordance with this chapter
8 who is qualified to engage in the practice of corrosion control on buried or submerged metal
9 piping systems and metal tanks by reason of thorough knowledge of the physical sciences and
10 the principles of engineering and mathematics acquired by a professional education and related
11 practical experience.
12 **(21)** "Certified installer" means either of the following:
13 (a) For aboveground tank systems, a person certified in accordance with this chapter to
14 install and repair aboveground storage tank systems — and for underground tank systems, a
15 person certified in accordance with this chapter to install and repair underground storage tank
16 systems.
17 (b) A registered professional engineer who directly supervises an installation by being
18 present during the activities specified in s. ATCP 93.240 (16) and (17), and who is competent in
19 the engineering methods and requirements in Wisconsin for designing and installing storage tank
20 systems for flammable, combustible or hazardous liquids.
21 **(22)** "Certified remover–cleaner" means a person certified in accordance with this chapter to
22 remove storage tank systems and to remove accumulated sludge and remaining product from

tanks that are to be closed, undergo a change in service, or otherwise be completely emptied and made inert.

(22m) "Certified tank system inspector" means a person certified in accordance with this chapter to inspect storage tank systems.

(23) "Certified tank system liner" means a person certified in accordance with this chapter to install interior linings for storage tanks.

(24) "Certified tank system site assessor" means a person certified in accordance with this chapter to conduct tank system site assessments and to collect samples necessary for those assessments.

(25) "Certified tank system tightness tester" means a person certified in accordance with this chapter to perform precision tightness testing to determine the presence of leaks in storage tank systems.

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

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

(27) "Class I liquid" means a flammable liquid.

Note: See sub. (30) and Note for Class II and III liquids.

(28) "Cleaned tank system" means a tank system that is free of all residue and vapors.

(29) "Closure" means the procedure by which a tank system is evaluated and permanently rendered safe from contributing to human danger, fire, explosion, and environmental contamination at the facility where it is installed.

(30) "Combustible liquid" means a liquid having a flash point at or above 100°F.

Note: Under NFPA 30 section 4.3.2, combustible liquids are further classified as being Class II, IIIA, or IIIB liquids.

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

(32) "Construction project" means a site or project that is under development, renovation or demolition, and is temporary in nature and has restricted public access.

Note: A construction project may involve a transportation corridor, building or structure, excavation or landscaping, or the replacement or upgrade of an existing storage tank system.

(33) "Consumptive use" means consumed on the premises where the storage tank system is located.

(34) "Continuous monitoring" means a leak detection method using equipment that routinely performs the required monitoring on a periodic or cyclic basis throughout each day.

(35) "Contractor" means a person or firm undertaking to do work or supply goods or a service.

(36) "Day" means any calendar day unless specifically stated otherwise in this chapter.

(37) "Department" means the department of agriculture, trade and consumer protection.

(37m) "Direct supervision" means to assume the responsibility of an activity of others and its results by providing oversight and guidance at the site where the activity is being conducted.

(38) "Dispenser" means a device or configuration of components consisting of a motor or fluid control, and an area for storing a hose nozzle valve with or without a pump, that dispenses and measures the amount of product dispensed by means of a mechanical or electronic metering mechanism.

(39) "Dispensing" means the transfer of fuel into a vehicle or portable container from a storage tank system.

(40) "Dispensing area" means a zone around the dispenser that extends a distance of 20 feet horizontally from the dispenser body, exclusive of the length of the hose and nozzle.

(41) "Dispensing system" or "product transfer system" includes the dispensers, nozzles, dispensing hoses, suction fuel pump, pipe and any necessary core components between the emergency shutoff valve and dispensing nozzle that allow the dispensing system to function as intended and in accordance with the installation requirements.

Note: In a typical fueling island, the dispensing system begins immediately downstream of the emergency shutoff valve, and all components upstream of that point, including the shut–off valve, are part of the tank system, as defined in sub. (115).

(42) "Electronic monitoring" means an electrical device installed to monitor tanks or piping for leaks.

Note: Typically, electronic monitoring uses an audible or visual alarm and may incorporate an automatic shutdown of the dispensing system. Examples include electronic line leak detectors and sump or interstitial liquid sensors.

(43) "Empty tank system" means a tank system from which all materials have been removed using commonly employed practices so that no more than one inch of residue remains in the system.

(43g) "EPA" means United States environmental protection agency.

(43r) "Equivalency" means having the same degree of safety, health, or public welfare as contained in the requirements specified in this chapter.

(44) "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.

(45) "Existing" means installed or in place since before (the effective date of this section ... [LRB inserts date], unless context requires otherwise.

(46) "Existing tank system" means a tank system used to contain an accumulation of regulated substances, or for which installation commenced, prior to (the effective date of this section ... [LRB inserts 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.

(47) "Facility" means a plot of land developed or designated to serve a particular function.

(48) "Farm premises" and "farming" have the meaning given in s. 102.04 (3), Stats.

Note: Section 102.04 (3), Stats., reads as follows:

As used in this chapter, 'farming' means the operation of farm premises owned or rented by the operator. 'Farm premises' means areas used for operations herein set forth, but does not include other areas, greenhouses or other similar structures unless used principally for the production of food and farm plants. 'Farmer' means any person engaged in farming as defined. Operation of farm premises shall be deemed to be the planting and cultivating of the soil thereof; the raising and harvesting of agricultural, horticultural or arboricultural crops thereon; the raising, breeding, tending, training and management of livestock, bees, poultry, fur–bearing animals, wildlife or aquatic life, or their products, thereon; the processing, drying, packing, packaging, freezing, grading, storing, delivering to storage, to market or to a carrier for transportation to market, distributing directly to consumers or marketing any of the above–named commodities, substantially all of which have been planted or produced thereon; the clearing of such premises and the salvaging of timber and management and use of wood lots thereon, but not including logging, lumbering or wood cutting operations unless conducted as an

accessory to other farming operations; the managing, conserving, improving and maintaining of such premises or the tools, equipment and improvements thereon and the exchange of labor, services or the exchange of use of equipment with other farmers in pursuing such activities. The operation for not to exceed 30 days during any calendar year, by any person deriving the person's principal income from farming, of farm machinery in performing farming services for other farmers for a consideration other than exchange of labor shall be deemed farming.

(49) "Flammable liquid" means any liquid that has a flash point below 100°F.

Note: Under NFPA 30 section 4.3.1, flammable liquids are classified as being Class I liquids and are subclassified as Class IA, IB, or IC liquids.

(50) "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.

(51) "Free product" means any regulated substance that exists outside of a tank system, a dispenser system or a container for transporting the substance.

(51m) "Hazardous liquid" means any liquid that is a federally regulated hazardous substance as defined in s. 168.21, Stats.

Note: The definition of federally regulated hazardous substances in s. 168.21 (3), Stats., corresponds to the CERCLA List of Hazardous Substances and Reportable Quantities contained in 40 CFR 302.4, Table 302.4.

(52) "Hazardous substance storage tank system" means a storage tank system which contains a hazardous substance defined in section 101 (14) of CERCLA — but not including any substances regulated as hazardous wastes under subtitle C, or any mixture of such substances and petroleum products — and which is not a petroleum storage tank system.

(53) "Heating device" means equipment, fueled by liquids regulated by this chapter, intended to create or generate heat for the purpose of providing direct heat or heating another media for space heating, food processing, commercial and industrial manufacturing, or energy generation.

(54) "Heating fuel" or "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, including used oil or used cooking oils when used in an oil burner to provide space heat or processing heat for consumptive use on the property.

Note: Heating fuel used to produce steam for power generation such as electricity or emergency power is not considered "heating fuel" or "heating oil" for purposes of the definition.

(55) "Housekeeping" means a facility management activity of keeping flammable, combustible and hazardous liquid storage organized and free of debris, vegetation, combustible goods and merchandise and non–essential combustible materials or products.

(57) "Important building" or "important building or structure" means a building or structure that is not considered by the owner, the authorized agent or the department to be expendable in an exposure fire.

Note: Examples include buildings occupied by one or more persons for other than incidental use, buildings that have a high–hazard use where products from fire can harm the community or the environment, control buildings that need the presence of personnel for orderly shutdown of important or hazardous processes, buildings that contain high–value contents or critical equipment or supplies, and buildings that are sited with respect to a storage tank system such that they will have a detrimental effect on release–response or fire–control activities.

(58) "Impressed current system" means a method of corrosion protection that generates cathodic current from an external, direct–current power source.

(59) "Intermediate bulk container" or "IBC" means a container that is manufactured and marked in accordance with 49 CFR 178, is intended for the storage of regulated substances within warehouses and other storage areas with automatic wet–pipe sprinkler systems, and has a liquid capacity of 793 gallons or less.

(60) "Interstitial monitoring" means a leak detection method that entails the surveillance of the space between a tank system's walls and the secondary containment system for a change in steady–state conditions.

(61) "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.

(62) "Leak" means any discharge of a regulated substance from a point in a tank system or dispensing system, that is not intended to be a discharge or dispensing point.

Note: See sub. (76) for a definition of "obvious release," sub. (103) for a definition of "release" and sub. (113) for a definition of "suspected release."

(63) "Leak detection" means determining whether a discharge of a regulated substance has occurred from a point in a storage tank system, that is not intended to be a discharge or dispensing point, such as a discharge into the interstitial space between the primary tank or piping and the secondary barrier or secondary containment around that tank or piping.

(64) (a) "Liquid" means any material that has both a fluidity greater than that of 300 penetration asphalt when tested in accordance with ASTM D5 at standard conditions of temperature and pressure, and a vapor pressure of 40 pounds per square inch absolute (psia) or lower at 100°F as determined by ASTM D323 or ASTM D4953, except as excluded under par. (c). For materials outside the scope of the ASTM D5 test, liquid means any material that both starts to melt at temperatures less than 100°F and has a vapor pressure of 40 psia or lower at 100°F, except as included under par. (c). In this subsection, "standard conditions of temperature and pressure" means a temperature of 60°F and a pressure of 14.7 psia.

Note: A pressure of 14.7 pounds per square inch absolute is the typical atmospheric pressure at sea level, which varies with changes in altitude and weather. Everyday pressure

measurements, such as with a tire-pressure gauge, typically begin with a zero reading at the atmospheric pressure.

(b) "Liquid" also means any material that is a viscous substance for which a specific melting point cannot be determined but which is determined to be a liquid in accordance with ASTM D4359, except as excluded under par. (c).

(c) "Liquid" does not include any asphalt substance that must be heated to at least 60°F at a pressure of 14.7 pounds per square inch absolute (psia) in order to make it fluid.

Note: For example, #5 and #6 fuel oil do not meet the criteria for a liquid and therefore are not regulated by this chapter.

(65) "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.

(66) "Local program operator" or "LPO" 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.

(67) "Lowest floor, story, cellar or basement" means the lowest space in which heavier–than–air vapors can accumulate.

(68) "Maintenance" means the normal operational upkeep to prevent a storage tank system from releasing product, or to maintain the structural and operational condition of any portion of the system. Maintenance activity is preventative in nature.

(69) "Marine–craft tank vehicle" means any tank having a liquid capacity of 110 gallons or more, used for carrying flammable or combustible liquids and mounted permanently or

otherwise upon a vessel or barge capable of water transportation. The tank is not solely for the purpose of supplying fuel for the propulsion of, or support of equipment on, the vessel upon which the tank is mounted.

Note: Section ATCP 93.130 requires marine–craft tank vehicles to have a material approval before being placed into service.

(70) "Mechanical monitoring" means a mechanical device not dependent upon electricity, installed to monitor tanks and piping for leaks.

Note: An example is a mechanical line leak detector.

(71) "Monthly monitoring" means an approved electronic or non–electronic method of testing a tank or pipe for a leak at least monthly. The test shall detect a 0.2 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05. For purposes of monitoring on a monthly cycle, the department will accept tests no further than 30 days apart.

(72) "Motor fuel" means flammable or combustible liquid that is used in the operation of an internal combustion or turbine engine.

(73) "Motor vehicle" means a self–propelled motor–driven vehicle that is used for moving people or products on land, water or air, except this term does not include any vehicle which is operated exclusively on a rail. "Motor vehicle" in this definition is intended to apply to motorized equipment transporting people and goods for pleasure, construction or commerce, rather than equipment dedicated to warehousing and yard operations, such as forklifts; or for grounds and facility maintenance, such as lawnmowers; or for amusement facilities, such as go–carts.

Note: Based on this definition, fuel storage tanks on a railroad train or other motorized equipment which operates exclusively on a rail are regulated under this chapter and NFPA 30 as non-vehicle fueling tanks, and NFPA 30A does not apply to them.

(74) "New" means installed or constructed on or after (the effective date of this section ... [LRB inserts date]).

(75) "Non–discriminating" means not discriminating as to the type of liquid.

(76) "Obvious release" means there is an indication of a release, and there is both environmental evidence, such as soil discoloration, observable free product, or odors — and a known source, such as a tank or piping with cracks, holes or rust plugs, or leaking joints.

Note: See sub. (62) for a definition of "leak," sub. (103) for a definition of "release" and sub. (113) for a definition of "suspected release."

(77) "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.

(78) "Operational life" means the period beginning when installation of the tank system has commenced and extending to when the tank system either is closed in accordance with s. ATCP 93.460 or 93.560, or undergoes a change in service to store a non-regulated substance in accordance with s. ATCP 93.450 or 93.550.

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

(80) "Owner" means either of the following:

(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 before the discontinuation of its use, or the person owning the property on which the storage tank system is located.

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

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

(83) "Petroleum storage tank system" means a storage tank system that primarily contains petroleum products, such as motor fuels, jet fuels, fuel oils, lubricants, petroleum solvents, and used oil.

(84) "Pier" means any structure, such as a dock, which extends into navigable waters from the shore, with water on both sides, and which is built or maintained for the purpose of servicing watercraft, providing a berth for watercraft, or for loading or unloading cargo or passengers onto or from watercraft. A pier may be an open deck or solid–fill structure.

(85) "Pipe" or "piping" means a pressure–tight cylinder used to convey, transfer or move a fluid, and is ordinarily designated "pipe" in applicable material specifications. Materials designated as tube or tubing in the specifications are considered pipe when intended for pressure service. This term includes pipe emanating from or feeding storage tanks, or transferring product to or from storage tanks.

(86) "Pipe system" or "piping system" means the primary piping, secondary containment, leak detection devices, tubing, including suction line drop tube, flanges, bolts, gaskets, valves, fittings, flexible connectors, the pressure–containing parts of other components such as expansion joints and strainers, and devices that serve such purposes as mixing, separating,

distributing, metering, or controlling flow, and any core components which allow the piping system to function as intended and in accordance with the installation requirements.

Note: For a typical underground system, the pipe system would be from the point of connection at the tank to the connection to the dispenser, immediately downstream of the emergency shutoff valve.

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

(88) "Place of employment" has the meaning given in s. 101.01 (11), Stats.

(89) "Point–of–sale," or "POS" means a marketing or dispensing practice that accommodates a cash, credit card, key, personal identification number or similar dispenser–authorized transfer of fuel into a motor vehicle without the direct oversight, supervision or intervention of an employee of the fueling facility.

(90) "Precision tightness testing" or "precision tightness test" means a procedure for testing the ability of a tank system to prevent a release of a regulated substance, that is capable of detecting a 0.1 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(91) "Pressurized piping" means product piping that experiences product pressure above normal atmospheric pressure. Product pressure may be generated from a pump or static head of an aboveground storage tank.

(92) "Pressurized system" or "remote pumping system" means a dispensing system where the pump is not located at, or is remote from, the dispenser.

(93) "Product" means any regulated substance in a storage tank.

(94) "Public access fueling" means the use of a facility by persons who are not employees of the facility to dispense fuel into vehicles, or to transfer fuel for resale into vehicles that are not owned or operated by the facility.

(95) "Public building" has the meaning given in s. 101.01 (12), Stats.

(96) "Public used–oil collection center" means any used–oil collection facility that allows an individual who is not an employee of the facility to transfer used oil from a portable container into a storage tank.

(97) "Public way" means any public thoroughfare, sidewalk, dedicated alley, railroad, waterway or right–of–way. The point of measurement is from the engineered or natural borders of the vehicle or pedestrian traffic lanes.

(98) "Readily accessible" means capable of being reached easily and quickly for operation, maintenance and inspection.

(99) "Re–commission" means the process of returning a system, component or process to a code–complying, in–service condition.

(100) "Recreational vehicle" means any self–propelled motor–driven vehicle that is used for moving people typically off–road, on land, snow, ice or water for sport or recreation, such as snowmobiles and all–terrain vehicles.

(101) "Red–tag" means a red tag secured to a component of a storage or dispensing system, which gives notice that the system or the product stored is under enforcement action for failure to comply with the requirements of either this chapter or ch. ATCP 94, and which prohibits operation of the system until the tag is removed by or under the direction of the authority having jurisdiction.

(102) "Regulated substance" means any flammable or combustible liquid and any liquid that is a federally regulated hazardous substance as defined in s. 168.21, Stats.

Note: The definition of federally regulated hazardous substances in section 168.21 (3), Stats., corresponds to the CERCLA List of Hazardous Substances and Reportable Quantities contained in 40 CFR 302.4, Table 302.4.

(103) "Release" means any discharge, including spilling, leaking, pumping, pouring, emitting, emptying, leaching, dumping or disposal of a regulated substance into groundwater, surface water or subsurface soils.

Note: See sub. (62) for a definition of "leak," sub. (76) for a definition of "obvious release" and sub. (113) for a definition of "suspected release."

(104) "Release detection" means determining whether a discharge of a regulated substance has occurred from a storage tank system into the environment.

(105) "Repair" means any work necessary to correct or restore a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, leak detection equipment, or other storage tank or dispensing system component that either has caused a suspected or obvious release or has failed to function properly.

(106) "Residential watercraft fueling facility" means that portion of a 1– or 2–family residential property where liquid fuels are stored in or dispensed for non–retail purposes from fixed equipment on land into the fuel tanks of self–propelled watercraft, including all facilities used for the storage, dispensing, and handling of flammable and combustible liquids.

(107) "Sacrificial anode system" means a method of corrosion protection that generates cathodic current from the galvanic corrosion of an expendable anode which is more electrochemically active than the structure being protected.

(108) "Secondary containment" means an approved barrier installed around a storage tank system that is designed to prevent a leak from the primary tank or piping from contacting the surrounding earth or the waters of the state before the leak can be detected and cleaned up.

(109) "Significant noncompliance" means the existence of one or more of the following:

(a) A violation that causes, or may cause, a substantial, continuing risk to public health or the environment.

(b) A violation that substantially deviates from a requirement of this chapter.

(c) A violation that includes failure to install, maintain or operate equipment essential to preventing or detecting leaks.

(d) A violation that is observed to reoccur repeatedly as a result of intentional or unintentional administrative or operational oversight.

(110) "Space heating" means heating of areas intended for occupancy or storage.

(111) "Storm water 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 storm water and wastewater does not include treatment except where incidental to conveyance.

(112) "Structure" means an assembly of materials forming a construction for occupancy, storage, use, shelter or weather protection meeting the definition of place of employment under sub. (88) or public building under sub. (95).

Note: The department does not consider a tank to be a structure although local or municipal regulations may classify a tank as a structure.

(113) "Suspected release" means either of the following:

(a) There is indication that a tank system or dispensing system has leaked — such as inventory losses; observable free product or evidence of free product in secondary containment at dispensers, submersible pumps or spill buckets; petroleum odors; unexplained presence of water in a tank; or activation of a leak detection alarm system — but there is no observable environmental evidence of a release.

(b) There is observable environmental evidence of a release, such as soil discoloration or free product, but the source is unknown.

Note: See sub. (62) for a definition of "leak," sub. (76) for a definition of "obvious release" and sub. (103) for a definition of "release."

(114) "Tank" means a device designed to contain an accumulation of regulated substance and constructed of non–earthen materials such as concrete, steel, fiberglass or plastic, and including the following types of tanks, which have the following meanings:

(a) "Abandoned tank" means an aboveground or underground tank with or without product that is not recognized by this chapter as in–use, temporarily out of service, or closed.

(b) "Accumulator tank" or "accumulator reservoir" means a container that is integral to a closed–loop mechanical-system operation of equipment, and that is used either to provide a regulated substance on demand, such as a fluid that is used as a heating or cooling media, or to store a regulated substance that is displaced from the functioning equipment, such as from an elevator or hydraulic lift.

Note: Accumulator tanks are outside the scope of this chapter.

(c) "Breakout tank" means a tank that is used to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by a pipeline. Tanks considered by this chapter to be breakout tanks do not have piping that transfers product directly to or from a loading rack.

(d) "Day tank" means an intermediate tank in a product transfer system between a storage tank and the end use of the product, usually a generator. The purpose of a day tank is to provide immediate product to the end source where the supply may otherwise be influenced by product temperature, viscosity or inadequate supply pressure.

(e) "Farm tank" means a tank that is constructed in accordance with NFPA 30A section 13.2 and installed on a farm premises.

(f) "Field–erected tank" means an aboveground tank that is built on the site from sections and components.

Note: See par. (p) for a definition of "fixed tank."

(g) "Gravity tank" means a supply tank from which the product is delivered directly by gravity.

(h) "Integral tank" means a vessel with a liquid capacity of less than 110 gallons, which supplies fuel to an engine and which is assembled and used with the engine as a single unit of equipment.

Note: Vessels with a capacity of 110 gallons or more are included in the definition of storage tank in par. (q).

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

1. Has a liquid capacity of 110 gallons or more, and is used for storing and dispensing liquid motor vehicle fuel.

2. Is supported on skids, wheels without axles, or similar means and is not mounted upon a tank vehicle or chassis capable of road travel.

3. Is designed and constructed in accordance with s. ATCP 93.250.

4. Is not intended for permanent placement.

Note: Movable tanks are acceptable for use at construction projects, farms, and other locations recognized in subch. VI, where it is more practical to move the tank, typically by lifting equipment, to off–road motorized equipment for dispensing, rather than drive the motorized equipment to the tank.

(j) "Multi–compartment tank" or "multi–chamber tank" means a vessel that contains 2 or more compartments created by the presence of an interior wall so that 2 or more substances can be stored at the same time within a single tank shell.

Note: In accordance with s. ATCP 93.250, each compartment of a multi–compartment tank is considered a separate tank, even if the same substance is stored in more than one compartment.

(k) "Portable tank" means an aboveground closed vessel that has a liquid capacity of 110 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; and includes intermediate bulk containers.

(L) 1. "Process tank" or "flow–through process tank" means 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 and the tank is utilized to carry out or control the heating, cooling, mixing, blending, separating, metering, or chemical action of materials. The processing is done on a regular basis and it is the primary function of the tank.

2. "Process tank" or "flow–through process tank" does not include a tank that is used for the storage of materials before their introduction into the production process or for the storage of finished products or by–products from the production process, or a tank that is only used to recirculate materials. A process tank would be considered a storage tank if the vessel is used as storage for a period exceeding 96 hours after the processing ends.

Note: Process tanks are outside the scope of this chapter.

(m) "Product recovery tank" means a tank that forms an integral part of a ch. ATCP 93 regulated substance spill control system for a storage, processing or transfer area. The purpose of the tank is spill recovery and temporary containment. A product recovery tank does not include a tank that is used for the storage of materials or by–products from a flow–through reclamation process. A product recovery tank will be considered a storage tank if the vessel is used as storage for a period exceeding 96 hours after the control of a release or spill.

Note: Product recovery tanks are outside the scope of this chapter.

(n) "Residential tank" means a tank located on the same property as a 1– or 2–family dwelling or a residential building that falls within the scope of chs. SPS 361 to 366 and used only by the residents of the property or for the maintenance of the property.

(o) "Service tank" means a tank that is used for a limited period of time during the servicing of liquid–bearing equipment, to hold liquids temporarily during the servicing, cleaning or relocation of the equipment.

Note: Service tanks are outside the scope of this chapter. Service tanks include the defueling and refueling tanks that are used in commercial aviation environments. These tanks are used for removal of fuel from an aircraft to facilitate other maintenance for the aircraft and for return of that fuel to the aircraft immediately thereafter.

They are typically not moved from one site to another and are operated by employees of an aviation service company under aviation service protocols and monitored situations.

(p) "Stationary tank" or "fixed tank" means a storage vessel intended for stationary installation and not intended for relocation, loading, unloading, or attachment to a transport vehicle, as part of its normal operation in the process of use.

(q) "Storage tank" means a liquid–tight vessel that is intended for fixed or stationary use or a tank that is used for fuel dispensing under subch. VI but is not used for any of the excepted purposes in s. ATCP 93.020 (6). This term includes a vessel which has a liquid capacity of 110 gallons or more and which is assembled and used with an engine as a single unit of equipment.

(r) "Work–top tank" means an aboveground steel rectangular tank for combined use as a working surface and a storage tank for Class IIIB liquids.

(115) "Tank system" includes the primary tank and pipe, integral secondary containment, integral supports, leak detection, overfill prevention, spill containment, anti–siphon devices, any vapor-recovery system connected to the tank, and the necessary core components that allow the tank system to function as intended and in accordance with the installation requirements. Tank system configurations include onshore underground storage tanks, onshore aboveground storage tanks, and storage tanks over water that are integral with a stationary pier, floating vessel or floating structure for the purpose of storage or vehicle fueling.

Note: In a typical fueling island, the dispensing system, as defined in sub. (41), begins immediately downstream of the emergency shutoff valve, and all components upstream of that point, including the shutoff valve, are part of the tank system.

(116) "Tank–system integrity assessment" or "TSIA" means the process by which the department seeks to determine if the integrity of a tank system or any component thereof has been compromised. This process includes precision tightness testing, inventory reconciliation, visual inspection of system components, and calibration checks of dispensers and automatic tank gauges.

Note: In general, TSIAs are to be performed if there are indications that the integrity of a system has been compromised.

(117) "Tank–system site assessment" or "TSSA" means the process by which the department expects tank–system owners or operators to determine if a tank system or any component of that system has released petroleum products or other hazardous substances into the soil, groundwater or surface waters. This process includes all of the following:

(a) Observation of field conditions, such as stained soils; odors; pitting, holes or cracks in tank system components; observable leaks; and elevated in–field soil–gas readings.

(b) Collection of soil samples for laboratory analysis of petroleum products or other hazardous substances, as prescribed in the department's *Tank System Assessment: A Guide to the Assessment and Reporting of Suspected or Obvious Releases From Underground and Aboveground Storage Tank Systems*.

(c) Reporting of the field observations and sampling results in a format prescribed by the department.

Note: In general, TSSAs are to be performed at the time a storage tank system, or some component thereof, is to be permanently closed, upgraded or repaired, or if a change in service is to take place.

Note: *Tank System Site Assessment: A Guide to the Assessment and Reporting of Suspected or Obvious Releases From Underground and Aboveground Storage Tank Systems* is available from the department's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx

(118) "Tank vehicle" means a tank truck or trailer system designed and constructed to comply with NFPA 385.

Note: NFPA 385 recognizes 3 types of tank vehicles: (1) a tank truck in which the cargo tank is supported entirely on the truck chassis, (2) a tank semi–trailer in which the cargo tank is supported by both the truck chassis and trailer chassis, and (3) a tank full–trailer in which the cargo tank is supported entirely on the trailer chassis.

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

Note: Since a tank wagon is not designed and constructed under NFPA 385 criteria, it shall be towed empty on the road for transport and placement in accordance with s. ATCP 93.610 (1).

(120) "Temporarily out of service" or "TOS" means a storage tank system that is not in use meets the requirements of s. ATCP 93.445 (1) or ATCP 93.545 (1) and is intended to be placed back into use within 24 months.

Note: Temporarily out of service does not apply to stationary tanks that are of seasonal use, such as heating fuel storage tanks.

(121) "Transfer area" means the area where product is transferred, commonly referred to as loading or unloading, between a storage tank and a transport vehicle. Transfer areas are located at terminals, as well as at end–user and intermediate vendors in the product distribution stream. The transfer area may involve loading racks, pipe stands, or direct hose–to–valve connections, and accommodate top or bottom transfer.

(121m) "Underground storage tank" or "underground tank" has the meaning given in sub. (122) unless the context requires otherwise.

(122) (a) "Underground storage tank system" or "UST system" 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 percent or more beneath the surface of the ground.

(b) "Underground storage tank system" or "UST system" does not include any of the following or pipes connected to any of the following:

1. Surface impoundment, pit, pond, or lagoon.

2. Storm water or wastewater collection system.

3. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

4. A storage tank situated in an underground area, such as a basement, cellar, mine shaft or tunnel, if the storage tank is situated upon or above the surface of the floor and not surrounded by earth.

(123) "Upgrade" means the addition to or retrofit of some part of a storage tank system, such as cathodic protection, leak detection, lining, or spill and overfill controls, to improve the ability of a storage tank system to prevent the release of product.

(124) "Used oil" or "waste oil" means any oil 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; and means used cooking oils that are used as fuel for purposes such as space heating or fueling motor vehicles.

Note: See ch. NR 679 and s. 287.15, Stats., for other definitions of used oil and waste oil, and for requirements relating to those definitions, such as criteria for transporting or recycling these liquids.

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

(126) "Vehicle fueling" means the process of adding motor fuel to the engine fuel supply tank for motor driven vehicles, including aircraft, watercraft, on– or off–road vehicles and vehicles on rails.

(127) "Watercraft" or "marine craft" means a vehicle designed to operate on rivers, streams or lakes for the transport of people or goods for recreation, business or commerce purposes.

(128) "Watercraft fueling" means the storage and fueling system and activities associated with shoreline fuel transfer into watercraft and aircraft while moored on the water to be fueled.

Note: Further information relating to terms associated with petroleum storage facilities, petroleum equipment and petroleum-based fuels is available at the Petroleum Equipment Institute's Web site at http://www.pei.org/wiki-pei.

Subchapter I — Administration and Enforcement

ATCP 93.100 Plan review. (1) GENERAL. (a) Plan review and written approval from the authorized agent or the department shall be obtained before any of the following activities are performed on storage tank systems used to store a regulated substance, except where exempted under par. (b):

1. Commencing any construction of new or additional tank or piping installation.

2. Changing the operation of a tank system from storage of a non–regulated substance to a regulated substance.

3. Adding or modifying tank or pipe corrosion protection.

4. Adding leak detection or modifying leak detection as specified in s. ATCP 93.110 (3) (e) when performed in conjunction with other changes that require plan review. A certified installer is not required to perform the modification of leak detection.

Note: Under sub. (3) (a) 5. c., the department's leak detection installation form, TR-WM-133, must be filled out and submitted anytime leak detection equipment is added or modified, whether or not plan review is required. This form is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

5. Upgrading or modifying spill or overfill protection, except this requirement does not apply where drop tube overfill protection is added or modified for existing underground fill piping that drops vertically into a tank.

6. Lining or relining of underground tanks.

7. Converting a full–service motor fuel dispensing facility or a self–service motor fuel dispensing facility to the use of a point–of–sale dispensing system or device. A certified installer is not required to perform the conversion to a point–of–sale dispensing system. The installer

shall fill out the department's point–of–sale fueling installation form, TR-WM-130, and shall provide the form to the authorized agent or the department, for inspection of the system.

Note: Form TR-WM-130 is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

8. a. Converting from the storage and dispensing of flammable or combustible liquids containing 10 percent or less ethanol by volume to liquids containing more than 10 percent ethanol by volume.

b. Converting from the storage and dispensing of flammable or combustible liquids containing 5 percent or less biodiesel fuel by volume to liquids containing more than 5 percent biodiesel fuel by volume.

9. Using a tank system to store a substance that poses a significant fire hazard or safety hazard to people or the environment due to material compatibility, equipment functionality or product characteristics, as determined by the authorized agent or the department, or fire department.

10. Adding or modifying any device or system component making an underground connection to a tank, product pipe or vent pipe.

(b) Plan review and approval is not required for any of the following:

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 1,100 gallons.

2. Integral fuel supply tanks of a motor vehicle, aircraft, watercraft, mobile power plant or mobile heating plant.

3. Aboveground tanks which have a capacity of less than 1,100 gallons and which store Class IIIB liquids other than used oil.

4. Reconfiguration of product piping that is located aboveground, from storage tanks supplying a regulated substance to a manufacturing, industrial or blending process.

5. Tank wagons, tank vehicles, or movable tanks that are used for vehicle fueling operations under subch. VI.

6. Aboveground tank systems that store hazardous liquids which are not also flammable or combustible liquids, if the construction is supervised by a qualified engineer.

Note: See s. ATCP 93.140 for registration requirements for tanks that store federally regulated hazardous substances. Section ATCP 93.350 requires aboveground hazardous substance tank systems to be designed by a qualified engineer.

7. Portable tanks that are not used as fixed tanks.

8. Tanks that are located at an EPA superfund site.

9. Aboveground tanks which are used at a farm premises or construction project in accordance with s. ATCP 93.630, and which meet all of the following conditions:

a. Have a capacity of less than 1,100 gallons.

b. Are located at least 40 feet from either the buildings and structures listed in s. ATCP 93.630 (2) (a), or important buildings or structures.

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

10. Fuel supply tanks which are used for a mobile power plant or mobile heating plant and which meet all of the following requirements:

a. The tank system is built and operated in accordance with a national standard.

b. The tank system is intended to be at the site for a period of 24 months or less.

c. The tank system has an aggregate capacity of less than 1,100 gallons.

d. The tank system does not use any Class I liquids.

11. Where the department determines that the review of a specific application, modification or contractor activity would not meet the regulatory oversight objective for technical plan review and approval.

(c) Notwithstanding pars. (a) and (b), if the department determines that the review of a specific application, modification or special equipment meets the regulatory oversight objective of this chapter, a plan review and written approval from the authorized agent or the department shall be obtained

(2) PLANS, SPECIFICATIONS AND INFORMATION. Plans, specifications and information submitted to the authorized agent or the department for review and approval shall contain all of the following:

(a) Plans that are clear and legible and submitted per department requirements along with fees and a completed installation application.

(b) 1. The name of the owner.

2. The name of the person, firm or corporation proposing the installation, if other than the owner.

3. The address of the facility, including the names of adjacent streets and highways.

(bm) A statement summarizing the scope of the project.

(c) 1. A plot plan, drawn to a minimum scale of one inch equals 20 feet, indicating the location of the installation with respect to property lines; adjoining streets or alleys; fences, including those installed over or through any part of the system; and other buildings on the same property. The plot plan shall indicate the location of buildings; other tanks; loading and unloading points; utilities; sanitary or storm sewers; water mains; water service piping; community and private potable water wells or other potable water source on the subject property;

any private potable water wells on adjacent property that are within 100 feet of the tank, piping or dispenser; and any offsite community wells that are within 1200 feet of the tank, piping or dispenser.

1m. For installations where cathodic protection will be installed, buried metal underground structures and components within 200 feet, such as culverts and guy wire anchor points, should be included in the plot plan.

Note: See s. ATCP 93.260 for minimum separating distances between tank systems and potable water supply sources.

Note: Chapter NR 116 requires municipalities to prohibit any storage of materials that are buoyant, flammable, explosive or injurious to animal, plant or aquatic life, in floodway areas of floodplains.

2. The class of construction of each building or room in a building that contains a storage tank shall also be indicated.

(d) The location, size and capacity of each tank and the following information on the contents of the tank:

1. The name of the stored liquid.

2. The flammability or combustibility classification of the stored liquid.

Note: Flammability and combustibility classifications are established in NFPA 30 sections 4.3.1 and 4.3.2, and are expressed as a Roman numeral and a letter, such as IB or IIIA.

3. Whether the stored liquid is classified in any of the following hazard categories as defined in the applicable model fire code adopted by reference under ch. SPS 314:

a. Explosive or pyrophoric.

b. Oxidizer or organic peroxide.

c. Unstable or water reactive.

d. Toxic or highly toxic.

e. Cryogenic or corrosive to living tissue.

(e) The location of all piping runs and spacing between all tanks and piping.

(f) The type of tank supports and clearances, including clearances between tanks.

(g) The type of venting and pressure relief used and combined capacity of all venting and relief valves on each aboveground tank.

(h) The location of fill, gauge and vent pipes and other openings for the tank.

(i) Location of burners, tanks, pumps, piping and control valves and the relative elevations of any areas within the building where heavier–than–air vapors can accumulate.

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

(k) Information and specifications describing the design and placement of leak detection systems.

(L) 1. Information regarding the type and operation of corrosion protection systems for tanks and piping.

2. For impressed current systems, the location and materials of gas mains and gas service lines serving the facility.

(m) Information regarding the type of secondary containment system.

(n) Specifications describing the spill and overfill protection devices.

(o) Information regarding the compatibility of the tank and piping system with the regulated substance.

(p) A copy of any 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 transferring product.

(q) Any material–approval numbers issued under s. ATCP 93.130.

(r) Information and specifications, including manufacturer's model numbers on materials, equipment and devices to be used in the project which do not have material–approval numbers issued under s. ATCP 93.130 and which have a direct impact on the regulated system.

Note: Examples of this equipment include valves, nozzles and hoses.

(s) Additional data and information regarding storage of regulated substances within buildings or enclosures to demonstrate compliance with the requirements of this chapter.

(t) Any other information necessary for the reviewer to determine code compliance.

(3) APPLICATION AND APPROVAL PROCESS. (a) *Submission of forms.* 1. 'General.' The department's installation application form, TR-WM-126, shall be completed and included with each application for approval, except as provided in subd. 5.

2. 'POS fueling.' For facilities that include dispenser point–of–sale fueling, the first page of the department's POS fueling installation form, TR-WM-130, shall also be completed and submitted.

3. 'Leak detection.' For facilities that include leak detection installation during the overall installation process, the first page of the department's leak detection installation form, TR-WM-123, shall also be completed and submitted.

4. a. For facilities that include fuel consisting of more than either 10 percent ethanol or 5 percent biodiesel by volume, as regulated under s. ATCP 93.680, Part I of the department's alternative fuel installation/conversion application form, TR-WM-132, shall be completed and submitted for approval. Part II shall serve as an addendum to the inspection checklist.

b. If the component or equipment manufacturer verifies the compatibility of the equipment, the verification shall be in writing, indicate an affirmative statement of compatibility, and specify the range of biofuel blends with which the component is compatible.

5. 'Exceptions.' a. For aboveground storage tanks that have a capacity of less than 1,100 gallons, at a farm premises or construction project, the department's farm and construction AST installation notification form, TR-WM-124, shall be completed and submitted as notification to the authorized agent or the department at the time of installation inspection. This form shall also serve as the plan submittal application and the installation checklist.

b. Where conversion to point–of–sale fueling is the only change at a facility, the department's POS fueling installation form, TR-WM-130, shall be completed and submitted to the authorized agent or the department at least 10 days prior to conversion. This form shall also serve as the plan submittal application and the installation checklist.

c. Where an upgrade, exchange or conversion of installed leak detection methodology to another approved methodology or manufacturer is the only change at a facility, the department's leak detection installation form, TR-WM-123, shall be completed and submitted to the department within 5 days of installation. This form shall also serve as the plan submittal application and the installation checklist.

d. Where conversion to storage and dispensing of alternative motor fuels is the only change at a facility, Part I of the department's alternative fuel installation/conversion application form, TR-WM-126, shall be completed and submitted to the department prior to conversion. Part I shall serve as the plan submittal application and Part II as the installation checklist.

Note: Forms TR-WM-124 — Farm and Construction Aboveground Storage Tank Installation Notification, TR-WM-126 —Flammable/Combustible/Hazardous Liquid Tanks Installation Application, TR-WM-130 — Point–of–Sale Fueling Installation Notification, TR-WM-132 — Storage Tank Alternative Fuel Installation/Conversion Application, and TR-WM-133 — Storage Tank Leak Detection Installation or Upgrade Application are available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx

Note: Within a first class city, the provisions in subdivision paragraphs c. and d. may be administered by that city instead of the department, as authorized in ss. ATCP 93.020 (8) (b) and 93.110 (3) and (4). As of **[the effective date of this rule...LEGISLATIVE REFERENCE BUREAU INSERTS DATE]**, only the City of Milwaukee is a first class city.

(b) *Review time.* The authorized agent or the department shall review and make a determination on an application for installation approval and plan review within 20 business days of receiving all of the required information and fees. If an applicant does not respond to a request by the department for additional information within 6 months after the date of the request, the department shall make a determination on the application based upon the information on hand.

Note: Section ATCP 93.1605 addresses fees associated with ch. ATCP 93 plan submittal, review, and inspection.

Note: Section ATCP 93.1605 authorizes double fees when construction is initiated without the required plan approval.

(c) *Conditional approval.* 1. If the authorized agent or the department determines that the plans and the application substantially conform to the provisions of this chapter, a conditional approval shall be granted in writing.

2. All conditions stated in the conditional approval shall be met before or during construction or installation.

3. A conditional approval issued by the authorized agent or the department is not an assumption of any responsibility for the design, construction or maintenance of the facility.

Note: Various sections of this chapter address the responsibilities that contractors have, under s. 168.22 (1), Stats., in achieving compliance with the technical requirements of this chapter, after plans and specifications are approved. For example, s. ATCP 93.115 (2) (b) 2. a. has requirements about completing a pre–construction installation form, and meeting then with an inspector; s. ATCP 93.115 (2) (b) 3. has requirements about notifying an inspector before starting an installation; ss. ATCP 93.400 (5) (b) and 93.500 (6) (a) have requirements about installing aboveground and underground tank systems according to the manufacturer's instructions, the applicable national standards in s. ATCP 93.200, plans and specifications approved under s. ATCP 93.100 and this chapter; ss. ATCP 93.400 (5) (f) and 93.500 (6) (d).

have requirements about completing a checklist during installation of aboveground and underground tanks or piping; and s. ATCP 93.500 (9) (a) 2. has requirements about documenting the performance of newly installed leak detection equipment. Contractors also have compliance responsibilities under various other sections, such as notifying an inspector about installing small tanks at farms and construction sites, in s. ATCP 93.630 (3) (c); notifying an inspector about converting a dispensing facility to a point–of–use dispenser, in s. ATCP 93.100 (1) (a) 7.; performing tank linings for underground tanks, in section ATCP 93.530; applying for approval to convert an installed tank system to store alternative fuel in s. ATCP 93.680; not allowing releases to occur, in s. ATCP 93.230 (a); stopping leaks and preventing migration of free product into the environment, in s. ATCP 93.585 (1); reporting releases to the department of natural resources, in s. ATCP 93.585 (2); and cleaning or removing tanks during closure, in ss. ATCP 93.315 (2) and 93.560 (2).

Note: Section ATCP 93.115 (2) (b) 4. addresses the responsibility of the authorized agent or the department to inspect installation of shop–built tanks and to record the results on the installation checklist.

(d) *Plan sets.* 1. A letter shall be sent to the designer and the owner of record with a statement relating to the examination of the plans and specifications and citing the conditions of approval or denial.

2. The plans and specifications shall be dated and stamped either "Conditionally Approved" or "Not Approved."

3. For all projects reviewed by the department, the department shall retain 2 copies of the plans and specifications and shall forward one copy of the plans and specifications, the approval letter, and the installation application to the corresponding LPO if there is one.

4. The remaining 2 sets of plans and specifications and the approval letter shall be returned to the person designated on the installation application.

Note: Under ss. ATCP 93.400 (11) (b) and 93.500 (9) (b), the approved plans and specifications and approval letter must be kept on site and available to the authorized agent or the department during all phases of installation. After installation is completed, the plans and specifications and approval letter must be made available to the authorized agent or the department upon request.

(e) *Plan denial.* If the authorized agent or the department determines that the plans and specifications or application do not substantially conform to the provisions of this chapter, the application shall be denied in writing, specifying the reasons for denial.

(f) *Appeals.* In the event of a dispute as to whether the information submitted to an authorized agent shows compliance with the provisions of this chapter, the application may be submitted to the department for informal review, instead of filing a formal appeal under s. ATCP 93.190, and the decision of the department shall then govern.

(4) PLAN CHANGES. (a) *Submittal as new installation.* Additions or modifications to systems that occur or become known after the closing of the excavation or commencement of system operation shall be submitted for review as a new installation.

(b) *Submittal as a revision.* 1. Additions or modifications which deviate from the original conditionally approved plans and specifications and which are made before closing the excavation or commencement of system operation shall be submitted for plan review and approval as a revision.

2. The replacement of parts or components shall be submitted for plan review and approval as a revision, unless they will be identical in function to the previously approved parts or components, and they will be in the identical location of the previously approved parts or components.

Note: Examples of modifications that require plan review as a revision include changes in tank placement, size of tank, length or direction of piping run, additional system components, and changes in monitoring equipment. The department will determine if the number and importance of items submitted for revision would be addressed more appropriately through a new plan submittal.

ATCP 93.110 Jurisdiction over enforcement. (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.

(b) The review of plans and specifications and the installation inspection for administering and enforcing this chapter shall be performed by a certified tank system inspector.

Note: LPOs are under contract with the department. The contract specifies LPO qualifications and responsibilities, such as plan review, inspection and consultation.

(c) The department may revoke its approval of a local program operator where the plan examiners or inspectors do not meet the standards specified by the department or where other requirements of the department are not met.

(2) PLAN REVIEW BY LPO. All of the following types of plans shall be submitted to the LPO for review and approval, except as provided in sub. (3) (b):

(a) Plans in which all tanks for the storage, handling or use of flammable or combustible liquids have an individual capacity of less than 5,000 gallons.

(b) Plans that consist solely of converting a full– or self–service motor fuel dispensing facility to the use of a point–of–sale dispensing system or device, regardless of tank size.

Note: Conversion to a point–of–sale dispensing system or device does not require a certified installer.

(3) DEPARTMENTAL PLAN REVIEW. Plan review and approval shall be obtained from the department in all of the following situations, except as provided in sub. (4):

(a) Where one or more tanks for storage of a regulated substance have an individual capacity of 5,000 gallons or more.

(b) Where the tank system is located in an area where there is no LPO.

(c) Where there is installation of, or an upgrade or addition to, the corrosion protection system, regardless of tank size.

(d) Where there is initial installation of leak detection to a tank system, regardless of tank size.

(e) Where there is an upgrade or addition to the leak detection system, regardless of tank size, including any of the following:

1. A change in manufacturer.

2. A change in model number.

3. A change in methodology.

Note: Examples of changes in methodology include switching from a mechanical line leak detector to an electronic one, static tank leak detection to continuous statistical leak detection (CSLD) or changing from statistical inventory reconciliation to an automatic tank gauge (ATG) or vice versa.

(f) Where there is a conversion from the storage and dispensing of flammable or combustible liquids containing 10 percent or less ethanol by volume to liquids containing more than 10 percent ethanol by volume.

(g) Where there is a conversion from the storage and dispensing of flammable or combustible liquids containing 5 percent or less biodiesel fuel by volume to liquids containing more than 5 percent biodiesel fuel by volume.

(4) PLAN REVIEW BY FIRST CLASS CITY. All plans for facilities within a first class city shall be submitted to that city for review and approval.

Note: As of **[the effective date of this rule...LEGISLATIVE REFERENCE BUREAU INSERTS DATE]**, only the City of Milwaukee is a first class city.

(5) SEQUENCE OF JURISDICTION. Where an authorized agent has jurisdiction under this chapter, and a provision of this chapter refers to the authorized agent or the department, the authorized agent's jurisdiction shall be exercised in advance of the department's jurisdiction.

Note: Under s. ATCP 93.020 (10), the department reserves the right to interpret the requirements in this chapter and in all adopted codes and standards.

ATCP 93.115 Enforcement and inspections. (1) GENERAL ENFORCEMENT. (a) *Enforcing agents.* This chapter shall be enforced by the authorized agent and the department having jurisdiction and authority under this chapter.

(b) *Access.* The authorized agent or the department is authorized to enter any building, facility or premises and examine any tank system or component and associated records for the purpose of enforcing this chapter.

(c) *Reexposure.* If any tank system or component that is subject to inspection is covered or concealed without the prior knowledge and authorization of the authorized agent or the department, the agent or department has the authority to require such work be exposed for inspection.

(d) *Tampering.* Signs, red–tags or seals posted or affixed by the authorized agent or the department may not be removed, mutilated, or tampered with, unless authorized by the agent or the department.

Note: Authorized agents and the department with ch. ATCP 93 enforcement responsibility have the authority to shut down a system or to prohibit specific actions relating to the operation of a system, dispensing product from the system, or adding product to a tank, by securing a red–tag to a component of the system marking the respective component inoperable until compliance has been achieved. Only an authorized agent or the department is authorized to grant the removal of the red–tag.

(2) INSPECTIONS. (a) *General.* 1. Tank system inspections for administering and enforcing this chapter shall be conducted by certified tank system inspectors.

2. Fire safety inspections involving flammable, combustible or hazardous liquids shall be conducted by either the authorized agent or the department or by an authorized member of the local fire department.

3. This chapter is not intended to limit or deny the ability of department of safety and professional services deputies to conduct the activities under s. 101.14 (1) (a) and (b), Stats., for the purpose of ascertaining and causing to be corrected any condition liable to cause fire, or any violation of any law or order relating to fire hazards or to the prevention of fire.

Note: See ch. SPS 314 for requirements for fire prevention not otherwise covered in this chapter.

(b) *New and replacement installations.* 1. Inspections shall be conducted during the installation of new or replacement storage tanks or piping systems within the plan review scope of s. ATCP 93.100.

2. There shall be a minimum of 3 inspections performed on underground storage tank systems or on any system that has underground piping, at the following installation points:

a. At a pre–construction meeting. For installations involving underground tanks or piping, the department's pre–construction installation form, TR-WM-131, shall be filled out by the certified installer, and a copy shall be provided to the certified tank system inspector at the end of the meeting. Where an LPO has jurisdiction, the LPO shall send a copy of the form to the department.

Note: Form TR-WM-131 — Pre–Construction UST/PIPE Installation is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 266–7874, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx

b. During the line–pressure tests.

c. At the pre–commissioning start up in accordance with the applicable standard listed in s. ATCP 93.200.

3. a. The certified installer shall notify the authorized agent or the department, on form TR-WM-121, at least 5 business days before starting an installation, to arrange for inspections.

b. Any date or time changes to the original submitted notification form, TR-WM-121, shall be requested at least one business day prior to the original date or time. The new date or time must be later than the original date or time.

Note: Form TR-WM-121 — ATCP 93 Notification Record is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

4. a. Before a shop–built tank system is placed into operation, including back into operation after undergoing a modification or upgrade that is required to have plan approval or registration, the authorized agent or the department shall inspect the installation, and shall record the results by completing and signing the installation checklist, form TR-WM-120, or TR-WM-138 UST, as received from the installer, under s. ATCP 93.400 (5) (f) or s. ATCP 93.500 (6) (e).

b. The original of the installation checklist, form TR-WM-120, or TR-WM-138, shall be completed and submitted to the department. A copy of the checklist shall be furnished to the owner, and a copy shall be retained by the authorized agent if there is one.

5. The owner or operator of a facility shall notify the authorized agent or the department before placing a tank into service.

Note: Section ATCP 93.145 specifies where a permit to operate must also be applied for before placing a tank into service.

(c) *Operating facilities.* Inspections at operating facilities, as determined by the authorized agent or the department, shall be conducted periodically by the authorized agent or the department to determine if the installation remains in conformance with the provisions of this chapter.

(d) *Written order.* When the tank system is inspected by a certified tank system inspector, any violations of this chapter shall be specifically listed, along with an allotted time to correct the violation.

(3) SYSTEM SHUTDOWN. Persons with enforcement authority under this chapter may shut down any part of a tank system, using the department–issued red–tag procedure, under any of the following conditions:

(a) *Immediate shutdown.* The following tank systems shall be subject to immediate shutdown:

1. Tank systems or their components that pose an immediate danger to life, safety or health. Conditions that cause immediate danger to life, safety, or health include visual evidence of leakage of a regulated substance, immediate human exposure to a regulated substance in the environment, defective equipment resulting in release of a regulated substance, overfill prevention that is not functioning properly or inadequate tank venting.

2. Tank systems that do not have leak detection, corrosion protection or spill and overfill protection installed as required under this chapter.

Note: Immediate shutdown is not authorized under subd. 2. where equipment is installed properly but is operating improperly, such as a sacrificial anode system that fails to meet the negative 850–millivolt threshold in s. ATCP 93.520 (2).

3. Tank wagons and movable tanks that are located, used or moved in a manner which presents an immediate environmental or safety hazard.

4. Tank systems undergoing installation that are not in compliance with this chapter, until the certified installer, professional engineer or owner obtains a petition for variance or code interpretation from the department showing that the action in question provides an equivalent degree of fire and environmental protection as the requirement in this chapter.

5. Tank systems that have experienced a lapse in financial responsibility required under subch. VII, until financial responsibility is obtained and the tank system is issued a permit to operate.

6. Tank systems used to store liquids that have been shown to be corrosive, reactive or otherwise incompatible with materials used in the construction of the tank system.

7. Tank systems with any breach that has the potential for liquid or vapor release, discovered as a result of an actual leak or a leak detection test, until the breach is repaired or otherwise corrected.

8. Tank systems that undergo a change of ownership in violation of s. ATCP 93.150, until all the requirements of that section are met.

(b) *Shutdown after investigation or inspection.* The following tank systems shall be subject to shutdown after investigation or inspection:

1. Tank systems or their components for which there is clear evidence of a release to the environment.

Note: Data sources that can yield evidence of these releases include inventory records, precision tightness testing results, and leak detection system results.

2. Tank systems that show evidence of attempts to mislead the authorized agent or the department regarding code compliance.

Note: Examples of this evidence include obviously falsified records, sensors that are altered or rendered inoperative, or spill and overfill prevention equipment that has been tampered with or altered.

(c) *Shutdown after continued violation.* 1. Tank systems or components are subject to shutdown for a continuing code violation under this chapter, provided all of the following conditions are met:

a. An order, allowing a period for compliance of at least 15 days, is issued with a specific compliance date.

b. The reinspection made after the specified compliance date shows that compliance has not been achieved.

2. If compliance is not achieved by the 15-day compliance date as in subd. 1. a., any additional inspections may result in a reinspection fee per the special inspection fees listed in s. ATCP 93.1605 (5).

(d) *Required information.* The owner or operator shall provide the authorized agent or the department with all of the following information when a system is shut down:

1. The type and volume of product in the tank system.

2. The date of last delivery into the tank system.

3. The name of the transport provider.

(4) PRODUCT DELIVERY INTO NONCOMPLYING TANK SYSTEMS.

(a) It is a violation of this chapter for any person to knowingly deliver, place, or receive a regulated substance into a tank system that has been shut down by an enforcement action under this section.

(b) The department may authorize delivery in human welfare or emergency situations on a case–by–case basis, such as for emergency generator systems serving healthcare facilities.

(5) EQUIPMENT TAMPERING. It is a violation of this chapter for any person to tamper with or disable systems that provide corrosion protection, leak detection or spill and overfill protection.

(6) STOP–WORK ORDER. (a) When the authorized agent or department determines that tank systems, components or work methods regulated under this chapter are contrary to the

provisions of these chapters, or are unsafe or dangerous in any manner, the authorized official may issue an order to stop the work or activity until the unsafe or dangerous act or condition is corrected.

(b) The stop–work order shall be issued verbally to the individual responsible for supervising the actions.

(c) If the actions cannot be corrected immediately and witnessed by the authorized agent or department, the authorized agent or department shall issue a written order within 6 hours of the verbal stop–work directive.

(d) The written order shall state the reason for the order and the conditions under which the cited work activity is authorized to resume.

ATCP 93.120 Revocation and expiration of approval. (1) The authorized agent or the department 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.

(2) Plan approval by the authorized agent or the department shall expire in either of the following circumstances:

(a) Construction has not commenced within two years from the date indicated on the approved plan.

(b) The construction has not been completed within five years from the date indicated on the approved plan.

ATCP 93.130 Specific approval of materials, equipment, concepts, technology and devices. (1) SPECIFIC APPROVAL REQUIRED. Specific approval shall be obtained in writing from the department for any of 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.

(d) Prefabricated dike systems with integrated collision protection.

(e) Marine–craft tank vehicles.

(2) DISCRETIONARY APPROVAL. (a) The department may require specific, written approval in accordance with sub. (3) for use of new, unique 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 use of new or unproven materials, equipment, concepts, technology or devices not specified in this chapter.

(3) APPLICATION FOR APPROVAL. (a) *General.* 1. Application for approval shall be made on the department's material approval application form, TR-WM-127, and 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 Table 93.130, and all information and documentation needed to complete the review, the department shall review and make a determination on the application within 60 business days.

(b) *Leak detection methods.* 1. 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 EPA standard test procedure for evaluating the method.

Note: EPA test protocols require precision tightness testing for tanks to 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 percent full, with a probability of detection of 0.95 and probability of false alarm of 0.05. Precision tightness testing for piping must be capable of detecting a 0.1 gallon per hour leak rate, at a pressure of 1.5 times the operating pressure, with a probability of detection of 0.95 and a probability of false alarm of 0.05. Automatic tank gauges and all methods of monthly monitoring must be capable of detecting 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.

2. The test methods shall be capable of detecting the minimum leak rate with the required probability of detection and false alarm, while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the height of the water table.

3. Manufacturers of leak detection methods shall specify what threshold leak rate is used with their test methods to indicate a leak.

Note: Section ATCP 93.515 (5) (b) requires automatic tank gauges to be provided with a printer that prints out the measured leak rate, and to state whether that leak rate indicates an actual leak in the system.

(c) *Flexible nonmetallic piping.* The application for approval of flexible nonmetallic 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, lining material specifications, field installation, seam testing procedures, bedding specifications and any required soil cover.

2. For flexible dike liners that are not required to have a soil cover, information and test results shall be submitted to assess the fire hazard of the exposed liner material.

Note: NFPA 701 (Test Method 2) is an example of an appropriate fire test.

(e) *Marine–craft tank vehicles.* Marine–craft tank vehicles shall be evaluated on an individual basis considering the proposed area of operation.

(4) EXPIRATION OF APPROVAL. (a) Approvals issued under this section are valid for a period of 3 years, with an expiration date of December 31 of the third full year after initial approval, except as provided in par. (b).

(b) Approvals designated as experimental are issued for a maximum term of 12 months.

(c) Approvals may be terminated at any time the department considers them to be in noncompliance with the assumptions on which the approval was based or with the conditions of approval.

Note: Form TR-WM-127 — Wisconsin Material Approval Application is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

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

(a) Metallic flex connectors.

(b) Shop–built aboveground and underground storage tanks used for public access fueling of automobiles, trucks, watercraft, ATVs, snowmobiles or aircraft as specified in s. ATCP 93.620.

(c) Shop–built aboveground and underground storage tanks used for fueling fleet vehicles that are licensed for public highway use except for tank wagons, movable tanks, farm tanks and tank vehicles as defined in this chapter and used in accordance with s. ATCP 93.610 or 93.630.

(d) Work–top tanks.

(e) Any product or material required to be either listed or listed and labeled by a standard adopted in ss. ATCP 93.200 to 93.220.

Note: Examples include required listings for dispensing devices for Class I and II liquids under NFPA 30A section 6.3.2; aboveground tanks under NFPA 30 section 25.3.1.4; and used–oil burners and the tanks that supply them, under NFPA 31 section 7.5.

Table 93.130

Material Review Fees

Fee per Review				
	Type of Review			
Action	**Chapter ATCP 93 and Voluntary**	**Alternate Product**	**Experimental**	**Alternate Standard**
1. New approval	$1,000	$1,200	$2,000	$1,200
2. Renewal of approval with no changes	$750	$900	$1,500	NA*
3. Renewal of approval with changes	$1,000	$1,200	$2,000	NA*
4. Manufacturer's request for minor revision (no extension of approval period)	$200	$200	$200	NA*
5. Manufacturer's request for major revision (new approval period)	$1,000	$1,200	$2,000	NA*

*NA means not applicable

ATCP 93.140 Tank registration. (1) GENERAL. All new and existing storage tanks that are used to store a regulated substance shall be registered with the department, except this requirement does not apply to any of the following tanks:

(a) Aboveground tanks which have a capacity of less than 1,100 gallons and which have any of the following characteristics:

1. Are farm tanks, or are located at and serve a construction project.

2. Are used to store heating oil or used oil, for consumptive use on the premises.

Note: Tanks that are not exempt from registration requirements under this paragraph include tanks which store heating oil as a backup fuel for natural gas-fired boilers.

3. Are used to store Class IIIB liquids other than used oil.

Note: There is no exemption for used oil unless it is consumed on the premises where stored. Therefore used–oil storage tanks that have a capacity of 110 gallons or more must be registered.

4. Are located inside a building and are used for industrial processes, if that use occurs through piping which connects the tank to the process.

(b) Aboveground tanks which are used to store nonflammable or noncombustible federally regulated hazardous substances and which have a capacity of less than 5,000 gallons.

Note: The list of federally regulated hazardous substances covered in this subchapter, also known as the CERCLA List, is located in 40 CFR 302.4, Table 302.4.

Note: Registration is not required for aboveground or underground tanks that are used to store nonflammable and noncombustible federally regulated hazardous substances in concentrations of less than 1 percent by volume, because s. ATCP 93.020 (6) (o) excludes those tanks from this chapter.

(c) Tank vehicles.

(d) Tank wagons, portable tanks, and movable tanks that are located on a property for less than 24 months.

(e) Tanks that are located at an EPA superfund site.

Note: Per Wisconsin statutes, eligibility for Petroleum Environmental Cleanup Fund Act (PECFA) funds is conditioned upon prior tank registration.

(2) REGISTRATION DEADLINES AND RESPONSIBLE PARTY. (a) The owner of a newly–installed storage tank shall have the tank registered with the department in accordance with sub. (3) within 15 business days of completion of the installation.

Note: See s. ATCP 93.150 for the deadline and other procedures for notifying the department of a change in ownership for a registered storage tank.

(b) An owner of a registered tank who changes their name or mailing address, or an owner of a registered tank at a facility that undergoes a name change, shall have the change registered with the department on form TR-WM-118, TR-WM-137, or TR-WM-153, as provided by the department, within 15 business days of the change.

Note: Form TR-WM-118– Aboveground Flammable/Combustible/Hazardous Liquid Storage Tank Registration, form TR-WM-137 — Underground Flammable/Combustible/Hazardous Liquid Storage Tank Registration, and form TR-WM-153 — Change of Ownership, Flammable/Combustible/Hazardous Liquid Storage Tank Registration are available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942. Forms TR-WM-118 and TR-WM-137 are also available from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(c) The owner of a registered tank system that undergoes any of the following changes or modifications shall have the change or modification registered with the department in accordance with sub. (3) (a) and (c) or (d) within 15 business days of completion of the change or modification:

1. Change in service, where the subsequent service is storing a regulated substance or when changing service from one regulated substance to another.

2. Addition of leak detection, spill or overfill control or corrosion protection for any part of the system; or upgrade, exchange or conversion of installed leak detection methodology to another approved methodology or manufacturer.

3. Converting to point–of–sale fueling.

(d) The owner of a tank system that is undergoing conversion to being either temporarily out of service or back in service shall have the change registered with the department in accordance with sub. (3) (a) within 15 business days of the change.

(e) The owner of land on which unregistered tanks are discovered, including any that are permanently closed, shall have the tanks registered with the department in accordance with sub. (3) (a) and (b) within 15 business days of discovery.

Note: See s. ATCP 93.400 (6) (c) for registration requirements that apply when an AST is relocated to a property with a different street address.

Note: See s. ATCP 93.450 or 93.550 (1) (e) for registration requirements that apply when an AST or UST, respectively, is changed from storing a regulated substance to storing a non–regulated substance.

Note: See s. ATCP 93.460 (4) or 93.560 (2) (d) for registration requirements that apply during permanent closure or removal of an AST or UST system, respectively.

Note: See s. ATCP 93.530 (2) (f) for registration requirements that apply when a UST lining is installed.

(3) REGISTRATION PROCEDURE. (a) *General.* A storage tank registration form, form TR-WM-118 or TR-WM-137, shall be completed, signed by the owner and submitted to the department, for each tank which stores regulated substances and which is not exempted in sub. (1).

Note: Form TR-WM-118 — Aboveground Flammable/Combustible/Hazardous Liquid Storage Tank Registration and TR-WM-137 — Underground Flammable/Combustible/Hazardous Liquid Storage Tank Registration are available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone

(608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(b) *Proof of financial responsibility.* For a tank owner meeting any of the conditions in sub. (2) (a) and (e), except for permanently closed tanks, proof of any required financial responsibility and an affidavit of financial responsibility, in accordance with subch. VII shall be submitted with the registration form.

Note: See s. ATCP 93.700 (1) for the types of tanks that must have financial responsibility. See s. ATCP 93.745 (2) (j) for requirements for an affidavit of financial responsibility.

(c) *Tank installation checklist and tests.* 1. Submittal of a registration form for a newly installed shop–built tank system, or for a registered shop–built tank system addressed in sub. (2) (c), shall include the original of the tank installation inspection checklist, form TR-WM-120 or TR-WM-138, as completed by the certified tank system inspector under s. ATCP 93.115 (2) (b) 4., except as specified in par. (d).

2. Submittal of a registration form for a newly installed UST system shall include the results of the installation tests required in s. ATCP 93.500 (6).

(d) *Exceptions.* In the following circumstances, the specified documents shall be submitted instead of form TR-WM-120 or TR-WM-138:

1. 'Newly installed aboveground tanks storing federally regulated hazardous substances.' Submittal of a registration form for an aboveground tank which stores federally regulated hazardous substances shall include a statement from the qualified engineer responsible for designing and overseeing the construction of the tank system. The statement shall include the name, business address and signature of the qualified engineer and a summary list of design standards used.

Note: The list of federally regulated hazardous substances referred to in this subdivision, also known as the CERCLA List, is located in 40 CFR 302.4, Table 302.4.

2. 'Conversion to point–of–sale fueling.' Where conversion to point–of–sale fueling is the only change at a facility, submittal of the registration form shall include the POS fueling installation form, TR-WM-130, completed under s. ATCP 93.100 (3) (a) 5. b.

3. 'Upgrade, exchange or conversion of installed leak detection methodology to another approved methodology or manufacturer.' Where upgrade, exchange or conversion of installed leak detection methodology to another approved methodology or manufacturer is the only change at a facility, submittal of the registration form shall include the leak detection installation form, TR-WM-133, completed under s. ATCP 93.100 (3) (a) 5. c.

4. 'Conversion to storage and dispensing of alternative motor fuels.' Where conversion to storage and dispensing of alternative motor fuels is the only change at a facility, submittal of the registration form shall include Part II of form TR-WM-132, as completed by the tank owner under s. ATCP 93.100 (3) (a) 5. d.

ATCP 93.145 Tank permits. (1) GENERAL. All in–use and temporarily out of service storage tanks, whether new or existing, that are used to store a regulated substance shall have a permit to operate from the department, except this requirement does not apply to any of the following tanks:

(a) Aboveground tanks.

(b) Farm and residential underground storage tanks which have a capacity of less than 1,100 gallons and which are used for storing motor fuel.

(c) Underground storage tanks storing heating oil for consumptive use on the premises.

Note: Tanks that are not exempt from permit requirements under this paragraph include tanks that store heating oil as a back-up fuel for natural gas-fired boilers.

(d) Tanks located at an EPA superfund site.

(2) PERMIT APPLICATION TIMELINE. The tank owner shall obtain a permit to operate, in accordance with sub. (3), after all requirements for plan approval under s. ATCP 93.100 and registration under s. ATCP 93.140 are completed and the tank is installed.

(3) PERMIT APPLICATION PROCEDURE. (a) The owner shall complete one permit application, form TR-WM-152, as provided by the department, for each tank and submit it to the department along with the information required on the application, except as specified in par. (b), and with any fees due to the department as assessed under this chapter or ch. ATCP 94.

(b) Where registration information in full compliance with s. ATCP 93.140 (3) is submitted for a newly installed tank, the department shall use that information as the permit application.

(4) PERMIT PROCESSING. (a) The department shall 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, information and fees specified in sub. (3), the department shall issue an underground storage tank operating permit for each storage tank.

(c) The department may decide to not issue or to not renew an operating permit for a tank if the department finds that there has been significant noncompliance with either this chapter or orders issued pursuant to this chapter. Upon making this decision, the department shall inform the owner or operator in writing of the reasons for the decision.

Note: See s. ATCP 93.190 for requirements relating to appealing a decision by the department.

(5) PERMIT POSTING. Each permit to operate shall be posted at the premises where the tank is located, and in a location where the permit is visible to the public. The posted permit shall be maintained in a legible state.

1 **(6)** PERMIT EXPIRATION AND RENEWAL. (a) 1. The underground storage tank permit
2 to operate shall annually expire on the 28th day of the month specified in the initially issued
3 permit, except as provided in subd. 2.
4 2. When a change of ownership occurs, the permit to operate shall expire upon completion
5 of the real estate transaction.
6 (b) 1. The department shall send the tank owner of record a permit renewal notice and online
7 renewal instructions before the expiration of the current permit, except as provided in subd. 2.
8 2. Where a change of ownership occurs, the department shall send the new tank owner a
9 permit application, form TR-WM-152, within 15 business days of being notified of the change of
10 ownership, as addressed in s. ATCP 93.150.
11 (c) To renew a permit, the tank owner shall complete all of the information required in the
12 online application including the information in subd. 1-4:
13 1. Proof of financial responsibility in accordance with subch. VII.
14 2. An affidavit of financial responsibility in accordance with s. ATCP 93.745 (2) (j)
15 3. Any fees due to the department as assessed under this chapter or ch. ATCP 94.
16 4. Test results specified in the online application.
17 **(7)** PERMIT SUSPENSION. (a) 1. The department may suspend any permit issued under
18 this section, upon determining that operation of any involved tank constitutes an imminent
19 hazard to human health or the environment, or that financial responsibility required in subch. VII
20 has been discontinued.
21 2. When suspending a permit, the department shall inform the owner or operator in writing
22 of the reasons for the suspension.

(b) Upon suspension of a permit, all dispensing from any involved tank shall cease, and the department may order the owner or operator to properly empty the tank.

(c) The department may reinstate a suspended permit upon determining that the hazard or financial responsibility failure which resulted in the suspension no longer exists.

Note: See s. ATCP 93.190 for requirements relating to appealing a decision by the department.

ATCP 93.150 Change of ownership. (1) Any person taking ownership of a storage tank registered under s. ATCP 93.140 shall notify the department of the change of ownership within 15 business days.

(2) The ownership–change notification shall be on form TR-WM-118, TR-WM-137, or TR-WM-153, as provided by the department and shall include all of the following:

(a) The name and address of the new owner and of a local contact person.

(b) The date the documents evidencing the ownership transfer are executed.

(c) The name of the previous owner.

(d) The address of all locations included in the change of ownership that have tanks which are subject to the registration requirements in s. ATCP 93.140.

(e) A copy of the newly recorded deed showing the new owner or other official documentation of ownership as approved by the department.

Note: A land contract does not meet the requirement for documentation of ownership change.

(f) Proof of financial responsibility in accordance with subch. VII and an affidavit of financial responsibility in accordance with s. ATCP 93.745 (2) (j).

Note: Form TR-WM-118– Aboveground Flammable/Combustible/Hazardous Liquid Storage Tank Registration, form TR-WM-137 — Underground Flammable/Combustible/Hazardous Liquid Storage Tank Registration, and form TR-WM-153

— Change of Ownership, Flammable/Combustible/Hazardous Liquid Storage Tank Registration are available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942. Forms TR-WM-118 and 137 are also available from the Division's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(3) A permit application, form TR-WM-152, if required under s. ATCP 93.145 (1), shall be completed and submitted to the department within 15 business days of its receipt and shall include all of the following:

(a) Proof of financial responsibility in accordance with subch. VII.

(b) An affidavit of financial responsibility in accordance with s. ATCP 93.745 (2) (j)

Note: If proof of financial responsibility and the affidavit are submitted under sub. (2) (f), it is not required to re-submit under sub. (3).

(c) Any fees due to the department as assessed under this chapter or ch. ATCP 94.

(d) Test results as specified in the permit application.

(4) All records that are required to be retained under either s. ATCP 93.400 (11) or 93.500 (9) shall be transferred to the new owner or operator.

Note: Marketer facilities should refer to: https://datcp.wi.gov/Pages/Programs_Services/StorageTankContacts.aspx. Non–marketer facilities should refer to: https://datcp.wi.gov/Pages/Programs_Services/StorageTankContacts.aspx.

ATCP 93.1605 Fees relating to storage tanks for liquids that are flammable, combustible or federally regulated hazardous substances. (1) PLAN EXAMINATION AND INSPECTION FEES. Fees for the examination of plans, site inspections and reinspections for tanks used for the storage of liquids that are flammable, combustible or federally regulated hazardous substances shall be determined in accordance with Table 93.1605.

(1m) PROJECTS INITIATED WITHOUT PLAN APPROVAL. The plan examination fees specified in Table 93.1605 shall be doubled for projects where the installation, erection, or construction was initiated without the required departmental approval.

(2) GROUNDWATER FEE. Pursuant to s. 168.23 (5), Stats., in addition to any fee charged by the department by rule for plan review and approval for the construction of a new or additional installation or change in operation of a previously approved installation for the storage, handling or use of flammable, combustible or hazardous liquids, the department shall collect a groundwater fee of $100 for each plan review submittal that includes at least one storage tank with a 1,000 gallon or greater capacity. The fees collected under this subsection shall be credited to the environmental fund for environmental management.

(3) REINSPECTION FEE. The contractor, when performing activities covered under ss. ATCP 93.240 (16) to 93.240 (19), shall pay the reinspection fee to the authorized agent or the department if a return trip is required due to any of the following or is required to reschedule a trip on less than 24 hours of notice for any of the following:

(a) Failure to have the tank system accessible for inspection on the date and time specified for inspection.

(b) Installation inspection points that are incomplete on the date and time specified for inspection.

(c) Failure to correct deficiencies by the date and time specified for inspection.

Note: Section ATCP 93.240 (16) covers aboveground tank system installation certification requirements. Section ATCP 93.240 (17) covers underground tank system installation certification requirements. Section ATCP 93.240 (18) covers tank system lining certification requirements. Section ATCP 93.240 (19) covers tank system removing and cleaning certification requirements.

1 **(4)** SPECIAL INSPECTION FEE. The owner or operator shall pay the miscellaneous
2 inspection fee specified in sub. (5) to the authorized agent or the department for any of the
3 following reasons:
4 (a) Replacement of identical equipment where the department or local program operator has
5 waived the plan submittal requirement.
6 (b) Pre–operational inspection required by the department as a result of compliance orders
7 where plan submittal is not required.
8 **(5)** SPECIAL INSPECTION FEE; AMOUNT. Any miscellaneous inspection fees assessed under
9 sub. (5) or s. ATCP 93.115 (3) (c) 2. shall be assessed at the following rates:
10 (a) $160 per inspection for a facility with only aboveground storage tanks.
11 (b) $240 per inspection for a facility with at least one belowground storage tank.
12 (c) If applicable, any additional actual costs for special circumstances may be assessed.
13

Table 93.1605

Plan Examination and Inspection Fees for Liquid Storage Tanks

Tank System Category	Plan Review Fee*	Installation Inspection Fee	Plan Revision Fee	Reinspection 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	$125	$250	$100	$100

through 48,000 gallons capacity				
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

Note: For all tanks which have a capacity of less than 5,000 gallons and which are reviewed by a local program operator, no state fees are required. The local program operator shall charge a fee which must be at least equal to the fee in this table, but which does not include the groundwater fee in sub. (2).

* If the department is conducting plan review in the absence of an assigned local program operator, the appropriate Table 93.1605 fees must be submitted, along with the groundwater fee in sub. (2). Further information on where local program operators perform reviews is available at the following Web site: https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx

** A point–of–sale system is any dispensing system that will authorize fuel dispensing by means of key, card or code activation. These conversions are reviewed by local program operators.

*** These reviews are performed only by the department.

1 **ATCP 93.165 Alternate Forms.** Although various sections of this chapter include a

2 requirement to record certain information on a particularly specified department form, that

1 requirement may be met by recording the same information in the same format on an alternate
2 form if that form is approved by the department.

3 **ATCP 93.170 Petition for variance.** The department shall consider and may grant a
4 variance to a provision of this chapter. The petition for variance shall establish an equivalency
5 which meets the intent of this chapter.

6 **(1)** APPLICATIONS FOR PETITION FOR VARIANCE. A petition for variance must include all of
7 the following:

8 (a) A completed and notarized petition for variance form, TR-WM-129.

9 (b) A petition for variance fee of $300.00.

10 (c) If the petition is requesting a variance from building or property setback requirements, a
11 position statement completed by the fire department having jurisdiction.

12 **(2)** DEPARTMENT ACTION. (a) Upon receipt of the petition for variance, including all
13 required information, the department shall evaluate the petition for variance and determine if it
14 provides for an equivalency which meets the intent of this chapter.

15 (b) If additional information is needed, the department shall notify the owner in writing of
16 the specific information required.

17 (c) If the department determines that the petition for variance provides an equivalency, the
18 department shall approve the variance.

19 (e) If the department determines that the petition for variance does not provide an
20 equivalency, the department may:

21 1. Approve the petition for variance subject to specific conditions determined by the
22 department which shall establish an equivalency which meets the intent of the rule;

2. Grant a temporary variance to delay enforcement of a rule to a specified date, not to exceed one year. In requesting the variance, the petitioner shall demonstrate that all available steps are being taken to safeguard the public and environment and shall possess and describe a program for coming into compliance with the rule as quickly as possible. A temporary variance may be renewed no more than twice, not to exceed one year each, and only if the petitioner files an application for renewal at least 90 calendar days before expiration of the temporary variance.

3. Grant an experimental variance to allow the petitioner to participate in an experiment approved by the department to demonstrate or validate new or improved techniques to safeguard the public and the environment; or

4. Deny the petition for variance.

(3) NOTIFICATION OF PETITION FOR VARIANCE DETERMINATION. The department shall notify the petitioner in writing of the petition for variance determination, including any conditions of approval. Any denial shall include the reason for denial and information on the appeals procedure.

(4) TIME LIMIT FOR PROCESSING. The department shall review and make a determination on an application for a petition for variance within 30 business days.

(5) MODIFICATIONS AND REVISIONS. (a) If a petition for variance is initially denied by the department, the petitioner may, in writing, modify the request for variance by submitting additional or other alternatives in order to provide an equivalency and resubmit the application for the petition for variance.

(b) The petitioner may, in writing, request that the petitioner's original statements or the conditions of approval be modified and resubmit the application for the petition for variance.

(6) REVOCATION. The department may revoke any petition for variance where it is determined that the variance was obtained through fraud or deceit or where the petitioner has violated the specific conditions on which the variance was approved.

ATCP 93.175 Prohibited practices. Persons subject to this chapter are prohibited from the following:

(1) Falsifying any records and reports required under this chapter.

(2) Removal of or tampering with any red-tag without written authorization from the department or an authorized agent.

(3) Installation or removal of any storage tank system without department or authorized agent approval.

(4) Unauthorized altering or disabling of any system covered in this chapter.

(5) Failing to maintain permits and financial responsibility for underground storage tank systems.

(6) Failure to comply with an administrative order issued by the department or an authorized agent.

ATCP 93.180 Penalties. Penalties for violations of this chapter shall be assessed in accordance with s. 168.26, Stats. and shall apply separately to each tank that is in violation of this chapter.

Note: Section 168.26, Stats., in coordination with 40 CFR 281.41, states, "Any person who violates this section or any rule or order adopted under this section shall forfeit not less than $10 nor more than $5,000 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."

Note: Under 42 USC 6991e (a) (3) and (d) (2), the EPA may assess fines of up to $10,000 for each tank for each day of violation and may seek judicial penalties of up to $25,000 for each day of continued noncompliance.

ATCP 93.190 Appeals and hearings on enforcement decisions. (1) HEARINGS. (a) *General.* The owner or operator of a tank system may request a hearing with the department, as specified in s. ATCP 1.06, on any decision affecting that person's legal rights, including enforcement orders and any petition for variance, material–approval, or permit decision issued under the scope of this chapter.

(b) *Appeal requirements.* 1. All appeals of enforcement orders issued under this chapter shall be in writing and shall be received by the department no later than 15 calendar days after the date of the enforcement order or decision being appealed, except as provided in subd. 2.

2. All appeals of petitions for variance or material–approval or permit decisions issued under this chapter shall be in writing and shall be received by the department no later than 30 calendar days after the date of the decision being appealed.

3. The department may make a determination not to proceed with a request for a hearing depending on the nature of the issue being appealed.

4. Appeals received after the appeal deadline shall be dismissed.

5. For purposes of this section, appeals filed after 4:30 p.m. shall be considered received on the next business day.

Note: The appellant or an attorney representing the appellant may request an administrative hearing to review this action by delivering, mailing, or faxing a written request for a hearing to one of the following:

In–person delivery address:
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, Wisconsin 53708

Mailing address:
Secretary of Department of Agriculture, Trade and Consumer Protection
PO Box 8911
Madison WI 53708–8911

1 6. An appeal shall be signed by the person whose legal rights are affected by the decision
2 being appealed or an attorney representing such person. Any appeal filed by a person other than
3 the person whose legal rights are affected by the decision being appealed or an attorney
4 representing that affected person shall be dismissed.
5 7. The written appeal shall list every reason the department's or authorized agent's decision
6 is incorrect and shall identify every issue to be considered at the hearing. Issues not raised in the
7 written appeal under this paragraph are considered waived and shall be dismissed.
8 (c) *Response.* Upon receipt of notification of hearing from the department, the affected party
9 shall submit to the department a written response within 15 calendar days of the date of service.
10 Failure to respond within the prescribed time limit or failure to appear at the scheduled hearing
11 may result in the allegations specified in the complaint being accepted as true and accurate.
12 (d) *Settlement agreement prior to hearing.* 1. If the department and the affected party are
13 able to reach preliminary agreement on disposition of a complaint prior to a hearing, such
14 agreement shall be processed in accordance with all of the following:
15 a. Be transmitted in writing to the secretary of the department or the person so designated by
16 the secretary.
17 b. Not be binding upon any party until accepted by the secretary of the department or the
18 person so designated by the secretary.
19 2. The settlement agreement shall be considered a joint motion by the parties to dismiss the
20 appeal in its entirety with prejudice or to dismiss such portions of the appeal with prejudice as
21 may be covered by the terms of the settlement agreement.
22 (e) *Witness fees.* Witness fees and mileage of witnesses subpoenaed on behalf of the
23 department shall be paid at the rate prescribed for witnesses in circuit court.

1 **(2)** CONDUCT OF HEARINGS. (a) All hearings shall be conducted by persons selected by
2 the department in accordance with ch. 227, Stats.
3 (b) Persons selected under par. (a) may administer oaths or affirmations and may grant
4 continuances and adjournments for cause shown.
5 (c) The affected party shall appear in person and may be represented by legal counsel.
6 (d) Witnesses may be examined by persons designated by the department.
7 (e) There shall be no prehearing discovery except as provided in s. 227.45 (7), Stats.
8 **(3)** DETERMINATIONS. (a) The department may make determinations and enter its order
9 on the basis of the facts revealed by its investigation.
10 (b) Any determinations as a result of petition or hearing shall be in writing and shall be
11 binding unless appealed to the secretary of the department.
12 **(4)** APPEAL ARGUMENTS. Appeal arguments shall be submitted to the department in
13 writing unless otherwise ordered.
14 **(5)** LOCATION OF HEARINGS. (a) All hearings shall be held at a location determined by
15 the department.
16 (b) Telephone testimony of individual witnesses and telephone hearings may be held at the
17 discretion of the person designated by the secretary as hearing officer.
18 **(6)** HEARING TRANSCRIPTS. (a) All hearings shall be electronically recorded.
19 (b) Any party may request a copy of the electronic recording.
20 (c) 1. A transcript of the recorded hearing shall be prepared upon request at the expense of
21 the party requesting the transcript.
22 2. Copies of transcripts prepared under this subsection shall be provided to the other party or
23 parties upon payment of the actual cost of copying or obtaining a copy of the transcript.

3. The department may require payment in advance.

4. A transcript may be provided at the department's expense to a party who demonstrates impecuniousness or financial need if that party has filed a petition for judicial review.

5. Where the department contracts with a court reporting firm for the preparation of transcripts, the fees charged for transcription and copying shall be equal to the fees charged to the department by the court reporting firm.

(7) ENFORCEMENT ACTION STATUS. Enforcement action shall proceed until such time as an administrative law judge has issued under this subsection a decision overturning or modifying the order.

Subchapter II — Adopted Standards and General Requirements

ATCP 93.200 Adoption of standards. The standards listed in Tables 93.200–1 to 93.200–11 are incorporated by reference into this chapter.

Note: Copies of the adopted standards are on file in the offices of the department and the legislative reference bureau. Copies of the standards may be purchased through the respective organizations listed in Tables 93.200–1 to 93.200–11.

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	Concrete Structures for Containment of Hazardous Materials.

Table 93.200–2

API	American Petroleum Institute 1220 L Street, NW Washington, DC 20005
Standard Reference Number	**Title**
1. 570–16	Piping Inspection Code: In-service Inspection, Rating, Repair, Alteration, and Rerating of In–service Piping Systems.
2. RP 575–14	Inspection of Existing Atmospheric and Low–pressure Storage Tanks.
3. Std 650–13 (With addenda 1 and 2)	Welded Steel Tanks for Oil Storage.
4. RP 651–14	Cathodic Protection of Aboveground Petroleum Storage Tanks.
5. RP 652–14	Linings of Aboveground Petroleum Storage Tank Bottoms.
6. Std 653–14	Tank Inspection, Repair, Alteration, and Reconstruction.
9. RP 1604–96	Closure of Underground Petroleum Storage Tanks.
10. RP 1615-11	Installation of Underground Petroleum Storage Systems, Sixth Edition.
11. RP 1621–93 (R 2012)	Bulk Liquid Stock Control at Retail Outlets.
12. RP 1626-10 (With errata and addendum)	Storing and Handling Ethanol and Gasoline–Ethanol Blends at Distribution Terminals and Filling Stations.
13. RP 1631–01	Interior Lining and Periodic Inspection of Underground Storage Tanks.
14. RP 1632–96 (R 2010)	Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems.
15. RP 1637–06 (R 2012)	Using the API Color–Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals.
16. Std 2000–14	Venting Atmospheric and Low–Pressure Storage Tanks.
17. Std 2015–18	Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks.
18. RP 2200–15	Repairing Hazardous Liquid Pipelines.
19. Std 2350–12	Overfill Protection for Storage Tanks in Petroleum Facilities.
20. Std 2610–05 (R 2010)	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)	Standard Guide for Three Methods of Assessing Buried Steel Tanks.

Table 93.200–3j

EI	Energy Institute 61 New Cavendish Street London W1G 7AR, UK
Standard Reference Number	**Title**
1. EI 1529-14	Aviation fuelling hose and hose assemblies, 7th edition.
2. EI 1542-12	Identification markings for dedicated aviation fuel manufacturing and distribution facilities, airport storage and mobile fuelling equipment, 9th edition.

Table 93.200–3r

HIR Technical Services	H.I.R. Technical Services P.O. Box 611 Titusville, PA 16354
Standard Reference Number	**Title**
HIR FTV RP 2007-18	In-service Inspection of Aboveground Atmospheric Fiberglass Reinforced Plastic Tanks and Vessels

Table 93.200–4

KWA	Ken Wilcox Associates 1125 Valley Ridge Drive Grain Valley, MO 64029
Standard Reference Number	**Title**
1999 Version	Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera.

Table 93.200–5

NACE	NACE International 1440 South Creek Drive Houston, TX 77084-4906
Standard Reference Number	**Title**
1. SP0169–13	Control of External Corrosion on Underground or Submerged Metallic Piping Systems.
2. SP0178–07	Design, Fabrication, and Surface Finish Practices for Tanks and

	Vessels to Be Lined for Immersion Service.
3. SP0188–06	Discontinuity (Holiday) Testing of New Protective Coatings on Conductive Substrates.
4. SP0193–16	External Cathodic Protection of On–Grade Carbon Steel Storage Tank Bottoms.
5. SP0285-11	Corrosion Control of Underground Storage Tank Systems by Cathodic Protection.
6. SP0286–07	Electrical Isolation of Cathodically Protected Pipelines.
6m. TM0101-12	Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Tank Systems.
7. TM0497–12	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. 10-18	Standard for Portable Fire Extinguishers.
1m. 20-16	Standard for the Installation of Stationary Pumps for Fire Protection.
2. 30-18	Flammable and Combustible Liquids Code.
3. 30A-18	Code for Motor Fuel Dispensing Facilities and Repair Garages.
4. 30B-15	Code for the Manufacture and Storage of Aerosol Products.
5. 31-16	Standard for the Installation of Oil–Burning Equipment.
5m. 35-16	Standard for the Manufacture of Organic Coatings
6. 37-18	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines.
7. 68–18	Standard on Explosion Protection by Deflagration Venting.
8. 110-16	Standard for Emergency and Standby Power Systems.
9. 326-15	Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair.
10. 385-17	Standard for Tank Vehicles for Flammable and Combustible Liquids.
11. 407-17	Standard for Aircraft Fuel Servicing.
12. 410-15– Chapter 6 only	Standard on Aircraft Maintenance.
13. 418-16	Standard for Heliports.
14. 704-17	Standard System for the Identification of the Hazards of Materials for Emergency Response.

1 **Table 93.200–7**

PEI	Petroleum Equipment Institute PO Box 2380 Tulsa, OK 74101
Standard Reference Number	**Title**
1. RP100-17	Recommended Practices for Installation of Underground Liquid Storage Systems.
2. RP200-13	Recommended Practices for Installation of Aboveground Storage Systems for Motor–Vehicle Fueling.
3. RP300-09	Recommended Practices for Installation and Testing of Vapor–Recovery Systems at Vehicle–Fueling Sites.
4. RP400-18	Recommended Procedure for Testing Electrical Continuity of Fuel–Dispensing Hanging Hardware.
5. RP500-11	Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.
6. RP600-12	Recommended Practices for Overfill Prevention for Shop–Fabricated Aboveground Tanks.
7. RP800–13	Recommended Practices for Installation of Bulk Storage Plants.
8. RP900–17	Recommended Practices for the Inspection and Maintenance of UST Systems.
9. RP1000-14	Recommended Practices for the Installation of Marina Fueling Systems.
10. RP1200-17	Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.
11. RP1300-13	Recommended Practices for the Design, Installation, Service, Repair and Maintenance of Aviation Fueling Systems.
12. RP1400-14	Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems.

2

3 **Table 93.200–8**

SSPC	The Society for Protective Coatings 40 24th Street Pittsburgh, PA 15222
Standard Reference Number	**Title**
VIS 2–01	Standard Method of Evaluating Degree of Rusting on Painted Steel Surfaces.

4

5 **Table 93.200–9**

STI	Steel Tank Institute 944 Donata Court Lake Zurich, IL 60047
Standard Reference Number	**Title**
1m. R012–07	Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks.
2. R051–17	Cathodic Protection Testing Procedures for sti–P3® USTs.
4e. R111-16	Storage Tank Maintenance.
4m. R892-06	Recommended Practices for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems.
4s. R972-10	Recommended Practice for the Addition of Supplemental Anodes to sti–P3® USTs.
5. SP001-11,5th Edition	Standard for the Inspection of Aboveground Storage Tanks.
6. SP031–18	Standard for Repair of Shop–Fabricated Aboveground Tanks for Storage of Flammable and Combustible Liquids.
7. SP131-14	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 142-06	Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids.
2. UL 971-95	Nonmetallic Underground Piping for Flammable Liquids.
3. UL 1746-07	Standard for External Corrosion Protection Systems For Steel Underground Storage Tanks.
4.UL 1856-13	Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems.
5. UL 2080-00	Standard for Fire Resistant Tanks for Flammable and Combustible Liquids.
6. UL 2085-97	Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids.
7. UL 2258–10	Nonmetallic Tanks for Oil–Burner Fuels and Other Combustible Liquids.

Note: Several other UL design standards are indirectly applied by this chapter through their inclusion in other standards that are directly adopted in this chapter. For example, UL 58, 80,

142, 1316, 1746, 2080 and 2085 are included in NFPA 30, in section 21.4.2, which is adopted in Table 93.200–6.

Table 93.200–11

U.S. Department of Energy	U.S. Department of Energy
Standard Reference Number	**Title**
1. DOE/GO 102016-4854, February 2016	Handbook for Handling, Storing, and Dispensing E85 and Other Ethanol-Gasoline Blends.
2. DOE/GO 102016-4875, November 2016	Biodiesel Handling and Use Guide: Fifth Edition (Revised).

ATCP 93.210 Application of standards. (1) All flammable, combustible and hazardous liquids, and equipment and facilities that are used to store them shall be designed, constructed, installed, operated, inspected, tested and maintained as specified in the standards adopted in s. ATCP 93.200, as those standards apply to the specific liquid, equipment or facility, except as otherwise provided in this chapter.

(2) All codes and standards referenced in the standards adopted in s. ATCP 93.200 shall apply to the prescribed extent of each such reference, except as modified by this chapter.

(3) Any requirements in the standards adopted in s. ATCP 93.200 that address design and construction of public buildings or places of employment and which conflict with requirements in chs. SPS 361 to 366, are not included as part of this chapter.

Note: In addition to addressing new construction for public buildings and places of employment, chs. SPS 361 to 366 generally require in s. SPS 361.03 (13) that every existing public building or place of employment be maintained to conform with the building code requirements which applied when the building, structure, element, system, or component thereof was constructed.

(4) All fire detection, prevention, suppression and isolation features required by a standard adopted in s. ATCP 93.200 shall be provided as specified in the standard, unless mandated otherwise by chs. SPS 361 to 366, under sub. (3).

(5) All fire detection, prevention, suppression and isolation features that are installed, whether or not they are required by rule or standard, shall be inspected, tested and maintained as required by the applicable standard adopted in s. ATCP 93.200 or by other rules of the department of safety and professional services.

Note: See also ch. SPS 314, *Wisconsin Fire Prevention Code*, for requirements on the inspection, testing and maintenance of fixed and portable fire protection systems.

(6) Any permit referenced in the standards adopted in s. ATCP 93.200 is not required by this chapter but may be required at the local level if done so through a local ordinance.

Note: For example, the permit referenced in NFPA 30 section 6.5.3.1 for spark–producing operations is not required by this chapter but may be applied through a local ordinance.

ATCP 93.220 Secondary references. For the purposes of this chapter, the department of safety and professional services shall enforce the applicable provisions of the following Wisconsin administrative codes in lieu of the indicated standards that are referenced in the NFPA standards adopted in s. ATCP 93.200:

(1) BOILERS AND PRESSURE VESSELS. Chapter SPS 341 in lieu of the ASME Boiler and Pressure Vessel Code.

(2) BUILDING ELEMENTS. Chapters SPS 361 to 366 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 High Challenge Fire Walls, Fire Walls and Fire Barrier Walls.

(d) NFPA 5000®– Building Construction and Safety Code®

Note: In addition to addressing new construction for public buildings and places of employment, chs. SPS 361 to 366 generally require in section SPS 361.03 (13) that every existing public building or place of employment be maintained to conform with the building code

requirements which applied when the building, structure, element, system, or component thereof was constructed.

(3) ELECTRICAL INSTALLATIONS. Chapter SPS 316 in lieu of NFPA 70 — National Electrical Code®.

ATCP 93.225 Alternate standards. (1) Alternate standards that are equivalent to or more stringent than the standards incorporated by reference in this chapter 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. ATCP 93.130 or ATCP 93.170.

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

(4) 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 chapter.

(5) If the department determines that the alternate standard is not equivalent to or more stringent than the referenced standard, the request for approval shall be denied in writing.

(6) The department may revoke an approval for any false statements or misrepresentations of facts on which the approval was based.

(7) The department may reexamine an approved alternate standard and issue a revised approval at any time.

ATCP 93.230 General requirements. (1) APPLICATION. This section applies to all new and existing tank systems, their appurtenances, and the associated property and facilities.

(2) ACCESS. (a) Owners and operators of storage tank systems shall cooperate fully with inspections, monitoring, testing and requests for document submission conducted or required by the authorized agent or the department.

(b) Facilities shall have available personnel, keys, codes or other items necessary to provide open access to sumps, dispensers, pumps or areas that contain liquid system valves, controls, connections and fittings for the purpose of inspecting for leaks, functionality of fire safety and leak prevention equipment or verification of proper system operation.

Note: Section 93.08, Stats., reads as follows:

In performing their duties or in enforcing the laws entrusted to their administration, the department and its authorized agents may do all of the following:

(1) Enter, within reasonable hours, any field, orchard, garden, packing ground, building, freight or express office, warehouse, car, vessel, vehicle, room, cellar, storehouse, cold storage plant, packing house, stockyard, railroad yard or any other place of business, which it may be necessary or desirable for them to enter.

(2) Open any box, carton, parcel, package or other receptacle, inspect the contents thereof, and, upon payment or tender of the market value, take samples of any product or material contained therein.

(3) Inspect products and materials and collect and test samples of them.

(3) RELEASES. (a) Owners and operators and contractors performing work under this chapter may not allow releases to occur from tank systems or dispensing systems, or from spilling or overfilling.

(b) Fuel–delivery persons may not allow releases to result from any overfilling or spilling that occurs during their delivery procedure.

Note: For further information on industry practices for preventing or detecting releases with aboveground storage systems, and for protecting groundwater, surface water and soil in the event of a liquid release, see API Publication 340 — *Liquid Release Prevention and Detection Measures for Aboveground Storage Facilities.*

(4) SAFETY DATA SHEET. Facilities shall have available a safety data sheet for each stored product regulated by this chapter.

Note: The flash point as noted in the safety data sheet will be used to resolve any disputes of the flammability or combustibility classification for the respective liquid product.

(5) UNITS OF MEASURE. Units of measurement shall be traditional U.S. measures.

Note: An important unit of measure used by this chapter is the U.S. gallon. It is equivalent to 4 U.S. quarts or 3.79 liters.

(6) DEGREASING AND CLEANING. (a) A Class I liquid may not be used for degreasing or cleaning any engine, machine, part or equipment, or for cleaning any part of a building or premises, except as provided under par. (b).

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

(7) SYSTEM COMPATIBILITY. Tank system components and containment systems shall be compatible with the substance stored in the tank system.

(8) FIRE EXTINGUISHER MAINTENANCE. All portable fire extinguishers shall be maintained in accordance with NFPA 10.

(9) PROPERTY MAINTENANCE. (a) The area around any tank, the area around or within a secondary containment, and the dispensing or transfer area shall be maintained free of vegetation, debris and other material that is not necessary for the operation of the tank, leak or spill containment, or liquid dispensing or transfer.

(b) Portable container storage shall comply with NFPA 30 chapter 15.

(c) All surface area within a 20–foot radius of a storage tank or dispenser shall be maintained free of combustible material and debris, except as allowed for public access motor vehicle fueling operations in ss. ATCP 93.605 (8) and 93.620 (2).

Note: With the exception of the requirements in ss. ATCP 93.605 (8) and 93.620 (2), the ability to maintain the combustible material free surface area addressed in this subsection may be limited by land features, landscaping and facility management of adjacent property owners.

(10) SYSTEM MAINTENANCE. (a) All system equipment and components shall be maintained to function to the manufacturer's original specifications, or in the absence of manufacturer's specifications, the designer's or construction contractor's original specifications, and shall be maintained to be leak–free.

(b) 1. At least monthly, except as provided in subd. 2., sumps and secondary containment systems for tanks, piping and dispensers shall be inspected, and any liquids and debris contained shall be removed.

2. Sumps with a non–discriminating electronic sensor that detects liquid in the sump shall be inspected at least semiannually unless more frequent inspection is required by PEI RP500 or RP900.

(c) Deficiencies in product lines or structural or transition components that allow for liquid leaks or water intrusion shall be repaired or corrected.

(d) Leak detection, fill and overfill prevention equipment shall be maintained in a functional condition.

(e) Fire and leak prevention and detection equipment installed, but not required by the department's rules, shall be maintained functional or be removed.

(f) Aboveground or underground storage tanks shall be properly maintained as in-use or temporarily out of service or be closed in accordance with s. ATCP 93.460 or 93.560, unless the requirements in s. ATCP 93.450 or 93.550 are met for a change in service to store a non-regulated substance.

Note: Section ATCP 93.115 (3) (a) 7. allows the authorized agent or the department or fire department to shut down the tank system until any breach in the tank system is repaired or otherwise corrected.

(11) DAMAGE TO UNDERGROUND COMPONENTS. (a) When damage has occurred to underground pressurized tank system components or to underground vent and remote fill lines, the affected portion of the tank system shall be removed from service, and the following actions shall be taken before that portion of the system is put back into service, except as provided in par. (b):

1. a. Perform third–party precision tightness testing of the tank system in accordance with s. ATCP 93.515 (4) (a) 1.

b. Perform a tightness test on the tank ullage in accordance with s. ATCP 93.515 (10).

2. Isolate system components through the use of pressure–retaining components.

3. Perform functional operational tests of existing monitoring equipment.

4. Perform any additional monitoring, processes, or procedures needed to verify system integrity.

5. Comply with the tank–system site assessment and response requirements in ss. ATCP 93.575 to 93.585 if a release is suspected.

6. Notify the authorized agent or the department if the damage resulted in a release.

Note: This notification can be part of the notice that is submitted under s. ATCP 93.400 (8) (c) or 93.500 (7) (d) when repairs are made because of a release from an AST or UST system.

(b) The actions in par. (a) 1. to 4. are not required where the damage is limited to dispenser system components that are isolated from the rest of the dispenser or tank system through the use of pressure–retaining components.

Note: In addition to these requirements, other additional safety or environmental protection actions or repairs may be necessary.

(12) PRODUCT COLOR CODING FOR FILL PIPE CAPS AND MANHOLE COVERS. (a) *General.* 1. All fill pipe caps and manhole covers for underground fuel tanks at distribution terminals, bulk plants and motor fuel dispensing facilities shall be identified by the standard color and symbol coding in API 1637.

2. Products containing extenders such as ethanol shall be designated by the addition of a black border around white symbols and a white border around other colored symbols.

Note: Extenders or oxygenates are added to gasoline and typically comprise a maximum of 15 percent of the fuel by volume.

3. Vapor–recovery connections and manholes shall be marked with orange circles.

4. a. Observation and monitoring wells shall be marked with a black triangle on a white background.

b. The well shall be provided with a durable label warning against the introduction of petroleum products into the well.

(b) *Location of identification.* 1. The color coding required in par. (a) shall be applied to the fill pipe cap and manhole cover or within the spill containment.

2. At all facilities with more than one tank, the color coding applied to the fill cap or manhole cover shall extend at least 12 inches beyond the edge of the cap or cover onto adjacent concrete or pavement.

Note: See s. ATCP 93.340 for additional information on product identification at bulk plants and terminals.

(13) DISCONNECTING AND DISCONTINUING VAPOR RECOVERY. Disconnecting or discontinuing use of a stage II vapor–recovery system or a portion thereof shall comply with PEI RP300 chapter 14, be completed within five days after it begins, and be reported to the department on form TR-WM-122 within 15 business days after the completion.

Note: Each connection of a tank to deactivated, unremoved vapor–recovery pipe should be capped or plugged at the tank, if readily accessible, to minimize the potential for water intrusion from the pipe.

Note: Form TR-WM-122 is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942. The form is also available from the Bureau's Web site at http://datcp.wi.gov/Consumer/Hazardous_Materials_Storage_Tanks/Hazardous_Materials_Storage_Tank_Forms/index.aspx.

(14) REMOVING WATER AND OTHER CONTAMINANTS FROM STORAGE TANKS. Water and other contaminants shall be removed from storage tanks in accordance with STI R111.

Note: See s. ATCP 93.605 (1) (g) for related requirements for water in storage tanks at motor fuel dispensing facilities.

(15) PREPARING TANKS FOR CHANGES IN FUEL TYPE. Converting a tank from storing a different type of liquid that is regulated by this chapter shall include complying with STI R111.

Note: See ss. ATCP 93.450, 93.550, and 93.680 for related requirements for changing the type of liquid stored in a tank.

ATCP 93.240 Certifications and enforcement.

(1) CERTIFICATIONS. Persons and firms providing or supervising any of the following services shall be credentialed by the department in accordance with this chapter:

(a) Tank–system site assessment as referenced in s. ATCP 93.465 for aboveground tanks and s. ATCP 93.580 for underground tanks.

(b) Underground tank system lining under ss. ATCP 93.530 and 93.535.

(c) The cleaning and removal of underground storage tank systems and stationary shop–built aboveground storage tank systems.

(d) Storage tank system precision tightness testing using equipment that is not permanently installed on the tank system.

Note: All methods of precision tightness testing are required to be approved by the department in accordance with s. ATCP 93.130.

(e) Corrosion protection services as required in s. ATCP 93.520.

(f) Installation of underground storage tank systems, underground piping, and shop–built aboveground storage tank systems, except this requirement does not apply to any of the following tank systems:

1. Aboveground heating oil tanks at 1– or 2–family dwellings.

2. Tanks or piping that are installed or constructed under the direct supervision of a registered professional engineer.

Note: "Under the direct supervision of a registered professional engineer" means the registered professional engineer must be on the site during, and responsible for, the key installation and test activities described in sub. (16) (e) or (17) (e).

(2) APPLICATION. (a) Application for a certification or registration, or a certification or registration examination covered under this section shall be submitted on a form prescribed by the department.

Note: Applications and related forms for certifications or registrations are available online at mydatcp.wi.gov, from the Department of Agriculture, Trade and Consumer Protection Bureau of Weights and Measures at PO Box 8911, Madison, WI 53708–8911; or at the department's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(b) An application for a certification or registration which either requires or recognizes the attendance at or completion of educational courses as a qualification for the certification or registration shall be accompanied by such evidence, including but not limited to transcripts, that verifies fulfillment of the prerequisite.

1 (c) Applicants for any certification or registration under this chapter shall include the
2 applicant's social security number, or in the case of a certification or registration for a business, the
3 applicant shall include the federal employer identification number. The department shall consider
4 the failure by the applicant to provide a social security number or a federal employer identification
5 number as an incomplete application and may not process the application further until the
6 appropriate number is provided.
7 (d) A business having multiple locations covered under one federal employer identification
8 number applying for a tank specialty firm registration need not obtain a separate registration for
9 each location.
10 **(3)** FEES. (a) Fees required for the various certifications or registrations and their processing
11 under this section shall be determined in accordance with Table 93.240.
12 (b) Fees required under this section are not refundable.
13 (c) Certification or registration fees may not be prorated.
14 **Table 93.240- Fees**

Certification or Registration Category	**Type**	**Application Fee**	**Examination Fee**	**Certification or Registration Fee**
Tank System Inspector	Certification	$20	$15	$50
Tank Specialty Firm	Registration	$20	NA	$50
Tank System Site Assessor	Certification	$20	$15	$50
Aboveground Tank System Installer	Certification	$20	$15	$50
Underground Tank System Installer	Certification	$20	$15	$50
Tank System Liner	Certification	$20	$15	$50
Tank System Remover–Cleaner	Certification	$20	$15	$50

Tank System Tightness Tester	Certification	$20	NA	$50
Cathodic Protection Tester	Certification	$20	NA	$50
Corrosion Expert	Certification	$20	NA	$50

Note: No application fee if application is submitted through the online application system on myDATCP.wi.gov.

(4) PROCESSING TIMES. An application for a certification or registration covered under this chapter shall be granted or denied by the department within 21 calendar days after the department receives all of the application materials necessary to obtain the certification or registration. If the certification or registration application information is insufficient, the department shall request additional information within 21 calendar days of receipt of the application. If an applicant does not respond to a request by the department for additional information within 3 months after the date of the request, the department shall make a determination on the application based upon the information on hand.

(5) MAILING. (a) Unless otherwise provided by law, all orders, notices and other papers may be served by the department by first class mail at the address on file with the department.

(b) A certification or registration holder shall be responsible for notifying the department of any change in mailing address.

(6) TERMS. (a) All certifications or registrations issued under this subsection shall be valid for a period of two years.

(b) All certifications or registrations issued under this subsection shall expire at 11:59 p.m. on the date of expiration. Certifications and registrations expire on the two-year anniversary of the original date of issuance.

1 **(7)** RENEWAL. (a) 1. A notice of renewal shall be mailed by the department to a
2 certification or registration holder at least 30 calendar days prior to the expiration of the
3 certification or registration.

4 2. Failure to receive a notice for renewal of a certification or registration may not be
5 considered as an excuse or good cause for failure to renew a certification or registration prior to
6 the expiration of the certification or registration.

7 (b) 1. Except as provided in subd. par. 2. b., upon receipt of the renewal notice from the
8 department, a person may apply to renew a certification or registration provided an application, a
9 certification or registration fee and evidence of all renewal obligations, if any, are submitted to
10 the department prior to the expiration date of the certification or registration.

11 **Note:** Qualification obligations for renewal are specified under the appropriate
12 certification or registration category sections.
13
14 2. A person may apply to renew a certification or registration in accordance with subd.
15 par. a. no later than one two-year term after expiration of the certification or registration. An
16 application fee as specified in Table 93.240 shall accompany the renewal application.

17 a. A person who files for renewal after the expiration date of a certification or registration
18 issued under subs. (13) to (20), shall comply with this chapter's requirements for initially
19 receiving that certification or registration.

20 b. A person who files for renewal of a certification or registration issued under subs.
21 (13), (16), or (17), and who has not obtained all continuing education credit required for renewal
22 shall comply with this chapter's requirements for initially receiving that certification or
23 registration.

1 c. For a certification or registration issued under subs. (13), (16), or (17), the time period
2 for obtaining continuing education credits shall extend from the beginning date to the expiration
3 date of that certification or registration.

4 **(8)** CONTINUING EDUCATION. (a) *Program Specifications.* 1. Only courses,
5 programs, and seminars approved in writing by the department shall be used for credit to fulfill
6 continuing education requirements.

7 2. a. Requests for a course, program or seminar to be recognized for approval shall be
8 submitted in writing to the department.

9 b. Requests for approval shall include sufficient information to determine if the course,
10 program or seminar complies with this subsection.

11 c. The department shall review and make a determination on a request for approval
12 within 21 calendar days of receipt of the request and information necessary to complete the
13 review.

14 3. a. Thirty minutes of attendance in an approved course, program or seminar shall be
15 deemed equal to 0.5 hours of acceptable continuing education.

16 b. Continuing education credit for attendance in approved continuing education courses,
17 programs or seminars in other than 30 minute increments shall be rounded down to the next half
18 hour.

19 c. Courses, programs and seminars to be considered for approval towards continuing
20 education credit shall relate to the skills and knowledge of one or more certification categories.

21 4. a. The department may limit credit approval to specific certification categories when
22 approving a course, program, or seminar for continuing education credit.

1 b. Approval of courses, programs or seminars for continuing education credit may be
2 renewed. Renewal shall be in accordance with subd. 2.
3 c. An approval of a course, program or seminar for continuing education credit under
4 subs. (13) to (21) shall expire either 3 years after the date of approval, or as otherwise specified
5 in the approval.
6 5. The department may revoke the approval of a course, program or seminar for
7 continuing education credit for any false statements, misrepresentation of facts or violation of the
8 conditions on which the approval was based. The department may not revoke the approval of a
9 course, program or seminar less than 30 calendar days prior to the course, program or seminar
10 being held.
11 6. a. The individual or organization which had obtained the course, program or seminar
12 approval shall maintain an attendance record of those individuals who have attended and
13 completed the course, program or seminar for at least 3 years from the date of the course,
14 program or seminar.
15 b. The attendance record shall include all of the following: the course name, the course
16 identification number assigned by the department, the date or dates the course was held or
17 completed, the name of each attendee, the name of each certification held by the attendee for
18 which the course applies, and the certification number assigned by the department of each
19 attendee.
20 c. A copy of the attendance record shall be forwarded by the person or organization which
21 had obtained the course, program or seminar approval to the department within 14 calendar days
22 after completion of the course or program.

1 7. Any individual or organization that obtains a course, program, or seminar approval for
2 continuing education credit under subs. (13) to (21) shall notify the department of any material
3 changes to the information submitted for that approval.
4 8. Any individual or organization that obtains a course, program, or seminar approval for
5 continuing education credit under subs. (13) to (21) shall notify the department if the course,
6 program, or seminar is discontinued before the end of its approval period.
7 (b) *Evidence of compliance.* Each certification holder shall retain evidence of compliance
8 with continuing education requirements throughout the certification period for which continuing
9 education credit was required for renewal of the certification.
10 1. The department shall accept as evidence of compliance original or copies of documents,
11 certified by the individual or organization providing the course, program or seminar, indicating
12 attendance and completion of the continuing education credit.
13 2. The department may require a certification holder to submit evidence of compliance for
14 the continuing education credit which was required to renew the certification.
15 (c) *Continuing education cycle*. For those certification categories which require continuing
16 educational credit for renewal, the certification holder shall obtain the necessary amount of
17 continuing educational credit prior to the expiration date of the certification as specified in Table
18 93.240.
19 **(9)** EXAMINATIONS ADMINISTERED BY THE DEPARTMENT. (a) For those
20 certification categories which require examination, the department shall conduct at least four
21 certification examinations annually for each certification category with the exception of sub. (13)
22 at times and locations specified by the department.

1 (b) An application and fee for a certification that requires an examination shall be received
2 by the department at least 30 calendar days prior to the day of the examination. The department
3 may postpone the applicant's appearance to another examination date if any of the following
4 occur:
5 1. The applicant fails to have the application on file with the department within the required
6 time.
7 2. The application information or required qualifications are incomplete.
8 3. The examination center is filled to capacity.
9 (c) Upon verification of the application and the required qualifications, the department shall
10 notify an applicant in writing of the date, time and place of the examination.
11 (d) 1. An applicant for certification examination shall provide a photo identification or
12 other appropriate evidence to gain admittance to an examination.
13 2. An applicant shall bring to a certification examination all necessary materials as specified
14 by the department.
15 3. a. Except as provided in subd. par. b., an applicant who fails to appear at a scheduled
16 certification examination without giving notice to the department at least 24 hours before the
17 examination shall be considered to have failed the examination and shall be required to submit a
18 re–examination application and examination fee.
19 b. The department may waive the 24–hour notification requirement of subd. par. a. due to
20 inclement weather, if the applicant notifies the department the day of the examination.
21 (e) The examination for a certification shall be based on a job analysis of the knowledge,
22 skills and abilities associated with the certification. The examination shall include all of the
23 following subject matter:

1. Regulations and standards governing the work or activities required or permitted under the certification.

2. Theories, principles, and practices associated with the activities required or permitted under the certification.

(f) A grade of 70 percent or greater in each part of a certification or registration examination shall be considered a passing grade.

(g) 1. The department shall inform an applicant of the results of an examination in writing within 21 calendar days from the examination date.

2. Upon notification of failing a certification or registration examination, an applicant may request another examination in accordance with this section.

3. An applicant who has successfully passed a certification or registration examination may submit an application and the certification or registration fee as specified under Table 93.240 for the appropriate certification or registration within 3 months after the date the department had mailed the results of the examination.

4. Failure to apply for a certification or registration in accordance with subd. 3. shall necessitate the applicant to apply, retake, and pass another certification or registration examination in order to obtain the certification or registration.

(h) 1. An applicant may request and make an appointment with the department to review the applicant's examination.

2. An applicant who has failed an applicant's examination may not review the examination less than 7 calendar days before the applicant is scheduled to retake the examination.

3. The department shall retain certification or registration examinations at least 2 months after the date of the examination.

1 **Note:** This subsection only applies to examinations administered by the department.

2 **(10)** ENFORCEMENT ACTIONS. (a) The department may take actions to ensure
3 compliance with the provisions of this chapter, including denying, revoking, or suspending
4 credentials.

5 (b) The department may require attendance at a specified education class.

6 **(11)** DENIAL, SUSPENSION, AND REVOCATION. (a) *Reasons.* The department may
7 deny, suspend, or revoke a certification or registration under this chapter if the department
8 determines that an applicant or holder of the certification or registration is responsible for any of
9 the following:

10 1. Fails to meet the qualifications for the certification or registration.

11 2. Has obtained the certification or registration through fraud or deceit.

12 3. Has demonstrated negligence or incompetence in fulfilling the responsibilities or
13 obligations of the certification or registration.

14 4. Has a conflict of interest in fulfilling the responsibilities or obligations under the
15 certification or registration.

16 5. Has demonstrated misconduct in fulfilling the responsibilities or obligations under the
17 certification or registration.

18 6. Has been arrested or convicted for a crime substantially related to the certification or
19 registration.

20 7. Has a physical or mental impairment which prevents the applicant or holder from
21 fulfilling the responsibilities or obligations under the certification or registration.

22 8. Has violated state, federal or local laws or regulations relating to the conduct of the
23 activities under the certification or registration.

9. Has attempted to defraud, including but not limited to falsifying test reports.

10. If registered or certified under this section has performed any of the following:

a. Failed to maintain required records.

b. Denied the department access to requested records.

c. Failed to submit a required notice or report to the department within a required time period.

d. Submitted false reports to the department or other persons.

e. Exhibited a pattern of submitting substantially inadequate reports.

(b) *Notice of denial, suspension, or revocation.* A notice of denial, suspension, or revocation shall be sent to the applicant or the certification or registration holder. The notice shall include all of the following:

1. The basis for the denial, suspension, or revocation, including the facts relied on by the department to make its decision and a citation of applicable statutes and administrative rules establishing the legal basis for the decision.

2. A statement that the applicant or the certification or registration holder may file a request for a hearing with the department as specified in s. ATCP 1.06.

(c) *Summary suspension.* Under s. 227.51 (3), Stats., the department may summarily suspend any certification or registration if the department finds that immediate action is necessary for public health, safety or welfare. The summary suspension of a certification or registration shall remain in effect until after a final decision is issued following a hearing.

(d) *Hearing.* The request for an administrative hearing shall be received by the office of legal counsel of the department no later than 30 days following the date of mailing of the notice under par. (b). Otherwise, the request for hearing shall be denied by the department.

1 (e) *Surrender of certification or registration.* A person whose certification or registration
2 has been suspended or revoked shall surrender the certification or registration to the department
3 upon request.
4 (f) *Reinstatement.* 1. Suspension. a. A person whose certification or registration has been
5 suspended may apply to have the certification or registration reissued only after the time set for
6 suspension by the department or hearing examiner has passed and by complying with the
7 conditions set forth in the suspension order.
8 b. The request to the department to have a suspended certification or registration reissued
9 shall be made in writing.
10 c. The department may require a person whose certification or registration has been
11 suspended to apply for the certification or registration by complying with all of the requirements
12 for a new applicant, including paying the application fees and successfully passing an
13 examination.
14 d. The department may impose conditions on the reissued certification or registration to
15 assure compliance with this chapter.
16 2. Revocation. A person whose certification or registration has been revoked may not
17 apply to ever receive such a certification or registration.
18 **(12)** RESPONSIBILITIES. (a) A person who holds a certification under this chapter shall
19 carry on person the certification issued by the department while performing or conducting the
20 activity or activities permitted under the certification.
21 (b) A person who holds a certification under this chapter shall present the certification for
22 identification upon request of the department or its representative.

1 (c) The requirements of this subsection apply to certifications or registrations issued to an
2 individual and not to a business.

3 **(13)** TANK SYSTEM INSPECTORS. (a) *General.* No person may conduct a regulatory
4 inspection of a tank system that is regulated under this chapter, to administer and enforce this
5 chapter, unless the person holds a certification issued by the department of agriculture, trade and
6 consumer protection as a certified tank system inspector.

7 (b) *Application for Examination.* A person applying to take a tank system inspector
8 certification examination shall submit all of the following:

9 1. An application in accordance with this section.

10 2. An application fee and examination fee in accordance with Table 93.240.

11 (c) *Qualifications for Examination.* A person applying to take a tank system inspector
12 certification examination shall have completed an approved educational course and training
13 program that included at least 3 days of field exercises within the 2 years immediately preceding
14 the application.

15 (d) *Examination.* A person seeking to obtain a tank system inspector certification shall take
16 and pass an examination in accordance with sub. (9).

17 (e) *Application for Certification.* Upon notification of successfully passing the examination
18 for a tank system inspector certification, a person may obtain the certification by submitting an
19 application and the certification fee in accordance with subs. (2) and (9) (g) 2. a.

20 (f) *Responsibilities.* A person who inspects tank systems as a certified tank system inspector
21 shall:

22 1. Perform regulatory enforcement of related code requirements in this chapter.

2. Issue non–compliance or violation–correction orders and conduct follow–up inspections as necessary to verify correction.

Note: Inspectors with authority granted by the local municipality may utilize the respective enforcement procedures as granted by the respective authority.

3. Pursue failure to comply with correction orders through local or department enforcement referral procedures.

4. Maintain a record of the inspections made including the dates and the findings of the inspections.

5. Provide a copy of the inspection report to the owner of the tank system or the owner's agent.

6. Make available to the department tank system inspection records upon request.

Note: Section 19.32 (2), Stats., considers a record to be material containing written or electromagnetic information. The department will consider computer records to be equivalent to written reports.

(g) *Renewal.* 1. a. A person may renew a certification as a tank system inspector.

b. A tank system inspector certification shall be renewed in accordance with sub. (7).

2. a. The renewal of a certification as a certified tank system inspector shall be contingent upon the inspector obtaining at least 12 hours of acceptable continuing education prior to the two-year expiration date of the certification, except as provided in subd. par. b.

b. A person who holds a certification as a certified tank system inspector may apply to the department for waiver of the continuing education requirements under subd. par. a. on the grounds of prolonged illness or disability or similar circumstances. Each application for waiver shall be considered individually on its merits by the department.

(14) TANK SPECIALTY FIRMS. (a) *General.* A corporation, partnership, sole proprietor, independent contractor, or person that provides or offers to provide installation, removal, testing,

lining, cleaning or assessments for a tank system which is regulated under this chapter shall hold both of the following:

1. A registration issued by the department of agriculture, trade and consumer protection as a registered tank specialty firm.

2. Insurance liability coverage, including pollution impairment liability, of no less than $1,000,000 per claim and $1,000,000 annual aggregate and with a deductible of no more than $100,000 per claim.

(b) *Application for Registration.* An entity applying for a tank specialty firm registration shall submit all of the following:

1. An application in accordance with sub. (2).

2. An application fee and a registration fee in accordance with Table 93.240.

3. Proof of the liability coverage specified in par. (a) 2.

4. A list of technicians certified under subs. (15) to (21) including the areas of certification for each technician.

(c) *Qualifications for Registration.* The person applying for a tank specialty firm registration shall be the owner of the business, a partner in the business applying on behalf of a partnership, or the chairman of the board or chief executive officer applying on behalf of the corporation.

(d) *Responsibilities.* An entity that provides storage tank system installation, removal, testing, lining, cleaning or site assessments as a registered tank specialty firm shall utilize the appropriate credentialed persons to install, remove, test, line, or clean storage tanks; to design or install a cathodic protection system for a tank system; or to provide tank–system site assessments.

(e) *Renewal.*

1. A person may renew a registration as a tank specialty firm.

2. A tank specialty firm registration shall be renewed in accordance with sub. (7).

3. An application for a renewal under this paragraph shall include proof of the liability coverage specified in par. (a) 2.

4. A list of technicians certified under subs. (15) to (21) including the areas of certification for each technician.

(15) TANK SYSTEM SITE ASSESSORS. (a) *General.* 1. No person may conduct a tank–system site assessment required under this chapter unless the person holds a certification issued by the department of agriculture, trade and consumer protection as a certified tank–system site assessor.

2. Each tank–system site assessment shall be performed by a person who has no personal or monetary interest in the facility and whose employer has no personal or monetary interest in the facility.

(b) *Application for Examination.* A person applying to take a tank–system site assessor certification examination shall submit all of the following:

1. An application in accordance with sub (2).

2. An application fee and examination fee in accordance with Table 93.240.

(c) *Examination.* A person seeking to obtain a tank–system site assessor certification shall take and pass an examination in accordance with sub. (9).

(d) *Application for Certification.* Upon notification of successfully passing the examination for a tank–system site assessor certification, a person may obtain the certification by submitting an application and the certification fee in accordance with subs. (2) and (9) (g) 2. a.

(e) *Renewal.* 1. A person may renew a certification as a tank–system site assessor.

2. A tank–system site assessor certification shall be renewed in accordance with sub. (7).

(16) ABOVEGROUND TANK SYSTEM INSTALLERS.

(a) *General.* Except as provided in par. (g), no person may install an aboveground tank system that is regulated under this chapter unless the person complies with one of the following:

1. The person holds a certification issued by the department of agriculture, trade and consumer protection as a certified aboveground tank system installer.

2. The person holds a Wisconsin registration as a professional engineer and is competent in the engineering methods and requirements in Wisconsin for designing and installing storage tank systems for flammable, combustible or hazardous liquids.

3. The person is under the direct supervision of another person who holds a certification or registration under subd. 1. or 2. and who is responsible for the installation.

(b) *Application for Examination.* A person applying to take an aboveground tank system installer certification examination shall submit all of the following:

1. An application in accordance with sub. (2)

2. An application fee and examination fee in accordance with Table 93.240.

(c) *Examination.* A person seeking to obtain an aboveground tank system installer certification shall take and pass an examination in accordance with sub. (9).

(d) *Application for Certification.* Upon notification of successfully passing the examination for an aboveground tank system installer certification, a person may obtain the certification by submitting an application and the certification fee in accordance with sub. (2).

1 (e) *Responsibilities.* A person who installs or supervises the installation of tank systems as
2 a certified aboveground tank system installer shall be present at the job site for at least all of the
3 following activities:
4 1. Preinstallation tank system testing.
5 2. Inspection and repair of coatings.
6 3. Placement of tanks.
7 4. Installation and testing of all connections and tank–related piping including vapor
8 recovery, vents and supply pipes.
9 5. Installation of monitoring or leak detection devices.
10 6. Installation of pumps.
11 7. Installation of any underground piping.
12 (f) *Renewal.* 1. a. A person may renew a certification as an aboveground tank system
13 installer.
14 b. An aboveground tank system installer certification shall be renewed in accordance with
15 sub. (7).
16 2. a. The renewal of a certification as an aboveground tank system installer shall be
17 contingent upon the installer obtaining at least 12 hours of acceptable continuing education prior
18 to the expiration date of the certification as specified in sub. (8) and Table 93.240, except as
19 provided in subd. par. b.
20 b. A person who holds a certification as an aboveground tank system installer may apply
21 to the department of agriculture, trade and consumer protection for waiver of the continuing
22 education requirements under subd. par. a. on the grounds of prolonged illness or disability or

similar circumstances. Each application for waiver shall be considered individually on its merits by the department of agriculture, trade and consumer protection.

(g) *Exclusion.* This subsection does not apply to field–constructed aboveground tanks.

(17) UNDERGROUND TANK SYSTEM INSTALLERS.

(a) *General.* No person may install an underground tank system that is regulated under this chapter unless the person complies with one of the following:

1. The person holds a certification issued by the department of agriculture, trade and consumer protection as a certified underground tank system installer.

2. The person holds a registration as a Wisconsin professional engineer and is competent in the engineering methods and requirements in Wisconsin for designing and installing storage tank systems for flammable, combustible, or hazardous liquids.

3. The person is under the direct supervision of another person who holds a certification or registration under subds. 1. and 2. and who is responsible for the installation.

(b) *Application for Examination.* A person applying to take an underground tank system installer certification examination shall submit all of the following:

1. An application in accordance with sub. (2).

2. An application fee and examination fee in accordance with subs. (2) and (3) and Table 93.240.

(c) *Examination.* A person seeking to obtain an underground tank system installer certification shall take and pass an examination in accordance with sub. (9).

(d) *Application for certification.* Upon notification of successfully passing the examination for an underground tank system installer certification, a person may obtain the

certification by submitting an application and the certification fee in accordance with subs. (2) and (3).

(e) *Responsibilities.* A person who installs or supervises the installation of tanks as a certified underground tank system installer shall be present at the job site for at least all of the following activities:

1. Preinstallation tank system testing.

2. Inspection and repair of coatings.

3. Placing of bedding material and the setting and bedding of tanks.

4. Backfilling operations and compacting of backfill around tanks and piping.

5. Installation or activation of department of agriculture, trade and consumer protection–accepted, factory–supplied cathodic protection systems.

Note: The department of agriculture, trade and consumer protection has accepted factory–supplied cathodic protection systems that comply with the sti–P3® specifications from the Steel Tank Institute, and may accept other systems of this type.

6. Installation and testing of all connections and tank–related piping including vapor recovery, vents and supply pipes.

7. Installation of leak detection devices and any monitoring wells.

8. Testing of tanks and piping both prior to and after backfilling.

9. Installation of pumps.

(f) *Renewal.* 1. a. A person may renew a certification as an underground tank system installer.

b. An underground tank system installer certification shall be renewed in accordance with sub. (7).

2. a. The renewal of a certification as an underground tank system installer shall be contingent upon the installer obtaining at least 12 hours of acceptable continuing education prior to the expiration date of the certification as specified in sub. (8) and Table 93.240 except as provided in subd. par. b.

b. A person who holds a certification as an underground tank system installer may apply to the department of agriculture, trade and consumer protection for waiver of the continuing education requirements under subd. par. a. on the grounds of prolonged illness or disability or similar circumstances. Each application for waiver shall be considered individually on its merits by the department of agriculture, trade and consumer protection.

(18) UNDERGROUND TANK SYSTEM LINERS.

(a) *General.* No person may line, reline, or perform the lining inspection of an underground tank system that has held or will hold flammable or combustible liquids which are regulated under this chapter unless the person complies with one of the following:

1. The person holds a certification issued by the department as a certified tank system liner.

2. The person is under the direct supervision of another person who holds a certification issued by the department as a certified tank system liner.

(b) *Application for Examination.* A person applying to take a tank system liner certification examination shall submit all of the following:

1. An application in accordance with sub. (2).

2. An application fee and examination fee in accordance with Table 93.240.

(c) *Examination.* A person seeking to obtain a tank system liner certification shall take and pass an examination in accordance with sub. (9).

(d) *Application for Certification.* Upon notification of successfully passing the examination for a tank system liner certification, a person may obtain the certification by submitting an application and the certification fee in accordance with sub. (2).

(e) *Responsibilities.* A person who lines or supervises the lining of underground tanks as a certified tank system liner shall be present at the job site for at least all of the following activities:

1. Removal of product from the tanks and making the atmosphere of the tanks inert or vapor–free.

Note: Chapter ATCP 93 requires plan submittal and approval prior to lining a tank.

2. Cutting of openings in tanks.

3. Removal and handling of sludge and other wastes from tanks.

4. Sand blasting of the tank interior.

5. Inspection for holes and wall thickness.

6. Notifying the owner if an internal tank assessment determines that a tank system assessment under this chapter is required.

7. Repair of holes.

8. Notifying and arranging for a certified tank system inspector to visit the site and authorize the lining, prior to applying the lining to the tank.

9. Coating of tanks.

10. Testing for holidays.

11. Testing for coating hardness.

12. Resealing of tanks.

13. Completing an API 1631 inspection form B and submitting it to the owner, authorized agent, and the department of agriculture, trade and consumer protection.

(f) *Renewal.* 1. A person may renew a certification as a tank system liner.

2. A tank system liner certification shall be renewed in accordance with sub. (7).

(19) TANK SYSTEM REMOVERS AND CLEANERS. (a) *General.* Except as provided in par. (g), no person may remove or clean a tank system that is regulated under this chapter unless the person complies with one of the following:

1. The person holds a certification issued by the department of agriculture, trade and consumer protection as a certified tank system remover–cleaner.

2. The person is under the direct supervision of another person who holds a certification issued by the department of agriculture, trade and consumer protection as a certified tank system remover–cleaner.

(b) *Application for Examination.* A person applying to take a tank system remover–cleaner certification examination shall submit all of the following:

1. An application in accordance with sub. (2).

2. An application fee and examination fee in accordance with Table 93.240.

(c) *Examination.* A person seeking to obtain a tank system remover–cleaner certification shall take and pass an examination in accordance with sub. (9).

(d) *Application for Certification.* Upon notification of successfully passing the examination for a tank system remover–cleaner certification, a person may obtain the certification by submitting an application and the certification fee in accordance with subs. (2) and (9) (g).

1 (e) *Responsibilities.* A person who removes or cleans or supervises the removing or
2 cleaning of tanks as a certified tank system remover–cleaner shall be present at the job site for at
3 least all of the following activities:
4 1. Disconnecting and draining of piping.
5 2. Capping of piping.
6 3. Vapor freeing or inerting of tanks.
7 4. Cleaning of tanks and handling of sludge and other wastes.
8 5. Removal of tank systems from the ground and loading them for transport or filling the
9 tank systems with an inert material.
10 6. Visual inspection of the soils around the excavation or tank system location.
11 (f) *Renewal.* 1. A person may renew a certification as a tank system remover–cleaner.
12 2. A tank system remover–cleaner certification shall be renewed in accordance with sub.
13 (7).
14 3. An application for a renewal under this section shall include proof of the liability
15 coverage specified in sub. (14) (a) 2.
16 (g) *Exclusions.* This section does not apply to any of the following:
17 1. Field–constructed aboveground tanks.
18 2. Heating fuel tanks located aboveground or in basements of 1– or 2–family dwellings.
19 **(20)** TANK SYSTEM TIGHTNESS TESTERS. (a) *General.* 1. No person may
20 conduct the tightness testing specified in this chapter for a tank system unless the person holds a
21 certification issued by the department of agriculture, trade and consumer protection as a certified
22 tank system tightness tester.

2. Tank system tightness testing shall be performed by a person with no personal or monetary interest in the facility and whose employer has no personal or monetary interest in the facility.

(b) *Application for Certification.* A person applying for a tank system tightness tester certification shall submit all of the following:

1. An application in accordance with sub. (2).

2. An application fee and a certification fee in accordance with Table 93.240.

(c) *Qualifications for Certification.* 1. A person applying for a tank system tightness tester certification shall have completed training in one or more tightness test methods that have been approved under this chapter, within the 2 years immediately preceding the application.

2. The test methodology training qualifying for certification shall have been provided by the person or entity that obtained the approval under this chapter for the methodology.

(d) *Responsibilities.* A person who conducts tightness tests for tank systems as a certified tank system tightness tester shall do all of the following:

1. Conduct tightness tests in accordance with the material approval under this chapter and any additional manufacturer's instructions.

2. Employ only those test methodologies for which training has been obtained.

(e) *Renewal.* 1. A person may renew a certification as a tank system tightness tester.

2. A tank system tightness tester certification shall be renewed in accordance with sub. (7).

(21) CATHODIC PROTECTION SPECIALTIES. (a) *General.* 1. Cathodic protection tester. No person may conduct cathodic protection testing of a tank system that is regulated

under this chapter unless the person holds a certification issued by the department of agriculture, trade and consumer protection as a certified cathodic protection tester.

2. Corrosion expert. a. No person may design or install a cathodic protection system for a tank system that is regulated under this chapter unless the person holds a certification issued by the department of agriculture, trade and consumer protection as a certified corrosion expert.

b. This paragraph does not apply to department of agriculture, trade and consumer protection–accepted, factory–supplied cathodic protection systems.

Note: The department of agriculture, trade and consumer protection has accepted factory–supplied cathodic protection systems that comply with the sti–P3® specifications from the Steel Tank Institute, and may accept other systems of this type.

3. Independence. Cathodic protection activities covered under this section shall be performed by a person with no personal or monetary interest in the facility and whose employer has no personal or monetary interest in the facility.

(b) *Application for Certification.* A person applying for certification as a cathodic protection tester or a corrosion expert shall submit all of the following:

1. An application in accordance with sub. (2).

2. An application fee and certification fee in accordance with s. Table 93.240.

3. Documentation showing formal education relating to soil resistivity, stray current, structure–to–soil potential, component electrical isolation measurements of buried metal piping and tank systems, and corrosion control.

4. Documentation from a cathodic protection certification entity recognized by the department of agriculture, trade and consumer protection, showing the applicant has successfully completed a certification examination that corresponds to the cathodic protection specialty addressed in the application.

Note: The department of agriculture, trade and consumer protection will accept the following certifications as demonstrating compliance with subds. 3. and 4. for a cathodic protection tester:
NACE certification as a CP 1 tester.
NACE certification as a CP 2 technician.
NACE certification as a CP 3 cathodic protection technologist.
NACE certification as a senior corrosion technologist.
NACE certification as a corrosion technologist.
NACE certification as a corrosion technician.
STI certification in UST system cathodic protection monitoring.

Note: The department of agriculture, trade and consumer protection will accept the following certifications as demonstrating compliance with subds. 3. and 4. for a corrosion expert:
NACE certification as a corrosion specialist.
NACE certification as a CP 4 cathodic protection specialist.

Note: NACE, formerly known as the National Association of Corrosion Engineers, can be contacted at NACE International, PO Box 218340, Houston, TX 77218. STI can be contacted at Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047.

(c) *Responsibilities.* A person who conducts cathodic protection tests or who designs or installs cathodic protection systems shall do all of the following:

1. Conduct all cathodic protection tests in accordance with this chapter and any manufacturer's instructions.

2. Employ only those methodologies for which training has been obtained and documented.

Note: Although several different levels of expertise may qualify for the same certification, this section is intended to prohibit performing cathodic protection activities unless the specific expertise for that activity has been attained and documented.

(d) *Renewal.* 1. A person may renew a certification as a cathodic protection tester or corrosion expert.

2. A certification for a cathodic protection tester or corrosion expert shall be renewed in accordance with sub. (7).

ATCP 93.250 Tank construction and marking.

(1) MULTI–COMPARTMENT TANKS. Each compartment of a multi–compartment tank shall be considered a separate tank, even if the same substance is stored in 2 or more of the compartments.

(2) CONSTRUCTION. Tanks containing flammable or combustible liquids shall be constructed and listed or labeled to one of the recognized design standards in NFPA 30 section 21.4.2, or to another standard or design approved by the department, except this requirement does not apply to any of the following tanks:

(a) Tanks that contain liquids which are also hazardous substances.

Note: Section ATCP 93.350 requires hazardous substance tanks to be designed and constructed under the supervision of a qualified engineer.

(b) Tank wagons, farm tanks and tank vehicles used in accordance with the requirements in ss. ATCP 93.610 and 93.630, for fuel dispensing from aboveground tanks and at farms and construction projects.

Note: Design standards recognized by NFPA 30 section 21.4.2 include API 12B, API 12D, API 12F, API 650, UL 58, UL 80, UL 142, UL 1316, UL 1746, UL 2080 and UL 2085. Another standard approved by the department is SU 2258 from Underwriters Laboratories Inc.

Note: Tank wagons have construction requirements in s. ATCP 93.610 (1). Farm tanks are required to meet the construction specifications in NFPA 30A section 13.2.3. Tank vehicles are required to meet the construction specifications in NFPA 385 chapters 2 and 3. Movable tanks covered under the dispensing requirements in s. ATCP 93.610 (2) are not exempted from this requirement.

(c) Tanks which are custom built for a specific purpose and which are supported by a statement acceptable to the department, from a qualified engineer, as defined in s. ATCP 93.350 (2) (d), except the competency of the engineer shall relate to the purpose for the custom–built tank.

(d) Aboveground used–oil tanks at a scrap recycling or auto recycling facility that are exempted from these requirements under s. ATCP 93.300 (9).

(3) MARKING. Newly manufactured or constructed tanks shall have at least all of the following information permanently marked on the exterior of the tank by the manufacturer or the party responsible for tank construction:

(a) The name of the manufacturer or the party responsible for tank construction.

(b) The year of manufacture or construction.

(c) The standard under which the tank is manufactured or constructed.

(d) The minimum rate of any required emergency venting.

Note: The applicable construction standard may already require this information or additional information to be marked on the tank. This marking requirement especially applies to farm tanks which have a capacity of less than 1,100 gallons and which are not required to be manufactured to any specific construction standard other than the minimal requirements in NFPA 30A section 13.2.3.

ATCP 93.260 Setbacks from already–installed potable water supply sources. (1) (a) Tank systems and their dispensing systems shall comply with the setback requirements in Table 93.260, except as specified in pars. (b) and (c).

(b) These setbacks do not apply where piping or dispensers are being replaced without replacing the tank.

(c) These setbacks do not apply where shorter setbacks are specified by the department of natural resources.

Note: The department of natural resources administers separating distances for proposed public community water supply wells regulated under ch. NR 811, and those distances may differ from the distances in Table 93.260. See footnote 4 under Table 93.260 for DNR requirements about separating distances for proposed and already–installed private water supply wells regulated under ch. NR 812.

Note: Longer setback distances may be imposed through local wellhead–protection requirements.

Table 93.260

Setbacks from Already–Installed Potable Water Supply Sources

Tank Type[1]	Minimum Distance to a Water Supply Well Regulated under Chapter NR 811 (feet) [2]	Minimum Distance to a Water Supply Well Regulated under Chapter NR 812 (feet) [3,4]
Farm UST or AST system with single wall	1200	100
Farm UST system with double wall and with electronic interstitial monitoring for the system	600[5]	50[5]
Farm AST system with double wall, or with other secondary containment that is under a canopy	600[6]	50[6]
One– or two–family residential heating oil UST or AST system	200	25
Emergency or standby power system AST with double wall and with continuous electronic interstitial monitoring for the tank	10[7]	10[7]
Other UST or AST system with single wall or an AST system with double wall and visual monitoring	1200	100
Other UST system with double wall and with electronic interstitial monitoring for the system	600[5]	50[5]
Other AST system with double wall, or with other secondary containment that is under a canopy; and with electronic interstitial monitoring for double wall, or electronic sensor for other secondary containment	600[6]	50[6]

1 Any reference in this column to a UST or AST "system" means both the tank and any product piping connected to it have the subsequently specified features.

2 The setback in this column is at least 1200 feet if any associated fueling area is not on a concrete surface, and any associated AST is not on a concrete surface, except this requirement does not apply to the setback for a one– or two–family residential heating oil AST.

3 The setback in this column is at least 100 feet if any associated fueling area is not on a concrete surface, and any associated AST is not on a concrete surface, except this requirement does not apply to the setback for a one– or two–family residential heating oil AST.

4 Any setback in this column that is less than 100 feet, other than the 25–foot setback for one– and two–family residences, may be utilized only after obtaining a variance or other approval from the department of natural resources, except a variance or other approval is not required for an AST that has a capacity of 1500 gallons or less.

5 This distance may be reduced by 50 percent if all of the following features are provided and maintained in addition to the features in the tank–type column: tank system construction of

corrosion–resistant material, such as fiber–reinforced plastic, or steel with a fiber–reinforced plastic wrap or jacket; non–discriminating sump sensors; testable secondary containment spill bucket; continuous electronic pressure, vacuum, or liquid-filled interstitial monitoring with automatic system shut–down; audible and visual high–level alarm at 90 percent full, and automatic shut–off at 95 percent; all fueling area protected by canopy; and downspouts for drainage of rainwater do not discharge into a fueling area.

6 This distance may be reduced by 50 percent if all of the following features are provided and maintained in addition to the features in the tank–type column: either continuous non–discriminating electronic interstitial monitoring for double wall, or continuous non–discriminating electronic sensor for other secondary containment; audible and visual high–level alarm at 90 percent full, and either automatic shutoff at 95 percent or no latch–open device is used with any manual–shutoff nozzle; all dispensing by suction pump fuel transfer; all motor vehicle fueling limited to private or fleet use; all fueling area protected by canopy; and downspouts for drainage of rainwater do not discharge into a fueling area.

7 This reduced setback is only permitted for emergency or standby power systems that are operated by the same facility which operates the well, and only if all of the following features are provided and maintained in addition to the features in the tank–type column: audible and visual high–level alarm at 90 percent full, and either automatic shutoff at 95 percent or no latch–open device is used with any manual–shutoff nozzle. This setback may be reduced further where approved in writing by the department, upon submittal of an explanation of why reducing the setback is needed, along with demonstration that additional features will be included which will provide adequate protection for the well.

Note: Aboveground storage tanks include tanks that are inside a building and have a liquid capacity of 110 gallons or more, are intended for fixed installation, and are not solely used for processing.

(2) Tank systems and their dispensing systems shall be at least 50 feet from ground–level potable water reservoirs regulated under ch. NR 811, except as specified in sub. (1) (b) and (c).

(3) Tank systems and their dispensing systems shall be at least 25 feet from potable water mains regulated under ch. NR 811, except as specified in sub. (1) (b) and (c).

Subchapter III — Specific Tank Storage Applications

ATCP 93.300 Tanks storing used oil. (1) GENERAL. (a) Used oil shall be considered a Class IIIB liquid unless designated otherwise in this chapter or as shown by product flashpoint testing.

(b) Tanks used to store used oil to supply an oil burner shall comply with the heating–fuel storage requirements in s. ATCP 93.310 and NFPA 31 chapter 7.

Note: Devices that burn used oil are regulated by the Commercial Building Code, chs. SPS 361 to 366, and the Fire Prevention Code, ch. SPS 314. The tank that stores the oil is regulated by this chapter.

Note: NFPA 31 section 12.9.1 requires tanks that supply used oil to an oil burner to be listed.

(2) TANK CONSTRUCTION AND INSTALLATION. (a) Tanks for the storage of used oil shall comply with the construction and marking requirements in s. ATCP 93.250 anytime a tank system is installed.

(b) Aboveground tanks for used–oil storage that have a capacity of less than 750 gallons are not required to be listed, or marked in accordance with s. ATCP 93.250 (3), except for tanks which supply oil to an oil burner.

Note: See s. ATCP 93.250 for minimum marking requirements for newly manufactured or constructed tanks.

(c) Tanks shall be constructed of noncombustible materials, unless constructed and utilized in accordance with SU 2258 from Underwriters Laboratories Inc.

(d) The fill opening shall be screened to prevent the passage of solid objects into the tank.

(e) The fill opening may be located directly at the tank.

(f) The fill opening shall be closed except when a transfer is actually taking place.

(g) Tanks that store used oil shall be installed by or under the direct supervision of a certified installer.

(h) The building setback for tanks which have a capacity of less than 1,100 gallons and which store used oil may be less than the setbacks listed in NFPA 30 Table 22.4.1.6 if approved in writing by the authorized agent or the department; and that approval shall be based on

consideration of the construction material for the building wall, the size of the tank, and the adjacent vehicular traffic.

Note: See s. ATCP 93.260 for minimum separating distances between tanks and water supply wells.

(3) SPILL AND OVERFILL PREVENTION. All tanks, whether new or existing, shall comply with all of the following:

(a) The fill opening shall be provided with spill containment.

(b) If the fill opening is located outdoors, the opening shall be located in a watertight enclosure of noncombustible construction.

(c) 1. Each tank shall have a means of overfill prevention that consists of either a visual gauge, an audible or visual alarm, or a pump shutdown which activates at 90 percent of the tank's capacity, except as provided in subd. 2.

2. a. If the fill point is remote from the tank or if the delivery person cannot readily observe the tank gauge, an overfill alarm shall be provided at the fill point unless a pump shutdown is provided that activates at 90 percent of the tank's capacity.

b. All overfill alarms shall be readily audible or visible at the fill point and shall alert the delivery person when the tank is 90 percent full.

3. All overfill alarms shall be labeled as such.

(4) SIGNAGE. All tanks, whether new or existing, shall be provided with a permanent and durable sign installed at the used oil handler site or facility that includes all of the following:

(a) "NO SMOKING."

(b) "USED OIL COLLECTION ONLY."

(c) "DEPOSITING OTHER MATERIAL IS PROHIBITED."

(5) VEHICLE COLLISION PROTECTION. Vehicle collision protection shall be provided for aboveground tanks in accordance with s. ATCP 93.430 unless the authorized agent or the department determines the tank system is not subject to vehicle collision.

(6) SECONDARY CONTAINMENT. (a) Aboveground tanks located outdoors shall have secondary containment that complies with s. ATCP 93.420 (1) to (4).

(b) Tanks located inside a building shall have secondary containment for 100 percent of the tank capacity if a leak from the storage tank could reach a floor drain, the exterior of the building, or areas that pose an ignition hazard.

Note: An oil–water separator connected to a floor drain may be used for all or a portion of the required secondary containment, depending on the system capacity.

(7) UNDERGROUND TANKS. (a) *General.* Underground tanks for used–oil storage shall comply with the applicable portions of NFPA 30 and this section.

(b) *Spill protection.* For underground tanks that store used oil, spill protection is not required at any point other than the fill point, if the tank meets all of the following conditions:

1. The tank receives used oil in batches of 25 gallons or less by manual transfer.

2. The tank is emptied only by suction transfer.

(c) *Corrosion protection.* Corrosion protection shall be provided in accordance with s. ATCP 93.520 except this protection is not required for piping that is associated with an underground tank which stores used oil, provided the tank and piping meet all of the following conditions:

1. The tank receives used oil in batches of 25 gallons or less by manual transfer.

2. All piping that is underground is sloped at an angle of at least 30 degrees from horizontal between the point at which it enters the ground and the tank, to allow for the free flow of oil.

Note: This section does not exempt the tank itself from corrosion protection requirements.

(d) *Leak detection.* Leak detection shall be provided in accordance with ss. ATCP 93.510 and 93.515.

(8) TANK CLOSURE AND GENERAL ADMINISTRATIVE REQUIREMENTS.

(a) *Aboveground tanks.* Aboveground tanks that store used oil shall comply with ss. ATCP 93.440 to 93.470.

Note: Sections ATCP 93.440 to 93.470 address: inspections; seldom–used and temporarily out of service tanks; change in service to store a non–regulated substance; tank closures; tank–system site assessments; and confirming and responding to leaks, spills, overfills and releases.

(b) *Underground tanks.* Underground tanks that store used oil shall comply with ss. ATCP 93.545 to 93.585.

Note: Sections ATCP 93.545 to 93.585 address: seldom–used and temporarily out of service tanks; change in service to store a non–regulated substance; tank system closures; conditions indicating releases; tank–system integrity assessments; tank–system site assessments; and responding to leaks, spills, overfills and releases.

(9) SCRAP RECYCLING AND AUTOMOBILE RECYCLING FACILITIES. Subsections (1) (a), (2) (a), (2) (c) to (h), (3) to (5), (6) (a), and (8) do not apply to a new or existing aboveground tank which contains used oil and which is located at a scrap recycling or automobile recycling facility adequately participating in a cooperative compliance program approved by the department of natural resources, provided all of the following requirements are met:

(a) The tank is constructed of a durable material acceptable to the department.

(b) If located outside of a building, the tank has secondary containment acceptable to the department.

(c) If located inside a building, the tank has venting and fire prevention features acceptable to the department.

ATCP 93.305 Public used oil collection centers. (1) GENERAL. Public used oil collection centers shall comply with s. ATCP 93.300 and this section.

Note: Also see ch. NR 679 for additional rules pertaining to used oil collection centers, such as operational criteria.

(2) TANK CONSTRUCTION. The tank shall be constructed to one of the recognized design standards in NFPA 30 chapter 21 unless otherwise accepted by the department.

Note: Design standards recognized by NFPA 30 chapter 21 include API 12B, API 12D, API 12F, API 650, UL 58, UL 80, UL 142, UL 1316, UL 1746, UL 2080 and UL 2085.

(3) TANK SIZE AND INSTALLATION REQUIREMENTS. (a) The tank may be of any size.

(b) Tanks located outdoors shall comply with the setback requirements of NFPA 30 Tables 22.4.1.1 (a) and (b) for a Class IIIA liquid.

(c) Tanks located inside a building shall have venting that terminates outdoors.

(4) DIKING. (a) A single–wall tank shall be placed within a diked area that complies with s. ATCP 93.420.

(b) A tank of double–wall construction, that is accessible to the public, shall be placed within secondary containment which meets all of the following requirements:

1. Any curb shall have a height of at least 4 inches.

2. The containment shall extend at least 2 feet beyond the greatest tank dimension in all directions.

(c) The tank shall be set back from the curb or dike wall such that an overflow of the tank will be contained within the diked or curbed area.

(d) The fill opening with spill containment shall be located within the diked or curbed area.

ATCP 93.310 Heating fuel storage. (1) SCOPE. This section applies to any new or existing aboveground or underground tank that is used to supply liquid fuel to a heating device, including a used oil burner, if the device and the fuel have the following characteristics:

(a) The heating device is used for space heating, processing or manufacturing.

(b) The fuel is consumed on the premises where stored.

Note: Number 5 and 6 fuel oil do not meet the criteria for a liquid and therefore are not regulated by this chapter.

(2) INSTALLATION, USE AND MAINTENANCE. (a) Tanks that supply oil–burning equipment shall be installed, used and maintained in accordance with NFPA 31 and this section.

(b) Tanks used to store heating fuel shall be installed by or under the direct supervision of a certified installer.

Note: Tanks installed at 1– or 2–family dwellings are not required to have plan review under s. ATCP 93.100, and aboveground tanks that have a capacity of less than 1,100 gallons are not required to have registration under s. ATCP 93.140.

Note: Devices that burn used oil are regulated by the Commercial Building Code, chs. SPS 361 to 366, and the Fire Prevention Code, ch. SPS 314. The tank that stores the oil is regulated by this chapter.

(3) UNDERGROUND TANKS THAT HAVE A CAPACITY OF LESS THAN 4,000 GALLONS. Underground heating oil storage tank systems that have a capacity of less than 4,000 gallons shall have all of the following:

(a) Overfill prevention equipment that notifies the person filling the tank, with either an audible or a visual signal, that the liquid level has reached 90 percent of the tank's capacity.

(b) Corrosion protection that complies with s. ATCP 93.520, except this requirement does not apply to tanks that were installed before November 1, 1994.

(c) 1. Precision tightness testing every 2 years or leak detection in accordance with s. ATCP 93.510, except this requirement does not apply to residential tanks which have a capacity of less

than 1,100 gallons and which were installed before October 29, 1999, for consumptive use on the property where stored.

2. The tightness testing or leak detection methods used to comply with subd. 1. shall be specifically approved for use with the specific type of heating oil in accordance with s. ATCP 93.130.

(4) UNDERGROUND TANKS THAT HAVE A CAPACITY OF 4,000 GALLONS OR MORE. Underground heating oil storage tank systems that have a capacity of 4,000 gallons or more shall have secondary containment which complies with s. ATCP 93.500 (1) if the system is either new or a replacement, leak detection which complies with s. ATCP 93.510 and corrosion protection which complies with s. ATCP 93.520.

(5) SPILL AND OVERFILL PREVENTION. (a) Spill and overfill prevention for aboveground tanks shall be provided in accordance with s. ATCP 93.300 (3).

(b) Spill and overfill prevention for underground tanks shall be provided in accordance with s. ATCP 93.505, except this requirement does not apply to residential tanks that have a capacity of less than 1,100 gallons containing fuel oil for consumptive use on the property.

(c) Fill pipes for used–oil tanks that are part of a heating system may be located inside a building.

(6) TANK CLOSURE AND GENERAL ADMINISTRATIVE REQUIREMENTS.

(a) *Aboveground tanks*. Aboveground tanks that store heating oil shall comply with ss. ATCP 93.440 to 93.470.

Note: Sections ATCP 93.440 to 93.470 address inspections; seldom–used and temporarily out of service tanks; change in service to store a non–regulated substance; tank closures; tank system site assessments; and confirming and responding to leaks, spills, overfills and releases.

(b) *Underground tanks*. Underground tanks that store heating oil shall comply with ss. ATCP 93.545 to 93.585.

Note: Sections ATCP 93.545 to 93.585 address seldom–used and temporarily out of service tanks; change in service to store a non–regulated substance; tank system closures; conditions indicating releases; tank system integrity assessments; tank system site assessments; and responding to leaks, spills, overfills and releases.

ATCP 93.315 Heating oil tanks that are removed from service. (1) APPLICATION. This section applies to aboveground heating oil storage tanks which are connected to heating appliances and which store heating oil that is consumed on the premises.

(2) GENERAL. Placing a heating oil storage tank 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 be left intact and open.

3. If the fill pipe is not removed, it shall be filled to the top with concrete 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 comply with sub. (2).

Note: A contractor must be certified in accordance with s. ATCP 93.240 to perform tank cleaning and tank removal at other than 1– and 2–family dwellings. Section ATCP 93.460 states that certification is not required for persons performing cleaning and removal of heating fuel tanks located aboveground or in basements at 1– and 2–family dwellings.

(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 comply with 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.

ATCP 93.320 Fuel storage for stationary combustion engines and gas turbines. (1) INSTALLATION AND USE.

(a) *General.* This section applies to the fuel storage tanks of stationary combustion engines and gas turbines, except when used at a farm premises or construction project.

Note: Stationary combustion engines under this section are commonly used to power emergency generators and pumps that provide fire protection. For requirements for storage tanks that are used to fuel stationary combustion engines at a farm premises or construction project, see s. ATCP 93.630.

(b) *Certified installer.* Tank installation shall be performed or supervised by a certified installer.

Note: See s. ATCP 93.100 (1) (b) 11. for criteria that can be used to exempt these tanks from plan review.

(c) *Marking.* 1. Aboveground tanks with the fill point remote from the tank and all new and existing underground storage tanks shall have the fill point labeled with the type of fuel.

2. Aboveground storage tanks shall have the tank labeled with the type of fuel.

(d) *Aboveground storage tank systems located in buildings.* Aboveground storage tank systems located in buildings and used to store fuel for stationary combustion engines and gas turbines shall comply with NFPA 20 and 37 chapter 6, and the fill connection shall be located outside the building

(e) *Aboveground storage tank systems not located in a building.* 1. Aboveground storage tank systems not located in a building and used to store fuel for stationary combustion engines and gas turbines shall comply with subch. IV and NFPA 20 and 37 chapter 6.

2. Storage tanks under this section that are within an enclosure which does not have enough non-mechanical, open-louver area in the lower portion of the walls or doors to prevent hazardous build-up of vapors shall have vents terminating outside of the enclosure. Any vent terminating through the roof of the enclosure shall extend high enough to prevent snow or ice build-up from impacting the operation of the vent.

(f) *Underground storage tank systems.* Underground storage tank systems used to store fuel for stationary combustion engines and gas turbines shall comply with subch. V and NFPA 37 chapter 6.

(2) SPILL AND OVERFILL PREVENTION. Spill and overfill prevention shall be provided in accordance with s. ATCP 93.410.

(3) TANK CLOSURE AND GENERAL ADMINISTRATIVE REQUIREMENTS.

(a) *Aboveground tanks.* Aboveground tanks that store fuel for stationary combustion engines and gas turbines shall comply with ss. ATCP 93.440 to 93.470.

Note: Sections ATCP 93.440 to 93.470 address inspections; seldom–used and temporarily out of service tanks; change in service to store a non–regulated substance; tank closures; tank system site assessments; and confirming and responding to leaks, spills, overfills and releases.

(b) *Underground tanks*. Underground tanks that store fuel for stationary combustion engines and gas turbines shall comply with ss. ATCP 93.545 to 93.585.

Note: Sections ATCP 93.545 to 93.585 address seldom–used and temporarily out of service tanks; change in service to store a non–regulated substance; tank system closures; conditions indicating releases; tank system integrity assessments; tank system site assessments; and responding to leaks, spills, overfills and releases.

ATCP 93.330 Converted tanks for the storage of flammable and combustible liquids.

(1) APPLICATION. This section applies to all converted tanks, whether new or existing.

(2) GENERAL INSTALLATION AND USE. Converted tanks for the storage of flammable and combustible liquids shall be installed by a certified installer.

(3) PRESSURE VESSELS. (a) Low–pressure tanks and pressure vessels that are being converted to the storage of flammable or combustible liquids at atmospheric pressure shall meet the applicable tank storage requirements of this chapter, specific to the liquid stored.

(b) Tank supports shall be capable of supporting a static load equal to at least 2 times the weight of the full tank. This capability shall be confirmed by engineering structural analysis, field testing, or by reference to an approved design standard.

(4) TANK VEHICLES. (a) The cargo tank of a tank vehicle that is converted to a stationary tank for the storage of flammable or combustible liquids shall meet the applicable tank storage requirements of this chapter, specific to the liquid stored, along with the requirements in pars. (b) to (d).

(b) Cargo tanks for permanent stationary use shall be constructed of steel only.

(c) The cargo tank vehicle platform shall be supported off the vehicle wheels and landing gear and secured against movement, by the use of blocking devices and anchoring mechanisms that are acceptable to the department.

(d) Venting of the cargo tank shall follow the requirements of either NFPA 385 chapter 5 or this chapter.

(5) GENERAL ADMINISTRATIVE REQUIREMENTS. Converted tanks shall follow the operating requirements of this chapter applicable to their current use.

ATCP 93.335 Manufacture of organic coatings. (1) APPLICATION. This section applies to storage tank systems for flammable or combustible liquids used in the manufacture of organic coatings.

(2) GENERAL. The tank systems shall comply with NFPA 35.

(3) CERTIFIED INSTALLER. A certified installer shall perform or supervise the installation.

(4) RETROACTIVITY. Tanks existing by the effective date shall comply with the registration requirements in s. ATCP 93.140 within 12 months after that date and shall comply with the spill and overfill requirements in s. ATCP 93.410 and with the transfer containment requirements in s. ATCP 93.420 (5) by December 31 of the fifth year after the effective date.

ATCP 93.340 Bulk plants and terminals. (1) CLEARANCES AT BULK PLANTS THAT WERE IN EXISTENCE ON MAY 1, 1991. Bulk plant facilities that were in existence on May 1, 1991, with setbacks less than those specified in NFPA 30 section 22.4 may be renovated or updated, but no additional storage capacity may be added in violation of the specified clearances.

(2) PRODUCT IDENTIFICATION. (a) *Standard color code.* All new and existing tanks and piping at bulk plants and terminals shall use the identification scheme in API 1637.

Note: See s. ATCP 93.230 (11) for color coding of fill pipe caps and manhole covers for underground tanks.

(b) *Type of identification.* The product identification scheme in API 1637 shall be accomplished by one of the following methods:

1. A disc tag of non–sparking material.

2. A label using minimum one–inch block letters.

3. Painted sections at least 12 inches long.

(c) *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.

(3) PROPERTY MAINTENANCE. Tank yards and diked areas shall be kept free from weeds, high grass, rubbish, and combustible materials that are not essential to the operation and shall be kept clean and orderly.

(4) SECURITY AT BULK PLANTS AND TERMINAL STORAGE FACILITIES. Owners and operators shall be aware of regulations, standards and operating practices that relate to facility security.

Note: Information on how to develop a comprehensive site security program is available in the API document, *Security Guidelines for the Petroleum Industry,* or the American Chemistry Council document, *Site Security Guidelines for the U.S. Chemical Industry.*

(5) TRANSFER OPERATIONS AT BULK PLANTS AND TERMINALS. In order to prevent a spill from moving beyond the loading or unloading area, any new or existing aboveground or underground storage tank which has a capacity of 5,000 gallons or more and which is drained or filled by pumping to or from a transport vehicle shall be provided with a catchment basin or treatment facility to contain the maximum capacity of the largest compartment of a tank car or tank vehicle loaded or unloaded at the facility. Existing tanks shall comply with this subsection within 2 years after the effective date of this section ... [LRB inserts date].

Note: Federal Spill Prevention Control and Countermeasure requirements in 40 CFR 112 may apply to smaller product transfers. A catchment basin may consist of remote impounding.

(6) GENERAL REQUIREMENTS. (a) *Aboveground tanks at existing facilities.* Aboveground tank systems at existing bulk plants and terminals shall comply with subch. IV.

(b) *Underground tanks at existing facilities.* Underground tank systems at existing bulk plants and terminals shall comply with subch. V.

(c) *New facilities.* New bulk plants and terminals shall comply with PEI RP800; aboveground tank systems there shall also comply with ss. ATCP 93.400 (3), (4), (5), and (7) to (11); and underground tank systems there shall also comply with subch. V.

ATCP 93.350 Hazardous substances. (1) SCOPE AND APPLICATION. (a) *General.* 1. This section applies to tanks that store, handle, or use liquids which are federally regulated hazardous substances, in any concentration of 1 percent or more by volume, for the purpose of protecting the waters of the state from contamination.

Note: The list of federally regulated hazardous substances covered in this subchapter, also known as the CERCLA List, is located in 40 CFR 302.4, Table 302.4.

Note: Other sections of this chapter regulate the storage and use of flammable and combustible liquids. Chapter SPS 314 — the *Wisconsin Fire Prevention Code*, through the adoption of NFPA 1, *Fire Code*, also regulates the storage and use of liquids that have properties such as being flammable, combustible, toxic, water reactive, explosive, and corrosive.

Note: See s. ATCP 93.140 for tank registration requirements and s. ATCP 93.145 for tank permit requirements.

2. Liquids within the scope of subd. 1. that are flammable or combustible shall also meet the requirements of this chapter which apply to flammable or combustible liquids.

(b) *Exemptions.* This section does not apply to any of the following:

1. Hazardous waste storage tanks that are licensed under s. 291.25, Stats., except any tank containing a flammable or combustible mixture of hazardous wastes regulated under that section, and other liquids, is not exempt from this chapter.

2. Aboveground tanks which are used to store a federally regulated hazardous substance and which have a capacity of less than 5,000 gallons, and transfer operations involving these tanks, unless the substance is flammable or combustible.

3. Accumulator tanks, process tanks, or service tanks.

4. Portable tanks containing liquids that are not flammable or combustible.

5. Tanks regulated under, and maintained in compliance with the rules in 40 CFR 430.03.

(2) TANK SYSTEM DESIGN AND CONSTRUCTION. (a) *General.* Design, construction and maintenance of tank systems for the storage of federally regulated hazardous substances shall be in accordance with good engineering practices and this chapter and shall be under the supervision of a qualified engineer.

(b) *Notification.* The qualified engineer shall notify the department or authorized agent on form TR-WM-121 of an impending installation of a tank system under this section unless this notice is provided under s. ATCP 93.115 (2) (b) 3. A written statement shall be provided that the system has been designed and will have construction oversight by a qualified engineer.

(c) *Testing.* All new tanks and pipe systems shall have pressure or vacuum testing that shall assure that all components and connections are tight, in a manner equivalent to the protocol and parameters specified in NFPA 30 section 21.5 and PEI RP 100 sections 11 and 14, before the tanks and pipe systems are placed into service.

(d) *Qualified engineer.* 1. The qualified engineer responsible for design and oversight of construction of federally regulated hazardous substance liquid storage tank systems under this chapter shall meet the requirements of this paragraph.

2. The qualified engineer shall be competent in the engineering methods for designing and installing hazardous liquid tank systems.

3. The qualified engineer shall be a registered professional engineer, unless one of the exemptions in s. 443.14, Stats., applies.

(3) GENERAL REQUIREMENTS FOR TANKS. Storage tanks shall meet all of the following requirements:

(a) *Structural.* Tanks shall have a stable foundation under all operating conditions and be of sufficient structural strength to withstand normal handling and use.

(b) *Chemical compatibility.* Tanks shall be chemically compatible with the substance being stored.

(c) *Wear, vibration, shock, and corrosion.* Tanks shall be protected from failure due to internal and external wear, vibration, shock, and corrosion.

(d) *Fire, heat, vacuum, and pressure.* Tanks shall be protected from fire, heat, vacuum, and pressure that might cause tank failure.

(e) *Collision protection.* Tanks that are subject to vehicle collision shall be protected from collision damage by vehicles and equipment.

(f) *Fiberglass–reinforced plastic.* If fiberglass–reinforced plastic material is used, the material shall be of sufficient density and strength to form a hard, impermeable shell that will not crack, wick, wear, soften, or separate under normal service conditions.

(g) *National standards*. Tanks shall be designed, constructed and installed or certified by a qualified engineer in accordance with a standard recognized by the department that is developed by a nationally recognized association or independent testing laboratory.

(h) *Listing*. Tanks used for underground storage shall be listed or shall be approved by the department.

(i) *Reinstallation of used tank systems*. 1. Used tank systems that do not meet the standards for new tanks under par. (g) or new piping under sub. (4) may not be reinstalled for hazardous substance storage.

2. If a used tank meets the standards for new tanks under par. (g), it may be reinstalled provided it is certified by a qualified engineer for use.

(k) *Spill prevention at pumps and valves*. The owner or operator shall prevent spills and leaks at all pumps and valves that control a liquid hazardous substance by using one or more of the following methods:

1. Installation of seal–less pumps and valves, double–seal pumps and valves or equivalent technology.

2. a. Implementation of a pump and valve inspection, maintenance, and repair program that complies with subd. 2. b.

b. The frequency of inspection and scope of maintenance and repair shall be based on a minimum of 5 years of actual operating and service records, manufacturer's recommendation, or records for similar operations.

3. a. Installation of pumps and valves within a catchment basin, such as a drip pan, pad or secondary containment system, that complies with subd. 3. b. and c.

b. The catchment basin shall be compatible with the substance stored for a period of time that will allow for cleanup under all operating conditions.

c. The catchment basin shall be inspected each day of operation for accumulation of liquid and shall have the capacity to contain all spills likely to accumulate in the basin.

(L) *Tanks subject to melting.* Aboveground storage tanks constructed of a material subject to melting when exposed to fire shall be located so that any spill or leak resulting from the failure of the material could not unduly expose persons, structures, or the environment.

(m) *Tanks subject to scouring.* 1. Storage tanks subject to scouring by the inflow of materials, or subject to wear from manual gauging shall be equipped with wear plates, diffusers, or other means to prevent localized wear or corrosion.

2. If wear plates are used, they shall cover an area of at least one square foot and be installed in a manner that prevents crevice corrosion of the tank.

(n) *Explosion protection.* Tanks shall be protected from explosion in accordance with generally accepted engineering practices. Protection shall be provided by cooling systems, fire–resistance measures, depressurizing valves, foundation sloping to prevent burning liquids from accumulating under the tank, or other means determined by a qualified engineer and acceptable to the department.

(o) *Protection from freezing.* Tanks, piping, valves and other ancillary equipment shall be protected from physical damage by freezing.

(4) PIPING SYSTEMS. (a) *General requirements.* Piping systems serving hazardous substance storage tanks shall meet all of the following requirements:

1. Piping systems shall be compatible with the substance stored and be protected from failure due to internal and external wear, vibration, shock, and corrosion.

2. Piping systems shall be free of leakage, structurally sound, properly supported under all operating conditions and be protected from fire, heat, vacuum, and pressure that would cause the system to fail.

3. Piping systems shall be designed, installed, and maintained to prevent damage from expansion, jarring, vibration, contraction, and frost.

4. Piping systems shall be protected from collision damage or crushing loads by vehicles and equipment.

5. Joint compounds and gaskets shall be compatible with the substance stored.

6. Piping with pump or compressor connections shall be provided with shutoff valves located adjacent to the connections.

7. Flexible connectors, elbows, loops, expansion chambers or similar measures shall be installed to allow for movement and prevent damage from water hammer.

8. Piping systems that carry liquids which expand upon freezing shall be protected from freezing or shall have provisions to prevent rupture due to freezing.

9. Refrigerated piping systems shall be constructed of materials suitable for extreme temperatures and pressures in the storage system.

(b) *National standards*. Hazardous substance piping systems serving storage tanks shall be designed, constructed and installed or certified by a qualified engineer in accordance with a standard, as recognized by the department that is developed by a nationally recognized association or independent testing laboratory.

Note: Examples of recognized standards include ORD–C107.7 — Glass–Fibre Reinforced Plastic Pipe and Fittings; and ASTM D 2996 — Standard Specification for Filament–Wound "Fiberglass" (Glass–Fiber–Reinforced Thermosetting Resin) Pipe.

(5) SECONDARY CONTAINMENT. (a) *General*. 1. All new and existing tank systems used to store hazardous liquids shall be provided with secondary containment.

2. Secondary containment systems shall be designed, constructed and installed to prevent the release of regulated substances to the environment at any time during the operational life of a

tank system by containing a leak or spill from the system until the leak or spill is detected and removed.

3. A building may serve as secondary containment if at least one of the following requirements is met:

a. The building is an enclosed structure resting on or above impermeable surfaces from which a discharge of the entire contents of the largest tank would not escape through any doorway, floor drain or other means.

b. The building drains and spillways are connected to an onsite wastewater treatment facility and are designed and maintained such that any leak or spill cannot drain elsewhere.

c. The building drains and spillways are connected to a municipal wastewater treatment facility with agreement of the municipality on the specific materials stored, and drains and spillways are designed and maintained such that any leak or spill cannot drain elsewhere.

4. Secondary containment systems shall be checked for evidence of a leak or spill at least every 30 days.

5. Double–walled tanks shall be designed, constructed, and installed to contain a leak from any portion of the inner tank and to detect a failure of the inner or outer wall.

6. Capacity requirements for secondary containment structures may be reduced by the amount of available treatment plant capacity that is directly accessible to the tank.

7. Secondary containment, including liners and vaults, shall be designed, constructed, and installed to do all of the following:

a. Contain 100 percent of the capacity of the largest tank within the containment area, except as provided in subd. 8.

b. Prevent precipitation or groundwater intrusion from interfering with the ability to contain or detect a leak or spill of a regulated substance.

c. Surround the tank completely and be capable of preventing migration of a regulated substance.

d. Use materials that are compatible with the substances stored and the environment.

e. Isolate incompatible liquids and tank materials from each other and from the environment.

8. a. Permanent containment structures that are not protected from the weather shall be designed and maintained to allow for the containment of 125 percent of the volume of the largest tank within the containment area.

b. Precipitation and debris shall be removed from the containment structure on a regular basis.

c. No precipitation, ice, or debris that is noticeably contaminated may be discharged to the environment.

9. Underground piping shall be provided with secondary containment and leak detection in accordance with sub. (8).

10. a. Connections to tanks shall be located within a containment structure constructed of compatible material and capable of containing leaks from the connections.

b. The containment structure for underground tanks shall have an access way so connections can be inspected and repaired.

(b) *Secondary containment systems for product transfers.* Transfer of hazardous substances shall take place within a secondary containment system that meets all of the following requirements:

1. a. For facilities that are designed on or after February 1, 2009, the system shall be capable of containing leaks and spills from the largest compartment of the vehicle being loaded or unloaded, including leaks or spills from connections, couplings, vents, pumps and valves, hose failure, or overturning of a container.

b. For facilities designed or installed before February 1, 2009, the system shall be capable of containing the volume of any leak or spill deemed likely to occur, in the professional judgment of a qualified engineer.

c. Open–ended fill lines shall be located within the secondary containment system.

2. a. The system shall be designed, installed, and operated to prevent any migration of hazardous substances into the soil or the waters of the state, before cleanup occurs, except as allowed in subd. 2. b.

b. The system may allow migration of the gaseous component of a spill.

3. The system shall be constructed, coated, or lined with materials that are compatible with the substances to be transferred and the environment.

4. a. Product transfers using temporary containment structures shall be constantly attended.

b. The attendant shall be familiar with emergency procedures such that the secondary containment capacity will not be exceeded in the event of a leak or spill.

5. a. Permanent containment structures shall have sufficient strength and thickness to withstand wear, hydrostatic forces, frost heaving, and weathering.

b. The structure shall support any vehicle brought into the transfer area.

6. Permanent containment structures shall have a foundation that prevents failure due to settlement, compression, or uplift.

7. a. Permanent containment structures shall be designed with a manually controlled drainage system to permit the drainage of liquids resulting from leaks, spills, and precipitation, such as a manually controlled pump or siphon or a manually controlled dike valve.

b. Pump, siphon and valve controls shall be located outside of the diked area.

c. All drainage systems shall be locked in a closed position when a transfer of a hazardous substance is in progress.

d. Spilled or leaked substances shall be removed from the containment system to prevent a release to the waters of the state.

(6) PRESSURE RELIEF AND VENTING. (a) *General pressure relief and venting requirements*. 1. a. Tanks shall be protected from over–pressurization and excessive vacuum that may be caused by operator error, filling, emptying, atmospheric temperature changes, pumping, refrigeration, heating, and fire exposure.

b. Tanks subject to failure due to pressure or vacuum shall be provided with pressure control devices as determined by the qualified engineer.

c. Protection shall be provided by vents, rupture discs, pressure or vacuum relief devices, controllers, fail–safe vessel designs, or other means determined by a qualified engineer.

2. If a pilot–operated relief valve is used, it shall be designed so the main valve will open automatically and will protect the tank in the event of failure of the pilot valve or other device.

3. Venting used on a tank containing a flammable or combustible hazardous substance shall follow the requirements of NFPA 30 sections 21.4.3 and 22.7.

4. Vent discharge openings shall be designed and constructed to prevent interference of operation due to precipitation.

5. Vents shall have provisions for draining any condensate that may accumulate.

6. Vents shall be protected from tampering.

7. Vents shall have direct contact with the vapor space of the tank.

8. Venting shall be sized to limit the back pressure to less than the maximum pressure allowed by the design of the system.

9. Tanks fitted with relief valves may not be equipped with an isolation valve below the relief valve unless 2 or more relief valves are provided, and isolation valves are interlocked.

10. Cooled tanks with sealed double–wall construction shall have a pressure relief valve on the outer wall in addition to a pressure relief valve or safety disk on the inner tank.

(b) *Normal venting*. Closed–roof atmospheric tanks and low–pressure tanks shall be equipped with normal vents designed to accommodate all of the following conditions:

1. Inbreathing resulting from maximum outflow of liquid from the tank.

2. Inbreathing resulting from contraction of vapors caused by a decrease in atmospheric temperature.

3. Outbreathing resulting from maximum inflow of liquid into the tank and maximum evaporation caused by the inflow.

4. Outbreathing resulting from expansion and evaporation that result from maximum increase in atmospheric temperature.

Note: Examples of normal venting include pilot–operated relief valves, pressure relief valves, pressure–vacuum valves, conservation vents, open vents, or a combination of devices.

(c) *Emergency venting*. 1. Atmospheric, low–pressure and high–pressure aboveground tanks shall have emergency venting to insure that the maximum pressure for the tank is not exceeded.

2. Emergency venting shall be designed by a qualified engineer in accordance with good engineering practices.

Note: Examples of emergency venting include larger or additional open vents, pressure–vacuum valves, pressure relief valves, a gauge hatch that permits the cover to lift under abnormal internal pressure or a manhole cover that lifts when exposed to abnormal internal pressure.

(d) *Labeling of pressure relief valves.* 1. Where safety, pressure relief or vacuum relief valves are used, each valve shall be permanently labeled with all of the following information:

a. The name or identifying trademark of the manufacturer.

b. The manufacturer's design or type number.

c. The pipe size of the inlet.

d. The set pressure or vacuum, in pounds per square inch gauge.

e. The full open pressure or vacuum, in pounds per square inch gauge.

f. The capacity at the indicated pressure or full open vacuum, in either cubic feet of gas per minute or cubic feet of gas per hour.

2. The labeling shall be provided either on the valve itself or on a plate securely fastened to the valve.

(7) TEMPERATURE MONITORING. (a) Temperature indicators and corresponding alarms shall be provided for storage tanks where heat from a reaction could cause damage to the system or a release to the environment.

(b) Heated or cooled tanks shall be equipped with appropriate thermal controls and gauges.

(c) Protection against overheating or overcooling shall be provided for heated or cooled tanks in accordance with generally accepted engineering practices.

Note: Means of protection may include temperature controllers, insulation, alarms, cooling systems, and special material selection.

(8) LEAK DETECTION FOR UNDERGROUND TANK SYSTEMS. (a) Underground storage tank systems that contain federally regulated hazardous substances shall be equipped

with a leak detection system which will detect a leak in the primary containment of the tank and piping.

(b) The leak detection method shall be capable of meeting the requirements in s. ATCP 93.510, except as provided in par. (c).

(c) Other methods of leak detection may be used if approval from the department is obtained before the installation and operation of the new UST system.

(9) CORROSION PROTECTION. Corrosion protection shall be provided in accordance with s. ATCP 93.520 for underground storage tank systems or s. ATCP 93.400 for aboveground storage tank systems.

(10) IDENTIFICATION AND LABELING. (a) Transfer points shall be labeled with the name of the substance transferred.

(b) Aboveground tanks storing hazardous substances within the scope of this section shall be identified and labeled in accordance with s. ATCP 93.400 (7).

Note: Section ATCP 93.400 (7) requires conformance with NFPA 704.

(c) All tanks on a property shall have a unique tank identification number that is readily visible to emergency response personnel.

(11) INSPECTIONS, CHANGES IN SERVICE, TANK CLOSURE, AND RELEASES FROM A TANK. (a) *Aboveground storage tanks.*

1. Aboveground storage tanks shall comply with ss. ATCP 93.440 to 93.470, except as provided in subd. 2.

2. Periodic inspections of aboveground tanks may be conducted in accordance with any nationally recognized standard that is more applicable to hazardous tanks than STI SP001.

3. Existing and new aboveground fiberglass storage tanks shall have certified external tank inspections and certified tank integrity inspections in accordance with HIR FTV RP 2007.

Note: Aboveground storage tanks which store hazardous substances and which have a capacity of less than 5,000 gallons are exempt from this chapter unless the substance is also flammable or combustible.

Note: Sections ATCP 93.440 to 93.470 address inspections; seldom–used and temporarily out of service tanks; change in service to store a non–regulated substance; tank closures; tank–system site assessment; and confirming and responding to leaks, spills, overfills and releases.

Note: The department accepts use of the following standard for performing periodic inspections under this subdivision: HIR FTV RP 2007, In-Service Inspection of Aboveground Atmospheric Fiberglass Reinforced Plastic Tanks and Vessels, as published by HIR Technical Services. This standard is available by contacting FTPI at http://www.fiberglasstankandpipe.com.

(b) *Underground storage tanks*. Underground storage tanks shall comply with ss. ATCP 93.545 to 93.585.

Note: Sections ATCP 93.545 to 93.585 address seldom–used and temporarily out of service tanks; change in service to store a non–regulated substance; tank system closures; conditions indicating releases; tank system integrity assessments; tank system site assessments; and responding to leaks, spills, overfills and releases.

(13) SECURITY AT CHEMICAL STORAGE FACILITIES. Owners and operators shall be aware of regulations, standards and operating practices that relate to facility security.

Note: Information on how to develop a comprehensive site security program is available in the API document *Security Guidelines for the Petroleum Industry,* or the American Chemistry Council document, *Site Security Guidelines for the U.S. Chemical Industry*.

ATCP 93.360 Storage of Class IA flammable liquids. (1) All storage, whether new or existing, of Class IA flammable liquids with a Reid vapor pressure not exceeding 25.3 psig (40 psia) and a boiling point of less than 100° F shall comply with the applicable requirements of NFPA 30 and this chapter, except as provided in sub. (2).

(2) Design standards for new tank systems do not apply to existing tank systems unless specified otherwise.

Note: See ch. SPS 341 for additional requirements that may apply to flammable liquid storage in pressure vessels at pressures greater than 15 psig.

ATCP 93.370 Emergency shutoff for transfers. (1) An emergency electrical shutoff shall be installed in accordance with NFPA 30A section 6.7 on any new or existing system that provides for the transfer of product from a fixed storage tank system to a tank vehicle rail tank car or vehicle fuel tank.

(2) The emergency electrical shutoff shall be tested annually. Annual testing for UST systems shall be documented on the functionality verification form, TR-WM-139.

Subchapter IV — General AST Storage

Note: The requirements in this subchapter are general requirements. Under s. ATCP 93.020 (7) (b), wherever subchapter III prescribes a specific or more detailed requirement regarding the same subject, that subchapter III requirement governs instead of the requirement in this subchapter.

ATCP 93.400 General requirements. (1) ABOVEGROUND TANK DESIGN. (a) *General.* Tanks designed and built for underground use may not be used aboveground.

(b) *Tanks for Class I, II, or IIIA liquids*. Tanks used for aboveground storage of Class I, II, or IIIA liquids shall comply with the tank construction and marking requirements in s. ATCP 93.250.

(c) *Tanks for Class IIIB liquids*. Tanks which have a capacity of 1,100 gallons or more and which are used for aboveground storage of Class IIIB liquids shall be listed or shall be acceptable to the department.

Note: See s. ATCP 93.130 (5) for listing and labeling requirements for aboveground tanks.

(d) *Tank foundations.* Tank foundations shall be designed to prevent uneven settling of the tank. Tank supports shall be placed on a prepared, flat, smooth, and solid surface.

(2) CORROSION PROTECTION. (a) *General.* Aboveground storage tank systems shall be protected from excessive external corrosion through the use of paint, protective coatings, or corrosion resistant materials that are applied after the surface has been prepared in accordance with the manufacturer's recommendations.

(b) *Tank systems.* Any portion of an aboveground tank system that is in contact with the ground shall be protected from corrosion by one of the following methods:

1. The tank system is constructed of an inherently corrosion–resistant material.

2. The tank system is isolated from the ground by a method acceptable to the department.

Note: Methods of isolation acceptable to the department include dielectric coating, placement on clean concrete, placement on an elevated ring wall, or mounting on listed saddles.

3. The tank system is protected by a sacrificial anode or impressed current system.

4. a. Single– or double–wall tanks which are constructed of material subject to corrosion and which are supported on runners or tank supports shall be constructed such that the bottom of the tank shell is at least 3 inches but no more than 12 inches above grade, as measured from the lowest point of the tank shell, except the 12–inch maximum does not apply where subd. 4. b. is met.

b. The 12–inch maximum in subd. 4. a. may be exceeded where structural fire resistance is provided that complies with NFPA 30 section 22.5.2.4.

(c) *Underground piping.* All new and existing underground piping connected to an aboveground tank shall be protected from corrosion using one of the methods in s. ATCP 93.520 (1).

(d) *Designed corrosion protection systems*. 1. Aboveground tank systems equipped with a new sacrificial anode or impressed current corrosion protection system shall follow the installation, operation, maintenance and testing requirements in s. ATCP 93.520.

2. Existing sacrificial anode or impressed current corrosion protection systems shall follow the operation, maintenance and testing requirements in s. ATCP 93.520.

(3) SECONDARY CONTAINMENT FOR PIPING. (a) When any underground piping is installed as part of a new tank system or when 50 percent or more of a run is replaced, the piping shall be provided with approved secondary containment with approved non–discriminating interstitial monitoring, except as specified in par. (g).

(b) 1. The material used for fabricating both the primary and secondary containment shall be listed in accordance with a standard that assures liquid– and vapor–tightness.

2. Secondary containment sumps shall be fabricated and installed in a manner that prevents release of liquids. These sumps shall be tested for leaks hydrostatically at installation, in accordance with the manufacturer's instructions and the adopted standard PEI RP 1200.

(c) All pipe connections at a dispenser for motor vehicle fueling that are installed or replaced on or after February 1, 2009, shall be placed within a secondary containment sump at the time of installation or replacement, except as exempted in par. (e).

(d) All pipe connections at a dispenser for motor vehicle fueling that were in existence or under construction before February 1, 2009, shall be placed within a secondary containment sump by January 1, 2021, except as exempted in par. (e).

(e) A secondary containment sump is not required under the pipe connections at a dispenser if the storage tank system meets all of the following conditions:

1. All piping is aboveground and readily accessible for inspection.

2. The dispenser and all the pipe connections at the dispenser are on or above a surface that is at least as impermeable as concrete.

(f) All pipe connections at a transition between aboveground and underground piping that are installed or replaced on or after February 1, 2009, shall be placed within a secondary containment sump at the time of installation or replacement.

(g) Secondary containment is not required for underground piping that is evaluated and maintained in accordance with API 570, by organizations that maintain or use an authorized inspection agency, a repair organization, and technically qualified piping engineers, inspectors and examiners, all as defined in API 570.

(h) 1. Secondary containment sumps provided under this subsection shall have non–discriminating electronic sensors that will detect liquids in the sump, unless approved otherwise by the department.

2. Piping that is installed or replaced on or after August 1, 2009, at secondary containment sumps provided under this subsection may not pass through the bottom of the sump.

3. All electrical conduit and wiring that is installed or replaced on or after August 1, 2009, at secondary containment sumps provided under this subsection for dispensers shall pass over the top of the sump wall rather than through the wall or bottom of the sump.

Note: This subsection recognizes dispenser pans, spray–on liners, brushed–on liners, formed–in–place containment products, and other effective secondary containment practices that are currently in use.

(4) LEAK DETECTION FOR PIPING. (a) All new and existing underground piping connected to an aboveground tank shall be provided with approved leak detection in accordance with s. ATCP 93.510 (4), except as specified in par. (c).

(b) Leak detection in accordance with par. (a) shall be installed immediately at the time of new installation or replacement of pipe.

(c) 1. Piping over 4 inches in diameter shall follow the plan and system requirements and deadlines in s. ATCP 93.517, except as specified in subd. 2. Leak detection for piping of 4 inches in diameter or less may be provided as specified in subd. 2. only if approved in writing by the department.

2. Leak detection for piping may consist of evaluations that are performed in accordance with API 570, by organizations that maintain or use an authorized inspection agency, a repair organization, and technically qualified piping engineers, inspectors and examiners, all as defined in API 570.

(5) INSTALLATION. (a) 1. The installation of shop–built tanks and associated piping shall be performed or supervised by a certified installer under s. ATCP 93.240 (16).

2. A certified installer shall verify that the installation of the electrical components for a tank system does not conflict with this chapter, except this verification is not required for the electrical criteria in ch. SPS 316.

(b) 1. All installation shall be in accordance with the manufacturer's instructions, the applicable national standards adopted in s. ATCP 93.200, and plans and specifications approved under s. ATCP 93.100 and this chapter.

2. All tank and pipe systems that are installed on or after the effective date, including replacement systems, shall undergo all of the following before the tank and pipe systems are placed into service:

a. Pressure testing that shall assure that the tank, pipe, and all connections are tight in accordance with PEI RP200 sections 6.6 and 9.6 and chapter 14.

b. Pre-operational testing and inspection in accordance with PEI RP200 chapter 14.

(c) Single wall horizontal–cylindrical and rectangular aboveground storage tanks shall be installed to allow full visual inspection of the outer tank shell, except for any portion of the shell that is in contact with a support for it.

(d) The foundations for all types of tanks shall be designed to minimize the possibility of uneven settling and to minimize corrosion in any part of the tank resting on the foundation.

(e) Tank supports shall be placed on a prepared, flat, compacted surface.

(em) Vent piping shall meet the requirements of NFPA 30 Subchapter 27.8 except the termination height of normal vent piping for Class II and Class III liquids shall be a minimum of 4 feet above the ordinary snow line.

(f) Upon completion of any installation of new or replacement shop–built tanks or piping, or any modification or upgrade thereto that requires plan approval or registration, the certified installer shall provide the authorized agent or the department with a completed tank installation checklist, form TR-WM-120.

Note: Form TR-WM-120 – Checklist for Aboveground Storage Tank Installation is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(6) MOVING SHOP–BUILT TANKS. Aboveground shop–built tanks that are moved from one location to another shall meet all of the following requirements, except for tanks covered in s. ATCP 93.610:

(a) The tank shall meet all the plan review, installation, and registration requirements in this chapter for the new location.

(b) If the tank contained Class I liquids, it shall be rendered free of flammable vapors before the move and maintained vapor–free until placed into service at the new location.

(c) If the tank is relocated to a property with a different street address, a revised tank registration, form TR-WM-118 or TR-WM-153, and part A of a tank system service and closure assessment report, form TR-WM-140, shall be completed and submitted to the department for the former location.

Note: Form TR-WM-118 — Aboveground Flammable/Combustible/Hazardous Liquid Storage Tank Registration; form TR-WM-140 — Tank System Service and Closure Assessment Report; and form TR-WM-153 — Change of Ownership, Flammable/Combustible/Hazardous Liquid Storage Tank Registration are available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942. Forms TR-WM-118 and TR-WM-140 are also available from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(cm) If the tank is relocated on the same property, part A of a tank system service and closure assessment report, form TR-WM-140, shall be completed and submitted to the department for the former location.

(d) The tank shall undergo pre–operational testing and inspection in accordance with PEI RP200 chapter 14.

(e) The tank shall have an inspection performed by a certified tank system inspector before being placed into operation.

(f) The tank shall continue to follow the inspection schedule in STI SP001 that was established at the former location.

(7) ABOVEGROUND TANK MARKING. (a) 1. All aboveground tanks, whether new or existing, that store Class I liquids, other than at refineries or at marine, pipeline, or transport terminals, shall have attached the wording, "FLAMMABLE—KEEP FIRE AWAY."

2. The wording shall be clearly visible and written in letters of a contrasting color at least 5 inches high with a minimum stroke width of one inch.

(b) 1. All aboveground tanks, whether new or existing, that store flammable or combustible liquids shall be labeled in accordance with NFPA 704.

2. The visibility and size of the label shall be in accordance with Table 93.400.

Table 93.400

Tank Labels

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"

(8) MAINTENANCE AND REPAIRS. (a) *Tanks.* 1. a. All shop–built aboveground steel storage tanks, whether new or existing, shall be maintained and repaired in accordance with STI SP031.

b. All repairs or modifications under STI SP031 shall be recorded on the department's TR-WM-134 form.

Note: Form TR-WM-134–STI SP031 Tank Repair/Modification Summary, is available from the Bureau of Weights and Measures, P. O. Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

c. A copy of the completed TR-WM-134 form shall be provided to the tank operator.

d. The tank operator shall have the completed TR-WM-134 form on site and available for inspection within 30 days after receiving it from the party that performed the repair, except as provided in sub. (11) (b) 2. for unattended sites.

2. Field–erected aboveground storage tanks shall be maintained and repaired in accordance with API 653.

(b) *Other system components*. 1. Repairs to any of the following tank system components shall be recorded on the department's TR-WM-136 form:

a. Below-grade components.

b. Tank containment and piping sumps.

c. Overfill valves and vent whistles.

d. Emergency vents.

e. Normal vent pressure or vacuum valves and flame arrestors.

f. Anti-siphon valves.

Note: Form TR-WM-136–STI SP031 Tank System Repair Report, is available from the Bureau of Weights and Measures, P. O. Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at http://datcp.wi.gov/Consumer/Hazardous_Materials_Storage_Tanks/Hazardous_Materials_Storage_Tank_Forms/index.aspx.

2. A copy of the completed TR-WM-136 form shall be provided to the tank operator.

3. The tank operator shall have the completed TR-WM-136 form on site and available for inspection within 30 days after receiving it from the party that performed the repair, except as provided in sub. (11) (b) 2. for unattended sites.

(c) *Testing of repairs*. 1. "Interstitial space." Any repair that affects any portion of an interstitial space for an AST system shall include testing of the affected portion in accordance with methods prescribed in ss. ATCP 93.500 (6) (b) and (c) and PEI RP 200, or other methods approved by the department, to verify that the containment complies with this chapter before that portion is placed back into service.

2. "Secondary containment sumps." Repair of any secondary containment sumps that are addressed in s. ATCP 93.400 (3) shall include testing in accordance with the methods prescribed in s. ATCP 93.400 (3) (b) before placing the sumps back into service.

3. "Overfill prevention equipment." Repair of overfill prevention equipment shall include testing in accordance with the methods prescribed in s. ATCP 93.410 (12) before placing the equipment back into service.

(d) *Reporting*. Repairs that are recorded under par. (a) 1. b. or (b) 1. because of a leak shall be reported to the department within 15 days of the repair.

Note: See ss. ATCP 93.230 (8) to (10) for additional facility maintenance requirements.

(e) *Property*. Tank yards and diked areas shall be kept free from weeds, high grass, rubbish, and combustible materials that are not essential to the operation and shall be kept clean and orderly.

(9) FACILITY LIGHTING. Adequate lighting shall be provided for loading, unloading, and dispensing operations.

(10) SYSTEM ACCESS. (a) All new aboveground 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 connections and appurtenances.

(11) RECORD KEEPING. (a) *General.* Operators of new and existing aboveground storage tank systems shall maintain all of the following records:

1. Documentation of any system repairs, alterations or upgrades— including software and hardware upgrades — and any inspections or testing required under this chapter.

2. Testing results obtained from any leak detection equipment, as retained from the equipment's printer or a handwritten log kept on-site.

3. Documentation maintained for all calibration, inspection, monitoring, testing, repair, and annual performance verification of any leak detection equipment, if so equipped.

4. Response to and investigation of any leak detection alarms.

5. Documentation maintained for all calibration, inspection, monitoring, testing, repair, and periodic performance verification of any corrosion protection equipment permanently located on–site.

6. Records of any environmental information that has accrued for a site, such as from site investigations, phase I or II environmental site assessments, repairs and tank–system site assessments.

7. Results of functional testing of impact and emergency shutoff valves.

7m. Results of functional testing of emergency electrical shutoffs.

8. Electrical continuity testing for dispensers of motor fuels that are Class I liquids.

9. One set of stamped, approved plans and specifications and a copy of the approval letter.

10. Documentation of compliance with the compatibility requirements in s. ATCP 93.680 (3) (c) 1. or (6) (c) 1., if the ethanol or biodiesel blends addressed therein are stored or dispensed.

(b) *Availability of records.* 1. Operators shall maintain the required records at the site, except as provided in subds. 2. and 3., and par. (c) 9.

2. Operators of unattended sites shall make the records available for inspection at the site when given 72 hours of prior notice.

3. The approved plans and specifications and approval letter shall be kept on site and available to the authorized agent or the department during all phases of installation. After installation is completed, the approved plans and specifications and approval letter shall be made available to the authorized agent or the department upon request.

4. Records may be kept electronically, provided they are in a format acceptable to the department.

(c) *Maintenance of records*. Records shall be maintained for the following periods from the date of the most recent test, inspection or upgrade:

1. Monthly leak detection monitoring for underground piping — one year.

2. Annual precision tightness testing for underground piping — one year.

3. Impressed current corrosion protection system, 60–day inspection — the previous 3 inspections.

4. Corrosion protection system, annual test — the previous 3 tests.

5. Annual performance verification of leak detection equipment and flow restrictor, for underground piping — 2 years.

6. Results of functional testing of impact and emergency shutoff valves and electrical continuity testing for dispensers — 2 years.

7. The owner's manual provided by the leak detection equipment manufacturer — until the leak detection system is replaced or no longer used.

8. Any tank or pipe system modification or repair — the operational life of the system.

9. Inspection or testing records — 3 years or the interval between required inspections or testing, whichever is longer.

10. Tank–system site assessments and other environmental assessments, such as assessments for property transactions — 3 years after completion of any permanent closure, upgrade, repair, or change in service. These records shall be maintained at one of the following locations:

a. With the owner or operator who took the AST system out of service.

b. With the current operator of the AST system site.

c. With the department if records cannot be maintained at the closed facility.

11. Leak detection alarm investigation — 2 years.

Note: All leak detection records should be retained. The documentation could be helpful to exclude the site as a possible source of contamination at a later date.

12. One set of stamped, approved plans and specifications and a copy of the approval letter — the operational life of the system.

13. Equipment or component compatibility for ethanol or biodiesel blends under s. ATCP 93.680 (3) (c) 1. or (6) (c) 1.—the operational life of the equipment or component.

(12) TANKS AT REMEDIATION SITES. (a) 1. Recovery systems using oil water separators or recovery systems pumping free product at the rate of 60 gallons or more per week shall comply with this paragraph.

2. Recovery product piping and storage tanks shall comply with either the plan review requirements in s. ATCP 93.100 or the design and construction requirements in s. ATCP 93.350 (2) for hazardous substances.

3. Tanks shall be registered in accordance with s. ATCP 93.140.

4. Tank construction and marking shall comply with ss. ATCP 93.250 and 93.400 (7).

(b) Tanks used in recovery systems that pump free product at the rate of less than 60 gallons per week shall be constructed and marked in accordance with ss. ATCP 93.250 and 93.400 (7).

ATCP 93.410 Spill and overfill prevention. (1)

(a) All aboveground storage tanks, whether new or existing, shall have a means of overfill prevention which consists of either a visual gauge, an audible or visual alarm, or a pump shutdown that activates at 90 percent of the tank's capacity, and which complies with any other applicable requirements in this section.

1 (b) Prior to delivery, the operator of the product delivery equipment that is transferring the
2 product shall ensure that the volume available in the tank is greater than the volume of product to
3 be transferred to the tank.
4 **(2)** The transfer operation shall be monitored constantly by the operator of the delivery
5 equipment so as to prevent overfilling and spilling.
6 **(3)** Equipment shall be clearly marked so visual and audible warning signals are
7 recognizable to the delivery person.
8 **(4)** Spill and overflow prevention equipment shall be maintained to work as originally
9 designed and installed.
10 **(5)** The fill opening shall be separate from the vent opening.
11 **(6)** (a) All aboveground storage tanks, whether new or existing, with the fill point not
12 located within a diked area shall be provided with a catch basin or similar containment, except
13 for tanks exempted by par. (d) and tanks that are exempted from secondary containment by
14 ss. ATCP 93.420 (1) (a) to (c).
15 (b) The catch basin or similar containment to contain spillage at the fill point shall have a
16 minimum liquid capacity of 5 gallons, except where the catch basin or similar containment was
17 installed before February 1, 2009.
18 (c) The basin shall be equipped with a method to remove product or a drain system that
19 directs spilled product into the tank.
20 (d) The following tanks are exempt from par. (a):
21 1. Tanks provided with controls before February 1, 2009, that comply with this subsection.
22 2. Tanks filled with a manual–shutoff nozzle without a latch–open device.

Note: The "controls" referred to in this subdivision may be something other than a mechanical device. In other words, they are anything that will reliably prevent a loss of product at the fill point from reaching the environment.

3. Tanks filled with a tight–connect with either a dry break connection or a manual shutoff valve on the hose–end connection.

(7) Aboveground tanks that are filled via handheld nozzles shall be constantly attended during product delivery and shall be provided with overfill prevention equipment which notifies the person filling the tank, with either an audible or a visual signal that the liquid level has reached 90 percent of the tank's capacity.

(8) Tanks located remote from the fill point, that are filled only with a manual shutoff nozzle without a latching mechanism shall be provided with overfill prevention equipment which notifies the person filling the tank, with both an audible and a visual signal, that the liquid level has reached 90 percent of the tank's capacity.

(9) (a) Any of the following new aboveground double-wall tanks storing Class IIIB products shall be provided with overfill prevention equipment which notifies the person filling the tank, with both an audible and a visual signal, that the liquid level has reached 90 percent of the tank's capacity:

1. Tanks using tight-connect delivery.

2. Tanks located remote from the fill point.

(b) Any of the following existing aboveground double-wall tanks storing Class IIIB products shall be provided with overfill prevention equipment which notifies the person filling the tank, with both an audible and a visual signal, that the liquid level has reached 90 percent of the tank's capacity:

1. Tanks using tight-connect delivery.

1 2. Tanks located remote from the fill point that use delivery nozzles with latch-open devices.

2 **(10)** (a) Any of the following double-wall aboveground tanks that are installed on or after
3 the effective date shall be provided with overfill prevention equipment which notifies the person
4 filling the tank, with both an audible and a visual signal, that the liquid level has reached 90
5 percent of the tank's capacity, and which automatically shuts off flow when the quantity of liquid
6 in the tank reaches 95 percent of the tank's capacity, except this requirement does not apply to
7 the tanks addressed in sub. (9) (a):

8 1. Tanks using tight–connect delivery.

9 2. Tanks located remote from the fill point that use delivery nozzles with latch–open
10 devices.

11 (b) Any of the following existing aboveground double-wall tanks shall be provided with
12 overfill prevention equipment which notifies the person filling the tank, with both an audible and
13 a visual signal, that the liquid level has reached 90 percent of the tank's capacity, and which
14 automatically shuts off flow when the quantity of liquid in the tank reaches 95 percent of the
15 tank's capacity, except this requirement does not apply to the tanks addressed in sub. (9) (b):

16 1. Tanks using tight–connect delivery.

17 2. Tanks located remote from the fill point that use delivery nozzles with latch–open
18 devices.

19 **(11)** Any single-wall aboveground tank which is not addressed in subch. III and which either
20 is existing by the effective date or is installed on or after that date shall be provided with overfill
21 prevention equipment which notifies the person filling the tank, with both an audible and a visual
22 signal, that the liquid level has reached 90 percent of the tank's capacity.

(12) Overfill prevention equipment shall be tested before it is placed into service to ensure it is set to activate at the levels specified in this section and that it will activate when the contained liquid reaches those levels. This testing shall be performed in accordance with one of the following:

(a) Requirements developed by the manufacturer, if the manufacturer has developed testing requirements.

(b) An approved standard developed by a nationally recognized association or independent testing laboratory.

(c) Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in this subsection.

(13) (a) Operators shall utilize the procedures and equipment as specified in PEI RP600 for preventing overfilling of new and existing shop–built aboveground tanks.

(b) Fuel–delivery persons shall utilize the procedures in PEI RP600 for preventing overfilling of new and existing shop–built aboveground tanks, and may not interfere with equipment that is intended to prevent overfilling.

Note: PEI RP600 does not mandate installation of equipment, but instead addresses how to effectively use the equipment that is provided, as required by other sections and referenced standards in this chapter.

Note: Under ss. ATCP 93.470 and ATCP 93.585 (2) (b), fuel–delivery persons must immediately inform the owner or operator of any spilling or overfilling which occurs during the delivery procedure and which may result in or be a release. Requirements for the owner or operator to report, investigate, and clean up any spills and overfills are contained in ss. ATCP 93.575 to 93.585.

Note: Overfill-prevention requirements for bulk plant tanks are in PEI RP800, and corresponding requirements for hazardous liquid tanks containing substances that are not flammable or combustible are in s. ATCP 93.350.

Note: API RP 1007, *Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles*, is a guideline for use by truck drivers and other personnel that includes specific steps

for unloading tank trucks into aboveground and underground tanks in a safe and efficient manner which protects the environment. It is available at http://publications.api.org.

ATCP 93.420 Secondary containment. (1) APPLICATION. Aboveground storage tanks using secondary containment as a method of spill control shall comply with the secondary containment requirements in NFPA 30 section 22.11 and this section, except this requirement does not apply to any of the following tanks:

(a) Tanks covered in ss. ATCP 93.610 (1) to (3) and 93.630.

Note: Sections ATCP 93.610 (1) to (3) and 93.630 cover tank wagons, movable tanks, tank vehicles, and aboveground farm tanks.

(b) Tanks storing Class IIIB liquids other than used oil.

Note: Federal regulations, such as the Spill Prevention Control and Countermeasure requirements in 40 CFR 112, may also apply to these tanks and be more restrictive but are not enforced by the department.

(c) Tanks storing Class IIIB liquids that are not in the same diked area as a tank containing Class I, II, or IIIA liquids.

(2) DIKE SYSTEMS FOR TANKS. (a) *Weather exposure.* Where a dike system is used to provide secondary containment for a tank system that is exposed to the weather, the dike system shall be constructed in accordance with NFPA 30 section 22.11; ACI 350.2R, if concrete is used; and this subsection.

(b) *Capacity.* The capacity of a dike system open to the weather shall be 25 percent larger than required under NFPA 30 section 22.11.1.2 or 22.11.2.2.

(c) *Construction.* The walls and floor of the dike system shall be constructed of earth, solid masonry, steel, precast concrete, engineered poured concrete, or other materials approved by the department.

(d) *Sealing.* Dike systems 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.

(e) *New earthen or masonry dikes.* 1. New dike systems that have walls or floor made of earth or masonry shall be lined with a synthetic material having a permeability of no faster than 10^{-6} centimeters per second for the substance stored, except as provided in subd. 2.

2. a. Tanks included in either subd. 2. b. or c. may have dike systems designed by an engineer, with the walls and floor made of clay material having a permeability of no faster than 10^{-6} centimeters per second for the substance stored. The dike system shall be designed to maintain the permeability for a minimum of 35 years.

b. Tanks that have a double bottom which includes interstitial monitoring.

c. Single–bottom tanks that are constructed to ensure that any leaks from the bottom will drain to a conspicuous location and be contained there.

3. All piping shall be routed over the top of the dike wall.

Note: A method to achieve compliance with subdivision 2. c. could include placing a tank over coarse aggregate that rests on a concrete base which is configured to provide the specified drainage and containment.

Note: As applied under ss. ATCP 93.440 (2) and (3), API 653 requires routine inspection of field–erected tanks, and STI SP001 requires periodic inspection of shop–built tanks for evidence of leaks.

(f) *Existing earthen or masonry dikes.* 1. Tanks may be installed within an existing dike system that has walls or floor made of earth or masonry only if all of the following conditions are met:

a. The dike system complies with par. (b).

b. The new tanks comply with par. (e) 2. b. or c.

c. All other tanks within the dike system have overfill protection as specified in NFPA 30 section 21.7.1.

2. An existing dike system that has walls or floor made of earth or masonry may be expanded with materials which are similar to the materials in the existing walls and floor. After that expansion, tanks may be installed within the dike system only if all of the conditions in subd. 1. a. to c. are met.

3. Tanks within an existing dike system that has walls or floor made of earth or masonry may be converted from storing an unregulated substance to storing a regulated substance only if all of the following conditions are met:

a. The dike system complies with par. (b).

b. The converted tanks comply with par. (e) 2. b. or c.

c. All other tanks within the dike system have overfill protection as specified in NFPA 30 section 21.7.1.

4. All new or replacement piping shall be routed over the top of the dike wall.

(g) *Approval and installation of synthetic liners.* Synthetic liners shall be approved in accordance with s. ATCP 93.130 and installed under the direct supervision of a qualified representative of the manufacturer

(h) *Testing and maintenance.* All new and existing synthetic liners and their seams shall be tested and maintained in accordance with the manufacturer's recommendations.

(i) *Inspection of seams.* Dike systems shall be constructed and maintained such that the liquid–tight seams can be visually inspected, except as provided in pars. (j) and (k).

(j) *Seam exceptions.* The following dike systems are not required to have seams that can be visually inspected:

1. Concrete or steel systems that are coated with a liquid–proof sprayed coating.

2. Systems using an additional synthetic liner.

3. Systems using a synthetic liner that is covered with earthen material.

(k) *Existing seams.* For existing dike systems, the seams directly under the tank are not required to be visible for inspection.

(L) *Separation.* A separation of at least 2 feet shall be provided between any new tank and the toe of any new or existing dike wall, and a minimum of 3 inches shall be provided between the bottom of any new tank and the dike floor, to allow for visual inspection of the exterior tank surface — except this 3–inch requirement does not apply to tanks that comply with par. (e) 2. b. or c., or where otherwise approved by the department.

(m) *Drainage.* Permanent containment structures shall be designed with a manually controlled drainage system to permit the drainage of liquids resulting from leaks, spills, and precipitation, such as a manually controlled pump or siphon or a manually controlled dike valve.

(n) *Dike maintenance.* Dikes shall be maintained in accordance with API 2610 and s. ATCP 93.400 (8) (e).

(3) SECONDARY CONTAINMENT TANKS. (a) The department may accept secondary containment tanks of any size as providing acceptable secondary containment, except where dike systems are specifically required by this chapter.

(b) Secondary containment tanks shall be provided with an approved method of interstitial leak detection.

(c) For electronic interstitial monitoring, the sensor shall be of a normally-closed type.

(d) Interstitial leak detection devices shall be tested for operability and functionality at installation.

(4) PIPING. All underground piping connected to an aboveground tank shall comply with the secondary containment requirements in s. ATCP 93.400 (3).

(5) TRANSFER OPERATIONS. In order to prevent a spill from moving beyond the loading or unloading area, any tank which has a capacity of 5,000 gallons or more and which is involved in transfer operations for bulk loading and unloading of tank cars or tank vehicles at facilities that refine, process, distribute, or manufacture liquids regulated under this code shall be provided with a catchment basin or treatment facility to contain the maximum capacity of the largest compartment of a tank car or tank vehicle loaded or unloaded at the facility.

Note: This transfer requirement does not apply to transfers of used oil or fuel oil for heating or other burning purposes.

Note: For further information on industry practices for preventing or detecting releases with aboveground storage systems, and for protecting groundwater, surface water and soil in the event of a liquid release, see API Publication 340 — *Liquid Release Prevention and Detection Measures for Aboveground Storage Facilities.*

ATCP 93.425 Tank lining of aboveground storage tanks. (1) The installation or repair of tank linings or coatings for aboveground storage tanks shall comply with API 652 and this section.

(2) The interior lining or coating of aboveground storage tanks or the repair of such linings or coatings shall be supervised and conducted by persons as required by the material manufacturer.

(3) Any openings cut for tank lining or similar purposes shall comply with API 653 for field–erected tanks and STI SP031 for shop–built tanks.

ATCP 93.430 Vehicle collision protection. (1) Permanent vehicle collision protection shall be provided for any new or existing 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, except for tanks covered in ss. ATCP 93.610 (1) to (3) and 93.630.

Note: Sections ATCP 93.610 (1) to (3) and 93.630 cover tank wagons, movable tanks, tank vehicles, and aboveground farm tanks.

Note: Vehicle collision protection is required for tanks located outside or inside a building in motorized–vehicle or self–propelled–equipment traffic areas, where impact resulting from vehicle speed, turning or backing is a risk factor. For example, vehicle collision protection is required for tanks located adjacent to traffic areas that accommodate public and fleet fueling, service and delivery vehicles, self–propelled construction and service equipment, and forklift equipment.

Vehicle collision protection is not required for tanks adjacent to vehicle and equipment service bays where traffic patterns and speed would not be expected to impact the tank system.

Vehicle collision protection is generally not required at a terminal where roadways are clearly defined, access is restricted to authorized personnel, and vehicle drivers are familiar with the layout of the facilities.

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

(3) Impact barriers shall be designed to protect the tank or component 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, except as provided in sub. (4).

(4) (a) For impact barriers designed primarily to protect from the impact of automobiles, the portion determined to be most vulnerable to vehicle impact shall be capable of withstanding a single impact of 12,000–lb force applied at 10 miles per hour or equivalent impact energy.

(b) The impact shall be applied using a minimum 0.5–inch thick steel plate having a frontal surface area of 12 inches by 12 inches centered at 18 inches above grade.

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.

(5) Vehicle impact barriers shall have a minimum height of 3 feet above grade.

ATCP 93.440 Aboveground tank inspection.

(1) APPLICATION. All new and existing aboveground storage tanks shall be inspected in accordance with this section.

(2) INSPECTION OF FIELD–ERECTED METALLIC ABOVEGROUND STORAGE TANKS. (a) Metallic aboveground storage tanks within the scope of API 653 shall be inspected in accordance with API 653.

(b) Initial inspections shall be conducted as required in Table 93.440.

(c) 1. The agency conducting an API 653 inspection shall report all applicable information from the inspection on an API 653 tank inspection summary form supplied by the department.

Note: TR-WM-119–API 653 Tank Inspection Summary is available from the Bureau of Weights and Measures, P. O. Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

2. A copy of the API 653 tank inspection summary shall be provided to the tank owner or operator along with the complete API 653 inspection report.

(d) The tank owner or operator shall have the API 653 inspection summary on site and available for inspection within 30 days after receiving it from the agency that performed the inspection.

(e) For tanks undergoing a transition from storing an unregulated substance to storing a regulated substance, any inspection in Table 93.440 that has not occurred shall be performed before putting the regulated substance into the tank. For the purposes of this paragraph, the service date is the date the tank was initially placed into service after construction.

Table 93.440

Inspection Type and Schedule

API 653 Inspection Type	First Required Inspection from Initial Service Date	Re–Inspection Frequency
In–Service	1 month	Monthly

External	5 years	Follow API 653
Ultrasonic, external	5 years	Follow API 653
Internal	10 years	Follow API 653

(3) INSPECTION OF SHOP-BUILT METALLIC ABOVEGROUND STORAGE TANKS. (a) 1. The owner or operator of all shop–built metallic aboveground fixed storage tanks shall have the tanks inspected in accordance with STI SP001, except as provided in subd. 2.

2. a. An alternate inspection procedure that provides equivalent environmental and fire safety protection may be used if accepted in writing by the department, or if developed by the certifying engineer for a facility in accordance with the federal spill prevention control and countermeasure regulations in 40 CFR 112.

b. This paragraph does not apply to tanks that have a capacity of less than 1,100 gallons.

c. This paragraph does not apply to heating oil tanks or to tanks at farms and construction projects.

Note: STI SP001 requires monthly and annual inspections and requires maintaining records of these inspections. For almost all ASTs that have a capacity of 5,000 gallons or less, these inspections are only required to be visual. For most tanks that have a capacity of more than 5,000 gallons, the requirements include, but are not limited to, having a certified inspection every 20 years, consisting of a visual exam and spot, ultrasonic examination, with no requirement for an integrity pressure test. STI SP001 includes optional checklists that may be used for the required record keeping. These checklists and a compendium that contains further guidance for these inspections are available from the Bureau of Weights and Measures, P. O. Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

Note: Tanks that are not required by this paragraph to have periodic inspections may otherwise be required to have periodic inspections, by the federal Spill Prevention Control and Countermeasure regulations in 40 CFR 112.

Note: Heating oil tanks and tanks at farms and construction projects are subject to the requirements in NFPA 31 or 30A under ss. ATCP 93.310 and 93.630, respectively.

(b) 1. The inspection schedule required in par. (a) shall be based on the tank's time in service.

2. Monthly inspections may be omitted for seasonal–use tanks during periods when the tank does not contain a regulated substance.

(c) If product is found within a tank's interstitial space during an inspection under this subsection, delivery of product into the tank shall be immediately suspended, and either of the following actions shall be taken within 10 business days:

1. A vacuum or pressure test shall be performed in accordance with the manufacturer's recommendations.

2. The tank shall be closed in accordance with s. ATCP 93.460.

Note: See sub. (5) for further requirements for corrective action.

(4) INSPECTION OF NONMETALLIC ABOVEGROUND STORAGE TANKS. (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 gallons or more shall have the tanks inspected in accordance with all of the following:

1. 'Monthly inspection.' a. At least monthly there shall be a visual inspection of the tank exterior, pipe connections and secondary containment, for signs of leakage, physical damage, and environmentally induced degradation.

b. Any product or water present in the secondary containment shall be removed.

2. 'Annual inspection.' a. At least annually there shall be a visual inspection of tank supports and foundation for signs of physical damage and chemically or environmentally induced degradation.

b. At least annually there shall be a test of the functionality of the tank venting system, if so equipped.

3. 'Qualifications for inspection.' The monthly and annual inspections shall be done by owners, contractors or operations personnel, who are knowledgeable of the facility operations, the tank construction and operation, and the characteristics of the product stored.

4. 'Every 5 years.' At least every 5 years, there shall be an external and internal examination of tank and pipe connections for physical or chemical damage or environmentally induced degradation, conducted by personnel trained and experienced in examining the specific tank construction type.

(b) HIR FTV RP 2007, *In-service Inspection of Aboveground Atmospheric Fiberglass Reinforced Plastic Tanks and Vessels*, may be used as an alternative to the sub. (4) (a) requirements for fiberglass reinforced plastic tanks.

(5) CORRECTIVE ACTION. (a) If a suspected or obvious release is encountered during the inspections under this section, a tank–system site assessment shall be conducted in accordance with s. ATCP 93.465 before the tank is returned to service.

(b) All corrective actions, including repairs that are indicated by the inspections under this section, shall be completed before the tank system is returned to service.

Note: Under ss. ATCP 93.400 (11) (a) 1., (b) 1., and (c) 9., records of the inspections that are required under this section must be maintained at the storage-tank site for at least either three years or the interval between inspections, whichever is longer.

ATCP 93.445 Seldom–used and temporarily out of service tank systems. (1) OPERATIONAL REQUIREMENTS. Owners or operators of aboveground seldom–used and temporarily out of service tanks shall comply with the applicable requirements of s. ATCP 93.545 (1).

(2) PLACING A TANK BACK INTO SERVICE. (a) The respective API 653 or STI SP001 inspection cycle shall be current for a tank before it is placed back into service.

(b) All leak detection, overfill, vent and fire valve devices shall be verified as functional before being placed back into service.

(c) 1. Tank systems out of service for more than 365 days shall pass a tightness test of the tank ullage portion in accordance with s. ATCP 93.515 (10), to assure that tank connections are liquid- and vapor-tight before the tanks are placed back into service.

2. Field-erected tank systems out of service for more than 365 days shall be evaluated for suitability for service in accordance with API 653, to assure that the tank and tank connections are liquid- and vapor-tight before the tanks are placed back into service.

3. Underground product piping out of service for more than 365 days shall pass a tightness test in accordance with s. ATCP 93.515 (4).

(3) NON–COMPLYING TANK SYSTEMS. Tank systems that do not comply with this section or in-use tank system requirements are abandoned tanks and shall be closed in accordance with s. ATCP 93.460 within 60 calendar days of non-compliance.

ATCP 93.450 Change in service to store a non–regulated or a regulated substance. Owners or operators of aboveground tanks shall comply with the change–in–service requirements of s. ATCP 93.550, except a revised registration for aboveground tanks, form TR-WM-118, shall be completed and submitted.

Note: Form TR-WM-118 — Aboveground Flammable/Combustible/Hazardous Liquid Storage Tank Registration is available from the Division of Trade and Consumer Protection, P. O. Box 8911, Madison WI, 53708–8911, or at telephone (608) 224–4942, or from the Division's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

ATCP 93.460 Closure of aboveground tanks.

(1) GENERAL. Owners or operators of aboveground tanks shall comply with the closure requirements of s. ATCP 93.560, except as provided in this section.

(1m) TANK REMOVAL. Tanks shall be removed from the site within one year of closure.

(2) CERTIFICATIONS. Certified persons are not required to perform the following closure functions:

(a) Cleaning and removal of heating fuel tanks, at 1– and 2–family dwellings, that are located aboveground or in the basement.

(b) Cleaning and removal of field–erected tanks.

(c) Cleaning and removal of tanks storing a Class III liquid that is neither petroleum nor CERCLA–listed.

(3) MARKINGS. (a) All aboveground tanks closed and not immediately removed from the site shall have the word "CLOSED" and the date of permanent closure permanently marked on the exterior tank wall, at least 3 feet above grade, with lettering at least 3 inches in height.

(b) A certified tank system inspector may perform the marking specified in par. (a).

(4) FORMS. When an aboveground tank is closed, a revised tank registration, form TR-WM-118, and part A of the tank–system service and closure assessment report, form TR-WM-140, shall be completed and submitted to the department within 21 business days of closure.

Note: Form TR-WM-118, Aboveground Flammable/Combustible/Hazardous Liquid Storage Tank Registration, and form TR-WM-140, Tank System Service and Closure Assessment Report are available from the Bureau of Weights and Measures, P. O. Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

ATCP 93.465 Tank–system site assessment.

(1) GENERAL. (a) Tank–system site assessments for aboveground tanks shall comply with this section and the assessment requirements in s. ATCP 93.580, except as provided in sub. (2).

(b) Tank–system site assessments for aboveground storage tank systems shall include assessment of any underground piping, the loading rack or transfer area, and the area under each

tank; and shall be performed after notifying the authorized agent or the department but before completing any permanent closure.

Note: For further information on sampling and reporting for these assessments, see the department's *Tank System Site Assessment: A Guide to the Assessment and Reporting of Suspected or Obvious Releases From Underground and Aboveground Storage Tank Systems* https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(2) EXCEPTIONS. (a) Aboveground storage tanks or underground piping that have been placed in secondary containment complying with s. ATCP 93.420 (2) (d), (e) or (g) for their entire operational life, and loading rack or transfer areas that have been placed in secondary containment complying with s. ATCP 93.420 (5) for their entire operational life are exempt from tank–system site assessment requirements, unless there is a suspected or obvious release outside the secondary containment.

(b) Aboveground storage tanks that have a capacity of less than 5,000 gallons are exempt from tank–system site assessment requirements unless a suspected or obvious release is present.

(c) A tank–system site assessment is not required for closure of double–wall pipe when modification or upgrading is conducted on an existing system that will remain in operation, unless a suspected or obvious release is present.

ATCP 93.470 Responding to a leak, spill, overfill, or release. Owners or operators, contractors, and fuel–delivery persons for aboveground tanks shall comply with the requirements relating to the presence of a leak, spill, overfill or release, and the assessment of, and response to a leak or release, in ss. ATCP 93.570 to 93.585.

Note: In s. ATCP 93.585, releases are required to be reported to the department of natural resources. Failure to notify the DNR of a release may have serious consequences — such as forfeitures under section 168.26, Stats., of $10 to $5000 for each violation. Each day of continued violation is a separate offense, and under s. ATCP 93.180, each tank that is in violation is a separate offense.

Subchapter V — General UST Storage and

Underground Piping

ATCP 93.500 General requirements. (1) SECONDARY CONTAINMENT. (a) *General.* All new and replacement underground storage tanks and piping systems shall be provided with secondary containment and continuous electronic interstitial monitoring, except as provided in par. (b).

Note: This section is coordinated with the federal Energy Policy Act of 2005, which addresses secondary containment for federally regulated tanks or piping installed within 1,000 feet of any community water system or any potable drinking water well, and which requires interstitial monitoring for any associated double–wall tanks or piping.

(b) *Exceptions.* This subsection and sub. (5) do not apply to any of the following:

1. Any farm or residential underground storage tank system which has a capacity of less than 1,100 gallons and which is used for storing motor fuel for noncommercial purposes.

2. Any underground storage tank system which has a capacity of less than 4,000 gallons and which is used for storing heating oil for consumptive use on the premises where stored.

5. Airport fuel hydrant systems.

(c) *Electronic interstitial monitoring.* 1. Electronic interstitial monitoring installed in new tank or pipe systems after the effective date shall have the ability to generate a printed status report and alarm history report, except as provided in subd. 2.

2. Subdivision 1. does not apply to any interstitial monitoring device for piping, that automatically shuts down product flow when liquid is detected inside the secondary-containment space.

(d) *Motor fuel dispenser containment.* All new motor fuel dispensing systems and all new dispensers added to an existing island or to an extension of existing pipe shall have under–dispenser containment.

(2) FLEXIBLE CONNECTIONS. Flexible piping approved under s. ATCP 93.130 or listed metallic flex connectors shall be used in all of the following locations:

(a) At the top of the tank.

(b) Below the dispenser.

(c) Any other locations recommended by the manufacturer.

(3) UNDERGROUND TANK DESIGN. (a) *General.* Tanks designed and built for underground use may not be used aboveground.

(b) *Tanks for Class I, II, IIIA, or IIIB liquids.* Tanks used for underground storage of Class I, II, IIIA, or IIIB liquids shall be listed and shall comply with the construction and marking requirements in s. ATCP 93.250.

Note: See s. ATCP 93.130 (5) for listing and labeling requirements for underground tanks.

(c) *Reuse of tanks.* Tanks that are moved from one underground location to another shall meet all of the following requirements:

1. The integrity of the tank shall be assessed and certified by the manufacturer, or a registered professional engineer, stating that the tank still meets the construction requirements in s. ATCP 93.250. The certification and a report of the assessment shall be included in the plan review documentation for the new installation.

2. The integrity assessment required in subd. 1 shall occur after the tank has been removed.

3. The tank shall meet all the installation requirements in this chapter.

(4) SYSTEM ACCESS. (a) 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, inspection or replacement.

Note: Piping elbows are an example of connections that do not need access because typically they do not need maintenance or inspection. Valves, extractor fittings, flex connectors,

corrosion–protection test connections, and overfill prevention devices are examples of connections that need this access.

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

(c) The means of access shall allow sufficient clearance for proper drainage from surface water incursion.

(5) SECONDARY CONTAINMENT FOR PIPING. (a) 1. When any underground product piping is installed as part of a new tank system or when 50 percent or more of a run is replaced, the piping shall be provided with approved secondary containment with non–discriminating electronic interstitial monitoring, except as specified in subd. 2., sub. (1) (b), and s. ATCP 93.300 (7).

Note: Underground fill piping is included in the piping that is addressed by this subdivision.

2. a. Sumps for new or replacement underground fill piping that does not drop vertically into a tank may be monitored visually on a monthly basis, instead of monitored with an electronic sensor.

b. Secondary containment is not required for underground fill piping that drops vertically into a tank.

c. Secondary containment is not required for pedestal-type suction pumps with a vertical riser that is readily visible and is located directly above the riser connection to the tank.

(b) The material used for fabricating both the primary and secondary containment shall be listed in accordance with a standard that assures liquid– and vapor–tightness.

Note: The UL 971 standard meets this requirement.

(c) All pipe connections provided at the dispenser and at the top of the tank that routinely contain product and are installed or replaced on or after February 1, 2009, shall be placed within a secondary containment sump.

(d) All existing pipe connections at the top of the tank and beneath all freestanding pumps and dispensers that routinely contain product shall be placed within secondary containment sumps by January 1, 2021.

(e) All pipe connections at a transition between aboveground and underground piping that are installed or replaced on or after February 1, 2009, shall be placed within a secondary containment sump at the time of installation or replacement.

(f) 1. Secondary containment sumps provided under this subsection shall have non–discriminating electronic sensors to detect liquids located in the lowest collection point of the sump, unless approved otherwise by the department.

2. Piping that is installed or replaced on or after August 1, 2009, at secondary containment sumps provided under this subsection may not pass through the bottom of the sump.

3. All electrical conduit and wiring that is installed or replaced on or after August 1, 2009, at secondary containment sumps provided under this subsection for dispensers shall pass over the top of the sump wall rather than through the wall or bottom of the sump.

Note: This subsection recognizes existing dispenser pans, spray–on liners, brushed–on liners, formed–in–place containment products, and other effective secondary containment practices that are currently in use.

(g) A tank-connection sump is not required for a safe suction piping system, installed before August 1, 2009, unless 50 percent or more of a run is replaced after that date.

(h) Secondary containment is not required for a pipe manifold connecting 2 or more tanks, installed before August 1, 2009.

(6) INSTALLATION. (a) *General.* 1. a. The installation of underground tanks and associated piping shall be performed or supervised by a certified installer.

b. A certified installer shall verify that the installation of the electrical components for a tank system does not conflict with this chapter, except this verification is not required for the electrical criteria in ch. SPS 316.

2. All installation shall be in accordance with the manufacturer's instructions, the applicable national standards adopted in s. ATCP 93.200, plans and specifications approved under s. ATCP 93.100 and this chapter.

3. Tank and pipe interstitial leak detection equipment shall be tested for operability and functionality at installation.

(b) *Tanks.* 1. Tanks shall have an air pressure and soap test performed after unloading.

2. a. All new and replacement tanks and pipe systems shall pass a pre-operational pressure or vacuum testing that assure that the tank, pipe, and all connections are tight in accordance with NFPA 30 section 21.5 and PEI RP100 chapters 11 and 14 before the tanks and pipe systems are placed into service.

am. Pre-operational testing shall be recorded on the department's pre-operational test form, TR-WM-155, and shall be maintained onsite in accordance with sub. (9) (a).

b. If a volumetric tank integrity test is used, it shall be capable of detecting a leak of 0.1 gallon per hour from any portion of the tank when the tank is at least 70 percent full of product, shall be approved in accordance with s. ATCP 93.130, and shall be performed in accordance with the approval. In addition, a tightness test shall be performed on the ullage portion of the tank in accordance with s. ATCP 93.515 (10).

Note: Volumetric tests approved under section ATCP 93.130 at 95 percent capacity are acceptable under this section at 70 percent capacity in combination with the ullage test.

c. If a non–volumetric tank integrity test is used, it shall be capable of detecting a leak of 0.1 gallon per hour from any portion of the tank at any product level.

d. The volumetric or non–volumetric tests performed under this section shall be conducted by a certified tank system tightness tester. An automatic tank gauge cannot be used to perform the volumetric or non-volumetric test requirement under this paragraph.

3. If the tank has integral secondary containment, both the primary and secondary containment shall be tested in accordance with this paragraph.

Note: The department has accepted use of the following standards in testing secondary containment under this paragraph: Steel Tank Institute Recommended Practice R012, *Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks*. This standard is available from the Steel Tank Institute at 644 Donata Court, Zurich, IL 60047 and Fiberglass Tank and Pipe Institute Protocol, *Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space*. This standard is available by contacting FTPI at http://www.fiberglasstankandpipe.com.

4. Tanks may be ballasted during installation with either clean potable water or the regulated liquid that will be stored in the tank.

a. If ballasted with the regulated liquid, all of the following shall be required: interstitial monitoring either by electronic sensor or weekly visual reading of interstitial vacuum gauge with vacuum gauge readings kept in a written log at the installation site; vent risers installed at the appropriate height for class of product; drop tube with automatic shutoff at 95 percent; and spill containment installed at the fill.

b. Tanks ballasted under this paragraph shall have a fully functional electronic interstitial monitoring system installed prior to operation.

(c) *Piping*. 1. Piping shall be shown to be leak-free by testing before backfilling and after backfilling.

2. Pressure piping, or suction piping with a check valve located at the tank, shall pass a precision tightness test in accordance with s. ATCP 93.515 (4) (a) 1. before being placed into service.

3. Piping that has leak detection provided by electronic line leak detection shall have the leak detection system certified as operable by performing a functional leak test in accordance with s. ATCP 93.515 (8) (e) before the piping is placed into service.

4. Any aboveground product or vent piping that is adjacent to or in the path of motorized vehicles or equipment shall have vehicle collision protection meeting the performance requirements in s. ATCP 93.430, unless approved otherwise by the authorized agent or the department.

5. Vent piping shall meet the requirements of NFPA 30 Subchapter 27.8 except the termination height of normal vent piping for Class II and Class III liquids shall be a minimum of 4 feet above the ordinary snow line.

(d) *Sumps.* 1. Secondary containment sumps shall be fabricated and installed in a manner that prevents release of liquids. These sumps shall be tested for leaks hydrostatically at installation, in accordance with the manufacturer's instructions and the adopted standard PEI RP 1200, except as provided in subd. 2.

2. The testing may be omitted for a sump that has continuous electronic pressure, vacuum, or liquid-filled interstitial monitoring in addition to double-wall construction, if the monitoring system is tested at installation to verify that it operates in accordance with the manufacturer's specifications.

(e) *Installation checklist.* Upon completion of any installation of new or replacement shop–built tanks or piping, or any system modification or upgrade that requires plan approval or

registration or permitting, the certified installer shall provide the authorized agent or the department with a completed tank installation checklist, form TR-WM-138.

Note: Form TR-WM-138 UST, Checklist for Underground Tank Installation, is available from the Bureau of Weights and Measures, P. O. Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

Note: Section ATCP 93.140 (3) (c) requires the tank installation checklist to be submitted to the department as part of the tank registration process.

Note: Tank permit shall be obtained prior to operation of the tank as required by s. ATCP 93.145 (2).

(7) REPAIRS. (a) *General.* Owners and operators of underground tank systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the tank system is used to store regulated substances.

(b) *Standards.* Repairs to underground tank systems shall be made by the manufacturer's authorized representative or in accordance with a standard developed by a nationally recognized association or an independent testing laboratory that is acceptable to the department.

Note: The department accepts use of the following standards in performing repairs under this paragraph, in addition to the applicable codes and standards adopted in s. ATCP 93.200: National Leak Prevention Association: NLPA Standard 631. This standard is available from NLPA at http://www.nlpa-online.org/standards.html. Fiberglass Tank and Pipe Institute: Recommended Practice T-95-02, *Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks.*. This standard is available by contacting FTPI at http://www.fiberglasstankandpipe.com.

(c) *Tank, pipe, containment, or fitting repair and replacement.* 1. Metal tanks, pipe, and fittings that have released product as a result of corrosion or other damage shall be replaced. Non-corrodible pipe and fittings that have released product shall be replaced or repaired in accordance with the manufacturer's specifications. Damaged spill basins and containment sumps shall be replaced or repaired in accordance with the manufacturer's specifications using a manufacturer-designed replacement insert or a complete factory-built, field-installed repair kit.

1 Containment sump penetration boots shall be replaced or repaired in accordance with either
2 manufacturer specifications or by other methods approved by the department.
3 2. Replacement flex connectors shall be placed within a containment sump so that it contains
4 the entire flex connector for future accessibility and replacement.
5 (d) *Tank–system site assessment.* When repairs are made to piping or fittings that have
6 released product to the environment, an assessment of the piping run, to identify points of
7 release, shall be performed in accordance with ss. ATCP 93.575 to 93.585.
8 (e) *Precision tightness testing.* Repaired tanks and piping shall have precision tightness
9 testing in accordance with s. ATCP 93.515 (4) before being placed back into service.
10 (f) *Ullage portion.* Any repair that affects the ullage portion of a tank shall include a
11 tightness test of the ullage portion in accordance with s. ATCP 93.515 (10) before the tank is
12 placed back in service.
13 (g) *Interstitial space.* Any repair that affects any portion of secondary containment for a
14 UST system shall include testing of the affected portion in accordance with the methods
15 prescribed in subs. (6) (b), (c), and (d) to verify that the containment complies with this chapter
16 before that portion is placed back into service.
17 (h) *Spill containment equipment.* Repaired spill containment equipment shall be tested in
18 accordance with the methods prescribed in s. ATCP 93.505 (2) (a) 3. before it is placed back into
19 service.
20 (i) *Containment sumps.* Any repair that affects any portion of containment sump for a UST
21 system shall include testing of the affected portion in accordance with the methods prescribed in
22 sub. (6) (d) to verify that the containment complies with this chapter before that portion is placed
23 back into service.

(j) *Overfill prevention equipment.* Repaired overfill containment equipment shall be tested in accordance with the methods prescribed in s. ATCP 93.505 (2) (b) 2. before it is placed back into service.

(k) *Records and reporting.* 1. Any repair to below-grade tank system components below the top of a shear valve, or to leak detection equipment that affects the capability of the leak detection system to detect a leak shall be recorded on the department's TR-WM-136 form.

Note: Form TR-WM-136–STI SP031 Tank System Repair Report is available from the Bureau of Weights and Measures, P. O. Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at http://datcp.wi.gov/uploads/Consumer/pdf/10901RepairReport.pdf.

2. A copy of the completed TR-WM-136 form shall be provided to the tank system operator.

3. The tank system operator shall have the completed TR-WM-136 form on site and available for inspection within 30 days after receiving it from the party that performed the repair, except as provided in sub. (9) (b) 2. for unattended sites.

4. Repairs that are recorded under subd. 1. because they affect the capability of the leak detection equipment to detect a leak shall be reported to the department within 15 days of the repair.

(8) INSPECTION, MAINTENANCE, AND PERIODIC TESTING OF UST SYSTEMS. (a) Operators of new and existing UST systems shall conduct routine and periodic inspection and maintenance in accordance with the applicable sections of PEI RP900, except that Section 6, Daily UST Inspection Checklist items may be performed at least monthly rather than daily.

(b) Any secondary containment sump:

1. With a tear, crack, or hole shall be either repaired with department-approved methods to be liquid-tight or replaced with equipment meeting the criteria for new secondary containment.

2. That is repaired under par. (b) and subsequently becomes no longer liquid-tight shall then be replaced with equipment meeting the criteria for new secondary containment.

Note: The one-time-repair limit in this section does not apply to connection boots or clamps. This section is directed instead at patches to the wall or floor of a sump, because these patches commonly have failed by delaminating.

3. That may have released product to the environment is repaired or replaced under par. (b) or when an initial sump is installed for preexisting piping on or after the effective date of this rule, an assessment shall be performed in accordance with ss. ATCP 93.580 to 93.585.

Note: See s. ATCP 93.605 (1) (g) for maintenance requirements relating to water levels in storage tanks for motor fuel dispensing facilities.

Note: See ss. ATCP 93.230 (8) to (10) for additional facility maintenance requirements.

(c) 1. Except for double-walled containment with continuous electronic pressure, vacuum, or liquid-filled interstitial monitoring, all new or existing containment sumps that are part of a piping interstitial monitoring system shall be tested for leaks at least once every three years in accordance with one of the following methods:

a. Methods prescribed in sub. (6) (d).

b. A code of practice developed by a nationally recognized association or independent testing laboratory.

c. Other method approved by the department.

2. Containment sump tightness testing shall be performed by a person with no personal or monetary interest in the facility and whose employer has no personal or monetary interest in the facility.

Note: Requests for alternate method should be submitted on the TR-WM-157 form. This form is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(9) RECORD KEEPING. (a) *General.* Operators of new and existing underground storage tank systems shall maintain all of the following records:

1. Documentation of any system repairs, alterations or upgrades, including software and hardware upgrades, and any inspections required under this chapter. These inspections include any precision tightness testing, ullage testing, or other testing that is required for determining whether a tank system component is liquid-tight or otherwise complying with this chapter.

Note: For examples of this testing, see the testing for spill-containment basins in s. ATCP 93.505 (3) (b) 1., and the tightness testing described in the Note under s. ATCP 93.510 (1) (e).

2. Documentation demonstrating conformance with leak detection requirements, and the manner in which these claims have been justified or tested by the equipment manufacturer and certified installer, including all of the following:

a. Information pertaining to the leak detection system, including the material approval as issued under s. ATCP 93.130 that was valid when the system was installed; operator manual; warranty; and documentation verifying that the equipment has been installed, programmed and tested to perform as required in this chapter.

b. Testing results obtained from leak detection equipment, as retained from the equipment's printer or a handwritten log kept on site.

c. Documentation maintained for all calibration, inspection, monitoring, testing, repair, and annual performance verification of leak detection equipment permanently located onsite.

3. Response to and investigation of leak detection alarms.

4. Documentation maintained for all calibration, inspection, monitoring, testing, repair, and periodic performance verification of any corrosion protection equipment permanently located onsite.

5. Analysis from a corrosion expert of site corrosion potential if corrosion protection equipment is not used.

6. Records of any environmental information that has accrued for a site, such as from site inspections or investigations, phase I or II environmental site assessments, or repairs, or from tank–system site assessments conducted under ss. ATCP 93.560 to 93.585.

7. Documentation of product inventory verification at facilities that are subject to the requirements of ch. ATCP 94.

8. Results of functional testing of impact and emergency shutoff valves.

Note: See NFPA 30A section 6.3.9.1 for testing requirements.

9. Electrical continuity testing for dispensers of motor fuels that are Class I liquids.

10. One set of stamped, approved plans and specifications and a copy of the approval letter.

11. Documentation of compliance with the compatibility requirements in s. ATCP 93.680 (3) (c) 1. or (6) (c) 1., as applicable to the ethanol or biodiesel blend.

(b) *Availability of records.* 1. Operators shall maintain the required records at the site, except as provided in subds. 2. and 3., and par. (c) 11.

2. Operators of unattended sites shall make the records available for inspection at the site when given 72 hours of prior notice.

3. The approved plans and specifications and approval letter shall be kept on site and available to the authorized agent or the department during all phases of installation. After installation is completed, the approved plans and specifications and approval letter shall be made available to the authorized agent or the department upon request.

4. Records may be kept electronically, provided they are in a format acceptable to the department.

(c) *Maintenance of records*. Records shall be maintained for the following periods from the date of the most recent test, inspection or upgrade:

1. Monthly leak detection monitoring — one year.

2. Annual precision tightness testing — one year.

3. Periodic precision tightness testing in association with inventory control — until the next test is conducted.

4. Impressed current corrosion protection system, 60–day inspection — the previous 3 inspections.

5. Corrosion protection system, annual test — the previous 3 tests.

6. Internal inspection associated with underground tank lining — 10 years.

7. Annual performance verification of leak detection equipment and flow restrictor — 2 years.

8. Results of functional testing of impact and emergency shut–off valves and electrical continuity testing for dispensers — 2 years.

9. The owner's manual provided by the leak detection equipment manufacturer — until the leak detection system is replaced or no longer used.

10. Any tank or pipe system modification or repair — the operational life of the system.

Note: Lifetime maintenance of repair and upgrading records is required by 40 CFR 280.33 (f).

11. Inspection or testing records — 3 years or the interval between required inspections or testing, whichever is longer.

12. Tank–system site assessments and other environmental assessments, such as assessments for property transactions — 3 years after completion of any permanent closure,

upgrade, repair or change in service. These records shall be maintained at one of the following locations:

a. With the owner or operator who took the UST system out of service.

b. With the current operator of the UST system site.

c. With the department if records cannot be maintained at the closed facility.

13. Leak detection alarm investigation — 2 years.

14. Product inventory verification in accordance with s. ATCP 93.503, inventory control in accordance with s. ATCP 93.515 (2), or statistical inventory reconciliation in accordance with s. ATCP 93.515 (6) — 10 years.

15. One set of stamped, approved plans and specifications and a copy of the approval letter — the operational life of the system.

16. Equipment or component compatibility for ethanol or biodiesel blends under s. ATCP 93.680 (3) (c) 1. or (6) (c) 1.—the operational life of the equipment or component.

Note: All leak detection records should be retained permanently. The documentation could be helpful to exclude the site as a possible source of contamination at a later date.

Note: Section ATCP 93.870 has record keeping requirements for operator training or USTs that are required to have a permit to operate from the department.

ATCP 93.503 Product inventory verification at retail facilities. (1) This section applies to any tank system from which products are offered for retail sale to the public that are subject to the requirements of ch. ATCP 94.

Note: Inventory verification can be particularly effective during regulatory investigations of consumer complaints about the quality of purchased fuels.

Note: The inventory verification specified in this section is not required to conform to the inventory control specifications in API 1621.

1 **(2)** To verify and maintain the integrity and quantity of delivered products, product
2 inventory verification shall be conducted monthly for the life of the tank system, and reconciled
3 on a monthly basis, in the following manner:
4 (a) Inventory volume measurements for regulated substance inputs, withdrawals, and the
5 amount still remaining in the tank are recorded each operating day.
6 (b) The equipment used is capable of measuring the level of product over the full range of
7 the tank's height, to the nearest one–eighth of an inch.
8 (c) The regulated substance inputs are reconciled with delivery receipts by measurement of
9 the tank inventory volume before and after delivery. Where tanks are interconnected by a
10 manifold, reconciliation may address all of the interconnected tanks as a group rather than as
11 individual tanks.
12 (d) Product dispensing is metered and recorded in accordance with applicable requirements
13 in ch. ATCP 92 for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of
14 product withdrawn.
15 (e) The measurement of any water level in the bottom of the tank is made to the nearest
16 one–eighth of an inch at least once a month.
17 **(3)** The reconciliation under sub. (2) shall be used to determine whether either of the
18 following are indicated:
19 (a) A leak detection method has failed as indicated by an overall product loss for two
20 consecutive months as addressed in s. ATCP 93.570 (4).
21 (b) Unauthorized product mixing has occurred, as indicated by an unexplained increase or
22 decrease in product level and as addressed in ch. ATCP 94.

Note: Where inventory control is used as the leak detection method, under s. ATCP 93.515 (2), the measurements and procedures followed there will satisfy the requirements for inventory verification in this section.

Note: Where statistical inventory reconciliation is used as the leak detection method, under s. ATCP 93.515 (6), the same data may be used for the statistical inventory reconciliation and the inventory verification in this section, provided the requirements of the statistical inventory reconciliation vendor and of this section are both met, including the monthly reconciliation in this section.

ATCP 93.505 Spill and overfill prevention. (1) GENERAL. (a) Prior to delivery, the operator of the fuel delivery equipment that is transferring the product shall ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank.

(b) The transfer operation shall be monitored constantly by the operator of the delivery equipment so as to prevent overfilling and spilling.

(2) EQUIPMENT. All underground storage tank systems, whether new or existing, shall meet all of the following requirements except par. (a) 1. a. does not apply to containment that was installed before February 1, 2009, and par. (a) 3. do not apply to containment that was installed before the effective date:

(a) *Spill prevention.* A liquid-tight containment basin that meets all of the following requirements shall be provided on top of the tank, where connections are made for product fill piping:

1. a. The basin shall have a capacity of at least five gallons.

b. The basin shall be fabricated and installed in a manner that prevents release of liquids.

2. The basin shall be equipped with either a drain system that directs spilled product into the tank or a mechanism to pump product out of the basin.

3. a. The basin shall be tested for leaks hydrostatically at installation in accordance with any manufacturer's instructions, and the adopted standard PEI RP 1200, except as provided in this subd. 3. b.

b. The testing in this subd. 3. a. may be omitted for a spill containment basin that has continuous electronic pressure, vacuum, liquid-filled interstitial monitoring in addition to double-wall construction, if the monitoring system is tested at installation to verify that it operates in accordance with the manufacturer's specifications.

(b) *Overfill prevention.* 1. Overfill prevention equipment shall be provided that will operate as follows unless approved otherwise in writing by the department:

a. Alert the transfer operator when the tank is no more than 90 percent full by triggering an audible and visual high-level alarm.

b. Automatically shut off the flow of liquid into the tank when the tank is no more than 95 percent full, if the tank uses tight-connect delivery.

Note: Retrofit equipment is available which complies with these requirements and which can be installed in a tank without removing pavement. See PEI RP100 section 7.3.2 for description of how the contents of the delivery hose can be drained into the tank after an automatic shutoff valve closes.

2. Overfill prevention equipment shall be tested before it is placed into service and annually to ensure it is set to activate at the level specified in subd. 1. and that it will activate when the contained liquid reaches that level. This testing shall be performed in accordance with manufacturer's instructions and the adopted standard PEI RP 1200.

Note: API RP 1007, *Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles*, is a guideline for use by truck drivers and other personnel that includes specific steps for unloading tank trucks into underground and aboveground tanks in a safe and efficient manner which protects the environment. It is available at http://publications.api.org.

(3) MAINTENANCE. (a) All new and existing spill and overfill protection shall be maintained to perform as originally intended.

Note: Under s. ATCP 93.585 (2) (b), fuel–delivery persons must immediately inform the owner or operator of any spilling or overfilling which occurs during the delivery procedure and which may result in or be a release. Requirements for the owner or operator to report, investigate and clean up any spills and overfills are contained in ss. ATCP 93.575 to 93.585.

(b) 1. All new or existing spill-containment basins shall be tested for leaks at least once every three years in accordance with one of the following methods:

a. Methods prescribed in sub. (6) (d).

b. A code of practice developed by a nationally recognized association or independent testing laboratory.

c. Other method approved by the department.

2. The testing in this subd. 1. may be omitted for a spill containment basin that has continuous electronic pressure, vacuum, liquid-filled interstitial monitoring in addition to double-wall construction, if the monitoring system is tested at installation to verify that it operates in accordance with the manufacturer's specifications.

3. Spill-containment basin tightness testing shall be performed by a person with no personal or monetary interest in the facility and whose employer has no personal or monetary interest in the facility.

4. Any spill-containment basin with a tear, crack, or hole shall be replaced with equipment meeting the criteria for new spill containment.

5. When a spill-containment basin replaced under subd. 2. has an obvious or suspected release or when an initial basin is installed on a preexisting tank on or after the effective date, an assessment shall be performed in accordance with ss. ATCP 93.580 to 93.585.

ATCP 93.510 Leak detection requirements. (1) GENERAL. (a) All new and existing underground tank systems used to store regulated substances shall be provided with a method of leak detection that complies with this section and s. ATCP 93.515, except as exempted in par. (d).

(b) The method of leak detection shall be approved in accordance with s. ATCP 93.130.

(c) All monitoring equipment used to satisfy the requirements of this section shall be installed, calibrated, operated, and maintained to perform as originally intended in accordance with the manufacturer's instructions and the department's approval as issued under s. ATCP 93.130.

(d) Leak detection is not required for any of the following tanks:

1. Tanks which have a capacity of less than 1,100 gallons and which are located on farm premises or at private residences.

2. Tanks storing Class IIIB liquids that are neither petroleum nor CERCLA–listed products.

(e) If a tank system exhibits a continuing pattern of failing and then not failing leak detection testing, a precision tightness test shall be performed within 10 business days in accordance with s. ATCP 93.515 (4), and if a tank system fails to pass that test, the site shall be assessed for the presence of a release in accordance with ss. ATCP 93.575 to 93.585.

Note: This section primarily addresses the leak detection that is required on a routine, ongoing basis during normal operation of an underground storage tank system. Several other sections of this chapter require additional UST leakage or tightness testing.

(2) ANNUAL EQUIPMENT VERIFICATION. (a) The following equipment shall be verified by a qualified person every 12 months for the same degree of operability and capability as when the equipment was newly installed using either requirements developed by the

manufacturer, or code of practice developed by a nationally recognized association in Table 93.200.

1. Equipment for measuring product levels that is used for manual tank gauging or statistical inventory reconciliation.

2. Automatic tank gauging equipment used for monthly monitoring, statistical inventory reconciliation or precision tightness testing.

3. Interstitial monitoring equipment.

4. Sensors used to detect leaks in tanks, lines or sumps.

5. Overfill prevention equipment automatic high-level alarm at 90 percent tank capacity and automatic overfill prevention shut off device at 95 percent capacity. The automatic overfill prevention device does not have to be removed from the tank if designed to be tested in place by the manufacturer and the manufacturer provides a test procedure that includes verification of operation and shut off level at 95 percent tank capacity.

(b) Under this subsection, a qualified person is a person certified by the equipment manufacturer as being trained in the operational characteristics of the equipment.

(c) 1. Annual monitoring equipment certification shall be made on the department's underground tank system functionality verification form, TR-WM-139, and on the department's electronic-mechanical line leak detector annual functionality form, TR-WM-123, and line test report form, TR-WM-125, if applicable and shall be maintained onsite in accordance with s. ATCP 93.500 (9) (a).

2. If all deficiencies found during the equipment verification have not been corrected, the first page of the TR-WM-139 form shall be sent to the department email address on the form within 5 business days of the completion of the verification.

Note: Form TR-WM-123, Electronic/Mechanical Line Leak Detector Annual Functionality, Form TR-WM-125, Line Tightness Test Report, and Form TR-WM-139, Underground Tank System Functionality Verification, are available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx . See s. ATCP 93.165 for use of alternate forms approved by the department.

(3) LEAK DETECTION FOR TANKS. (a) *General.* 1. Tanks shall be monitored at least every 30 days for leaks using one of the methods listed in s. ATCP 93.515, except as provided in subd. 2. and s. ATCP 93.500 (1) (a).

2. Tanks installed prior to February 1, 2009, that have a capacity of 1,000 gallons or less may use manual tank gauging conducted in accordance with s. ATCP 93.515 (3) as the sole means of leak detection provided it is performed weekly.

Note: Under s. ATCP 93.500 (1) (a), continuous electronic interstitial monitoring is generally required for all secondary containment installed on or after February 1, 2009.

(b) *Failed tests.* If a passing test using monthly monitoring is not achieved, the site shall be assessed for the presence of a release in accordance with ss. ATCP 93.575 to 93.585.

(c) *Inconsistent results.* The authorized agent or the department may require a precision tightness test to be performed where any of the following events occur:

1. A tank system is accumulating water for no apparent reason.

2. A leak detection method is providing erratic results.

3. A tank system is tested with multiple leak detection methods that show different results.

(d) *Inventory control as leak detection.* Tank systems installed prior to February 1, 2009 may use monthly inventory control performed in accordance with s. ATCP 93.515 (2) as leak detection provided all of the following conditions are met:

1. The tank is 10 years old or less.

2. The tank has precision tank tightness testing performed in accordance with s. ATCP 93.515 (4) at least once every 5 years from the date of installation until the tank is 10 years old.

3. The tank system has corrosion protection in accordance with s. ATCP 93.520.

(4) LEAK DETECTION FOR PIPING. (a) *Pressurized piping.* Underground piping that conveys regulated substances under pressure shall comply with all of the following requirements:

1. The system shall be equipped with an automatic line leak detector in accordance with s. ATCP 93.515 (8) (b).

2. Single–wall piping systems shall have at least one of the following leak detection methods:

a. An annual precision tightness test in accordance with s. ATCP 93.515 (4).

b. Monthly monitoring to the 0.2 gallon per hour rate.

3. Double–wall piping systems shall use one of the leak detection methods in subd. 2., or statistical inventory reconciliation, or continuous interstitial monitoring, except as provided in s. ATCP 93.500 (1) (a).

Note: Under s. ATCP 93.500 (1) (a), continuous electronic interstitial monitoring is generally required for all secondary containment installed on or after February 1, 2009.

4. If a passing test using monthly monitoring is not achieved, the site shall be assessed for the presence of a release in accordance with ss. ATCP 93.575 to 93.585.

(b) *Suction piping.* 1. Piping which conveys regulated substances under suction and which is not entirely visible shall use one of the following leak detection methods, except as provided in subd. 2.:

a. A precision tightness test performed in accordance with s. ATCP 93.515 (4) at least every three years.

b. Interstitial monitoring.

2. Leak detection may be omitted for suction piping that meets all of the following requirements:

a. The below–grade piping operates at less than atmospheric pressure.

b. 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.

c. Only one check valve is included in each suction line.

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

e. A method is provided that allows compliance with subd. 2. b. to d. to be readily observed or otherwise determined.

(c) *Inventory control as leak detection.* Piping connected to a tank using inventory control in accordance with sub. (3) (d) shall comply with one of the following:

1. Pressurized piping shall have leak detection complying with par. (a).

2. Suction piping shall have leak detection complying with par. (b).

ATCP 93.515 Leak detection methods. (1) GENERAL. (a) Leak detection methods for tank systems shall meet the requirements of this section.

(b) The leak detection test information reports submitted to the department, or maintained on site as required in s. ATCP 93.500 (9), shall include at least all of the following:

1. Site information including the name of the business, the street address, and the municipality in which the site is located.

2. Tank system information including the department–assigned tank identification number, the site identification number designated by the owner or operator, the tank capacity, the product in the tank, the type of pipe system, and whether there are pipe manifolds in the tank system.

3. Test method information including the name of the method or equipment used, the material approval number as issued under s. ATCP 93.130, the date the test was performed, the threshold value used to declare a leak, the rate of volumetric change, whether the final result was a pass or fail, and the name and certification of the technician performing the test.

(2) INVENTORY CONTROL. (a) *General methodology*. Inventory control that is used as the leak detection method shall be conducted in accordance with API 1621 and with this subsection.

(b) *Prescriptive requirements*. Product inventory control shall be conducted monthly and reconciled to detect a leak rate of at least 0.5 percent of throughput on a monthly basis, in the following manner:

Note: A leak rate of 0.5 percent is equal to 5 gallons out of every 1,000 gallons of throughput.

1. Inventory volume measurements for inputs, withdrawals, and the amount still remaining in the tank shall be recorded each operating day.

2. 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.

3. a. The inputs shall be reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

b. Where tanks are interconnected by a manifold, reconciliation may address all of the interconnected tanks as a group rather than as individual tanks.

4. The measurement of any water level in the bottom of the tank shall be electronically or manually gauged to the nearest one–eighth of an inch at least once a month and recorded.

(c) *Product losses*. Tank systems that exceed the losses allowed under par. (b) for 2 consecutive months shall follow the requirements in ss. ATCP 93.575 to 93.585 for assessing and responding to a release.

(d) *Precision tightness test.* A precision tightness test shall be performed in accordance with sub. (4) within 10 business days of notification from the authorized agent or the department for any of the following reasons:

1. Failure to provide monthly inventory control data for the past 12 months.

2. Incomplete or inconsistent data entry reflected during any 2 months of data entry out of the most recent 3 months of inventory control record keeping.

(3) MANUAL TANK GAUGING. (a) *Where allowed.* 1. Manual tank gauging may be used as the sole method of leak detection for tanks that have a capacity of 1,000 gallons or less for the life of the tank.

2. For tanks that have a capacity of more than 1,000 gallons to 2,000 gallons, manual tank gauging may be used if all of the following conditions are met:

a. The tank system has a precision tightness test performed in accordance with sub. (4) at least once every 5 years from the date of installation until the tank is ten years old.

b. The tank is less than 10 years old.

c. The piping either receives an annual precision tightness test or has electronic line leak detection testing, and this tightness test or leak detection testing is performed in accordance with the capabilities specified in s. ATCP 93.130 (3) (b).

3. Tanks which have a capacity of more than 1,000 gallons to 2,000 gallons and which are more than 10 years old shall be provided with monthly monitoring in accordance with sub. (5), (6), or (7).

4. Tanks that have a capacity of more than 2,000 gallons may not use manual tank gauging as the method of required leak detection.

(b) *Manual tank gauging procedures.* Manual tank gauging shall meet all of the following requirements:

1. Liquid level measurements shall be taken with a gauge stick that is marked to measure the liquid to the nearest one–eighth of an inch over the full range of the tank's height.

2. Tank liquid level measurements shall be taken at the beginning and ending of the test duration periods given in Table 93.515, during which no liquid may be added to or removed from the tank and shall be based on the average of 2 stick readings taken at both the beginning and ending of the period.

3. A leak is suspected and subject to the requirements of ss. ATCP 93.575 to 93.585 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in Table 93.515.

Table 93.515

Test Duration and Standards

Nominal Tank Capacity	Minimum Test Duration	Weekly Standard (One Test)	Monthly Standard (Average of 4 Tests)
550 gallons or less	36 hours	10 gallons	5 gallons
551–1000 gallons, tank diameter of 48 inches	58 hours	12 gallons	6 gallons
551–1000 gallons, tank diameter of 64 inches	44 hours	9 gallons	4 gallons
551–1,000 gallons and using precision tightness testing every 5 years	36 hours	13 gallons	7 gallons
1001–2000 gallons[1]	36 hours	26 gallons	13 gallons

1 Requires precision tightness testing every 5 years. This method is only allowed until the tank is 10 years old.

(4) PRECISION TIGHTNESS TESTING. (a) Precision tightness testing shall be conducted in one of the following ways:

1. By a certified tank system tightness tester, using methods approved under s. ATCP 93.130 to perform precision tightness testing for tanks or piping.

Note: The approval criteria in s. ATCP 93.130 include capability of detecting a leak rate of 0.1 gallons per hour.

2. With permanently installed leak detection equipment as approved under s. ATCP 93.130 to perform precision tightness testing for tanks or piping.

(b) Where a certified tank system tightness tester is used, the tester shall include the date and the beginning and end times in the test results report.

(c) Precision tightness testing of double-wall underground product piping shall include testing of both the inner and outer wall.

(d) Precision tightness testing shall be recorded on the department's tank precision tightness testing form, TR-WM-152, or line tightness testing form, TR-WM-125, as applicable and shall be maintained onsite in accordance with s. ATCP 93.500 (9) (a). Alternative forms may be used with the permission of the department.

(5) AUTOMATIC TANK GAUGING. Automatic tank gauging shall meet all of the following requirements:

(a) 1. No more than 30 days may elapse between monthly monitoring tests using an automatic tank gauge.

2. Monthly monitoring tests shall have the capabilities specified in s. ATCP 93.130 (3) (b).

3. An automatic tank gauge shall be placed in the center of the tank and no closer than 12 inches from the fill pipe and the submersible pump.

(b) Automatic tank gauges shall be provided with a printer that provides at least all of the following information:

1. The starting date and time and ending date and time of the test.

2. The volume of liquid in the tank during the test.

3. The measured leak rate in gallons per hour and whether this leak rate indicates a pass or a fail.

4. The specific identification of the tank, associated piping, or sumps used for interstitial monitoring that are being tested.

Note: See s. ATCP 93.130 (3) (b) 1. for approval requirements for automatic tank gauges.

(c) Automatic tank gauges shall be programmed to provide an audible and visual alarm in the event of a tank or line test failure, a periodic monthly tank or line test not performed within a 30-day interval, or a tank or line interstitial sensor actuation. Manual operator action shall be needed to silence the alarm.

(6) STATISTICAL INVENTORY RECONCILIATION.

(a) Leak detection methods based on the application of statistical principles to inventory data shall meet the requirements of 40 CFR § 280.43 (h) including:

1. Report a quantitative result with a calculated leak rate;

2. Be capable of detecting a leak rate of 0.2 gallon per hour or a release of 150 gallons within 30 days; and

3. Use a threshold that does not exceed one-half the minimum detectable leak rate.

(b) Tank systems or portions of tank systems using statistical inventory reconciliation as the primary method of leak detection shall be monitored and evaluated for leaks at least every 30 days with a conclusive result of pass or fail within the 30-day monitoring period.

(c) The daily tank system product inventory records shall be kept current and shall be maintained on site.

(d) Tank product level measurements shall be recorded using an electronic inventory probe or an automatic tank gauge.

(e) The operator shall have an effective process to submit their data to the vendor according to the vendor requirements for producing an evaluation report within the 30-day monitoring period.

(f) The statistical inventory reconciliation vendor shall analyze the data and supply an evaluation report to the operator within the 30-day monitoring period.

(g) If the result of the 30-day monitoring period is inconclusive or missing, another method of leak detection shall be used to determine a conclusive pass or fail for that monitoring period.

(h) If during the initial 30-day monitoring period, a conclusive result has not been obtained, another method of leak detection shall be used to determine a conclusive pass or fail for that monitoring period.

(i) Operators using statistical inventory reconciliation shall review the vendor summary report within 24 hours of receipt. If the summary report indicates a failure, the operator shall take immediate action in accordance with the requirements in ss. ATCP 93.575 to 93.585 for assessing and responding to a leak or release.

(j) Statistical inventory reconciliation may not be used as a method of precision tightness testing.

(L) Before changing from another method of leak detection to statistical inventory reconciliation, the operator shall provide the department with proof that precision testing was performed in accordance with s. ATCP 93.515 (4) within the previous 12 months, showing the tank system to be liquid-tight.

(7) INTERSTITIAL MONITORING. Interstitial monitoring between an underground tank system and a secondary barrier immediately around it may be used only if the system is installed and maintained to detect a leak from any portion of the tank that could contain product, and the system meets one of the following requirements:

(a) *System testing.* Post–installation testing shall be performed on the interstitial monitoring system to verify that the system operates in accordance with the manufacturer's specifications.

(b) *Double–walled systems.* For double–walled systems, the sampling or testing method shall be capable of detecting a leak through the inner or outer wall in any portion of the tank or piping that routinely contains product.

(c) *Systems with internally fitted liners.* 1. For tank systems with an internally fitted liner, a monitoring system shall be installed that is capable of detecting a leak between the inner wall of the tank and the liner.

2. The liner shall be chemically compatible with the substance stored.

(d) *Systems with a barrier in the excavation zone.* Systems with a secondary barrier within the excavation zone shall meet all of the following requirements:

1. The testing method shall be capable of detecting a leak between the system and the secondary barrier.

2. The secondary barrier around the system shall consist of manufactured material which is impermeable to at least 10^{-6} cm/sec for the regulated substance stored, and which will direct a leak to the monitoring point, to be detected.

3. The liner shall be chemically compatible with the substance stored.

4. 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.

5. The test method shall be designed, installed, and maintained so groundwater, soil moisture, and rainfall do not render the method inoperative, so that a leak could go undetected.

6. The site shall be investigated to ensure that the secondary barrier is always above groundwater and not in a 25–year flood plain, unless the barrier and monitoring designs are for use under such conditions.

7. Monitoring wells shall be clearly marked and secured to avoid unauthorized access and tampering.

(e) *Interstitial monitoring sensors.* Interstitial monitoring sensors shall be capable of providing an audible or visual alarm in the event of a tank or line interstitial sensor actuation. Manual operator action shall be needed to silence the alarm.

(8) METHODS OF LEAK DETECTION FOR PIPING. (a) *General.* Leak detection for piping shall follow the requirements of s. ATCP 93.510 (4) and this section.

(b) *Automatic line leak detectors.* 1. Underground piping systems serving a storage tank with a submersible pump or pressurized booster pump shall be provided with an automatic line leak detector that alerts the operator to the presence of a leak by restricting or shutting off flow from the pump, when it detects leaks of 3 gallons per hour at 10 pounds per square inch line pressure within one hour.

2. New or replacement automatic electronic line leak detection shall be provided with a printer that provides at least all of the following information:

a. The date and time of the test.

b. The measured leak rate in gallons per hour and whether this leak rate indicates a pass or a fail.

c. The specific identification of the associated piping or sumps used for interstitial monitoring that are being tested.

3. Automatic electronic line leak detection shall be programmed to provide an audible and visual alarm in the event of a line test failure or if a periodic monthly line test is not performed within a 30-day interval. Manual operator action shall be needed to silence the alarm.

4. Any of the methods in sub. (7) may be used in lieu of complying with subd. 1. if they are designed and approved under s. ATCP 93.130 to detect a leak from any portion of the underground piping that routinely contains product.

(c) *Line tightness testing*. 1. In addition to the automatic line leak detection required by par. (b), a periodic precision tightness test of piping shall be performed in accordance with sub. (4), except as provided in subds. 2 and 3.

2. Where piping leak detection is installed that has the capability to perform monthly monitoring, a separate precision tightness test is not required.

3. Any of the methods in subs. (6) and (7) may be used in lieu of complying with subd. 1. if they are designed and approved under s. ATCP 93.130 to detect a leak from any portion of the underground piping that routinely contains product.

(d) *Interstitial sensors.* Sensors used for interstitial line monitoring shall be programmed to provide an audible or visual alarm. Manual operator action shall be needed to silence the alarm. The operator shall respond to the alarm within 30 minutes.

(e) *Periodic line leak detection equipment testing.* 1. A start–up functionality test of the operation of the leak detector shall be conducted in accordance with the manufacturer's procedures for testing to the leak thresholds in par. (b) by inducing a physical line leak.

2. A functionality test of the operation of a mechanical line leak detector shall be conducted annually in accordance with the manufacturer's procedures for testing to the leak thresholds in par. (b) by inducing a physical line leak.

3. A functionality test of the operation of an electronic line leak detector shall be conducted at least annually in accordance with the manufacturer's procedures for periodic testing to the leak thresholds in par. (b) by inducing a physical line leak.

5. Annual functionality verification shall be recorded on the department's electronic-mechanical line leak detector annual functionality form, TR-WM-123, and shall be maintained onsite in accordance with s. ATCP 93.500 (9) (a).

(9) OTHER METHODS. The department may approve other methods of leak detection in accordance with s. ATCP 93.130.

(10) ULLAGE TESTING. Tightness testing of the ullage portion shall be performed in one of the following ways:

(a) As specified in NFPA 30 section 21.5, by or under the direct supervision of a certified installer or tank system tightness tester.

(b) By or under the direct supervision of a certified tank system tightness tester, with leak detection equipment and methods as approved under s. ATCP 93.130 that measure the tightness of the ullage portion.

(11) ORDERED CONVERSION OF LEAK DETECTION METHODOLOGY. (a) The authorized agent or the department may order an operator, in writing, to terminate the use of a leak detection method and convert to an approved electronic methodology with history-generation capabilities for any of the following reasons:

1. The operator has a history of failing to perform monthly leak detection for a total of six months or more during a twenty-four month period, or for three consecutive months.

2. Statistical inventory reconciliation reports reflect pass for a total of six months or more during the preceding twenty-four months, or for three consecutive months, and the data points are not consistent with the material approval criteria in s. ATCP 93.130.

3. The operator fails to review monthly leak-detection reports as required by the applicable leak detection method under this section.

4. The operator enters data into an inventory record that is not supported by actual probe-generated data.

(b) The operator shall complete a conversion under par. (a) within 30 days of the date of the order or as determined by the department. Daily inventory verification as specified in s. ATCP 93.503 (2) is acceptable as a temporary monthly leak detection method during the conversion period.

Note: Failure to provide monthly leak detection in accordance with this subsection beyond the 30-day period or compliance date as determined by the department may result in immediate shutdown under s. ATCP 93.115 (3) (a) 2.

ATCP 93.517 Airport hydrant system requirements

(1) GENERAL. (a) Airport hydrant system installations shall comply with release reporting, response and investigation, closure, financial responsibility and notification requirements in accordance with this section.

(b) New installations shall meet the plan review requirements in accordance with s. ATCP 93.100.

(c) New or existing installations shall meet the requirements of subch. V unless specified otherwise in this section.

(2) AIRPORT HYDRANT SYSTEM PLANS AND REQUIREMENTS (a) For new airport hydrant systems, leak detection plans shall be submitted to the department before the system becomes operational in accordance with s. ATCP 93.100.

(b) Fuel hydrant leak detection plans shall include all of the following:

1. A description of the airport hydrant system.

2. A description of the leak detection method used.

Note: A designer of an airport hydrant leak detection system who does not have a financial interest in the airport may be considered to be the independent third party that is required in s. ATCP 93.130 (3) (b) 1. for leak detection methods.

3. A schedule for testing the system.

4. Any limitations of the leak detection method.

5. An action plan in the event a leak is detected.

(c) Owners and operators of underground piping systems associated with airport hydrant systems shall meet leak detection requirements in accordance with s. ATCP 93.510, or use one or a combination of the following alternative methods of release detection:

1. Perform a semiannual or annual tightness test at or above the piping operating pressure in accordance with the following system volume:

a. Fuel systems with less than 50,000 gallons are not to exceed one gallon per hour for semiannual testing or 0.5 gallons for annual testing.

b. Fuel systems with 50,000 to 75,000 gallons are not to exceed 1.5 gallons per hour for semiannual testing or 0.75 gallons for annual testing.

c. Fuel systems with 75,000 to 100,000 gallons are not to exceed 2.0 gallons per hour for semiannual testing or one gallon for annual testing.

d. Fuel systems greater than 100,000 gallons are not to exceed 3.0 gallons per hour for semiannual testing or 1.5 for annual testing.

2. Piping segments not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

a. First test, not later than October 13, 2018, airport hydrant systems may use up to a 6.0 gallon per hour leak rate.

b. Second test, between October 13, 2018 and October 13, 2021 airport hydrant systems may use up to a 6.0 gallon per hour leak rate.

c. Third test, between October 13, 2021 and October 22, 2022, airport hydrant systems must use a 3.0 gallon per hour leak rate.

d. Subsequent tests, after October 13, 2022, begin using semiannual or annual line testing according to the maximum leak detection rate in par. (b).

3. Perform inventory control in accordance with s. ATCP 93.515 (2) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow through; and

4. Perform a line tightness test, conducted in accordance with s. ATCP 93.515 (4), at least every two years; or

5. Another method approved by the implementing agency if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability of detection.

(3) REGISTRATION AND NOTIFICATION. (a) The owner of a newly installed airport hydrant system shall notify the implementing agency and register the system in accordance with s. ATCP 93.140.

(b) All owners of airport hydrant systems shall provide proof of financial responsibility in accordance with s. ATCP 93.700.

(4) SYSTEM REQUIREMENTS. (a) All new airport hydrant systems shall be designed and equipped with isolation valves appropriate for leak testing.

(b) Any repair or upgrade to an existing airport hydrant system shall include the installation of isolation valves in the section that is repaired or upgraded.

(5) PERIODIC INSPECTIONS AND WALKTHROUGHS. Owners and operators must inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry according to the occupational safety and health administration is not required, or at least annually if confined space entry is required:

(a) Hydrant pits—visually check for any damage; remove any liquid or debris; and check for any leaks; and

(b) Hydrant piping vaults—check for any hydrant piping leaks.

ATCP 93.520 Corrosion protection. (1) GENERAL. (a) *Where required.* Vent lines, vapor lines and any portion of a single or double–wall tank system, whether new or existing, that

routinely contains product and is in contact with the ground or with water shall be protected from corrosion by one of the following methods:

1. The tank and piping are constructed of an inherently corrosion–resistant material.

2. a. The tank and piping are installed at a site that is determined by a certified corrosion expert to be non–corrosive during the operational life of the system.

b. A certified corrosion expert retained for the purpose of determining a non–corrosive site shall make at least one personal visit to each tank site during the design stage.

Note: See ATCP Table 93.200–5 for information on contacting NACE.

3. The tank is a listed composite or jacketed tank designated as complying with UL 1746, and the piping is protected by one of the methods in this subsection.

Note: In addition to composite and jacketed tanks, the UL 1746 standard also includes requirements for coated tanks and tanks with pre–engineered cathodic protection systems. These last 2 types of cathodic protection are not included in the blanket approval under this section.

4. The tank and piping are protected with a sacrificial anode system in accordance with a standard developed by a nationally recognized association or independent testing laboratory that is acceptable to the department.

5. a. The tank and piping are protected with a corrosion protection system designed by a certified corrosion expert and comply with either sub. (2) or (3).

b. A corrosion expert retained for the purpose of designing an impressed current corrosion protections system shall make at least one personal visit to each tank site during the design stage.

(b) *Design and construction.* 1. To allow for periodic testing, new and replacement factory–or field–installed corrosion protection systems shall have appropriate connections, insulated lead wires and accessible test stations, including as specified in subds. 2. and 3.

2. All lead wires connected to a tank, anode, reference electrode, or other component associated with the corrosion protection system shall terminate at a test station.

3. The termination of each lead wire at a test station shall be clearly labeled or coded to identify the specific component to which it is connected.

4. Impressed current systems shall be designed to prevent stray current conditions that may negatively impact other underground structures, utility lines, or cable anchors, or any impressed current systems protecting those items.

5. Local utilities shall be notified by the contractor when impressed current systems are installed, repaired, or adjusted, including where an increase in rectifier amperage or voltage output occurs.

(c) *Operation and maintenance*. 1. Operation and maintenance of corrosion protection systems shall be in accordance with national standards acceptable to the department.

2. All new and existing corrosion protection systems shall be operated and maintained to continuously provide corrosion protection for the life of the tank system.

3. For impressed current systems, operation and maintenance practices and procedures shall be evaluated, and conducted in a manner that minimizes direct current interference to or from any underground structure, utility line, or cable anchors in the area.

(d) *Periodic testing requirements*. 1. a. All new and existing corrosion protection for UST systems shall be tested within 6 months of installation or repair and at least annually, except as provided in subd. 3.

b. For sacrificial anode systems, structure–to–soil potential readings shall be conducted with a minimum of one local potential measurement near the UST center and away from the anodes

and one remote potential measurement. Alternatively, a minimum of three potential measurements, one at each of the UST ends and one near the center of the UST, may be taken.

Note: This requirement is from NACE standard TM-0101.

bm. For impressed current systems, structure-to-soil potential readings shall be conducted with a minimum of three potential measurements, one at each of the UST ends and one near the center of the UST.

Note: This requirement is from NACE standard TM-0101.

c. For each product line, structure–to–soil potentials shall be taken above the piping, at the ends and middle, away from the anode locations. Piping runs over 50 feet shall have additional readings taken every 25 feet.

d. For impressed current systems, the annual test shall include instant–off potentials.

2. In addition to the requirements in subd. 1., impressed current corrosion protection systems shall be inspected and evaluated by the site operator at least every 60 days to ensure the equipment is providing adequate current in accordance with its design.

3. Tanks designated as sti–P3® equipped with a preinstalled sacrificial anode system and test station, shall be tested in accordance with all of the following:

a. Testing shall occur within 6 months of installation and at least every 3 years thereafter until the tank is 10 years old.

b. Testing shall occur annually in accordance with subd. 1. after the tank is 10 years old.

4. The results of the inspections, evaluations and testing under this paragraph shall be summarized on the department's form, TR-WM-141, and retained at the site in accordance with s. ATCP 93.500 (9).

Note: Form TR-WM-141, UST Corrosion Protection Test/Survey Report, is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone

(608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

Note: Section ATCP 93.500 (9) specifies retention requirements for testing and repair records of corrosion protection systems.

(e) *Certifications for corrosion protection.* 1. A certified cathodic protection tester shall be on the site to supervise and monitor the initial post–installation start–up of impressed current corrosion protection systems.

Note: NACE requires a person with Senior Corrosion Technologist certification or higher for corrosion protection system commissioning.

2. A certified cathodic protection tester shall perform or supervise the performance of reinstallation or replacement of anodes.

Note: NACE requires a person with Level 1 Cathodic Protection Tester certification or higher for reinstallation or replacement of anodes.

3. a. All new and existing corrosion protection for UST systems shall be tested by a certified cathodic protection tester, except as provided in subd. par. b.

Note: NACE requires a person with corrosion technologist certification or higher or a person with corrosion technician certification who is directly supervised by a certified corrosion technologist or higher to perform work as a state–certified cathodic protection tester.

b. Tanks designated as sti–P3® shall be tested by a person holding a certification from the Steel Tank Institute or one of the certifications in subd. par. a.

Note: Additional information on corrosion protection certifications is available from the department's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(2) SACRIFICIAL ANODE SYSTEMS. (a) *General.* All new and existing sacrificial anode systems shall maintain the standard protection threshold reading of at least negative 850 millivolts or shall comply with the requirements of par. (b).

(b) *Failing sacrificial anode systems.* 1. Unless arrangements are made with the authorized agent or the department to conduct follow–up testing, the cause of the failure shall be investigated and repaired within 90 days of the failed reading; or the entire tank system shall be emptied within 90 days of the failed reading and shall remain empty until the repair is completed.

2. If more than 2 years has elapsed since the previous corrosion protection test, or if the corrosion protection system has been inoperative for 2 years or more, an internal inspection shall be performed by a third party in accordance with one of the following standards:

a. For lined tanks, the internal inspection shall be in accordance with API 1631 or KWA.

b. For unlined tanks, the internal inspection shall be in accordance with ASTM G158 Method B.

3. If the tank fails the internal inspection, one of the following shall occur:

a. The tank system shall be permanently closed.

b. The tank system shall be lined or any present lining shall be repaired in accordance with API 1631, and an impressed current corrosion protection system shall be installed.

4. After an inspection under this paragraph, if the tank is not closed under subd. 3. a., a precision tightness test shall be performed on the tank system in accordance with s. ATCP 93.515 (4). In addition, a tightness test shall be performed on the ullage portion of the tank in accordance with s. ATCP 93.515 (10).

(3) IMPRESSED CURRENT SYSTEMS. (a) *General.* 1. Equipment for impressed current systems shall be served by a dedicated and clearly marked electrical circuit that remains energized at all times.

2. All new and existing impressed current systems shall maintain either of the following standard protection levels:

a. An instant–off reading of at least negative 850 millivolts.

b. A 100 millivolt or greater negative shift in polarization between the instant–off reading and the native soil reading or a 100 millivolt or greater positive shift in the depolarized structure potential from the instant-off reading.

3. When a new impressed current system is installed or an existing system is replaced in whole or in part, an ammeter shall be installed, along with an hour meter that totals the number of hours during which electric current flows through the system.

(b) *Failing impressed current systems.* If impressed current corrosion protection readings taken in accordance with sub. (1) (d) 2. indicate the system is not maintaining adequate continuous protection, the system shall be analyzed by a certified corrosion expert for site corrosion potential and qualification of system functionality.

(c) *Inoperative impressed current systems.* 1. Impressed current systems that have been inoperative for 120 days or less shall comply with all of the following requirements:

a. Power shall be restored and the system shall be tested by a certified cathodic protection tester for system functionality.

b. If the impressed current system is damaged or inoperable, a certified corrosion expert shall repair, survey, and re–commission the system.

2. Impressed current systems that have been inoperative for 121 to 180 days shall comply with all of the following requirements:

a. A precision tightness test shall be performed on the tank system in accordance with s. ATCP 93.515 (4) within 15 days of discovery.

b. Power shall be restored and the system shall be tested for system functionality by a certified cathodic protection tester.

c. If the impressed current system is damaged or inoperable, a certified corrosion expert shall repair, survey, and recommission the system.

3. Impressed current systems that have been inoperative for 181 to 365 days shall comply with all of the following requirements:

a. A precision tightness test shall be performed on the tank system in accordance with s. ATCP 93.515 (4) within 15 days of discovery.

b. A certified corrosion expert shall assess, survey, and recommission the impressed current system and perform any necessary repairs.

4. Impressed current systems that have been either inoperative or not tested for more than 365 days shall comply with all of the following requirements:

a. An internal inspection of the tank shall be performed in accordance with sub. (2) (b) 2.

b. If the tank fails the internal inspection, the tank owner shall either have the tank repaired and lined, or have the lining repaired in accordance with s. ATCP 93.530, or have the tank permanently closed and removed in accordance with s. ATCP 93.560.

c. If the tank is not closed under subd. par. b., a certified corrosion expert shall assess, survey, and re–commission the impressed current system and perform any necessary repairs.

d. If the tank is not closed under subd. par. b., a precision tightness test shall be performed on the tank system in accordance with s. ATCP 93.515 (4). In addition, a tightness test shall be performed on the ullage portion of the tank in accordance with s. ATCP 93.515 (10).

ATCP 93.530 Tank lining of underground storage tanks. (1) GENERAL. (a) The installation of interior tank lining for underground storage tanks shall comply with API 1631 and this section.

(b) An underground storage tank that does not meet the structural requirements specified in API 1631 may not be upgraded or repaired by lining and shall be permanently closed in accordance with this chapter.

(c) When lining a tank, an access way for an inspector to enter the tank shall be installed from the tank interior to finished grade, if not already provided.

(2) INSPECTION AND REPORTING REQUIREMENTS FOR TANK LINING. (a) *General.* 1. It is the responsibility of the lining contractor to communicate with the authorized agent or the department to establish the time for inspections.

2. The lining contractor shall give the authorized agent or the department at least 5 days of written notice before beginning the tank lining or any excavation preliminary to tank lining.

(b) *Plan approval.* The tank owner is responsible for obtaining plan approval from the authorized agent or the department in accordance with s. ATCP 93.100 before beginning the tank lining or any excavation preliminary to tank lining.

(c) *Tank integrity assessment before lining.* 1. The tank–lining contractor shall provide the tank owner and the authorized agent or the department with a written report of the assessment of the interior surface and structural condition of the tank before leaving the site and before installing the lining.

2. The tank integrity assessment shall include all of the following:

a. A description of the internal wall condition including any deflection and any defects, rust plugs, holes or leaks, regardless of size or number.

b. A description of any repair or other conditioning necessary to prepare the tank for interior lining.

c. A description of the degree of compliance with all requirements under API 1631 regarding structural qualification, tank cleaning and other pre–lining activities.

Note: Section 292.11, Stats., requires immediate notification of the department of natural resources in the event of a hazardous substance discharge.

3. If holes or rust plugs are observed during the visual internal inspection, the tank–lining contractor shall notify the owner before lining the tank that a tank–system site assessment must be performed, and that assessment shall be performed in accordance with ss. ATCP 93.575 to 93.585.

(d) *Authorization before lining.* 1. The authorized agent or the department shall be at the site before the actual application of the lining.

2. The application of the interior lining may proceed only when authorized by the authorized agent or the department after verifying all of the following:

a. The tank integrity assessment and any required tank–system site assessment have been completed.

b. An approved set of plans is on the site.

c. The condition of the tank has been communicated to the owner.

(dm) *Tank integrity assessment after lining.* After installing the lining, the tank-lining contractor shall have a tightness test performed on the tank ullage in accordance with s. ATCP 93.515 (10) to assure that all tank-top connections and openings are liquid- and vapor-tight.

(e) *Completion of forms.* 1. a. The certified tank system liner shall provide a completed, signed, and notarized API 1631 Form B inspection affidavit to the tank owner within 10 business days of completing the lining procedure.

b. The signature on API 1631 Form B shall be that of the certified tank system liner who conducted the pre–lining tank integrity assessment and the lining procedure.

2. An underground tank installation checklist, form TR-WM-138, shall be completed and signed by the certified tank system liner and the certified tank system inspector.

Note: Form TR-WM-138 — Checklist For Underground Tank Installation is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

Note: See s. ATCP 93.240, Certifications and Enforcement, for requirements that certified tank system liners perform or supervise specific lining–related activities involving underground storage tanks.

(f) *Submittal of forms.* The tank owner shall have all of the following documents submitted to the department within 15 business days of completing the lining procedure:

1. The pre–lining and post-lining tank integrity assessments under pars. (c) and (e).

2. The completed and signed API 1631, Form B under par. (e) 1.

3. The tank installation checklist under par. (e) 2.

4. A revised tank registration, form TR-WM-137.

Note: Form TR-WM-137 — Underground Flammable/Combustible/Hazardous Liquid Storage Tank Registration is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

ATCP 93.535 Periodic inspection and repair of lined tanks. (1) (a) The owner of a lined tank shall obtain an internal inspection of the tank lining within 5 years after the date of initial tank lining, or repair to a previously installed tank lining, and at least every 5 years thereafter.

(b) This section applies whether or not cathodic protection has been added to the tank system.

1 **(2)** Any complete or partial tank lining conducted any time after the original tank lining was
2 installed is considered a repair of the lining.
3 **(3)** The owner shall notify the authorized agent and the department in writing at least 5
4 business days before having the inspection performed.
5 **(3m)** Before commencing any inspection, the underground tank system liner shall insure that
6 the tank is prepared for inspection in accordance with API 1631.
7 **(4)** Tank lining inspections shall use one of the following methods as specified in sub (5):
8 (a) Video camera inspection in accordance with KWA Method A only. A pre-inspection
9 tightness test shall be performed in accordance with s. ATCP 93.510 (4); if the tank fails the
10 tightness test, video inspection is not permitted.
11 (b) Physical inspection in accordance with API 1631.
12 **(5)** Inspection requirements are as follows: (a) For tanks with lining and cathodic protection
13 added at the same time, if cathodic protection has been maintained at a protective level:
14 1. Video inspection as prescribed under sub. (4) (a).
15 2. Physical inspection as prescribed under sub. (4) (b).
16 (b) For tanks with cathodic protection added after the tank was lined:
17 1. For first 5-year inspection following cathodic protection addition with cathodic
18 protection maintained at a protective level, physical inspection is required under sub. (4) (b).
19 2. If first 5-year inspection indicates no change of external wall thickness, then subsequent
20 5-year inspections can be performed as allowed in sub. (5) (a).
21 (c) For lined tanks without cathodic protection installed, physical inspection is required under
22 sub. (4) (b).

(d) The use of the equipment to perform the inspections under par. (a) shall be in accordance with national consensus standards.

(e) Inspection and repairs of lined tanks shall be conducted by or under the direct supervision of an underground tank system liner in accordance with s. ATCP 93.240 (1) (b).

(f) The person performing the inspection shall be certified by the manufacturer of the inspection equipment.

(g) An inspection shall include all interior portions of the tank.

(7) Repair of tank linings shall comply with the requirements of API 1631 and the lining manufacturer's specifications.

(7g) Tanks that have an overall average tank metal thickness or an average tank thickness of a designated thin wall area of less than 75 percent or any through-wall perforations shall be immediately closed per s. ATCP 93.560.

(7r) Tanks that have an overall average tank metal thickness or an average tank thickness of a designated thin wall area of 75 percent to 85 percent shall have an impressed current system installed per s. ATCP 93.520 or be immediately closed per s. ATCP 93.560.

(8) A lined tank that requires repairs to more than 10 percent of the lined surface shall be returned to service only if all of the following conditions are met:

(a) The tank meets the structural requirements in subs. (7), (7g), and (7r) before the lining repair.

(b) The tank has impressed current corrosion protection installed in accordance with s. ATCP 93.520 before being placed back into service.

1 **(9)** The person performing the inspection shall provide a report to the owner, authorized
2 agent, and the department within 15 days of completing the inspection that describes all of the
3 following items in addition to those required in API 1631:
4 (a) The type of repairs that have been made.
5 (b) The total dimension of the area in square inches that has been repaired by lining.
6 (c) A schematic drawing of the tank showing the area of repairs.
7 **(10)** Before placing any tank back into service under this section, both of the following shall
8 occur in the following order:
9 (a) An access way for an inspector to enter the tank shall be installed from the tank interior
10 to finished grade, if not already provided.
11 (b) A precision tightness test shall be performed on the tank system in accordance with s.
12 ATCP 93.515 (4). In addition, tightness test shall be performed on the ullage portion of the tank
13 in accordance with s. ATCP 93.515 (10).
14 **ATCP 93.545 Seldom–used and temporarily out of service tank systems. (1)**
15 OPERATIONAL REQUIREMENTS. When a storage tank system is placed temporarily out of
16 service, the owner or operator shall comply with all of the following:
17 (a) Notify the department of the registration change in accordance with s. ATCP 93.140 (2)
18 (d).
19 (b) Maintain tank permits in accordance with s. ATCP 93.145.
20 (c) Maintain financial responsibility in accordance with subchapter VII.
21 (d) Operation and maintenance of corrosion protection shall be continued.
22 (e) 1. The tank, piping, dispensing equipment, lines, pumps, manways, and other ancillary
23 equipment shall be secured to prevent tampering, except as exempted in subd. 2.

2. Facilities that are in operation and secured against general public access are not required to have the additional security required in subd. 1. All vent lines shall be left open and functioning.

(f) All inspections, maintenance, and periodic testing shall be performed as if the tank were still in service.

(g) Requirements for tanks with product:

1. Product must be removed from tanks if they have been in TOS status for twelve months.

2. Product must be tested and meet ASTM standards prior to bringing the tank back into service.

3. Leak detection shall be maintained in accordance with this chapter.

(h) Requirements for tanks without product:

1. The tank system is empty when all liquid has been removed from the tank and the associated piping so that no more than one inch of residue remains in the system.

2. The tank shall be protected against flotation caused by flooding or soil saturation.

(j) Single-walled tanks or piping installed more than 30 years ago shall be placed back into service within one year or be permanently closed per s. ATCP 93.560.

(2) PLACING A TANK BACK INTO SERVICE. (a) Notify the department of the registration change in accordance with s. ATCP 93.140 (2) (d).

(b) A precision tightness test shall be performed on the tank and piping in accordance with s. ATCP 93.515 (4) (a) 1. before placing the tank system back into service.

(c) Tank systems out of service for more than 365 days shall pass a tightness test of the ullage portion in accordance with s. ATCP 93.515 (10) to assure that tank connections are liquid- and vapor-tight.

(d) The tank system shall fully comply with this chapter before being placed back into service, except double–wall construction is not newly required for underground tank systems installed before February 1, 2009.

(e) Tank systems covered in par. (a) shall immediately have the leak detection system verified in accordance with s. ATCP 93.510 (2).

(f) Tanks covered in par. (b) shall have all the respective components documented as functional on form TR-WM-139 and on forms TR-WM-123 and TR-WM-125, if applicable, before being placed back in service.

(g) Product stored in tank during the TOS period shall be tested and meet ch. ATCP 94 standards prior to being sold.

Note: Form TR-WM-123, Electronic/Mechanical Line Leak Detector Annual Functionality, form TR-WM-125, Line Test Report, and form TR-WM-139, Underground Tank System Functionality Verification, are available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx. See s. ATCP 93.165 for use of alternate forms approved by the department.

(3) NON–COMPLYING TANK SYSTEMS. Tank systems that do not comply with this section or in-use tank system requirements are abandoned tanks and shall be closed in accordance with s. ATCP 93.560 within 60 calendar days of non-compliance.

ATCP 93.550 Change in service to store a non–regulated or a regulated substance. (1) When a tank system that held a regulated substance undergoes a change in service to store a non–regulated substance, the owner or operator shall comply with all of the following requirements:

(a) At least 5 business days before beginning a change in service, the owner or operator shall notify the authorized agent or the department of the intended change.

(b) Before a change in service, the owner or operator shall have the tank emptied and cleaned, by removing all liquid and accumulated sludge in accordance with the procedures specified in API 2015.

(c) A tank system integrity assessment, and, if necessary, a tank system site assessment shall be performed for the tank system in accordance with ss. ATCP 93.575 to 93.585 after notifying the authorized agent or the department but before completing the change in service.

(d) Cleaning of tanks and tank system site assessments shall be performed by persons certified in accordance with ss. ATCP 93.240 (14) to (21).

(e) The owner shall have a revised tank registration, form TR-WM-137, and part A of the department's tank system service and closure assessment report, form TR-WM-140, completed and submitted to the department within 21 business days of changing a tank system to storage of a non–regulated substance.

Note: Form TR-WM-137 – Underground Flammable/Combustible/Hazardous Liquid Storage Tank Registration, and form TR-WM-140 – Tank System Service and Closure Assessment Report are available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(f) The change in service shall occur within 60 days after in-use or temporarily out of service status is terminated.

(2) When a tank system that held a non–regulated substance undergoes a change in service to store a regulated substance, all applicable requirements of this chapter apply upon placing the tank system into service. These requirements include precision tightness testing for the liquid-containing portion and tightness testing for the ullage portion.

ATCP 93.560 Tank system closure. (1) NOTIFICATION. (a) At least 5 business days before beginning permanent closure of a tank system, the owner or operator or designee shall

notify the authorized agent or the department of the intended closure on form TR-WM-121, except a shorter notification period is permitted where unexpected closure is commenced upon finding adverse conditions during a corrective action conducted under s. ATCP 93.585.

(b) Any date or time changes to the original submitted notification form, TR-WM-121, shall be requested at least one business day prior to the original date or time. The new date or time must be later than the original date or time.

Note: Form TR-WM-121 – ATCP 93 Notification Record is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(2) CLOSURE PROCEDURES. (a) To permanently close an underground tank system, the owner or operator shall have the tank and piping emptied and cleaned, by removing all liquids and accumulated sludge, and shall remove the tank and piping from the site unless allowed otherwise under par. (e). Tanks that are removed shall be scrapped unless reused in accordance with s. ATCP 93.350 (3) (i) or 93.500 (3) (c).

(am) Tank basin and piping trench excavation shall be left open until inspector approves backfilling and tank and piping must remain onsite until inspector approves removal.

(b) Tank cleaning processes shall comply with the appropriate national standard referenced in s. ATCP 93.200.

Note: For guidance in complying with the tank-cleaning requirements in API standard 2015, as listed on line 17 of Table 93.200-2, API publishes RP 2016, *Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks*, which is available from API at the address listed in the table.

(c) Individuals cleaning tanks or removing tank systems or portions of tank systems shall be certified in accordance with ss. ATCP 93.240 (14) to (21).

(d) When an underground tank system is closed, or when a previously closed tank system is removed under sub. (4), the owner shall have a revised tank registration, form TR-WM-137, and part A of the department's tank–system service and closure assessment report, form TR-WM-140, completed and submitted to the department within 21 business days of closure or removal.

Note: Form TR-WM-137 — Underground Flammable/Combustible/Hazardous Liquid Storage Tank Registration, and form TR-WM-140 – Tank System Service and Closure Assessment Report are available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(e) Underground tanks systems may be closed in–place by filling with an inert, solid material, after emptying and cleaning, if the department determines, upon written request from the owner or operator that one or more of the following conditions exist:

1. Excavation would impact the structural integrity of an adjacent building or structure.

2. Overhead utilities at a commercial site pose a safety hazard.

3. Excavation would impact adjacent transformers or substations.

4. Unauthorized encroachment would occur onto neighboring property under different ownership.

5. The tank location is inaccessible to necessary equipment.

6. Excavation would result in the destruction of mature trees.

7. Excavation would encroach upon a public way.

8. Excavation would necessitate the permanent disconnection or relocation of underground utilities.

Note: Closing a tank in–place does not exempt the tank from tank–system site assessment requirements.

(f) The department's Tank System Service and Closure Assessment Report form, TR-WM-140, shall be filled out by the certified remover and provided to the certified tank system inspector at the closure inspection.

(3) TANK–SYSTEM SITE ASSESSMENT. A tank–system site assessment shall be performed in accordance with ss. ATCP 93.575 to 93.585 after notifying the authorized agent or the department but before closing a tank system in place, installing a new system, or backfilling the tank basin and the piping trenches.

Note: The department and the department of natural resources share jurisdiction over tank closures and tank–system site assessments. The DNR must be notified if a release is discovered.

(4) APPLICABILITY TO PREVIOUSLY CLOSED SYSTEMS. (a) *General.* When directed by the department, the owner or operator of any tank system closed in–place before December 22, 1988, shall have the system removed in accordance with this section and have the tank basin assessed in conformance with s. ATCP 93.580.

(b) *Systems previously closed without solid, inert fill.* The owner or operator of any tank system that was closed before October 1, 1971, without removing the tank from the site but by filling the tank with water, shall bring the closed system into compliance with sub. (2) within a time period established by the department on a case–by–case basis, except that the tank–system site assessment in s. ATCP 93.580 is not required unless there is a suspected or obvious release. Written documentation shall be provided to prove closure with water before September 1, 1971.

Note: Before 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.

(c) *Other tank systems.* Empty or improperly closed or abandoned tank systems that do not meet the requirements of sub. (2) or the exemption under par. (b) shall be permanently closed in accordance with all of the provisions of this section.

ATCP 93.565 Abandoned tank system closure.

(1) Tank systems that are abandoned with or without product shall be closed within 60 days of non-compliance with s. ATCP 93.545 or in-use tank system requirements.

(2) Exceptions. Abandoned tank systems that are less than 30 years old or of double-wall construction may be returned to service if they meet the conditions outlined in par. (b) in the order listed:

(a) Apply for permits to operate in accordance with s. ATCP 93.145.

(b) 1. The integrity of a fiberglass tank shall be assessed and certified by the manufacturer, or a qualified professional engineer. The assessment shall include an internal inspection and certification that the tank is suitable for continued service.

2. The integrity assessment of a steel tank shall be performed in accordance with API 1631.

a. Tanks that have an overall average tank metal thickness or an average tank thickness of a designated thin wall area of less than 75 percent or any through-wall perforations shall be immediately closed per s. ATCP 93.560.

b. Tanks that have an overall average tank metal thickness or an average tank thickness of a designated thin wall area of 75 percent to 85 percent shall have an impressed current system installed per s. ATCP 93.520 or be immediately closed per s. ATCP 93.560.

c. The certification and report of the assessment shall be submitted to the department for approval prior to adding product to the tank.

3. Cathodically protected tanks shall meet the requirements of s. ATCP 93.520.

4. Precision testing of the entire tank system without product shall be performed per s. ATCP 93.515 (4) by a certified tank system tightness tester.

5. A complete underground tank system functionality verification shall be conducted per s. ATCP 93.510 (2). Form TR-WM-139 documenting the verification shall be submitted to the department.

6. The tank system shall fully comply with this chapter before being placed back into service, except double–wall construction is not newly required for tank systems installed before February 1, 2009.

7. Tank system shall pass a department storage tank system inspection conducted in accordance with this chapter.

ATCP 93.570 Conditions indicating a release. The owner or operator of a storage tank system shall follow the procedures in s. ATCP 93.575 when any of the following conditions exist or when ordered to do so by the department:

(1) OPERATING CONDITIONS. Unusual operating conditions exist, such as erratic behavior of product dispensing equipment, loss of product from the tank system, an unexplained presence of water in the tank, or water or product in the interstitial space of a secondarily contained system.

Note: Significant damage to equipment would be considered to be an unusual operating condition that could result in needing to perform the assessments specified in s. ATCP 93.575.

(2) MONITORING RESULTS. Results from a leak detection method, including an alarm, indicate that a release may have occurred.

(3) OFF-SITE IMPACTS. Off-site impacts appear, such as the presence of contaminated soils or free product, dissolved phase product or vapors in soils, basements, sewer or utility lines, or nearby waters of the state.

(4) INVENTORY VERIFICATION. Inventory verification results indicate that a required method of leak detection has failed.

ATCP 93.575 Tank–system integrity assessment.

(1) GENERAL. The owner or operator shall assess all suspected or obvious releases in accordance with sub. (2) within 7 business days of discovery of any of the conditions described in s. ATCP 93.570, unless any of the following conditions occur:

(a) System equipment or the monitoring device is found to be defective and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result.

(b) Inventory control is the method of leak detection, as allowed by s. ATCP 93.510 (3) (d), and the data is reevaluated using an additional 7 days of data, and the reevaluation does not show a loss.

(2) ASSESSMENT. The owner or operator shall evaluate and confirm all suspected or obvious releases by taking one or all of the following actions and shall also do so in accordance with any corresponding directive of the department:

(a) *Tank–system integrity assessment.* 1. The owner or operator shall have a precision tightness test conducted in accordance with s. ATCP 93.515 (4) to determine whether a leak exists.

2. For UST systems with secondary containment, the owner or operator shall have the integrity of the interstitial space tested in accordance with one of the following, to determine whether a breach of the interstitial space has occurred:

a. Requirements developed by the manufacturer, if the manufacturer has developed testing requirements.

b. An approved standard developed by a nationally recognized association or independent testing laboratory.

c. Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in this subdivision.

(b) *Tank–system site assessment*. The owner or operator shall have the site assessed for the presence of a release in accordance with s. ATCP 93.580.

ATCP 93.580 Tank–system site assessment. (1) GENERAL. When a tank–system site assessment is required by this chapter, or when directed by the department, the owner or operator shall have the site evaluated for the presence of a suspected or obvious release in accordance with sub. (3).

Note: An "obvious release" means there is an indication of a release, and there is both environmental evidence, such as soil discoloration, observable free product, or odors — and a known source, such as a tank or piping with cracks, holes or rust plugs, or leaking joints. A "suspected release" means either of the following: (a) There is an indication that a tank system has leaked — such as inventory losses; observable free product or evidence of free product in secondary containment at dispensers, submersible pumps or spill buckets; petroleum odors; or leak detection alarm system activation — but there is no observable environmental evidence of a release; or (b) There is observable environmental evidence of a release, such as soil discoloration or free product, but the source is unknown.

(2) EXEMPTION FROM ASSESSMENT. A tank system site assessment is required for the following tank systems or components only if there is a suspected or obvious release:

(a) Tanks which have a capacity of less than 4,000 gallons and which stored heating oil for consumptive use on the premises where stored.

(b) Tanks located at a private residence or on a farm premises, which have a capacity of less than 1,100 gallons, and which stored fuel for dispensing into motorized vehicles.

(c) The closure of double–wall pipe when modification or upgrading is conducted on a system that will remain in operation, unless the piping is to be closed in–place.

(d) Where the entire tank system, including the connections at the tank and dispensers, has been placed in liquid–tight secondary containment for the entire operational life of the system.

(3) TANK–SYSTEM SITE ASSESSMENT PROCEDURES. (a) *General.* When a tank–system site assessment is required, the owner or operator shall have a certified tank–system site assessor document field observations and sample for the presence of a release wherever contamination is identified or is most likely to be present at the tank site. If the assessor discovers obvious contamination, he or she shall complete the appropriate assessment sampling, such as for the entire system; or for only the tank, or piping, or sumps, or dispensers, and complete the documentation and reporting in its entirety. All sampling, documentation, and reporting under this paragraph shall be in a format prescribed by the department.

Note: The sampling documentation and reporting prescribed by the department is contained in *Tank System Site Assessment: A Guide to the Assessment and Reporting of Suspected or Obvious Releases from Underground and Aboveground Storage Tank Systems* available from the department's Web site at https://datcp.wi.gov/Documents/TSSA.pdf.

Note: The format for the reporting is available at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

Note: In s. ATCP 93.585, releases are required to be reported to the department of natural resources. Failure to notify the DNR of a release may have serious consequences – such as forfeitures under section 168.26, Stats., of $10 to $5,000 for each violation. Each day of continued violation is a separate offense, and under s. ATCP 93.180, each tank that is in violation is a separate offense.

(b) *Exception.* A person who is not a certified tank–system site assessor may perform assessments if directly supervised by a certified tank–system site assessor who is on the site during the entire assessment.

(c) *Filing.* 1. The documentation required in par. (a) shall be filed with the owner or operator no later than 21 business days after discovery of the conditions that resulted in the assessment.

2. For all tank or piping removals, any replacement of single-wall spill containment under s. ATCP 93.505 (2) (a), and for all releases that must be reported to the department of natural resources under s. ATCP 93.585 (2), the documentation required in par. (a) shall also be filed

with the department of natural resources no later than 21 business days after the tank or component removal or the discovery of the release.

Note: Send the documentation that must be filed with the department of natural resources under this section to the Environmental Program Associate in the applicable DNR regional office. Contact information for the Environmental Program Associates is available through the following DNR Web site: http://dnr.wi.gov/topic/brownfields/contact.html.

ATCP 93.585 Responding to a leak, spill, overfill or release. (1) GENERAL. (a) *Leaks.* Immediately upon discovery of any evidence of a leak from a tank system or dispensing system, the owner or operator or any contractor performing work under this chapter shall take all measures necessary to stop the leak and to prevent migration of any free product into the environment.

(b) *Releases.* Immediately upon confirming any suspected release or discovering any obvious release, the owner or operator shall investigate the extent of contamination, and undertake corrective and mitigation actions in accordance with s. 292.11 (3), Stats.

(2) REPORTING A RELEASE. (a) *Reporting to the department of natural resources.* The owner or operator or a person who causes it shall immediately report any release of a regulated substance to the department of natural resources in accordance with s. 292.11 (2), Stats.

Note: Releases that must be reported to the department of natural resources under section 292.11 (2), Stats., include the discovery of contaminated soils or free product; dissolved phase product or vapors, in soils, in basements, in sewer or utility lines, or in surface water or groundwater either 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.

Note: For more information about reporting releases to the department of natural resources, refer to the DNR Web site at http://dnr.wi.gov/topic/Spills/Report.html. That site includes a notice to use a 24–hour hotline number of 1-800–943–0003 for reporting spills.

Note: Failure to notify the DNR of a release may have serious consequences —such as forfeitures under section 168.26, Stats., of $10 to $5000 for each violation. Each day of

continued violation is a separate offense, and under s. ATCP 93.180, each tank that is in violation is a separate offense.

Note: Department staff and authorized agents periodically inspect storage facilities for petroleum products and other hazardous substances. These inspectors have authority to report any release encountered during these inspections that has not been reported to the DNR by the owner or operator — and these releases may become the subject of formal enforcement actions.

(b) *Reporting to the owner or operator.* Fuel–delivery persons shall immediately inform the owner or operator of any overfilling or spilling which occurs during the delivery procedure and which may result in or be a release.

(c) *Reporting under CERCLA.* The release of a regulated substance to the environment that equals or exceeds its reportable quantity under CERCLA shall be reported immediately to the EPA.

Note: The CERCLA List of Hazardous Substances and Reportable Quantities is contained in 40 CFR 302.4, Table 302.4.

(3) FIRE HAZARD RESPONSE. The owner or operator shall identify, mitigate and monitor fire and explosion hazards, such as the presence of free product or vapors in structures.

(4) PREVENTION OF FURTHER RELEASE. The owner or operator shall take action to prevent further release of the regulated substance to the environment, including all of the following:

(a) Removing and safely storing as much of the regulated substance from the tank system as necessary to prevent further release to the environment.

(b) Taking steps to prevent migration of the substance, including managing any contaminated soils or water in accordance with ch. 292, Stats.

(5) DEMONSTRATION OF ADEQUATE CORRECTIVE ACTION. (a) No later than 21 business days after reporting a release under this section, the owner or operator shall submit documentation to the department of natural resources demonstrating compliance with subs. (1)

(b) and (4), and demonstrating that the corrective and mitigation actions which were taken have accomplished or will accomplish all of the following:

1. Restoration of the environment to the extent practical.

2. Minimization of the harmful effects from the release to the air, lands or waters of Wisconsin.

(b) Any repairs or changes to a tank system that are made because of a release reported under this section shall be reported to the department within 21 business days of completing the repair or change.

Subchapter VI — Dispensing of Motor Fuels

ATCP 93.600 Applicability. This subchapter applies to all new and existing motor fuel dispensing facilities, except where specified otherwise.

ATCP 93.605 General fuel dispensing requirements. (1) STANDARDS AND INSPECTIONS. (a) *General.* Periodic and annual inspections and maintenance shall be conducted in accordance with PEI RP500 and RP900, except that PEI RP 900, Section 6, Daily UST Inspection Checklist items may be performed at least monthly rather than daily.

Note: In addition to the PEI RP500 and RP900 maintenance requirements, further criteria on maintaining USTs is available in standard STI R-111, *Storage Tank Maintenance*, from the Steel Tank Institute, at www.steeltank.com. This standard is applied to USTs under ss. ATCP 93.230 (14) and (15) and addresses topics such as how to keep the fuel clean, the effects of water and contaminants on fuel, how to monitor various types of tanks and fuels, how to clean tanks, and criteria to follow when switching fuels.

(b) *Electrical continuity.* Dispensers for motor fuel that is a Class I or Class II liquid shall be tested for electrical continuity in accordance with PEI RP400 when installing or replacing any hanging hardware assembly or component or when the hose breakaway becomes disconnected.

(c) *Records.* Records shall be maintained for underground tanks in accordance with s. ATCP 93.500 (9), and for aboveground tanks in accordance with s. ATCP 93.400 (11).

(d) *Nozzles*. 1. Nozzles used for dispensing motor fuel shall be listed and shall be automatic closing.

Note: Latch–open nozzles may be prohibited in some of the circumstances addressed by this chapter.

2. New and replacement nozzle spouts shall comply with one of the following:

a. Nozzle spouts used for spark–ignition fuels shall have an outside diameter of 0.807 to 0.840 inches.

b. Nozzle spouts used for compression–ignition fuels for passenger cars and light–duty trucks shall have an outside diameter of 0.929 to 0.9375 inches.

c. Nozzle spouts used for compression–ignition fuels for heavy–duty trucks and off–road heavy equipment shall have an outside diameter of either 1.122 to 1.250 inches or 0.929 to 0.9375 inches.

3. Changing from one to another of the fuel types in subd. 2. shall include changing the nozzle spout to the size specified in subd. 2. for the new fuel.

(e) *Hose*. 1. Hose used for dispensing motor fuels shall be listed and labeled.

Note: Per s. ATCP 93.650, hose used for fueling aircraft must also meet the requirements of EI 1529.

2. Where fueling hose is allowed to be longer than 18 feet, the hose shall be reeled or racked unless approved otherwise by the authorized agent or the department.

3. All fueling hose shall be protected from damage.

4. Hose and fittings used for dispensing motor fuels shall be maintained in a manner where they are not subject to being driven over by vehicle traffic.

5. Hose and fittings used for dispensing of flammable and combustible liquids shall be periodically inspected for wear and stress. Hose or fittings that are suspect or have the appearance of wear shall be immediately replaced.

(f) *Emergency shutoff valve.* 1. All new or replacement dispensing devices for Class I liquids shall be provided with a double–poppet, heat–actuated emergency shutoff valve that will stop the flow of fuel if the dispenser is displaced from its base, or if the fusible link is activated.

2. Anytime an emergency shutoff valve is replaced, the valve shall comply with subd. 1.

(fm) *Testing.* Emergency electrical disconnect shall be tested at least annually. Tests conducted on underground storage tank dispensing systems shall be documented on functionality verification form, TR-WM-139.

(g) *Water level in tanks.* Water may not exceed the following depths, as measured with water-indicating paste, in any tank utilized in storing the following fuels, except as otherwise approved by the department:

1. Gasoline-alcohol blends, biodiesel, biodiesel blends, and E85 fuel ethanol— 1/4 inch.

2. Aviation gasoline and aviation turbine fuel—one inch

3. Gasoline, diesel, gasoline-ether, kerosene, and other fuels —2 inches.

4. Tanks used to store motor fuels or kerosene shall have the water level checked and recorded at least once per month.

5. Anytime the water level exceeds the levels in this paragraph, sale of the fuel shall be stopped. The cause of the water ingress shall be determined and corrected and excess water removed from the tank within 5 days.

6. Water levels in tanks at retail facilities subject to the requirements of ch. ATCP 94 shall be maintained in accordance with that chapter.

(2) PORTABLE CONTAINERS. (a) Portable containers for the sale or purchase of a flammable or combustible liquid shall be clearly marked with the name of the product.

(b) Liquids having a flash point of less than 100°F may not be dispensed into a portable container or portable tank unless all 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 that is colored red.

(3) DISPENSING OPERATIONS. (a) All dispensing areas shall be provided with lighting where fueling operations are performed during hours of darkness.

(b) Dispenser displays shall be located to be fully visible to the person fueling the vehicle.

(c) All surface area within a 30 foot radius of the dispenser shall be maintained free of high grass, weeds, and debris.

(cm) No combustible materials, including pallets and packaging material, may be within 3 feet horizontally of the dispenser cabinet or tank.

(d) Fuel may not be dispensed using tank pressurization.

(4) DISPENSER LABELING. Dispensers at facilities subject to the requirements of ch. ATCP 94 shall be labeled in accordance with the requirements of that chapter.

(5) ATTENDED AND UNATTENDED FUELING. (a) To be considered as being an attended fueling facility, there shall be at least one attendant regularly on duty on a daily basis, but not necessarily during all hours of operation, to supervise, observe, and control the actual dispensing of fuel.

(b) All point–of–sale dispensing systems, whether attended or not, shall meet the requirements in NFPA 30A section 9.5 for unattended self–service motor fuel dispensing facilities except a telephone or other means for contacting emergency services available to the public is not required.

(c) 1. All new fueling facilities that are not attended as specified in par. (a) shall have pipeline catastrophic leak detection, and sump monitors if so equipped, that will automatically shut down either the submersible pump or the dispenser operation upon detection of a system leak.

2. All existing fueling facilities that are not attended as specified in par. (a) shall have pipeline catastrophic leak detection, and sump monitors if so equipped, that will do either of the following upon detection of a system leak:

a. Automatically shut down either the submersible pump or the dispenser operation.

b. Send an alarm to a facility that is staffed 24 hours a day, 7 days a week.

Note: As an example, par. (c) would not apply to a convenience store and retail station that closes each day at 10:00 p.m. and then continues to operate its point–of–sale, card–reader dispensers until the store and station reopen the next day.

(6) OVERFILL PROTECTION. Before delivery of product into a storage tank, the driver, operator or attendant of the tank vehicle shall measure the available capacity of the tank. The available capacity shall be more than the volume of the product to be delivered.

(7) PRODUCT TRANSFERS. Fuel from public access fueling dispensers may only be transferred into integral vehicle and equipment fuel supply tanks, contractor pickup mounted cross–over tanks, and approved portable containers that have a capacity of 10 gallons or less.

(8) SEPARATION FROM GASEOUS FUELS. A motor fuel dispenser shall be separated from storage vessels and dispensers for liquefied petroleum gas, liquefied natural gas,

compressed natural gas, gaseous hydrogen, and liquefied hydrogen that are regulated by ch. SPS 340. Separation distances shall be the distances that are required by NFPA 30A chapter 12.

Note: Based on definitions of "dispenser," "dispensing area," and "dispensing system" in ss. ATCP 93.050 (38), (40), and (41), respectively, the distances under this subsection are measured to the body of the device that measures and dispenses the liquid product, rather than to the distal end of the hose and nozzle which can be extended away from that device.

ATCP 93.610 Fuel dispensing systems using aboveground mobile tanks. (1) TANK WAGONS. (a) *General.* Tank wagons shall be constructed and used in accordance with this subsection.

Note: In accordance with s. ATCP 93.700, tank wagon owners and operators are required to comply with the financial responsibility requirements in subchapter VII.

(b) *Duration of use.* After 24 months, tank wagons need to be either removed, replaced, or inspected and recertified by the manufacturer.

(c) *Location and type of use.* The use of tank wagons is limited to the fueling of vehicles and equipment in the following operations:

1. Landfill and mine, pit and quarry operations.

2. Highway or runway construction, including associated material processing sites.

3. Construction projects for buildings, structures, and utilities.

4. Logging and woodcutting operations.

5. Dewatering operations.

6. Farming operations included under the definition of farming.

7. Trail grooming.

8. Fueling of heating or cooling units on semitrailers.

(d) *Limitations on location and type of use.* 1. Tank wagons may not be used for fueling vehicles unless the vehicles are dedicated to the operation of the specific project or facility.

2. Tank wagons may not be used for general fueling of fleet vehicles or any retail sales.

(e) *Specifications for tank wagons*. Tank wagons shall be constructed in accordance with all of the following:

1. The maximum total capacity of a tank wagon shall be 1,100 gallons.

2. The maximum capacity of a tank or individual compartment used to store Class I liquids shall be 330 gallons.

3. The tank shall be permanently affixed to the chassis.

4. Tanks shall be coated on the exterior to inhibit rust.

5. Tank wall thickness and joint configuration shall be in accordance with UL 142.

6. a. The fill opening for the tank shall be liquid tight, lockable and separate from any other opening.

b. Tanks used to dispense gasoline shall be equipped with a drop tube at the fill opening that terminates within 6 inches of the tank bottom.

7. Tanks shall be provided with an updraft–type vent affixed to an 18–inch high standpipe, and the vent shall comply with one of the following:

a. For tanks up to 660 gallons — a 2–inch vent.

b. For tanks of 661 to 900 gallons — a 2.5–inch vent.

c. For tanks of 901 to 1,100 gallons — a 3–inch vent.

8. Tanks shall be provided with a liquid–level gauge.

9. a. Tanks that store Class I liquids shall be provided with a permanently mounted, listed pumping device.

b. A pump using a gasoline combustion engine may only be used on tanks containing Class II or III liquids.

10. Tank wagons shall be provided with listed fueling hose that is stored and secured on a hanger or hose reel.

11. The pump shall be equipped with a manufactured anti–siphon device.

12. Where Class I or II liquids are dispensed, means shall be provided to electrically bond the tank to the equipment being fueled.

13. Frames, chassis, tires, and rims shall be constructed and maintained so they are adequate to support the weight of the system and keep it stable.

14. a. The product stored in the tank shall be clearly marked on the tank.

b. Tanks with multiple compartments shall also be marked at the fill point of the tank.

15. Nozzles may not have a latch–open device.

(f) *Operations involving tank wagons*. 1. Tank wagons shall be empty of liquid product while being towed off the premises where used or on any public access road, lane or highway.

2. Tank wagons shall be protected from public access and public vehicle collision while on the premises where used.

3. Tanks placed within 25 feet of a public roadway shall be protected by collision protection.

4. Tank wagons that contained Class I liquids immediately before transport shall be purged of flammable vapors before transport off the premises where used.

5. The fueling operator shall remain in attendance at the dispensing nozzle while fuel is flowing.

6. Fuel may not be dispensed using gravity discharge.

7. No more than one tank wagon may be towed at one time by a transport vehicle.

8. Support shall be provided for single–axle units to prevent tipping.

9. a. Tank placements shall comply with the setback requirements in s. ATCP 93.630 (2) (a), except as provided in subd. 9. b.

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.

(2) MOVABLE TANKS. (a) *General.* This section applies to temporary uses of movable tanks constructed in accordance with NFPA 30 section 21.4.2. or a similar standard recognized by the department.

(b) *Duration of use.* After 24 months, movable tanks need to be either removed, replaced, or inspected and recertified by the manufacturer.

(c) *Location and type of use.* Movable tanks may be used only for fueling of vehicles and equipment in the following situations:

1. In accordance with sub. (1) (c) 1. to 7.

2. At recycling centers and refuse centers.

3. At power generating stations.

4. For short–term use during fuel storage equipment changeovers.

(d) *Limitations on location and type of use.* Movable tanks may not be used for any retail sales, or for fueling vehicles unless the vehicles are dedicated to the operation of the specific project or facility.

(e) *Specifications for movable tanks.* 1. Movable tanks shall be constructed in accordance with the design standards of NFPA 30 section 21.4.2 or a similar standard recognized by the department.

2. Nozzles may not have a latch–open device.

3. The maximum capacity of a movable tank shall be 1,100 gallons.

4. Movable tanks are not required to be listed.

(f) *Operations involving movable tanks.* 1. a. Tank placements shall comply with the setback requirements in s. ATCP 93.630 (2) (a), except as provided in subd. 1. b.

b. Where setbacks required in subd. 1. 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.

Note: For farming operations, there are additional setback requirements in s. ATCP 93.630.

2. Movable tanks shall be protected from public access and public vehicle collision.

3. Tanks placed within 25 feet of a public roadway shall be protected by collision protection.

4. The fueling operator shall remain in attendance at the dispensing nozzle while fuel is flowing.

(3) TANK VEHICLES. (a) *General.* This section applies to temporary uses of tank vehicles that are constructed in accordance with NFPA 385.

Note: See s. ATCP 93.330 (4) for requirements for converting a tank vehicle to a stationary tank.

Note: In accordance with s. ATCP 93.700, owners or operators of tank vehicles who conduct fueling in accordance with this section are required to comply with the financial responsibility requirements in subchapter VII.

(b) *Duration of use*. Tank vehicles may remain on the customer's property for a maximum of 5 days unless any of the following conditions apply:

1. The tank vehicle is used to fill aircraft in accordance with s. ATCP 93.650 or aircraft support equipment.

2. Prior to the tank vehicle arriving at the customer's property, the local fire department has approved conditional use for more than 5 days.

3. The tank vehicle is converted to a stationary tank in accordance with s. ATCP 93.330.

Note: Federal Spill Prevention Control and Countermeasure requirements in 40 CFR 112 include provisions for secondary containment for tank vehicles while parked.

(c) *Location and type of use*. Tank vehicles may be used only for transferring fuel into a fixed–tank system, or for fueling of vehicles and equipment in the following situations:

1. With the expressed permission of the local fire department.

2. Fueling of vehicles and equipment on the customer's premises and in connection with the business for the uses listed in subs. (1) (c) 1. to 7. and (2) (c) 2.

3. Fueling of fleet vehicles or locomotives in accordance with this subsection.

Note: This type of fueling is also known by the term "wet–hose fueling."

4. Fueling of watercraft under emergency conditions in accordance with s. ATCP 93.640 (5) or as allowed under NFPA 30A section 9.6.

Note: NFPA 30A section 11.9 allows fueling of Class II fuels directly from a tank vehicle, for commercial or governmental watercraft used in connection with the business.

5. Fueling of aircraft in accordance with s. ATCP 93.650.

(d) *Specifications for tank vehicles*. 1. Tank vehicles shall be constructed in accordance with NFPA 385.

2. Readily accessible and functional portable fire extinguishers shall be carried on the tank vehicle as required by NFPA 385.

Note: NFPA 385 requires one portable fire extinguisher with a minimum rating of 4A, 40–B:C – or 2 or more extinguishers, each having a minimum rating of 2A, 20–B:C. NFPA 385 and this chapter require portable fire extinguishers to be maintained in accordance with NFPA 10.

3. Tank vehicles shall carry all of the following supplies:

a. A storm drain plug kit.

b. A containment berm with a minimum effective length of 12 feet.

c. Non–water absorbent material capable of absorbing a minimum of 25 gallons of fuel.

(e) *Transfer into tank vehicles.* Fuel may be transferred into a tank vehicle only from a fixed storage tank system, except where this chapter permits otherwise for emergencies.

(f) *Operations involving tank vehicles.* All operations involving tank vehicles shall be in accordance with all of the following requirements:

1. The fueling operation shall take place outdoors, and the point of transfer shall be at least 15 feet from a building.

2. Fuel may not be dispensed using gravity discharge.

3. Expansion space shall be left in each tank to prevent overflow in the event of a rise in temperature.

4. Nighttime deliveries shall be made in well–lighted areas, or a means of lighting shall be provided for the dispensing and delivery area.

5. The tank vehicle shall have its flasher lights in operation during fueling.

6. Fueling operations are prohibited within 25 feet of an ignition source.

7. Dispensing operations may not take place where either the operation or a fuel spill would impede either egress from a building or facility access by emergency response personnel.

8. Fueling operations shall take place in locations that utilize natural features or man-made barriers such that a spill will not flow into a building or into the waters of the state.

9. The company providing the mobile fueling service shall maintain an agreement with a local emergency response provider unless the company is equipped to provide emergency response.

10. The 2 vehicles shall be electrically bonded when dispensing Class I or II liquids.

11. a. Where the fueling operation is accessible to the public, precautions shall be taken, such as the placement of signs, to notify the public that fueling is in process.

b. The signs shall have black letters at least 2 inches high with a minimum stroke width of ½ inch on a yellow background.

c. The signs shall read as follows:

"NO SMOKING

FUELING IN PROGRESS

AUTHORIZED PERSONNEL ONLY"

12. All engines, motors, and electrical equipment not essential to the fueling operation shall be shut down.

13. The fuel delivery nozzle shall be put in contact with the fill pipe before the flow of fuel begins, and this contact shall be continuously maintained until the flow stops.

14. The operator shall remain in attendance at the dispensing nozzle while fuel is flowing.

(4) OTHER MOBILE TANKS. Written approval shall be obtained from the department before dispensing fuel from any mobile tank that is not addressed in subs. (1) to (3).

ATCP 93.615 Fuel dispensing systems using aboveground fixed tanks. (1) GENERAL. Aboveground fixed–tank fuel dispensing facilities shall comply with NFPA 30, NFPA 30A, PEI RP200, ss. ATCP 93.445 to 93.470, and this section.

(2) DURATION OF USE. There is no limit on the duration of use for a fixed–tank fuel dispensing facility, provided the system is installed, operated and maintained in compliance with this chapter.

(3) LOCATION AND TYPE OF USE. (a) A fixed–tank fuel dispensing facility may be used for any type of fueling, subject to the requirements of this chapter.

(b) A fixed–tank fuel dispensing facility shall be used for all of the following types of fueling:

1. Public access fueling of trucks, automobiles, and portable containers.

2. General fueling of fleet vehicles, except where a tank vehicle is allowed under s. ATCP 93.610 (3).

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

4. Fueling from tanks that are used on the same premises for more than 2 years, unless otherwise allowed under this chapter.

5. Aircraft fueling in accordance with the dispensing requirements in s. ATCP 93.650, except where use of tank vehicles is also allowed, in accordance with the requirements for tank vehicles in s. ATCP 93.610 (3).

6. Watercraft, snowmobile and ATV fueling in accordance with the dispensing requirements in s. ATCP 93.640, except as provided in ss. ATCP 93.640 (4) and (5) for residential watercraft and emergency fueling.

Note: Section ATCP 93.640 (4) has requirements for residential non–public fueling of watercraft. Section ATCP 93.640 (5) allows watercraft to be fueled from a tank vehicle under emergency conditions.

(4) LIMITATIONS ON LOCATION AND TYPE OF USE. There are no general limitations on location or use for fixed fuel tanks.

(5) SPECIFICATIONS FOR FIXED–TANK FUEL DISPENSING FACILITIES. (a) *Tank listing*. Tanks shall be listed and labeled appropriate to their use.

(b) *Installer certification.* Installation shall be by a certified installer.

(c) *Setbacks for public access fueling.* The setbacks specified in Table 93.615–A for public access fueling shall be maintained at all times.

(d) *Setbacks for other fueling.* 1. The setbacks specified in Table 93.615–B for fleet vehicle fueling shall be maintained at all times.

2. There is no required setback between the dispenser and the tank at a farm premises or construction project in accordance with s. ATCP 93.630.

(e) *Setback measurement.* 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 diked areas 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 93.615–A

Setbacks for Aboveground Tanks Used for Public Access 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	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
Other code–complying tank	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 which 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.

Table 93.615–B

Setbacks for Aboveground Tanks Used for Fleet Vehicle Fueling Only

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	0	0	0	0	Separate compartment for each tank
Protected[2]	0–6,000	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
Other	≤ 12,000 for	25	0	50	25	3

code–complyin g tank	Class I ≤ 20,000 for Class II or III					

[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 which 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.

(f) *Secondary containment.* 1. Diking or a similar system shall be used to provide secondary containment for aboveground tanks in accordance with NFPA 30 section 22.11.1 or 22.11.2. and s. ATCP 93.420.

2. a. When any underground piping is installed as part of a new tank system or when 50 percent or more of a run is replaced, the piping shall be provided with approved secondary containment with approved leak detection.

b. The material used for both the primary and secondary containment shall be liquid– and vapor–tight.

(g) *Collision protection.* Aboveground motor fuel tanks shall be protected from vehicle impact in accordance with s. ATCP 93.430.

(h) *Aboveground piping.* 1. Aboveground piping may not rest directly on grade.

2. All aboveground piping shall be of steel and be coated or otherwise protected to inhibit corrosion.

3. Piping shall be supported against impact, vibration, expansion, and contraction.

4. Collision protection shall be provided on all sides of aboveground piping not protected by a structure, building or dike wall.

5. Collision protection shall meet the performance requirements in s. ATCP 93.430.

(i) *Underground piping.* Any underground piping shall comply with the leak detection requirements for pressurized piping specified in s. ATCP 93.510 (4).

(j) *Check valves.* 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.

(k) *Vents and fill opening.* 1. Fill and vent openings shall be separate.

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

3. All fill pipes for aboveground fueling tanks shall be locked and shall be labeled and color coded as specified in s. ATCP 93.230 (12).

(L) *Spill prevention.* Spill control shall be provided in accordance with s. ATCP 93.410.

(m) *Overfill prevention.* 1. Tanks that are filled via handheld nozzles shall be constantly attended during product delivery and shall be provided with overfill prevention equipment which notifies the person filling the tank with either an audible or a visual signal that the liquid level has reached 90 percent of the tank's capacity.

2. Tanks that are filled by means of a tight connection between the delivery hose and the fill pipe or a similar device acceptable to the department shall be equipped with overfill prevention equipment that will operate as follows, unless approved otherwise in writing by the department:

a. Alert the transfer operator when the tank is no more than 90 percent full by triggering an audible and visual high-level alarm.

b. Automatically shut off the flow of liquid into the tank when the tank is no more than 95 percent full.

(n) *Leak detection for aboveground tanks.* Leak detection for aboveground tanks shall be provided in accordance with one of the following:

1. Where dikes are provided, a minimum of 2 feet shall be provided between any new tank and the toe of the dike walls, and a minimum of 3 inches shall be provided between the bottom of any new tank and the dike floor, to allow for visual inspection of the exterior tank surface, except as provided in subd. 2. or as otherwise approved by the department.

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. ATCP 93.515 (7).

(o) *Tank enclosures.* Aboveground tanks shall be provided with enclosures in accordance with sub. (7).

(6) OPERATIONS INVOLVING FIXED–TANK FUEL DISPENSING FACILITIES. Operations involving fixed–tank fuel dispensing facilities shall follow the requirements in NFPA 30, NFPA 30A, and all of the following:

(a) Fuel may not be dispensed using gravity discharge.

(b) Aboveground tanks may not be used for vehicle fueling at residences, except as allowed in s. ATCP 93.640 (4) for watercraft fueling.

(7) 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, except where exempted under par. (b) or (c).

(b) If the property on which the tanks are located has a perimeter security fence, additional enclosure of the tank system is not required.

(c) For fleet fuel dispensing tank systems that have an aggregate tank capacity of 1,320 gallons or less, enclosure of the tank by one of the structures listed in par. (a) is not required if all of the following conditions are met:

1. The fill opening of the tank is kept locked.

2. The electrical control panel is secured inside of a building.

3. The dispenser is secured against unauthorized use.

4. Dusk–to–dawn lighting is provided above the tank area.

5. For Class I liquids, all normal vents on the primary tank terminate at least 12 feet above grade.

Note: Federal Spill Prevention Control and Countermeasure regulations in 40 CFR 112 may require fencing for tanks with capacities of more than 1,320 gallons.

(d) Buildings or fences under this subsection shall be made entirely of noncombustible materials and have a minimum of one exit in compliance with chs. SPS 361 to 366.

(e) Buildings or fences may not be supported by the tanks they enclose.

(f) Buildings or fenced enclosures may not be used for occupancy, storage, or any other use unless specifically allowed under chs. SPS 361 to 366.

(g) Fences surrounding tanks shall be of chain–link design or other open fencing approved by the department.

(h) Gates and doors shall be normally locked.

ATCP 93.620 Public access motor vehicle fueling operations. (1) GENERAL. (a) Public access fueling operations shall follow the operational requirements of NFPA 30A and this section.

(b) When the product dispensed from a tank system is changed from a Class I liquid to a Class II or III liquid, the department's corresponding district inspection office shall be notified, and the new product shall be tested and approved before being dispensed.

Note: Under ch. ATCP 94, similar notification and approval is required for changing from storing a Class II or III liquid to storing a Class I liquid.

Note: See the department's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx for inspector contact information.

(2) DISPENSING AREA SAFETY. (a) Equipment or devices not required for, or not integral to the fueling operation, such as vending machines or automated teller machines, may only be installed outside of the fuel dispensing area.

(c) No Class I liquid, other than fuel being dispensed, may be located within 20 feet of any motor fuel dispenser.

(d) A person shall be at least 14 years old to dispense fuel into the fuel tank of a motor vehicle.

(e) Combustible merchandise placed within 20 feet of a fuel dispenser shall meet all of the following requirements:

1. No combustible merchandise, including pallets and packaging material, may be within 3 feet horizontally of the dispenser cabinet.

2. The height of the merchandise display, including pallets and packaging material, may not exceed 3 feet above grade.

Note: Trash receptacles and window washing containers that are for public use are not considered merchandise under this section. Window washing solution in containers for sale to the public would be considered merchandise under this section.

(f) A means of two–way voice communication between the customer and attendant shall be maintained while the facility is open to the public and an attendant is on duty.

(g) No vehicle may be fueled from an aboveground storage tank while the storage tank is being filled.

ATCP 93.630 Fuel storage and dispensing at farms and construction projects. (1) GENERAL. (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.

(b) *Limitations on location and type of use.* The tanks may not be used for fueling vehicles unless the vehicles are dedicated to the operation of the farm premises or construction project.

(c) *Specifications for tanks.* 1. The tanks shall be constructed in accordance with NFPA 30A chapter 13 and this section.

2. Nozzles on gravity systems may not have a latch–open device.

3. There is no minimum required setback between the tank and the dispenser.

(d) *Operations involving tanks.* Operations shall be in accordance with NFPA 30A chapter 13.

(e) *Security.* The tank system shall be equipped so the hose, hanger, or outlet valve can be locked to prevent tampering.

(2) MODIFICATIONS TO NFPA 30A AND EXEMPTIONS (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:

1. Human occupancy.

2. Housing of any livestock.

3. Storage or repair of any motor–driven vehicle or machine.

4. Storage of chemicals, pesticides, or other fuels.

5. Storage of hay or similar crops susceptible to spontaneous combustion if stored in a combustible building or structure.

(b) *Other operations.* For all operations within the scope of this section using a tank without secondary containment, other than farming, the tank and the fueling operation shall be placed outside and at least 40 feet from the near side of a public way and from any important building or structure.

(c) *Operations using secondary containment tanks.* All operations within the scope of this section using a tank with secondary containment shall follow the setback requirements in Table 93.630.

(d) *Irrigation operations.* 1. A tank that supplies a combustion engine in an irrigation system shall be located on land or on a pier of the solid-fill type.

2. The tank shall be mounted to maintain stability against vibration, wind, water-saturated ground, and floodwater and shall be liquid-tight.

3. Where a tank is at an elevation that may produce a gravity head-pressure or siphon pressure, the tank outlet shall be equipped with a device, such as a normally closed solenoid valve, which will prevent gravity or siphon flow from the tank to the engine. This device shall be located adjacent to and downstream of the tank outlet valve. The device shall be installed and adjusted so that liquid cannot flow by gravity or siphon from the tank to the engine if the fuel piping, tubing, or hose system fails when the engine is not in use.

4. The fuel piping, tubing, or hose system connecting the tank to the engine shall comply with all of the following:

a. Be compatible with the fuel.

b. Be constructed, supported, and protected against physical damage and stresses arising from impact, settlement, vibration, expansion, contraction, wave action, and wildlife.

c. Be of a type that is designed to withstand the forces and pressures exerted upon it, including from any motion of the engine or a pier.

d. Be liquid-tight.

e. Have a valve at the tank to shut off the liquid supply from the tank.

(3) TANKS OF LESS THAN 1,100 GALLONS. (a) Aboveground tanks that have a capacity of less than 1,100 gallons shall comply with this subsection before use.

(b) Installation shall be by a certified installer.

(c) The certified installer shall fill out a tank installation notification, form TR-WM-124, and provide the form to the authorized agent or the department for inspection of the tank system.

Note: Form TR-WM-124 — Farm & Construction AST Installation Notification is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at http://datcp.wi.gov/Consumer/Hazardous_Materials_Storage_Tanks/Hazardous_Materials_Storage_Tank_Forms/index.aspx.

(d) Before a tank may be filled or used, the tank system shall be inspected or authorized for use by the authorized agent or the department, except as allowed otherwise by par. (g).

(e) The owner shall remit the inspection fee under Table 93.1605 to the authorized agent or the department before filling or using the tank.

(f) The tank shall be inspected within 5 business days after notification for a standard inspection and within 2 business days after notification for a priority inspection, except as provided in par. (g).

(g) The tank may be filled and used if the inspection has not been completed within the time limits after notification specified in par. (f).

(h) Tanks that are filled via hand–held nozzles shall be constantly attended during product delivery and shall be provided with overfill prevention equipment which notifies the person filling the tank, with either an audible or a visual signal that the liquid level has reached 90 percent of the tank's capacity.

(i) 1. Tanks shall be mounted on noncombustible supports that are adequate to provide stability.

2. The base of the tank supports shall be at the same grade level as the vehicles when positioned for fueling.

3. The bottom of the tank, irrespective of any supports, shall be elevated at least 6 inches above the surrounding grade.

(4) TANKS OF 1,100 GALLONS OR MORE, OR LOCATED LESS THAN 40 FEET FROM BUILDINGS. Aboveground tanks which have a capacity of 1,100 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:

(a) *Tank listing.* The tank shall be listed and labeled for aboveground use.

(b) *System design and location.* The tank system shall comply with the specifications for dispensing facilities in s. ATCP 93.615 (5), with the following exceptions:

1. The tank system and the fueling operation shall be located in accordance with Table 93.630.

2. Vehicle collision protection may be omitted where a dike complying with this chapter is provided for secondary containment.

3. Tanks under this paragraph are exempt from the enclosure requirement in s. ATCP 93.615 (5) (o).

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
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 is 200 feet.	

(c) *Administrative requirements.* 1. The tank system shall be installed in accordance with the manufacturer's instructions, the applicable national standards adopted in s. ATCP 93.200, plans and specifications approved under s. ATCP 93.100 and this chapter.

2. The tank system installation shall be performed or supervised by a certified installer.

3. The tank system shall be inspected in accordance with s. ATCP 93.115 (2).

4. The tank shall be registered in accordance with s. ATCP 93.140.

ATCP 93.640 Watercraft, snowmobile and ATV fueling. (1) GENERAL REQUIREMENTS. (a) *General.* Use of aboveground storage tank systems and fueling operations for watercraft, snowmobiles, and ATVs shall comply with NFPA 30A chapter 11, the

requirements for dispensing systems in s. ATCP 93.615, and the requirements of this section, except as otherwise approved under this chapter.

(b) *Tank location.* 1. Aboveground tanks located on land shall be set back at least 10 feet from the ordinary high water mark of a navigable body of water.

Note: The ordinary high water mark is determined by the county zoning department or the department of natural resources.

Note: The municipality in which the tank is located may have additional requirements for the siting of the tank.

2. Tanks shall follow the setback requirements of Table 93.615–A, except that there is no required separation between the tank and the dispenser if the tank is used exclusively for watercraft, snowmobile, or ATV fueling.

(c) *Tank appurtenances.* 1. Any dispenser used for a fueling operation above or within 100 feet of navigable water shall use a dry–break connection or a listed no–drip nozzle with automatic shutoff.

2. A nozzle latch–open device may not be installed or used above or within 100 feet of navigable water.

(d) *Hose.* Hose lengths more than 18 feet long, used for dispensing fuel, shall be reeled, racked, or otherwise protected from damage.

(2) PUBLIC ACCESS WATERCRAFT FUELING. All piping systems and tank systems that are installed on or after (the effective date of this section ... [LRB inserts date]) for watercraft beyond the scope of sub. (4) shall comply with PEI RP1000, this subsection, and sub. (3).

Note: See s. ATCP 93.400 (3) for requirements relating to secondary containment for any underground piping, including any transition between aboveground and underground piping.

1 **(3)** SEASONAL INSTALLATION OF A FUELING SYSTEM ON A PIER. (a) *Plan*
2 *requirements*. Before installing a fueling system on a pier, plans shall be submitted for review
3 and shall specify the requirements of this subsection.
4 (b) *Pipe and tank requirements.* 1. All connections that are broken shall use dry–break
5 couplings listed for use with petroleum products.
6 2. Broken connections shall be plugged during storage.
7 3. The tank vent shall be left open.
8 (c) *Management plan.* 1. The owner shall develop and maintain on-site, a written plan for
9 safely draining the tank and pipe system before disassembly.
10 2. The disassembly plan under subd. 1. shall also be submitted with the plans for a proposed
11 system that are required under s. ATCP 93.100.
12 **(4)** RESIDENTIAL WATERCRAFT FUELING OPERATIONS. (a) Aboveground tanks for
13 watercraft fueling for noncommercial purposes at a private residence shall comply with the
14 requirements for aboveground tanks in ss. ATCP 93.400 to 93.420, and this subsection.
15 (b) No more than 2 tanks are allowed at any residence.
16 (c) Tanks shall be listed and may not exceed 600 gallons in aggregate capacity.
17 (d) The tank shall be used only by the residents of the property for fueling their watercraft or
18 for maintenance of their property.
19 (e) 1. The tank shall be located outdoors, on land, at least 25 feet from the dwelling and
20 other important buildings and at least 10 feet from the ordinary high water mark of a navigable
21 waterway, public roadway, or property line.
22 2. All setbacks shall be measured from the inside of the dike wall to the dwelling, important
23 building, ordinary high water mark, public roadway, or property line.

(f) A means shall be provided to prevent the discharge of liquid due to a siphoning effect. Gravity dispensing systems may not be used.

(g) Transfer of product shall be from a tank by means of an approved, fixed, fuel dispensing hand pump, or a listed, fixed, electrical pump.

(5) EMERGENCY FUELING 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 watercraft shall be permitted for emergency fueling, provided the operation is in accordance with the requirements for tank vehicles in s. ATCP 93.610 (3).

(6) SNOWMOBILE AND ATV FUELING. (a) *General.* Tank systems used for fueling snowmobiles or ATVs shall meet the requirements for dispensing systems in s. ATCP 93.615 and this subsection.

(b) *Tank location.* Tank systems adjacent to a body of water shall also follow the requirements for watercraft fueling.

(c) *Collision protection.* 1. Aboveground tank systems used for snowmobile and ATV fueling shall be provided with collision protection.

2. The collision protection shall be spaced no more than 30 inches on center.

3. If the fueling area is adjacent to vehicle traffic or a parking area, bollards or equivalent protection shall be placed to separate the snowmobile or ATV fueling area from motor vehicle traffic.

ATCP 93.650 Aircraft fuel dispensing. (1) GENERAL REQUIREMENTS. Fueling operations for aircraft shall follow the requirements in s. ATCP 93.610 (3) or 93.615, NFPA 407, NFPA 418, and this subchapter.

(2) SETBACKS. (a) Aboveground tanks used for public access fueling shall be at least 30 feet from the point of fuel transfer into the aircraft.

(b) Aboveground tank setbacks from buildings, public ways, and property lines shall follow the requirements in Table 93.615–B.

(c) 1. The point of fuel transfer into the aircraft, from any tank or truck supply source, shall be at least 100 feet from public traffic or assembly areas at public events, unless a reduced distance is authorized by the fire chief.

2. The public events referred to in subd. 1. do not include passenger terminals, fixed base operators, or persons entering or exiting the aircraft.

(3) COLLISION PROTECTION. (a) Barriers shall be provided to protect tanks, pumps, dispensers, and vents from collision damage from aircraft or other vehicles in accordance with s. ATCP 93.430.

(b) Where subject to collision from aircraft, barriers protecting an aboveground tank shall be located at all four corners of the storage tank system and extend at least 12 inches above the top of the tank.

(4) PRODUCT IDENTIFICATION. (a) All fuel handling equipment for aircraft and installations within the scope of EI 1542, whether new or existing, shall be marked as referenced in the standard.

(b) All aboveground tanks and fill pipes for underground tanks for aircraft, whether new or existing, shall be labeled or otherwise marked using the identification scheme in EI 1542.

Note: EI 1542 has requirements for identifying aviation gasoline (AVGAS) and turbine fuels and the equipment used to store and dispense them.

1 **(5)** FUELING HOSE. (a) All public access, self–service fueling hose for aircraft that is
2 installed or replaced on or after February 1, 2009, shall be reeled or racked unless approved
3 otherwise by the authorized agent or the department.
4 (b) All fueling hose shall be protected from damage.
5 **(6)** OPERATIONS. (a) *General.* Individuals who dispense fuel into aircraft shall be
6 knowledgeable in operations and emergency procedures specific to the fuel and fueling systems
7 they are operating.
8 (b) *Amphibious aircraft.* Shoreline fuel dispensing systems for amphibious aircraft shall
9 follow the requirements of s. ATCP 93.640.
10 **ATCP 93.660 Racetrack and amusement vehicle fueling operations. (1)** Racing vehicles
11 and amusement ride vehicles with integral internal combustion engines shall follow the
12 requirements of this section.
13 **(2)** The fuel tanks of racing vehicles shall be filled from safety cans or a fixed fueling
14 system complying with s. ATCP 93.615.
15 **(3)** During a race in which the vehicle is competing, the vehicle may be refueled with the
16 engine running, if the racetrack is equipped with onsite fire protection that is capable of
17 responding adequately to fires ignited during the fueling.
18 **(4)** Fueling areas shall be posted with signs that read as follows:
19 "NO SMOKING OR OPEN FLAMES"
20 **(5)** A portable fire extinguisher with a minimum 40–B:C rating shall be provided at each
21 fueling area, including pit stalls, pit work areas, and garages.

(6) Fueling areas that use methanol shall provide a minimum of 10 gallons of water at each fueling area, including pit stalls, pit work areas, and garages, for the purpose of diluting a methanol fire.

ATCP 93.680 Alternative motor fuels. (1) APPLICATION. (a) All storage or dispensing systems for fuel consisting of more than 10 percent ethanol by volume shall comply with subs. (2) to (4) and DOE/GO-102016-4854.

(b) All storage or dispensing systems for fuel consisting of more than 5 percent biodiesel by volume shall comply with subs. (5) to (7) and DOE/GO 102016-4875.

Note: The department and the EPA consider the following parts of a UST system to be critical for demonstrating equipment compatibility under this section:

1. Tank or internal tank lining.
2. Piping.
3. Line leak detector.
4. Flexible connectors.
5. Drop tube.
6. Spill and overfill prevention equipment.
7. Submersible turbine pump and components.
8. Sealants (including pipe dope and thread sealant), fittings, gaskets, o-rings, bushings, couplings, and boots.
9. Containment sumps (including submersible turbine sumps and under dispenser containment).
10. Leak and release detection floats, sensors, and probes.
11. Fill and riser caps.
12. Product shear valve.

(2) MATERIAL COMPATIBILITY FOR ETHANOL BLENDS. Equipment used to store or dispense fuel consisting of more than 10 percent ethanol by volume may not contain or consist of any of the following materials:

(a) *Metals*. Zinc, lead, aluminum, or alloys containing these metals such as brass or terne.

Note: Terne–plated steel and lead–based solder are commonly used in equipment that handles gasoline. These materials will dissolve when in contact with high concentrations of ethanol.

(b) *Natural materials.* Cork, leather, or natural rubber.

(c) *Polymers.* Polyurethane, polyvinyl chloride, polyamides, or methyl–methacrylate plastics.

Note: Materials that have been shown to be generally compatible with high concentrations of ethanol include unplated steel, stainless steel, black iron, bronze, Neoprene rubber, Buna–N, polypropylene, nitrile, Viton, Teflon, thermoset reinforced fiberglass and thermoplastic piping material.

(3) GENERAL REQUIREMENTS FOR ETHANOL BLENDS. (a) *Tank cleaning.* 1. If another type of fuel was stored in the tank, the tank shall be cleaned in accordance with API 2015 or another method approved by the department before introducing the ethanol–blended fuel.

Note: See s. ATCP 93.230 (15) for related cleaning criteria when changing the type of liquid stored in a tank.

2. All cleaning work shall be performed by a certified tank cleaner unless specifically approved by the department based on an alternate cleaning method.

Note: Most metal storage tanks and pipe are compatible with ethanol. However, some fiberglass storage tank systems manufactured before 1992 might not be compatible with higher levels of ethanol. The tank manufacturer and installation contractor should be consulted for additional information on the reuse of underground storage tanks.

3. Denatured alcohol (commonly known as E98) may not be stored in underground storage tanks due to flammability issues.

(b) *Tightness testing.* A precision tightness test shall be performed on the tank and piping in accordance with s. ATCP 93.515 (4) before placing the tank system back into service.

(c) *Equipment requirements.* 1. 'Approved equipment.' Equipment or components used for storing or dispensing ethanol–blended motor fuel shall be listed or shall be verified by the manufacturer as being compatible with ethanol–blended fuel, except where otherwise approved in writing by the department.

Note: The department and the EPA accept use of the criteria in API 1626, as adopted in s. ATCP 93.200, to demonstrate compatibility for UST systems storing ethanol blends under this section.

2. 'Dispenser nozzles and hoses.' Dispensers that are installed on or after February 1, 2009, shall use a separate fueling nozzle and hose for dispensing ethanol–blended motor fuels of more than 10 percent ethanol by volume.

Note: See ch. ATCP 94 for signage requirements for ethanol–blended fuels.

3. 'In–line filters.' A 1– or 2–micron in–line filter shall be used for dispensing ethanol–based fuel.

4. 'Lined tanks.' Tanks with linings regulated under s. ATCP 93.530 may not be used to store ethanol–blended fuels.

(4) NOTIFICATION PROCEDURES FOR ETHANOL BLENDS. (b) At least 30 days prior to commencing conversion to an ethanol-blended fuel, a certified installer or professional engineer shall complete part I of the department's alternative fuel installation/conversion application form, TR-WM-132, and submit it to the department as part of the plan review submittal.

Note: Plan review is required in s. ATCP 93.100 for facilities converted to store and dispense ethanol–based fuels.

Note: Within a first class city, the provisions in par. (b) may be administered by that city instead of the department, as authorized in ss. ATCP 93.020 (8) and 93.110 (3) and (4). As of the effective date of this section ... [LRB inserts date], only the City of Milwaukee is a first class city.

(c) At least 15 days prior to commencing normal fueling operations using ethanol–blended fuel, the operator shall complete part II of the department's alternative fuel installation/conversion application form, TR-WM-126 Alternative Fuels, and provide the completed form to the certified tank system inspector performing the pre–operational inspection.

Note: A map of weights and measures petroleum inspectors can be found at: http://datcp.wi.gov/uploads/Consumer/pdf/WM_Gen_Insp_Territories.pdf

Note: See the department's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

Note: Form TR-WM-126, Alternative Fuels — Storage Tank Alternative Fuel Installation/Conversion Application, is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

(5) MATERIAL COMPATIBILITY FOR BIODIESEL BLENDS. Equipment used to store or dispense fuel consisting of more than 5 percent biodiesel by volume may not contain or consist of any of the following materials:

(a) *Metals.* Zinc, lead, aluminum, or alloys containing these metals such as brass or terne.

Note: Terne-plated steel and lead-based solder are commonly used in equipment that handles gasoline. These materials will dissolve when in contact with high concentrations of biodiesel.

(b) *Natural materials.* Cork, leather, or natural rubber.

(c) *Polymers.* Polyurethane, polyvinyl chloride, polyamides, or methyl-methacrylate plastics.

Note: Materials that have been shown to be generally compatible with high concentrations of biodiesel include unplated steel, stainless steel, black iron, bronze, Neoprene rubber, Buna-N, polypropylene, nitrile, Viton, Teflon, thermoset reinforced fiberglass and thermoplastic piping material.

(6) GENERAL REQUIREMENTS FOR BIODIESEL BLENDS. (a) *Tank cleaning.* 1. If another type of fuel was stored in the tank, the tank shall be cleaned in accordance with API 2015 or another method approved by the department, before introducing fuel consisting of more than 5 percent biodiesel by volume.

Note: See s. ATCP 93.230 (15) for related cleaning criteria when changing the type of liquid stored in a tank.

2. All cleaning work shall be performed by a certified tank cleaner unless specifically approved by the department based on an alternate cleaning method.

Note: Most metal storage tanks and pipe other than galvanized steel are compatible with biodiesel. However, some fiberglass storage tank systems manufactured before 1995 might not be compatible with higher levels of biodiesel. The tank manufacturer and installation contractor should be consulted for additional information on the reuse of underground storage tanks.

(b) *Tightness testing.* A precision tightness test shall be performed on the tank and piping in accordance with s. ATCP 93.515 (4) before placing the tank system back into service.

(c) *Equipment requirements.* 1. 'Approved equipment.' Equipment or components used for storing or dispensing fuel consisting of more than 5 percent biodiesel by volume shall be listed or shall be verified by the manufacturer as being compatible with the fuel except where otherwise approved in writing by the department.

2. 'Dispenser nozzles and hoses.' Dispensers that are installed on or after the effective date shall use a separate fueling nozzle and hose for dispensing fuel consisting of more than five percent biodiesel by volume.

Note: See ch. ATCP 94 for signage requirements for biodiesel-blended fuels.

3. 'Inline filters.' A two- or ten-micron inline filter shall be used for dispensing fuel consisting of more than five percent biodiesel by volume.

4. 'Lined tanks.' Tanks with linings regulated under s. ATCP 93.530 may not be used to store fuel consisting of more than five percent biodiesel by volume.

(7) NOTIFICATION PROCEDURES FOR BIODIESEL BLENDS. (a) At least 30 days prior to commencing conversion to biodiesel blends, a certified installer or professional engineer shall complete part I of the department's alternative fuel installation/conversion application form, TR-WM-132 Alternative Fuels, and submit it to the department as part of the plan review submittal.

Note: Plan review is required in s. ATCP 93.100 for facilities converted to store and dispense fuel consisting of more than five percent biodiesel by volume.

Note: Within a first class city, the provisions in par. (b) may be administered by that city instead of the department, as authorized in ss. ATCP 93.020 (8) and 93.110 (3) and (4). As of the effective date of this section ... [LRB inserts date], only the city of Milwaukee is a first class city.

(b) At least 15 days prior to commencing normal fueling operations using fuel consisting of more than five percent biodiesel by volume, the operator shall complete part II of the department's alternative fuel installation/conversion application form, TR-WM-132 Alternative Fuels, and provide the completed form to the certified tank system inspector performing the preoperational inspection.

Note: See the department's Web site at http://datcp.wi.gov/Consumer/Hazardous_Materials_Storage_Tanks/Hazardous_Materials_Storage_Tank_Forms/index.aspx.

Note: Form TR-WM-132, Alternative Fuels—Storage Tank Alternative Fuel Installation/Conversion Application, is available from the department's Web site at http://datcp.wi.gov/Consumer/Hazardous_Materials_Storage_Tanks/Hazardous_Materials_Storage_Tank_Forms/index.aspx.

Subchapter VII — Financial Responsibility

ATCP 93.700 Applicability. (1) This subchapter applies to owners and operators of any of the following storage tank systems, whether new or existing, that are in–use, seldom–used or temporarily out of service:

(a) Petroleum underground storage tank systems.

(b) Petroleum aboveground storage tank systems located on piers that are not of solid–fill construction.

(c) Petroleum aboveground storage tank systems, located on floating structures or watercraft, that are not used exclusively for the propulsion of that floating structure or watercraft.

(d) Tank wagons.

(e) Tank vehicles that perform fueling operations covered in s. ATCP 93.610 (3).

(f) Petroleum aboveground storage tank systems using tanks with individual capacities of 5,000 gallons or more, with single bottoms, that were upgraded with tank lining but not placed in impermeable dike systems.

(g) Petroleum aboveground storage tank systems using tanks with individual capacities of 5,000 gallons or more, with double bottoms, that are not provided with interstitial monitoring and not placed in impermeable dike systems.

(2) This subchapter does not apply to any of the following:

(a) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(b) Owners and operators of the following storage tank systems:

1. Farm and residential underground storage tank systems which have a capacity of less than 1,100 gallons and which are used for storing motor fuel for noncommercial purposes.

2. Storage tank systems used for storing heating oil for consumptive use on the premises.

3. Any tank system in sub. (1) (a) that is permanently closed in accordance with s. ATCP 93.560.

(3) If the owner and operator of a petroleum storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

ATCP 93.703 Definitions. In this subchapter:

(1) "Accidental release" means any release of petroleum arising from operating a storage tank system that results in a need for corrective action or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(2) "Affidavit of financial responsibility" means a form, supplied by the department on which the owner and operator attest to compliance with 40 CFR 280.111.

Note: The affidavit of financial responsibility is available from the Bureau of Weights and Measures, PO Box 8911, Madison, WI 53708–8911, or at telephone (608) 224–4942, or from the Bureau's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

Note: The affidavit of financial responsibility is required in addition to the certification showing the specific type of financial responsibility. See s. ATCP 93.745 (2) (j) for further information.

(3) "Aggregate" means an accident or a continuous or repeated exposure to conditions that result in a release from a storage tank system which might occur in one year.

Note: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "aggregate" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "aggregate."

(4) "Bodily injury" has the meaning given to this term by applicable Wisconsin statutes; however, this term does not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

Note: For further information about this term, see ch. Ins 6, which interprets this term as it is used in s. 292.63 (1) (ad), Stats., for petroleum storage environmental cleanup.

(5) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

(6) "Financial reporting year" means the latest consecutive 12–month period for which any of the following reports are 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.

(c) An annual report submitted to the federal energy information administration or rural utilities service.

Note: "Financial reporting year" may thus comprise a fiscal or a calendar year period.

(7) "Legal defense cost" means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought by any of the following:

(a) By the 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.

(c) By any person to enforce the terms of a financial assurance mechanism.

(8) "Occurrence" means an accident or a continuous or repeated exposure to conditions, that results in a release from a storage tank system.

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."

(9) "Operation" or "in operation" means the underground storage tank was used to store a regulated substance at any time after December 22, 1988, regardless of the current status of the tank.

(10) "Owner or operator," when the owner or operator are separate parties, means the party that is obtaining or has obtained financial assurances.

(11) "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.

1 **(12)** "Petroleum marketing firms" means all firms owning petroleum marketing facilities.
2 Firms owning other types of facilities with tanks covered in the scope of this subchapter as well
3 as petroleum marketing facilities are considered to be petroleum marketing firms.
4 **(13)** "Property damage" has the meaning given to this term by administrative rules of the
5 office of commissioner of insurance. This term does not include those liabilities that, consistent
6 with standard insurance industry practices, are excluded from coverage in liability insurance
7 policies for property damage. However, such exclusions for property damage do not include
8 corrective action associated with releases from tanks that are covered by the policy.
9 **Note:** For further information about this term, see ch. Ins 6, which interprets this term as it is
10 used in s. 292.63 (1) (ad), Stats. for petroleum storage environmental cleanup.
11
12 **(14)** "Provider of financial assurance" means an entity that provides financial assurance to
13 an owner or operator of a tank system covered in this subchapter through one of the mechanisms
14 listed in ss. ATCP 93.710 to 93.735, including a guarantor, insurer, risk retention group, surety,
15 issuer of a letter of credit, issuer of a state–required mechanism, or a state.
16 **(15)** "Substantial business relationship" means the extent of a business relationship
17 necessary under Wisconsin law to make a guarantee contract issued incident to that relationship
18 valid and enforceable. A guarantee contract is issued incident to that relationship if it arises from
19 and depends on current economic transactions between the guarantor and the owner or operator.
20 **(16)** "Tangible net worth" means the tangible assets that remain after deducting liabilities;
21 the assets do not include intangibles such as goodwill and rights to patents or royalties. For
22 purposes of this definition, "assets" means all current and all probable future economic benefits
23 obtained or controlled by a particular entity as a result of past transactions.
24 **ATCP 93.705 Amount and scope of required financial responsibility. (1)** Owners or
25 operators of petroleum storage tank systems within the scope of this subchapter 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 storage tank systems within the scope of this subchapter in at least the following per–occurrence amounts:

(a) For owners or operators of petroleum underground storage tank systems 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 storage tank systems covered in s. ATCP 93.700 (1); $500,000.

(2) Owners or operators of petroleum underground storage tank systems 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 tank systems 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.

(c) For the purposes of this subsection, a petroleum underground storage tank means a single containment unit and does not mean combinations of single containment units.

(3) Owners or operators of petroleum aboveground storage tanks covered in this subchapter 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 their operation in the amount of $1 million per occurrence.

1 **(4)** If the owner or operator uses separate mechanisms or separate combinations of
2 mechanisms to demonstrate financial responsibility, the amount shall be in the full amount
3 specified in subs. (1) to (3) for any of the following, except as provided in sub. (5):
4 (a) Taking corrective action.
5 (b) Compensating third parties for bodily injury and property damage caused by sudden
6 accidental releases.
7 (c) Compensating third parties for bodily injury and property damage caused by non–sudden
8 accidental releases.
9 **(5)** If an owner or operator uses separate mechanisms or separate combinations of
10 mechanisms to demonstrate financial responsibility for different petroleum storage tank systems,
11 the annual aggregate required shall be based on the number of tanks covered by each such
12 separate mechanism or combination of mechanisms.
13 **(6)** (a) Owners or operators shall review the amount of aggregate assurance provided
14 whenever additional petroleum storage tank systems are acquired or installed.
15 (b) If the number of petroleum storage tank systems for which assurance is needed exceeds
16 100, the owner or operator shall demonstrate financial responsibility in the amount of at least $2
17 million of annual aggregate assurance by the anniversary of the date on which the mechanism
18 demonstrating financial responsibility became effective.
19 (c) If assurance is being demonstrated by a combination of mechanisms, the owner or
20 operator shall demonstrate financial responsibility in the amount of at least $2 million of annual
21 aggregate assurance by the first–occurring effective date anniversary of any one of the
22 mechanisms combined, other than a financial test or guarantee, to provide assurance.
23 **(7)** The amounts of assurance required in this section exclude legal defense costs.

1 **(8)** The required per–occurrence and annual aggregate coverage amounts do not in any way
2 limit the liability of the owner or operator.

3 **ATCP 93.707 Allowable mechanisms and combinations of mechanisms. (1)** Subject to
4 the limitations of subs. (3) and (4), an owner or operator may use any one or combination of the
5 mechanisms listed in ss. ATCP 93.710 to 93.735 to demonstrate financial responsibility under
6 this subchapter for one or more storage tank systems.

7 **(2)** Subject to the limitations of subs. (3) and (4), a local government owner or operator may
8 use any one or combination of the mechanisms listed in ss. ATCP 93.727 to 93.735 to
9 demonstrate financial responsibility under this subchapter for one or more storage tank systems.

10 **(3)** An owner or operator may use a guarantee or surety bond to establish financial
11 responsibility only if "for value received" is included in the guarantee or surety bond
12 mechanisms.

13 **(4)** An owner or operator may use self–insurance in combination with a guarantee only if,
14 for the purpose of meeting the requirements of the financial test under this subchapter, the
15 financial statements of the owner or operator are not consolidated with the financial statements
16 of the guarantor.

17 **ATCP 93.710 Financial test of self–insurance.**

18 **(1)** To use the financial test of self–insurance to meet the financial responsibility
19 requirements of s. ATCP 93.705, an owner or operator, or guarantor, or both, shall meet the
20 criteria of either sub. (2) or (3) based on year–end financial statements for the latest completed
21 fiscal year.

22 **(2)** (a) The owner or operator, or guarantor, or both, shall have a tangible net worth of at
23 least 10 times each one of the following:

1. The total of the applicable aggregate amount required by s. ATCP 93.705, based on the number of storage tank systems 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.

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 do one of the following:

1. File financial statements annually with the U.S. securities and exchange commission, energy information administration, or rural utilities service.

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. ATCP 93.705 (2) or (3) for the amount of liability coverage each time specified in that section.

1 (b) The fiscal year–end financial statements of the owner or operator, or guarantor, or both,
2 shall be examined by an independent certified public accountant and be accompanied by the
3 accountant's report of the examination.
4 (c) The firm's year–end financial statements may not include an adverse auditor's opinion, a
5 disclaimer of opinion, or a going concern qualification.
6 (d) The owner or operator, or guarantor, or both, shall have a letter signed by the chief
7 financial officer as specified in sub. (4).
8 (e) If the financial statements of the owner or operator or guarantor, or both, are not
9 submitted annually to the U.S. securities and exchange commission, energy information
10 administration or rural utilities service, the owner or operator, or guarantor, or both, shall obtain
11 a special report by an independent certified public accountant stating all of the following:
12 1. The accountant has compared the data that the letter from the chief financial officer
13 specifies as having been derived from the latest year–end financial statements of the owner or
14 operator, or guarantor, or both, with the amounts in such financial statements.
15 2. In connection with that comparison, no matters came to the attention of the accountant
16 which caused him or her to believe that the specified data should be adjusted.
17 **(4)** To demonstrate that the financial test is met under sub. (2) or (3), the chief financial
18 officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each
19 financial reporting year, as defined by the 12–month period for which financial statements used
20 to support the financial test are prepared, a letter worded exactly as found in 40 CFR 280.95 (d)
21 except for the following:
22 (a) The instructions in brackets in the letter shall be replaced by the relevant information and
23 the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the letter to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.95 (d) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/otgg_final080807.pdf

(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 either sub. (2) or (3) and sub. (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.

ATCP 93.713 Guarantee. (1) To use a guarantee to meet the financial responsibility requirements of s. ATCP 93.705, an owner or operator shall obtain a guarantee that conforms to

1 the requirements of this section. The guarantor shall be a firm that is engaged in a substantial
2 business relationship with the owner or operator and issues the guarantee as an act incident to
3 that business relationship or the guarantor shall be a firm that meets at least one of the following
4 requirements:

5 (a) The firm possesses a controlling interest in the owner or operator.

6 (b) The firm possesses a controlling interest in a firm described under par. (a).

7 (c) The firm is controlled through stock ownership by a common parent firm that possesses a
8 controlling interest in the owner or operator.

9 **(2)** (a) Within 120 days of the close of each financial reporting year, the guarantor shall
10 demonstrate that it meets the financial test criteria of s. ATCP 93.710 based on year–end
11 financial statements for the latest completed financial reporting year by completing the letter
12 from the chief financial officer described in s. ATCP 93.710 (4), and the guarantor shall deliver
13 the letter to the owner or operator.

14 (b) If the guarantor fails to meet the requirements of the financial test at the end of any
15 financial reporting year, within 120 days of the end of that financial reporting year, the guarantor
16 shall send notice by certified mail to the owner or operator before cancellation or non–renewal of
17 the guarantee.

18 (c) If the department notifies the guarantor that he or she no longer meets the requirements
19 of the financial test of s. ATCP 93.710 (2) or (3), the guarantor shall notify the owner or operator
20 within 10 days of receiving such notification from the department.

21 (d) Under either par. (b) or (c), the guarantee shall terminate no less than 120 days after the
22 date the owner or operator receives the notification as evidenced by the return receipt.

23 (e) The owner or operator shall obtain alternative coverage as specified in s. ATCP 93.753.

(3) The guarantee shall be worded exactly as found in 40 CFR 280.96 (c) except for the following:

(a) The instructions in brackets in the guarantee shall be replaced by the relevant information and the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the guarantee to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.96 (c) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(4) (a) An owner or operator who uses a guarantee to satisfy the requirements of s. ATCP 93.705 shall establish a standby trust fund when the guarantee is obtained.

(b) Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee shall be deposited directly into the standby trust fund in accordance with instructions from the department under s. ATCP 93.747.

(c) This standby trust fund shall meet the requirements for standby trust funds in s. ATCP 93.725.

ATCP 93.715 Insurance and risk retention group coverage. (1) To use insurance and risk retention group coverage to meet the financial responsibility requirements of s. ATCP 93.705, an owner or operator shall obtain 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 a current insurance policy.

(2) "Termination," as used in the forms required under this section, 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 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.

(4) Each insurance policy shall be amended by an endorsement worded as specified in 40 CFR 280.97 (b) (1), or evidenced by a certificate of insurance worded as specified in 40 CFR 280.97 (b) (2), except for the following:

(a) The instructions in brackets in the endorsement or certificate shall be replaced by the relevant information and the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the endorsement or certificate to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.97 (b) (1) or (2) shall be deleted.

Note: A link to 40 CFR 280 is available by accessing the following Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(6) (a) If the insurer or group terminates coverage for any reason, the insurer or group shall notify the department of such termination at the same time the insured is notified.

(am) If the operator is the insured and the insurance lapses or is terminated, the insurer or group shall notify the owner of the property at the same time the insured is notified.

(b) If the insured allows coverage to lapse or changes insurers or groups, the insured shall notify the department within 10 days.

ATCP 93.717 Surety bond. (1) To use a surety bond to meet the financial responsibility requirements of s. ATCP 93.705, an owner or operator shall obtain a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be listed as an acceptable surety on federal bonds in the latest Circular 570 of the U.S. department of the treasury.

(2) The surety bond shall be worded exactly as found in 40 CFR 280.98 (b), except for the following:

(a) The instructions in brackets in the surety bond shall be replaced by the relevant information and the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the surety bond to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.98 (b) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(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) (a) The owner or operator who uses a surety bond to satisfy the requirements of s. ATCP 93.705 shall establish a standby trust fund when the surety bond is acquired.

(b) Under the terms of the bond, all amounts paid by the surety under the bond shall be deposited directly into the standby trust fund in accordance with instructions from the department under s. ATCP 93.747.

(c) This standby trust fund shall meet the requirements for standby trust funds in s. ATCP 93.725.

(5) The owner of the property on which tanks are located has ultimate responsibility under this chapter and shall be listed as a co–beneficiary of any policy issued.

ATCP 93.720 Letter of credit. (1) To use a letter of credit to meet the financial responsibility requirements of s. ATCP 93.705, an owner or operator shall obtain 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 shall be regulated and examined by a federal or state agency.

(2) The letter of credit shall be worded exactly as found in 40 CFR 280.99 (b), except for the following:

(a) The instructions in brackets in the letter shall be replaced by the relevant information and the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the letter to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.99 (b) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(3) (a) An owner or operator who uses a letter of credit to satisfy the requirements of s. ATCP 93.705 shall also establish a standby trust fund when the letter of credit is acquired.

(b) Under the terms of the letter of credit, all amounts paid pursuant to a draft by the department shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department under s. ATCP 93.747.

(c) This standby trust fund shall meet the requirements for standby trust funds in s. ATCP 93.725.

(4) (a) The letter of credit shall be irrevocable with a term specified by the issuing institution.

(b) 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.

(c) Under the terms of the letter of credit, the 120 days shall begin on the date the owner or operator receives the notice as evidenced by the return receipt.

ATCP 93.723 Trust fund. (1) To use a trust fund to meet the financial responsibility requirements of s. ATCP 93.705, an owner or operator shall establish 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 40 CFR 280.103 (b) (1), except for the following:

(a) The instructions in brackets in the agreement shall be replaced by the relevant information and the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the agreement to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.103 (b) (1) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(3) The trust agreement shall be accompanied by a formal certification of acknowledgment as specified in 40 CFR 280.103 (b) (2).

(4) 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.

(5) 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.

(6) 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.

(7) Within 60 days after receiving a request from the owner or operator for release of funds as specified in sub. (5) or (6), the department shall instruct the trustee to release to the owner or operator such funds as the department specifies in writing.

ATCP 93.725 Standby trust fund. (1) (a) An owner or operator using any one of the mechanisms authorized by s. ATCP 93.713, 93.717, or 93.720 shall establish a standby trust fund when the mechanism is acquired.

(b) 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) The wording of the standby trust agreement or trust agreement shall be identical to the wording specified in 40 CFR 280.103 (b) (1), except for the following:

(a) The instructions in brackets in the agreement shall be replaced by the relevant information and the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the agreement to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.103 (b) (1) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(3) The department shall 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 section.

1 **ATCP 93.727 Local government bond rating test. (1)** (a) To use the bond rating test to
2 meet the financial responsibility requirements of s. ATCP 93.705, a general purpose local
3 government owner or operator or local government serving as a guarantor shall have a currently
4 outstanding issue or issues of general obligation bonds of $1 million or more, excluding refunded
5 obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA,
6 AA, A, or BBB.

7 (b) Where a local government has multiple outstanding issues, or where a local
8 government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall
9 be used to determine eligibility.

10 (c) Bonds that are backed by credit enhancement other than municipal bond insurance may
11 not be considered in determining the amount of applicable bonds outstanding.

12 **(2)** (a) A local government owner or operator or local government serving as a guarantor
13 that is not a general purpose local government and does not have the legal authority to issue
14 general obligation bonds may satisfy the requirements of s. ATCP 93.705 by having a currently
15 outstanding issue or issues of revenue bonds of $1 million or more, excluding refunded issues,
16 and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of
17 AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local
18 government.

19 (b) Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for
20 each bond shall be used to determine eligibility.

21 (c) Bonds that are backed by credit enhancement may not be considered in determining the
22 amount of applicable bonds outstanding.

(3) The local government owner or operator or guarantor shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(4) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator or guarantor shall sign a letter that is identical to the letter specified in 40 CFR 280.104 (d), except for the following:

(a) The instructions in brackets in the letter shall be replaced by the relevant information and the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the letter to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.104 (d) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(5) To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor other than a general purpose government shall sign a letter which is identical to the letter specified in 40 CFR 280.104 (e), except for the following:

(a) The instructions in brackets in the letter shall be replaced by the relevant information and the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the letter to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.104 (e) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(6) The department may require reports of financial condition at any time from the local government owner or operator or local government guarantor. If the department finds that the local government owner or operator or guarantor no longer meets the local government bond rating test requirements of this section, the local government owner or operator shall obtain alternative coverage within 30 days after notification of such a finding.

(7) If a local government owner or operator or local government guarantor using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator shall obtain alternative coverage within 150 days of the change in status.

(8) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the bond rating test, or within 30 days of notification by the department that the owner or operator no longer meets the requirements of the bond rating test, the owner or operator shall notify the department of such failure within 10 days.

ATCP 93.730 Local government financial test. (1) To use a financial test to meet the financial responsibility requirements of s. ATCP 93.705, a local government owner or operator shall pass the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to assess and levy taxes

1 or to freely establish fees and charges. To pass the local government financial test, the owner or
2 operator shall meet the criteria of this section based on year–end financial statements for the
3 latest completed fiscal year.

4 **(2)** The local government owner or operator shall have the following information available,
5 as shown in the year–end financial statements for the latest completed fiscal year:

6 (a) Total revenues consisting of the sum of general fund operating and non–operating
7 revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use
8 of money and property, charges for services, investment earnings, sales of assets such as
9 property and publications, restricted and unrestricted intergovernmental revenues, and total
10 revenues from all other governmental funds including enterprise, debt service, capital projects,
11 and special revenues, but excluding revenues to funds held in a trust or agency capacity. For
12 purposes of this test, the calculation of total revenues excludes all transfers between funds under
13 the direct control of the local government using the financial test, liquidation of investments and
14 issuance of debt.

15 (b) Total expenditures consisting of the sum of general fund operating and non–operating
16 expenditures including public safety, public utilities, transportation, public works, environmental
17 protection, cultural and recreational, community development, revenue sharing, employee
18 benefits and compensation, office management, planning and zoning, capital projects, interest
19 payments on debt, payments for retirement of debt principal, and total expenditures from all
20 other governmental funds including enterprise, debt service, capital projects, and special
21 revenues. For purposes of this test, the calculation of total expenditures excludes all transfers
22 between funds under the direct control of the local government using the financial test.

1 (c) Local revenues consisting of total revenues, as defined in par. (a), minus the sum of all
2 transfers from other governmental entities, including all monies received from federal, state, or
3 local government sources.
4 (d) Debt service consisting of the sum of all interest and principal payments on all
5 long–term credit obligations and all interest–bearing short–term credit obligations. For purposes
6 of this test, debt service includes interest and principal payments on general obligation bonds,
7 revenue bonds, notes, mortgages, judgments, and interest bearing warrants. For purposes of this
8 test, debt service excludes payments on non–interest–bearing short–term obligations, interfund
9 obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from
10 other governments.
11 (e) Total funds consisting of the sum of cash and investment securities from all funds,
12 including general, enterprise, debt service, capital projects and special revenue funds, but
13 excluding employee retirement funds, at the end of the local government's financial reporting
14 year. For purposes of this test, the calculation of total funds includes federal securities, federal
15 agency securities, state and local government securities, and other securities such as bonds,
16 notes, and mortgages. For purposes of this test, the calculation of total funds excludes agency
17 funds, private trust funds, accounts receivable, value of real property, and other non–security
18 assets.
19 (f) Population consisting of the number of people in the area served by the local
20 government.
21 **(3)** The local government's year–end financial statements, if independently audited, may not
22 include an adverse auditor's opinion or a disclaimer of opinion. The local government may not

have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(4) To demonstrate that it meets the financial test of this section, the chief financial officer of the local government owner or operator, 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 prepared, a letter which is identical to the letter specified in 40 CFR 280.105 (c), except for the following:

(a) The instructions in brackets in the letter shall be replaced by the relevant information and the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the letter to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.105 (c) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(5) If a local government owner or operator using the test to provide financial assurance finds that it 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 local government owner or operator. If the department finds that the local government owner or

operator no longer meets the financial test requirements of this section, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

(7) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it 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 it no longer meets the requirements of the financial test, the owner or operator shall notify the department of such failure within 10 days.

ATCP 93.733 Local government guarantee. (1) To use a guarantee to meet the financial responsibility requirements of s. ATCP 93.705, a local government owner or operator shall obtain a guarantee that conforms to the requirements of this section.

The guarantor shall be either the state in which the local government owner or operator is located or a local government having a substantial governmental relationship with the owner and operator and issuing the guarantee as an act incident to that relationship.

(2) A local government acting as the guarantor shall do one of the following:

(a) Demonstrate that it meets the bond rating test requirement of s. ATCP 93.727 and deliver a copy of the chief financial officer's letter as contained in s. ATCP 93.727 (4) or (5) to the local government owner or operator.

(b) Demonstrate that it meets the worksheet test requirements of s. ATCP 93.730 and deliver a copy of the chief financial officer's letter as contained in s. ATCP 93.730 (4) to the local government owner or operator.

(c) Demonstrate that it meets the local government fund requirements of s. ATCP 93.735 (1) and deliver a copy of the chief financial officer's letter as contained in s. ATCP 93.735 (2) to the local government owner or operator.

1 **(3)** If the local government guarantor is unable to demonstrate financial assurance under any
2 of s. ATCP 93.727, 93.730 or 93.735 (1) at the end of the financial reporting year, the guarantor
3 shall send by certified mail, before cancellation or non–renewal of the guarantee, notice to the
4 owner or operator. The guarantee shall terminate no less than 120 days after the date the owner
5 or operator receives the notification as evidenced by the return receipt. The owner or operator
6 shall obtain alternative coverage as specified in s. ATCP 93.753.
7 **(4)** (a) The guarantee agreement shall be worded as specified in subs. (5) to (8) of this
8 section, depending on which of the following alternative guarantee arrangements is selected:
9 1. If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a
10 standby trust as directed by the department, the guarantee shall be worded as specified in subs.
11 (5) or (6).
12 2. If, in the default or incapacity of the owner or operator, the guarantor guarantees to make
13 payments as directed by the department for taking corrective action or compensating third parties
14 for bodily injury and property damage, the guarantee shall be worded as specified in subs. (7) or
15 (8).
16 (b) The local government guarantor shall sign a guarantee that is identical to the guarantee
17 specified in the CFR section referenced in subs. (5) to (8), except for the following:
18 1. The instructions in brackets in the guarantee shall be replaced by the relevant information
19 and the brackets deleted.
20 2. If financial responsibility for aboveground tanks within the scope of this subchapter is
21 demonstrated using this method, all of the following changes shall be made:
22 a. Reference in the guarantee to underground tanks shall be amended to refer to
23 aboveground tanks.

b. Certification that wording is identical to the wording required in 40 CFR 280.106 (d) or 40 CFR 280.106 (e) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm. There are 2 different documents specified in 40 CFR 280.106.

(5) If the guarantor is a state, the local government guarantee with standby trust shall be identical to the wording found in 40 CFR 280.106 (d), except as modified under sub. (4).

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(6) If the guarantor is a local government, the local government guarantee with standby trust shall be identical to the wording found in 40 CFR 280.106 (d), except as modified under sub. (4).

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(7) If the guarantor is a state, the local government guarantee without standby trust shall be identical to the wording found in 40 CFR 280.106 (e), except as modified under sub. (4).

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

(8) If the guarantor is a local government, the local government guarantee without standby trust shall be identical to the wording found in 40 CFR 280.106 (e), except as modified under sub. (4).

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

ATCP 93.735 Local government fund. (1) (a) To use a local government fund to meet the financial responsibility requirements of s. ATCP 93.705, a local government owner or operator shall establish a dedicated fund account that conforms to the requirements of this section. A dedicated fund may not be commingled with other funds or otherwise used in normal operations,

1 except as specified in par. (c). A dedicated fund shall be considered eligible if it meets the
2 requirements in one of pars. (b), (c), or (d).
3 (b) The fund is dedicated by state constitutional provision or local government statute,
4 charter, ordinance, or order to pay for taking corrective action and for compensating third parties
5 for bodily injury and property damage caused by accidental releases arising from the operation of
6 petroleum underground storage tanks and is funded for the full amount of coverage required
7 under s. ATCP 93.705, or funded for part of the required amount of coverage and used in
8 combination with other mechanisms that provide the remaining coverage.
9 (c) 1. The fund is dedicated by state constitutional provision or local government statute,
10 charter, ordinance, or order as a contingency fund for general emergencies, including taking
11 corrective action and compensating third parties for bodily injury and property damage caused
12 by accidental releases arising from the operation of petroleum underground storage tanks and is
13 funded for 5 times the full amount of coverage required under s. ATCP 93.705 or funded for part
14 of the required amount of coverage and used in combination with other mechanisms that provide
15 the remaining coverage.
16 2. If the fund is funded for less than 5 times the amount of coverage required under s. ATCP
17 93.705, the amount of financial responsibility demonstrated by the fund may not exceed
18 one–fifth the amount in the fund.
19 (d) 1. The fund is dedicated by state constitutional provision, or local government statute,
20 charter, ordinance, or order to pay for taking corrective action and for compensating third parties
21 for bodily injury and property damage caused by accidental releases arising from the operation of
22 petroleum storage tanks.

2. A payment is made to the fund once every year for 7 years until the fund is fully funded. This 7–year period is hereafter referred to as the pay–in period.

3. The amount of each payment shall be determined by the formula (TF – CF)/Y, where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay–in period.

4. If the method in this paragraph is chosen, one of the following is also required:

a. The local government owner or operator has available bonding authority, approved through voter referendum if such approval is necessary prior to the issuance of bonds, for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available 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 storage tanks.

b. The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by Wisconsin statutes. The letter shall also state that prior voter approval is not necessary before use of the bonding authority.

(2) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator or guarantor shall sign a letter worded exactly as specified in 40 CFR 280.107 (d), except for the following:

(a) The instructions in brackets in the letter shall be replaced by the relevant information and the brackets deleted.

(b) If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

1. Reference in the letter to underground tanks shall be amended to refer to aboveground tanks.

2. Certification that wording is identical to the wording required in 40 CFR 280.107 (d) shall be deleted.

Note: A link to 40 CFR 280 is available at the following EPA Web site: http://www.epa.gov/oust/fedlaws/cfr.htm.

ATCP 93.737 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 which satisfies the financial responsibility requirements of s. ATCP 93.705.

(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.

ATCP 93.740 Cancellation or nonrenewal by a provider of financial assurance. (1) (a) 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.

(b) 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.

(c) 1. 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

1 date on which the owner or operator received notice of termination as evidenced by the return
2 receipt.
3 2. Termination for nonpayment of premium or misrepresentation by the insured may not
4 occur until a minimum of 10 days after the date on which the owner or operator receives the
5 notice of termination, as evidenced by the return receipt.
6 **(2)** (a) If a provider of financial responsibility cancels or fails to renew for reasons other
7 than incapacity of the provider as specified in s. ATCP 93.753, the owner or operator shall obtain
8 alternate coverage as specified in this subchapter within 60 days after receipt of the notice of
9 termination.
10 (b) If the owner or operator fails to obtain alternate coverage within 60 days after receipt of
11 the notice of termination, the owner or operator shall notify the department of such failure and
12 submit all of the following to the department:
13 1. The name and address of the provider of financial assurance.
14 2. The effective date of termination.
15 3. The evidence of the financial assistance mechanism subject to the termination maintained
16 in accordance with s. ATCP 93.745 (2).
17 **ATCP 93.743 Reporting by owner or operator. (1)** GENERAL. The owner or operator of
18 a petroleum storage tank subject to financial responsibility requirements under the scope of this
19 subchapter shall submit a copy of the applicable forms listed in s. ATCP 93.745 (2) documenting
20 current evidence of financial responsibility to the department in accordance with this section.
21 **(2)** TIMING. (a) *Underground tanks.* Copies of the applicable forms listed in s. ATCP
22 93.745 (2) shall be submitted to the department upon annual permit renewal as required in s.
23 ATCP 93.145, along with all of the following:

1. The specific location and designated regulated object number of tanks at each facility covered by the respective mechanism of financial responsibility.

2. If insurance and risk retention under s. ATCP 93.715 is used, the insurance underwriter certificate of insurance, and schedule of covered locations and storage tanks as provided by the insurer, reflecting pollution coverage in the amounts required under s. ATCP 93.705.

(b) *Aboveground tanks*. Copies of the applicable forms listed in s. ATCP 93.745 (2) shall be submitted to the department within 30 days after the owner or operator identifies a release from an aboveground storage tank that is required to be reported under s. ATCP 93.585.

(c) *All tanks.* If the owner or operator of an underground or aboveground petroleum storage tank fails to obtain alternate coverage as required by this subchapter, copies of the applicable forms listed in s. ATCP 93.745 (2) shall be submitted to the department within 30 days after the owner or operator receives notice of any of the following:

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.

(3) NEW TANKS. The owner or operator of an underground petroleum storage tank, or an aboveground petroleum storage tank used or intended for use over water, shall certify compliance with the financial responsibility requirements of this subchapter as specified in the new tank registration form when notifying the department of the installation of a new storage tank as required in s. ATCP 93.140.

1 **(4)** ADDITIONAL SUBMITTALS. The department may require an owner or operator to
2 submit evidence of financial assurance as described in s. ATCP 93.745 (2) or other information
3 relevant to compliance with this subchapter at any time.
4 **ATCP 93.745 Record keeping. (1)** (a) Owners or operators shall maintain evidence of all
5 financial assurance mechanisms used to demonstrate financial responsibility under this
6 subchapter until released from the requirements of this subchapter under s. ATCP 93.750.
7 (b) An owner or operator shall maintain such evidence at the storage tank site or the owner's
8 or operator's place of business.
9 (c) Records maintained off–site shall be made available to the authorized agent or the
10 department upon request.
11 **(2)** An owner or operator shall maintain the following types of evidence of financial
12 responsibility:
13 (a) An owner or operator using an assurance mechanism specified in ss. ATCP 93.710 to
14 93.720, ss. ATCP 93.727 to 93.735, or s. ATCP 93.723 shall maintain a copy of the instrument.
15 (b) An owner or operator using a financial test or guarantee, or a local government financial
16 test or a local government guarantee supported by the local government financial test shall
17 maintain a copy of the chief financial officer's letter based on year–end financial statements for
18 the most recent completed financial reporting year. Such evidence shall be on file no later than
19 120 days after the close of the financial reporting year.
20 (c) An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a
21 copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(d) A local government owner or operator using a local government guarantee under s. ATCP 93.733 (4) shall maintain a copy of the signed standby trust agreement and copies of any amendments to the agreement.

(e) A local government owner or operator using the local government bond rating test under s. ATCP 93.727 shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(f) A local government owner or operator using the local government guarantee under s. ATCP 93.733 where the guarantor's demonstration of financial responsibility relies on the bond rating test under s. ATCP 93.727 shall maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

(g) 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.

(h) An owner or operator using a local government fund under s. ATCP 93.735 shall maintain all of the following documents:

1. A copy of the state statute or provision or local government ordinance or order that dedicates the fund.

2. a. Year–end financial statements for the most recent completed financial reporting year showing the amount in the fund.

b. If the fund is established using incremental funding backed by bonding authority, financial statements showing the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

3. If the fund is established using incremental funding backed by bonding authority, documentation showing the required bonding authority, including either the results of a voter referendum or attestation by the Wisconsin attorney general.

(i) A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year–end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(j) 1. An owner or operator using an assurance mechanism specified in ss. ATCP 93.710 to 93.735 shall maintain an updated copy of an affidavit of financial responsibility worded exactly as specified in 40 CFR 280.111 (b) (11) (i), except as specified in subds. 2. and 3.

2. The instructions in brackets in the affidavit shall be replaced by the relevant information and the brackets deleted.

3. If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, all of the following changes shall be made:

a. Any reference in the affidavit to underground tanks shall be amended to refer to aboveground tanks.

b. Any certification that wording is identical to the wording required in 40 CFR 280.111 (b) (11) (i) shall be deleted.

Note: A copy of the affidavit of financial responsibility required in 40 CFR 280.111 (b) (11) (i) is available from the department's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx

4. The owner or operator shall update the affidavit referenced in subd. 1. annually and whenever the financial assurance mechanisms used to demonstrate financial responsibility change or when requested by the department.

1 **ATCP 93.747 Drawing on financial assurance mechanisms. (1)** (a) The department shall
2 require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds
3 stipulated by the department, up to the limit of funds provided by the financial assurance
4 mechanism, into the standby trust if the conditions under either par. (b) or (c) apply.
5 (b) 1. The owner or operator fails to establish alternate financial assurance within 60 days
6 after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or other
7 financial assurance mechanism.
8 2. The department determines or suspects that a release from a storage tank covered by the
9 mechanism has occurred and so notifies the owner or operator, or the owner or operator has
10 notified the department of natural resources pursuant to s. ATCP 93.585 of a release from a
11 storage tank covered by the mechanism.
12 (c) The conditions of sub. (2) (b) or (c) 1. or 2. are satisfied.
13 **(2)** (a) The department may draw on a standby trust fund when the conditions under either
14 par. (b) or (c) apply.
15 (b) The department makes a final determination that a release has occurred and immediate or
16 long–term corrective action for the release is needed, and the owner or operator, after appropriate
17 notice and opportunity to comply, has not conducted corrective action in accordance with ss.
18 ATCP 93.570 to 93.585.
19 (c) The department has received one of the following:
20 1. Certification from the owner or operator and the third–party liability claimants and from
21 attorneys representing the owner or operator and the third–party liability claimants that a
22 third–party liability claim should be paid. The certification shall be worded exactly as specified
23 in 40 CFR 280.112 (b) (2) (i), except for the following:

a. The instructions in brackets in the certification shall be replaced by the relevant information and the brackets deleted.

b. If financial responsibility for aboveground tanks within the scope of this subchapter is demonstrated using this method, reference in the certification to underground tanks shall be amended to refer to aboveground tanks, and any certification that wording is identical to the wording required in 40 CFR 280.112 (b) (2) (i) shall be deleted.

Note: A copy of the affidavit of financial responsibility required in 40 CFR 280.111 (b) (2) (i) is available from the department's Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

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 a 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) (c) 1. and valid court orders under sub. (2) (c) 2.

ATCP 93.750 Release from the requirements. An owner or operator is no longer required to maintain financial responsibility under this subchapter for a storage tank after the tank has been permanently closed or, if corrective action is required, after corrective action has been completed and the tank has been permanently closed in accordance with ss. ATCP 93.560 to 93.585 for underground tanks and ss. ATCP 93.460 to 93.470 for aboveground tanks.

ATCP 93.753 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. ATCP 93.745 (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. ATCP 93.713.

(2g) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11, U. S. Code, naming a local government owner or operator as debtor, the local government owner or operator shall notify the department by certified mail of such commencement and submit the appropriate forms listed in s. ATCP 93.745 (2) documenting current financial responsibility.

(2r) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11, U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in s. ATCP 93.733.

(3) (a) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self–insurance shall 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.

(b) The owner or operator shall obtain alternate financial assurance as specified in this subchapter within 30 days after receiving notice of such an event.

(c) 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.

ATCP 93.755 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 comply with either sub. (2) or (3) by the anniversary date of the financial mechanism from which the funds were drawn.

(2) The owner or operator shall replenish the value of financial assurance to equal the full amount of coverage required.

(3) The owner or operator shall acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(4) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided under s. ATCP 93.705. If a combination of mechanisms was used to provide the assurance funds that were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

Subchapter VIII — Training for Operators of Underground Storage Tank Systems

ATCP 93.800 Purpose. The purpose of this subchapter is to implement the operator–training requirements issued by the U.S. environmental protection agency in response to the federal Energy Policy Act of 2005.

Note: The EPA operator–training requirements are available through the following Web site: https://www.epa.gov/ust/operator-training-minimum-training-requirements-and-training-options.

ATCP 93.805 Scope. This subchapter applies to all underground storage tank systems that are required by s. ATCP 93.145 to have a permit to operate from the department.

Note: This subchapter generally does not specify operation or maintenance requirements. For applicable operation or maintenance requirements, refer to previous sections of this chapter, such as s. ATCP 93.605 (1) (a), which requires fuel dispensing facilities to have periodic and annual inspections and maintenance in accordance with PEI RP500 and RP900.

ATCP 93.810 Definitions. In this subchapter:

(1) "Class A operator" means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements. The Class A operator typically manages resources and personnel, such as establishing work assignments to achieve and maintain compliance with regulatory requirements.

Note: In general, this individual focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to properly operate and maintain an underground storage tank system, such as the requirements in 40 CFR 280 and this chapter.

(2) "Class B operator" means the individual who has day–to–day responsibility for implementing applicable regulatory requirements. The Class B operator typically implements in-field aspects of operation, maintenance, and record keeping for the UST system.

Note: This individual generally focuses on field implementation of applicable UST requirements and the day–to–day aspects of operating, maintaining, and record keeping for USTs at one or more facilities.

(3) "Class C operator" means the individual responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

Note: This individual typically is the first line of response to alarms and to events indicating emergency conditions. Not all employees of the facility are necessarily Class C operators.

ATCP 93.820 Designation of Class A, Class B, and Class C operators. (1) GENERAL. Each new or existing underground storage tank system or group of underground storage tank systems at a facility shall have a Class A operator, a Class B operator, and a Class C operator, as designated by the owner or operator and as accredited in accordance with this subchapter.

Note: This subchapter does not preclude any individual from being designated to more than one of the operator classes, provided the individual complies with the requirements for each designated class.

Note: This subchapter does not preclude any individual from being a designated operator for more than one facility that includes an underground storage tank system.

Note: This subchapter does not preclude an owner or operator from contracting with another party to provide Class A, Class B, and Class C operators.

Note: There may be occasions when a Class A, Class B, or Class C operator will not be present at a facility. For example, operators are frequently not present at unmanned facilities, such as emergency generators at telecommunication towers and card lock/card access facilities. However, these operators are still responsible for operation and maintenance activities or responding to emergencies or alarms and are still subject to the requirements of this subchapter.

(3) If the owner and operator of the tank system are separate persons, either the owner or operator may designate the Class A, Class B, and Class C operators at the facility, but both the owner and the operator are under the same responsibility under this section to ensure that Class A, Class B, and Class C operators are designated.

ATCP 93.830 Responsibilities of Class A, Class B, and Class C operators. (1) CLASS A OPERATORS. Responsibilities of a Class A operator include all of the following:

(a) Compliance with tank system registration and permit to operate requirements.

(b) Managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

(c) Ensuring that appropriate individuals do all of the following:

1. Properly operate and maintain the underground storage tank system.

2. Maintain appropriate records.

3. Receive training to operate and maintain the underground storage tank system and keep records.

4. Properly respond to emergencies or alarms relating to spills, leaks or releases from the underground storage tank system.

5. Make financial responsibility documents available to the authorized agent or the department as required.

(2) CLASS B OPERATORS. Responsibilities of a Class B operator include ensuring that all of the following occur:

(a) Requirements for leak or release detection methods, record keeping, and reporting are met.

(b) Requirements for leak or release prevention equipment, record keeping, and reporting are met.

(c) All relevant equipment complies with performance standards.

(cm) Monthly periodic inspections required under PEI RP 500 and RP 900 per ss. ATCP 93.500 (8) and ATCP 93.605 (1) are performed or reviewed monthly by a Class B operator.

(d) Appropriate individuals are trained to properly respond to emergencies or alarms relating to spills, leaks or releases from the underground storage tank system.

(e) All Class C operators are provided with training and written instructions that include all of the following:

1. Emergency response procedures, including all of the following:

a. Procedures for overfill protection during delivery of regulated substances.

b. Operation of emergency shut–off systems.

c. Appropriate responses to all alarms.

d. Reporting of leaks, spills and releases.

e. Any site–specific emergency procedures.

2. The name and other information needed for contacting appropriate parties if a leak, spill, release, or alarm occurs.

(f) 1. A Class C operator is present during all operating hours of the underground storage tank system, except as provided in subd. 2.

2. a. For fueling facilities which are attended as specified in s. ATCP 93.605 (5) (a) and which include hours of operation when no attendant is on duty, a sign shall be posted in a conspicuous place, stating the emergency shutoff procedures and the name and telephone number of the Class B operator, along with the name and telephone number of the local emergency responders, including 911 personnel.

Note: Section ATCP 93.605 (5) (a) reads as follows: To be considered as being an attended fueling facility, there shall be at least one attendant regularly on duty on a daily basis, but not necessarily during all hours of operation, to supervise, observe, and control the actual dispensing of fuel.

b. For fueling facilities that are not attended as specified in s. ATCP 93.605 (5) (a), signage shall be posted in accordance with the location and information requirements in subd. 2. a.

c. For facilities which are not addressed in subd. 2. a. or b. and which typically are unmanned, such as emergency generators, signage shall be posted in accordance with the location and information requirements in subd. 2. a.

(3) CLASS C OPERATORS. Responsibilities of a Class C operator include all of the following:

(a) Initially responding to alarms, spills, leaks, or releases.

(b) Notifying the Class B or Class A operator and appropriate emergency responders, including 911 personnel, when necessary.

(c) Controlling or monitoring the dispensing or sale of regulated substances.

ATCP 93.840 Training elements for Class A operators. Each Class A operator shall attend department-approved training in all of the following:

(1) Basic underground storage tank system requirements, so that the operator can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance, and record keeping requirements and standards of this chapter regarding all of the following:

(a) Spill prevention.

(b) Overfill prevention.

(c) Leak and release detection.

(d) Corrosion protection.

(e) Emergency response.

(f) Product compatibility.

(1m) Tank registration and permitting requirements.

(2) Financial responsibility documentation requirements.

1 **(3)** Notification requirements.

2 **(4)** Requirements for reporting obvious and suspected releases.

3 **(5)** Requirements for permanently closing a tank system and for placing a tank system

4 temporarily out of service.

5 **(6)** Operator training requirements.

6 **ATCP 93.841 Training elements for Class B operators.** Each Class B operator shall

7 attend department-approved training in all of the following:

8 **(1)** Compared with training for a Class A operator, training for a Class B operator shall

9 provide a more in–depth understanding of operation and maintenance aspects but may cover a

10 more narrow breadth of applicable regulatory requirements. At a minimum, the department-

11 approved training program shall teach the Class B operator, as applicable, about the purposes,

12 methods, and function of:

13 (a) Components of underground storage tank systems.

14 (b) Materials of underground storage tank system components.

15 (c) Methods of leak and release detection, and leak and release prevention applied to

16 underground storage tank system components.

17 (d) Operation and maintenance requirements of this chapter which apply to underground

18 storage tank systems and which address each of the following:

19 1. Spill prevention.

20 2. Overfill prevention.

21 3. Leak and release detection.

22 4. Corrosion protection.

23 5. Emergency response.

1 6. Product compatibility.

2 7. Reporting and record keeping requirements.

3 8. Class C operator training requirements.

4 **(2)** Each Class B operator shall receive either of the following:

5 (a) Site–specific operator training that is focused only on regulatory requirements and

6 equipment specific to the operator's underground storage tank system facility.

7 (b) General training that encompasses all regulatory requirements and typical equipment

8 used at UST facilities.

9 **ATCP 93.842 Training elements for Class C operators.** Each Class C operator shall be

10 trained by a Class A or Class B operator or complete department-approved training in all of the

11 following:

12 **(1)** Each Class C operator shall be trained to take appropriate action in response to both of

13 the following:

14 (a) Emergencies, including situations which pose an immediate danger or threat to the public

15 or to the environment and which require immediate action.

16 (b) Alarms caused by spills, leaks or releases from an underground storage tank system.

17 **(2)** Each Class C operator shall be trained to understand the instructions specified in s.

18 ATCP 93.830 (2) (e).

19 **ATCP 93.850 Acceptable training and certification processes. (1)** Operator training shall

20 include evaluation and accreditation of the operator's knowledge of the applicable requirements

21 in ss. ATCP 93.840 to 93.842. Thirty days after the effective date of this section ... [LRB inserts

22 date]:

23 (a) *Training*. 1. Training must be approved in writing by the department.

2. Requests for training approval shall be submitted on a form, TR-WM-155, supplied by the department.

3. Requests for approval shall include sufficient information to determine if the training complies with this subsection.

4. The department shall review and make a determination on a request for approval within 21 calendar days of receipt of the request and information necessary to complete the review.

5. Training approval shall expire 3 years after the date of approval.

6. Training approval may be renewed. Renewal shall be in accordance with subd. 2.

7. The department may revoke the approval for any false statements, misrepresentation of facts, or violation of the conditions on which the approval was based.

(b) *Attendance record.* 1. The person who obtained approval shall maintain an attendance record for at least 3 years from the date of training.

2. The attendance record shall include all of the following:

a. The course name.

b. The course identification number assigned by the department.

c. The date or dates the course was held or completed.

d. The name of each attendee.

(c) *Certificate requirements.* Classroom or field training programs shall issue certificates signed by the trainer to each operator trained that identifies name of trainee, date trained, operator training class completed, and list the name of the trainer or examiner and the training company name, address, telephone number, except as noted in par. (b) 2.

(d) *Modifications.* Modifications to approved training programs shall be submitted for approval in accordance with par. (a).

(e) *Discontinuation.* The person who obtained approval shall notify the department if the training program is discontinued before the end of its approval period.

(2) Acceptable methods for meeting the requirements in sub. (1) and ss. ATCP 93.840 to 93.842 include all of the following:

(a) *Class A and Class B Operators.* Class A and Class B operators shall obtain a certificate from a department-approved training program.

(b) *Class C Operators.* Class C operators shall obtain a certificate issued by an accredited Class A or Class B operator or a department-approved training program showing that the Class C operator has successfully completed training conducted or authorized by an accredited Class A or Class B operator for the facility where the Class C operator is employed.

(4) (a) To address Class A and Class B operators who are responsible for underground storage tank systems in multiple states, the department may accept operator training verification from other states if equivalency can be established.

(b) Class A and Class B operators who choose to proceed under this subsection shall obtain written proof of their training verification and the state's equivalent operator training requirements and submit for department approval.

(c) Class A and Class B operators who choose to proceed under this subsection shall retain a copy of the department's letter of approval at the facility.

ATCP 93.860 Documentation deadlines. (1) CLASS A, CLASS B, AND CLASS C OPERATORS. All Class A, Class B, and Class C operators shall obtain the documentation specified in s. ATCP 93.850 (1) (c) before assuming their responsibilities under this subchapter, except as provided in sub. (2).

1 **(2)** EXISTING, COMPLIANT FACILITIES. (a) An incoming Class A or Class B operator
2 for a facility that was complying with s. ATCP 93.820 immediately before that personnel change
3 may obtain the documentation specified in s. ATCP 93.850 (1) (c) no later than 30 days after
4 assuming the responsibilities under this subchapter.
5 (b) An incoming Class A or Class B operator for a facility that was complying with s. ATCP
6 93.820 immediately before that personnel change shall notify the department of the Class A or
7 Class B operator change within 15 days of completion of the training program.
8 **ATCP 93.870 Record keeping. (1)** The owner or operator shall maintain the documentation
9 specified in s. ATCP 93.850 (1) (c) at the underground storage tank system site and have it
10 immediately available for inspection by the authorized agent or the department, except as
11 provided in sub. (2).
12 **(1m)** Owners and operators of underground storage tank systems must maintain and have
13 available onsite for inspection documentation of designated Class A, Class B, and Class C
14 operators and maintain records verifying that the training and retraining, as applicable, have been
15 completed. Records must:
16 (a) Identify all Class A, Class B, and Class C operators currently designed for the facility.
17 (b) Include names, class of operator trained, date of assumed duties, date of each completed
18 initial training, and any retraining.
19 (c) Include certificates specified in s. ATCP 93.850 (1) (c) verifying completion of training
20 or retraining.
21 (d) Be maintained in paper or electronic form by the owner or operator for as long as Class
22 A, Class B, and Class C operators are designated.

(2) For fueling facilities that are not attended as specified in s. ATCP 93.605 (5) (a) and facilities that typically are unmanned, such as emergency generators, the owner or operator shall maintain the documentation specified in s. ATCP 93.850 (1) (c) at a readily available site and provide it for inspection to the authorized agent or the department upon request.

Note: Section ATCP 93.605 (5) (a) reads as follows: To be considered as being an attended fueling facility, there shall be at least one attendant regularly on duty on a daily basis, but not necessarily during all hours of operation, to supervise, observe, and control the actual dispensing of fuel.

(3) The documentation referenced in sub. (1), (1m), or (2) shall be accompanied with contact information for each designated operator, including a telephone number and mailing address.

ATCP 93.880 Retraining for non-compliance. (1) If the authorized agent or the department determines that an underground storage tank system is not in compliance with release prevention and release detection requirements or exhibits a continuing pattern of non-compliance with this chapter, the department or authorized agent may order that the Class A, Class B, or Class C operators shall be retrained within 30 days.

(2) Retraining under this section shall be in accordance with a directive by the department.

Note: Significant operational compliance performance measures for release prevention and release detection, as developed by the U.S. environmental protection agency, are available at the following Web site: Https://www.epa.gov/ust/significant-operational-compliance-soc-performance-measures.

Note: Section ATCP 93.115 (3) (c) allows shutdown of any underground storage tank system for which there is a continuing violation of this chapter.

SECTION 2. EFFECTIVE DATE: This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Sheila Harsdorf
Secretary

1

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

Rule Subject:	**Flammable, Combustible and Hazardous Liquids**
Adm. Code Reference:	**ATCP 93**
Rules Clearinghouse #:	**17-092**
DATCP Docket #:	**13-R-20**

Rule Summary

This rule implements Wis. Stat. § 168.23 (1), which directs the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules related to construction, maintenance, and abandonment standards applicable to tanks for 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. The proposed rule repeals and recreates Wis. Admin. Code ch. ATCP 93, thereby updating an administrative rule that has not been significantly revised since 2008.[1] The content of the proposed rule reflects input from various sources, including: Recommendations made by the Department of Safety and Professional Services (DSPS) prior to the program's relocation to DATCP in 2013; feedback provided by stakeholders and businesses regulated under Wis. Admin. Code ch. ATCP 93; and agency concerns about the responsibilities of Class A, B, and C operators.

The substance of the changes to Wis. Admin. Code ch. ATCP 93 fall into six broad categories:

- Harmonizing the rule with current federal standards, especially those set out by the Environmental Protection Agency;
- Effecting necessary changes arising from the inter-departmental transfer of the storage tank program from DSPS to DATCP;
- Updating technical standards that are incorporated by reference;
- Eliminating provisions that are no longer in effect as well as unnecessary explanatory notes;
- Modifying outdated terminology; and
- Clarifying ambiguous language.

Additional changes include the correction of typographical errors, form number changes, name changes to certain documents, and changed information concerning the availability of documents (hyperlinks or through Document Sales).

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[1] Although no substantive changes to the rule have been made since a 2008 process, DATCP has periodically effected numerous minor revisions to rule language pertaining to forms and hyperlinks over the years.

Small Business Affected

This rule is anticipated to have a minimal impact on small businesses within the state. The majority of proposed modifications serve mainly to update and organize provisions in the current rule.

For the sake of convenience, the proposed Wis. Admin. Code ch. ATCP 93 updates, reorganizes, and moves portions of SPS (Safety and Professional Services) chapters that affect the program into the DATCP-related chapters of the Wisconsin Administrative Code. For instance, Wis. Admin. Code § ATCP 93.240 incorporates numerous certifications and enforcement provisions from Wis. Admin. Code ch. SPS 305. Similarly, a table from Wis. Admin. Code ch. SPS 302, currently used by the tanks program, will be incorporated as Wis. Admin. Code § ATCP Table 93.130. Small businesses should benefit from this streamlining.

The proposed Wis. Admin. Code ch. ATCP 93 incorporates by reference approximately 75 standards established by recognized technical societies, as indicated in tables listed in rule Section 200. Depending upon the nature of the entity, a business may need to encumber the cost of purchasing the copyrighted document in which a given standard is published. However, businesses will only need to purchase those publications applicable to their particular needs. Because EPA regulations also incorporate many of the same standards, most business entities already bear this cost.

Certain provisions of the proposed rule may have an economic impact on certain businesses, depending on the age and technology of their tank systems. DATCP does not believe these changes will result in significant costs for small businesses. For instance:

- Wis. Admin. Code § ATCP 93.505 (2) (a) 3. b. DATCP proposes to include a site assessment for suspected or obvious releases with a tear, crack, or hole from spill basins. The site assessment could add costs.
- Wis. Admin. Code § ATCP 93.515 (6). There could be a hardware upgrade cost if a business uses stick to determine tank inventory. Since most businesses now use electronic probes, the costs should be minimal.
- Wis. Admin. Code § ATCP 93.515 (11). Ullage testing and conversion could create additional costs if there is repeated non-compliance. Compliant businesses should see no financial effect.
- Wis. Admin. Code § ATCP 93.545 (1) (j). This provision aligns Wisconsin with other states as to putting older, single-walled tanks back into service or permanently closing them.
- Wis. Admin. Code § ATCP 93.630 (2) (d). A new section pertaining to irrigation operations could affect those businesses that have irrigation operations.

For the most part, fees have not been changed within the proposed ATCP 93. However, some re-inspection fees and plan approvals under ATCP 93.115 and in Table 93.1605 may have an impact on business costs.

Some changes in the proposed ATCP 93 relate to manufacturer or industry requirements. Costs associated with these requirements, such as updating old equipment and outmoded technologies, would be incurred regardless of inclusion in ATCP 93.

Reporting, Bookkeeping and other Procedures

Like the current rule, the proposed rule continues to require certain types of reporting and record keeping that are associated with the testing of these tanks and tank systems.

As previously mentioned, many small businesses or business organizations will decide to purchase some of the standards-related publications that are indicated in the tables in Section 200.

Professional Skills Required

The proposed rule reflects some changes based on new definitions and responsibilities in subchapter VIII (Training for Operators of Underground Storage Tank Systems):

- The definitions of Class A, B, and C operators have been changed to match the definitions set forth by EPA.
- The subchapter has been renumbered and reorganized for the sake of clarity.
- Record keeping documentation methods also changed to accommodate the added proposed provisions.

An exemption in ATCP 93.820 that gave small businesses until August 8, 2012 to comply with the rule has been deleted.

Accommodation for Small Business

Many of the businesses affected by this rule are "small businesses." DATCP shared details of the proposed ATCP 93 with selected stakeholders at three intervals during the rulemaking process. Many stakeholders are represented through organizations such as the Wisconsin Petroleum Marketers and Convenience Store Association, the Cooperative Network, and Kwik Trip. DATCP received input and considered suggestions from these stakeholders and responded to various requests for clarification prior to the release of the hearing draft rule. Nonetheless, because of the inevitable complexity of a 350-page rule, DATCP expects to undertake an extensive training and informational program for the benefit of Department staff and industry personnel. DATCP also expects to receive ongoing inquiries concerning the interpretation and enforcement of the rule and will devote resources to fielding those inquiries.

Conclusion

This proposed rule will likely benefit businesses, including small businesses. Negative impacts, if any, will be few and limited. Accordingly, the proposed rule is not subject to the delayed small business effective date provided in Wis. Stat. § 227.22 (2) (e).

Dated this 10th day of July, 2018.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Sean M. Brown
Sean M. Brown, Administrator
Division of Trade and Consumer Protection

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

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ADMINISTRATIVE RULES
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1. Type of Estimate and Analysis	2. Date
☒ Original ☐ Updated ☐ Corrected	July 10, 2018

3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)
Ch. ATCP 93 - Flammable, Combustible and Hazardous Liquids (Permanent)

4. Subject

Flammable, Combustible and Hazardous Liquids

5. Fund Sources Affected	6. Chapter 20, Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S	Wis. Stat. § 20.115 (1) (t)

7. Fiscal Effect of Implementing the Rule
☐ No Fiscal Effect ☐ Increase Existing Revenues ☒ Increase Costs ☐ Decrease Costs
☒ Indeterminate ☐ Decrease Existing Revenues ☒ Could Absorb Within Agency's Budget

8. The Rule Will Impact the Following (Check All That Apply)
☐ State's Economy ☒ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☐ Small Businesses **(if checked, complete Attachment A)**

9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).
$

10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be $10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?
☐ Yes ☒ No

11. Policy Problem Addressed by the Rule

With the enactment of 2013 Wisconsin Act 20 (the biennial budget bill), the State of Wisconsin transferred the *Petroleum and Storage Tank Inspection programs* ("tanks program") from the Department of Safety and Professional Services (DSPS) to the Department of Agriculture, Trade and Consumer Protection (DATCP). In doing so, DATCP inherited Wis. Admin. Code ch. ATCP 93 (formerly Wis. Admin. Code ch. SPS 310) that had been last comprehensively evaluated in 2008 when the Department of Commerce housed the program.

In the past decade, multiple events have occurred. These various occurrences caused aspects of Wis. Admin. Code ch. ATCP 93 to necessitate an update:

- In 2011, the program transferred from the Department of Commerce to DSPS.
- In 2013, the program transferred from DSPS to DATCP. While "SPS 310" was renumbered as "ATCP 93", the rule continues to refer to the SPS Administrative Code for several items such as fees, administrative procedures, and licensing, among other program functions.
- In 2015, the EPA enacted rule changes that are expected to be in place in 2018.
- ATCP 93 incorporates 64 standards by reference. Of these, 54 standards have now been further updated to even more recent standards.
- ATCP 93 has time provisions that have now elapsed and must be removed.
- Some explanatory notes are no longer relevant or necessary.

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- Over time, industry and agency staff have noticed unclear or confusing wording in rule language.

In order to address these problems, DATCP proposes to repeal and recreate Wis. Admin. Code ch. ATCP 93. To do so, DATCP proposes changes in seven broad categories:

- To accept recommendations made by DSPS prior to the program's relocation to DATCP.
- To harmonize Wis. Admin. Code ch. ATCP 93 with current federal standards, especially those set by the EPA.
- To address reorganizational changes of the program that occurred during the transfer to DATCP from DSPS.
- To respond to questions raised by stakeholders and businesses regulated by Wis. Admin. Code ch. ATCP 93.
- To update standards incorporated by reference.
- To address agency concerns about the responsibilities of Class A, B, and C operators.
- To clarify or improve several aspects of this rule, as defined in the plain language analysis of the proposed rule.

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12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

To develop this rule, DATCP considered multiple changes recommended by the Wisconsin Department of Safety and Professional Services before the program transfer occurred. An internal committee recommended a number of changes that were shared with stakeholders. The language was then modified in three stages: a September 2011 meeting with the Wisconsin Petroleum Marketers and Convenience Store Association and the Cooperative Network; after a November 2011 *Federal Register* notice of proposed changes by the EPA; and other changes suggested before the program transferred to DATCP in 2013.

Due to the size and complexity of this rule and the tanks inspection program, DATCP shared the draft of the proposed Wis. Admin. Code ch. ATCP 93 with numerous stakeholders in three stages. Subchapters zero through three were shared in June 2015; subchapters zero through six were shared in July 2016; and the entire rule, in draft, was shared in March 2017. Stakeholders who received the draft rule in these three incremental stages included the Wisconsin Petroleum Council, the Wisconsin Petroleum Equipment Contractors Association, Wisconsin Petroleum Marketers and Convenience Store Association, Cooperative Network, Kwik Trip, and WE Energies.

DATCP stressed that the proposed rule drafts were preliminary and subject to change both from internal and external input. DATCP pointed out that the ability to comment on these drafts would not circumvent any aspect of the formal process laid out in statute. Furthermore, Wis. Stat. § 227.13 grants state agencies the explicit authority to independently consult with industry and interested persons in contemplation of rule making. Even prior to the preparation of a scope statement, public comments regarding the subject matter of a proposed rule may even be solicited by public hearing, pursuant to Wis. Stat. § 227.136(7). DATCP emphasized that an opportunity to public comment would continue up to and including this proposed order to adopt this rule. Consequently, DATCP received comments throughout its process, considered the suggested

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changes or requests for clarifications, made changes to the draft language based upon stakeholder comments, and responded to the stakeholders before release of the public hearing draft rule. After sending the final redlined version to stakeholders, DATCP received over 25 comments for consideration and acted upon this stakeholder feedback and input.

On September 30, 2017, DATCP posted the draft rule and initial regulatory flexibility analysis on the department webpage for 30 days of comment for the purposes of economic impact. DATCP received no specific fiscal comments. Following four public hearings, DATCP did not receive any public comments that reflected any sentiment that the proposed rule would add to business costs in a meaningful way.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

n/a

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Wis. Admin. Code ch. ATCP 93 incorporates approximately 75 standards by reference, located in tables listed in Section 200. Depending upon the nature of the entity, a business may need to encumber the cost of purchasing the publication containing the standard. However, businesses will only need to purchase those publications applicable to their particular needs. Because the EPA requires many of the same standards, most business entities already bear this cost. The cost of the updated standards cannot be determined because DATCP is unable to predict the individual purchasing decisions of businesses and industries. For regulatory purposes, DATCP will need to purchase all standards at a cost measuring in the thousands of dollars.

For the sake of convenience, the proposed Wis. Admin. Code ch. ATCP 93 updates, reorganizes, and moves portions of SPS chapters that affect the program into the ATCP chapters of the Wisconsin Administrative Code. For instance, Wis. Admin. Code § ATCP 93.240 incorporates numerous certifications and enforcement provisions from Wis. Admin. Code ch. SPS 305. Similarly, a table from Wis. Admin. Code ch. SPS 302, currently used by the tanks program, will be incorporated as Wis. Admin. Code § ATCP Table 93.130. Small businesses should benefit from this streamlining. These changes should have no fiscal impact on state government or program costs. Since the majority of the proposed rule modifications serve mainly to update and organize provisions in the current rule, adoption of the proposed rule will have minimal, if any, economic impact to state and/or local economies.

Adopting other provisions of the proposed rule may have an economic impact on certain businesses depending on the age and technology of their tank systems. DATCP does not believe these changes will incur significant costs for small businesses:

- Wis. Admin. Code § ATCP 93.505 (2) (a) 3. b. DATCP proposes to include a site assessment for suspected or obvious releases with a tear, crack, or hole from spill basins. The site assessment could add costs.

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- Wis. Admin. Code § 93.515 (6). There could be a hardware upgrade cost if a business uses stick to determine tank inventory. Since most businesses now use electronic, the costs should be minimal.
- Wis. Admin. Code § 93.515 (11). Ullage testing and conversion could create additional costs if there is repeated non-compliance. Compliant businesses should see no financial effect.
- Wis. Admin. Code § 93.545 (1) (j). This provision aligns Wisconsin with other states for putting older, single-walled tanks back into service or permanently closing them.
- Wis. Admin. Code § 93.630 (2) (d). A new section pertaining to irrigation operations could affect the subset of businesses that have irrigation operations.

For the most part, fees have not been changed in Wis. Admin. Code ch. ATCP 93. However, some re-inspection fees and plan approvals under Wis. Admin. Code § ATCP 93.115 and in Table 93.1605 may have an impact on business costs.

Some changes in Wis. Admin. Code ch. ATCP 93 relate to manufacturer or industry requirements. Costs associated with these requirements, such as updating aged equipment and outmoded technologies, would be incurred regardless of inclusion in Wis. Admin. Code ch. ATCP 93.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

ATCP 93, as amended, is designed to clarify and modernize existing rules and regulations. Since the standards being adopted will more closely mirror federal guidelines, industry compliance will be much easier. The proposed changes provide administrative efficiencies in this way as well.

Some aspects of the current tanks program tie into rules administered by DSPS. The proposed rule eliminates that problem by taking applicable provisions from the SPS rules and putting them directly into the newly created Wis. Admin. Code ch. ATCP 93. This is especially important for licenses, certifications, and registrations since DATCP currently "borrows", by reference, provisions from Wis. Admin. Code ch. SPS 305. Instead of stakeholders needing to refer to multiple rules between two agencies, industry will now be able to rely largely upon the newly recreated Wis. Admin. Code ch. ATCP 93.

This rule is designed to clarify and modernize existing rules and ensure regulatory consistency. If the proposed changes are not enacted, outdated rule language will remain, and existing regulations will fail to comply with the 2015 EPA rule changes expected to be in place in 2018.

If the department does not implement the numerous technical updates, the current rule will continue to be difficult to understand and remain incongruent with the latest industry standards. If the department does not alter the structure of the existing rule, its authority to administer Wisconsin's storage tanks and petroleum inspection programs will continue to rely on a non-statutory provision (Section 9138) of 2013 Wisconsin Act 20. This would become increasingly impractical and confusing as time goes on.

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If not enacted, some rule provisions affecting the program will remain in different state agency's administrative code and would continue to perpetuate an inefficiency. Since DSPS no longer uses the portions of their administrative rules that affect the tanks inspection program, DSPS could then eliminate these provisions (and has advocated to do so) which would effectively leave no rules in place beyond those which already transferred from Wis. Admin. Code ch. SPS 310 as the current Wis. Admin. Code ch. ATCP 93.

16. Long Range Implications of Implementing the Rule

Implementing this rule benefits business and the general public. The new rule simplifies the number of rules that businesses must follow and develops a more uniform standard. In addition, the rule modifications create consistency between this rule and other existing DATCP rules. The proposed Wis. Admin. Code ch. ATCP 93 also incorporates known EPA-mandated changes that will be required in the future.

17. Compare With Approaches Being Used by Federal Government

As mentioned, DATCP incorporated new EPA requirements and regulations from 2015.

The Federal government relies on many of the industry standards that DATCP proposes to incorporate by reference into Wis. Admin. Code § ATCP Tables 93.200-1 to 11.

The new rule maintains the requirement that a substance release must be reported if it qualifies under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

All federal financial requirements in the previous subchapter VII (Financial Responsibility) will be maintained in the current rule.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

All surrounding states have similar programs. Minnesota plans to finalize a new rule on underground storage tanks in October 2018. Michigan recently adopted new rules that govern underground storage tanks. Iowa will finalize in Spring 2019.

19. Contact Name	20. Contact Phone Number
David A. Woldseth	608-224-5164

This document can be made available in alternate formats to individuals with disabilities upon request.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

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Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements
☐ Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☐ No