



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: January 30, 2025

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary

SUBJECT: Approval of Statement of Scope for ATCP 93: Flammable, combustible, and hazardous liquids

PRESENTED BY: David Woldseth, Program and Policy Analyst, Division of Trade and Consumer Protection

REQUESTED ACTION:

At the Board meeting on January 30, 2025, the Department will request approval of the attached Statement of Scope, regarding Wis. Admin. Code ch. ATCP 93 relating to flammable, combustible, and hazardous liquids.

SUMMARY:

At the December 12, 2024, Board meeting, the DATCP Board approved the Department to hold a preliminary public hearing and comment period on the Statement of Scope for ch. ATCP 93 (SS 111-24). The Department held this public hearing on January 7, 2025, with a comment period that was open from December 16, 2024, to January 10, 2025. The Department did not receive any comments.

Under Wis. Stat. ch. 168, subch. II, the Department is responsible for regulating tanks for the storage, handling, or use of liquids that are flammable, combustible, or federally regulated hazardous substances. Wisconsin Stat. § 168.23 (1) directs the Department to promulgate rules imposing standards for the construction, maintenance, and abandonment of such tanks, as well as standards for the property and facilities where such tanks are located, to protect the waters of this state from contamination. In compliance with that statutory directive, the Department promulgated Wis. Admin. Code ch. ATCP 93.

The Department proposes to consider an industry request to amend Wis. Admin. Code ch. ATCP 93 to update the standards for the construction, maintenance, and abandonment of tank systems for the storage, handling, or use of liquids that are flammable, combustible, or federally regulated substances to reflect technical developments and industry changes.

The Department now request approval of the Statement of Scope to begin considering rule revisions.

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STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: Ch. ATCP 93

Relating to: Flammable, Combustible, and Hazardous Liquids (Permanent)

1. Finding/nature of emergency (Emergency Rule only):

n/a

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to consider updating the standards for the construction, maintenance, and abandonment of tank systems for the storage, handling, or use of liquids that are flammable, combustible, or federally regulated substances to reflect technical developments and industry changes that have occurred during the past several years.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Under Wis. Stat. ch. 168, subch. II, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for regulating tanks for the storage, handling, or use of liquids that are flammable, combustible, or federally regulated hazardous substances.

Wis. Stat. § 168.23 (1) directs DATCP to promulgate rules imposing standards for the construction, maintenance, and abandonment of such tanks, as well as standards for the property and facilities where such tanks are located, to protect the waters of this state from contamination. In compliance with that statutory directive, DATCP promulgated Wis. Admin. Code ch. ATCP 93.

Wis. Admin. Code ch. ATCP 93 protects the waters of this state and provides "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." *See* Wis. Admin. Code § ATCP 93.010. Those existing policies of protecting the waters of this state from contamination, reducing fire hazards, and protecting human life are proposed to be included in the revised rule.

Wisconsin's tanks and petroleum inspection programs have long existed in the state. Most recently, the program transferred from the Department of Safety and Professional Services to DATCP as part of 2013 Wisconsin Act 20.

DATCP may consider changes to Wis. Admin. Code ch. ATCP 93 definitions to provide greater regulatory clarification. DATCP may also consider changes to clarify cross references between aboveground storage tank systems (ASTs) and underground storage tank systems (USTs) within Subchapter III- Specific Tank Storage Applications, Subchapter IV – General AST Storage, and Subchapter V – General UST Storage and Underground Piping.

DATCP may consider changes to the inspection procedures in the enforcement and inspections section to clarify statutory requirements.

DATCP may consider changes to the spill and overfill prevention section due to the number of stakeholder questions regarding spill and overfill prevention compliance.

Leak detection methods for ASTs and USTs consistently change. DATCP may consider changes to leak detection methods and storage tank leak detection material approvals.

The existing rule currently incorporates 77 standards by reference. When nationally recognized technical societies update standards, DATCP will, as a matter of procedure, normally adopt the most recent standard. DATCP may review the role of these standards in the tank inspection program to update, amend, or repeal standards. Publishing organizations whose standards are incorporated by reference are: the American Concrete Institute; the American Petroleum Institute (API); ASTM International; Energy Institute; HIR Technical Services; Ken Wilcox Associates; NACE International; the National Fire Protection Association (NFPA); Petroleum Equipment Institute; the Society for Protective Coatings; Steel Tank Institute; Underwriters Laboratories, Inc.; and the United States Department of Energy. DATCP will continue to incorporate standards by reference and would therefore seek the permission of the Attorney General under Wis. Stat. § 227.21 (2) for approval of any new or updated standards.

DATCP may consider changes to storage tank credentialing and certification requirements. Currently, if credential and certification holders fail to renew prior to the expiration, the holder must meet the requirements for a new credential or certification, re-taking the required exam. Both DATCP and its stakeholders have identified this as burdensome. DATCP may explore options such as fee changes that may include late renewal options.

DATCP may consider adding additional storage tank credentialing, certification, or registration testing formats. The addition of new testing formats could result in fee changes for credentialing, certification, or registration.

Stakeholders have requested clarity regarding the requirements for temporarily out of service (TOS) tanks and abandoned tanks. During a rule revision, DATCP may review the current requirements in Wis. Admin. Code ch. ATCP 93 for TOS tanks and abandoned tanks and consider revisions that would refine and clarify those requirements.

DATCP may also review the requirements of abandoned tank system closures and consider different methods, procedures, or requirements before closure.

DATCP may consider changes to plan review of storage tank systems and plan approvals.

DATCP may look at style changes to streamline the rule. The *Administrative Rules Procedures Manual* makes numerous editorial suggestions. DATCP may consider whether reorganization of certain portions of the rule can make the rule less complicated.

The alternative would be not considering any of these potential changes at this time. Due to the rapidly changing environment surrounding Wis. Admin. Code ch. ATCP 93, the rule risks being more outdated if no changes are considered.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. §§ 168.23 (1), (3), and (4); 168.25 (2), and 168.28 (2)

168.23 Rules.

(1) 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. The rule shall comply with ch. 160. The rule may include different standards for new and existing tanks, but all standards shall provide substantially similar protection for the waters of the state. The rule shall include maintenance requirements related to the detection and prevention of leaks. The rule may require any person supplying heating oil to any noncommercial storage tank for consumptive use on the premises to submit to the department, within 30 days after the department requests, the location, contents and size of any such tank.

(3) The rule promulgated under sub. (1) may require the certification or registration of persons who install, remove, clean, line, perform tightness testing on and inspect tanks and persons who perform site assessments. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration. The department may not require an individual who is eligible for the veterans fee waiver program under s. 45.44 to pay any fee that may be charged pursuant to such a rule.

(4) The department shall promulgate a rule specifying fees for plan review and inspection of tanks for the storage, handling, or use of flammable or combustible liquids and for any certification or registration required under sub. (3).

168.25 Enforcement.

(2) The department shall issue orders directing and requiring compliance with the rules and standards of the department adopted under this subchapter whenever, in the judgment of the department, the rules or standards are threatened with violation, are being violated or have been violated.

168.28 Inventory of petroleum product storage tanks.

(2) INVENTORY OF STORAGE TANKS. The department shall undertake a program to inventory and determine the location of aboveground storage tanks and underground storage

tanks. The department may require its deputies and any person engaged in the business of distributing petroleum products to provide information on the location of aboveground storage tanks and underground storage tanks. The department shall develop uniform procedures for reporting the location of aboveground storage tanks and underground storage tanks.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 1,500 staff hours to develop this rule.

6. List with description of all entities that may be affected by the proposed rule:

Businesses that design, install, inspect, service, test, operate, or remove storage tank systems for flammable, combustible, or hazardous liquids may be impacted by this rule. This may include retail gasoline stations, fuel wholesalers or distributors, fleet operators, or farmers. It also may include petroleum equipment service companies and fire prevention inspectors.

This rule may also impact businesses that sell or distribute petroleum and other liquid fuel products at wholesale or retail. It may also impact businesses that manufacture, sell, or distribute chemical liquids regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These businesses are already regulated under the existing rule, but there may be minor changes to the specific requirements.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal regulations for aboveground storage tank systems do not address fire and public safety issues or groundwater pollution issues, except for protecting navigable waters of the U.S. or adjoining shorelines.

Federal regulations for underground storage tanks do not address fire and public safety issues or surface water pollution issues, except for protecting potable water supply sources. Potential rule changes are not expected to conflict with these federal regulations.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

DATCP anticipates any modifications considered to have minimal economic impact. DATCP anticipates that some businesses in the state may choose to purchase standards incorporated by reference. Changes to the rule could increase or decrease costs for inspection, enforcement, and credentialing. DATCP may modify fees to create late renewal options in credentialing. Finally, since equipment and design will vary from business to business, the changes from this revision would be limited and have minimal economic impact on small businesses in the state.

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Department of Agriculture, Trade and Consumer Protection

10-25-2024

Date Submitted