



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: January 8, 2024

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary
Michelle Reinen, Administrator, Division of Trade and Consumer Protection *Michelle*

SUBJECT: **ATCP 93: Flammable, Combustible, and Hazardous Liquids;**
Wisconsin Admin. Code Chapter ATCP 93 (Hearing Draft Rule)

PRESENTED BY: David A. Woldseth, Policy Analyst

REQUESTED ACTION:

At the January 25, 2024 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposed rule (copy attached) related to flammable, combustible, and hazardous liquids. This rule implements Wis. Stat. § 93.07 (1) which allows the department, "To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department...".

SUMMARY:

This rule serves two functions: It incorporates standards by reference and resolves a number of 2017 Wisconsin Act 108 Issues where the rule is not aligned with statute.

DATCP formally published the draft scope statement in the January 30, 2023 *Wisconsin Administrative Register* and filed a copy with the Department of Administration (DOA). After publication, the Joint Committee for the Review of Administrative Rules required DATCP to hold a public hearing on the scope statement under Wis. Stat. § 227.136 (1). At its March 2, 2023 meeting, the DATCP Board approved that hearing, and it was held on Thursday, March 27, 2023. The Board approved the scope statement May 11, 2023, and staff prepared a hearing draft rule for public hearing that it presents for approval.

Next Steps

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the *Wisconsin Administrative Register*. DATCP will then hold public hearings. The exact hearing dates and locations have not yet been determined.

Following the public hearings, DATCP will prepare the final draft rule which will be presented for the Board's consideration. If the Board approves, DATCP will transmit the rule to the Governor for his written approval. After the Governor approves the final draft rule, DATCP will send the final draft rule to the Legislature for

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review by the 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.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date January 17, 2024</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ATCP 93</p>	
<p>4. Subject Flammable, Combustible, and Hazardous Liquids</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.115 (1) (t)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$Unknown</p>	
<p>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)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The Department of Agriculture, Trade and Consumer Protection (department) modifies ch. ATCP 93 in two areas:</p> <ul style="list-style-type: none">• Incorporation of Standards by Reference• Resolution of 2017 Wisconsin Act 108 Issues	
<p>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. DATCP published the Fiscal Estimate on its website in October and received no comments..</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. Local government does not enforce ATCP 93 and will therefore spend very little, if anything, on these changes.</p>	
<p>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) The proposed ch. ATCP 93 incorporates by reference approximately 75 standards established by recognized technical societies, as indicated in tables listed in s. 200. Of the 75 standards, 43 have been updated since November 2019, and DATCP intends to adopt the new standards. 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. Should all updated standards be purchased, an entity should expect to pay \$7,789 plus shipping and handling costs. Therefore, since the State of Wisconsin must purchase two sets, one for its own use and one for the Legislative Reference Bureau, the state will pay at least \$15,578 plus shipping and handling.</p>	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The current version of ch. ATCP 93 contains multiple provisions that DATCP believes are not permitted per its Act 108 review. The department has not enforced these provisions since October 2019, and it would therefore have no financial impact.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
The rule will have the most updated standards and the provisions prohibited by statute will be removed.

16. Long Range Implications of Implementing the Rule
If DATCP does not act, the standards will quickly become outdated.

17. Compare With Approaches Being Used by Federal Government
The Federal government also relies on many of the industry standards that DATCP proposes to update and incorporate by reference into the tables in s. 200.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
All surrounding states have similar programs.

19. Contact Name
David A. Woldseth

20. Contact Phone Number
608-224-5164

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
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
-

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 #:
DATCP Docket #:

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:

- Updates standards incorporated by reference;
- Resolves 2017 Wisconsin Act 108 issues; and
- Addresses form management concerns.

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 compliance and enforcement ease, the proposed ATCP 93 retains references to specific form identification numbers within the rule itself. It leaves the references in the Notes section that explain how to obtain the forms. Therefore, small businesses should continue to know which forms should be used by consulting the rule itself.

The proposed ATCP 93 incorporates by reference approximately 75 standards established by recognized technical societies, as indicated in tables listed in s. 200. Depending upon the nature of the entity, a business may need to bear 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. Should all updated standards be purchased, an entity should expect to pay \$7,789 plus shipping and handling costs. Therefore, since the State of Wisconsin must purchase two sets, one for its own use and one for the Legislative Reference Bureau, the state will pay at least \$15,578 plus shipping and handling.

Fees have not been changed in the proposed new version of 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. Form identification numbers will continue to be listed in the rules and the Notes section will explain how to obtain forms.

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

As this makes minor changes, businesses should not need additional professional skills.

Accommodation for Small Business


Many of the businesses affected by this rule are “small businesses.” DATCP expects to receive ongoing inquiries concerning the interpretation and enforcement of the rule and will devote resources to fielding those inquiries. Reference copies of all standards are available for inspection at the Legislative Reference Bureau and at DATCP.

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 __17th__ day of January, 2024.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 

Michelle Reinen, Administrator
Division of Trade and Consumer Protection

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

PROPOSED ORDER

The Wisconsin department of agriculture, trade and consumer protection proposes the following rule *to repeal* ATCP 93.050 (59), 93.100 (1) (b) 1., 3., 9., and 9. Note, 93.440 (3) (a) 2. b., 93.465 (2) (b), 93.610 (1) and (2), 93.630 (3), and 93.700 (2) (b) 1.; *to amend* ATCP 93.020 (6) (b), 93.050 (1), (66), and (114) (k), 93.110 (1) (a), 93.140 (1), Table 93.1605, 93.200, Table 93.400, 93.400 (1) (c), 93.440 (4) (a) Intro., 93.615 (3) (b) 3., 93.610 (4), Table 93.615-A, Table 93.615-B, 93.630 (4), and Table 93.630; *relating to* storage of flammable, combustible, and hazardous liquids and affecting small businesses.

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

This rule implements Wis. Stat. ch. 168, subch. II, which is titled *Storage of Dangerous Substances*. That subchapter consists of Wis. Stat. §§ 168.21 to 168.28. DATCP is responsible for administering and enforcing that subchapter per Wis. Stat. § 168.21(2).

Statutes Interpreted

Statutes Interpreted: Wisconsin Stat. ch. 168, subch. II.

Statutory Authority

Wisconsin Stats. §§ 168.23 and 168.28(2), as well as Wis. Stat. §§ 168.25(2), 93.07(1) and (2), and 15.04(i) to (m).

Explanation of Statutory Authority

The rule is authorized by Wis. Stat. §§ 168.23 and 168.28(2). Subsection (1) of Wis. Stat. § 168.23 directs the department to “promulgate by rule construction, maintenance and abandonment standards applicable to tanks for the storage, handling or use of liquids that are flammable or

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

Wisconsin Stat. § 168.25(2) further directs the department to issue orders requiring compliance with the rules adopted under Wis. Stat. § 168.23 whenever, in the judgment of the department, those rules are threatened with violation, are being violated, or have been violated.

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

Finally, Wis. Stat. § 15.04(i) to (m) requires the department to implement a comprehensive forms program.

Related Statutes and Rules

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

Plain Language Analysis

Background

DATCP repealed and recreated ch. ATCP 93 in November 2019. This marked the last time DATCP revised the rule. Periodically, the Department updates rules to consider and usually to adopt the most recent versions of standards it incorporates into its rules by reference. This rule revision achieves that.

Rule Content

The Department of Agriculture, Trade and Consumer Protection (department) considered modifications to ch. ATCP 93 in three areas:

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

Incorporation of Standards by Reference

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

After reviewing the standards, DATCP chose to incorporate all updates to these industry standards made since the November 2019 revision. The decision alters the tables in Wis. Admin. Code § ATCP 93.200.

Resolution of 2017 Wisconsin Act 108 Issues

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

Due to the complexity of the rule, provisions cross-reference and affect other portions of the rule. In that context, DATCP further reviewed the rule to discover if the change from 110 to 5,000 gallons affected other parts of ch. ATCP 93. It found it did and therefore required other changes throughout the chapter that had not been identified in the March 31, 2021 letter.

For years, DATCP has not solely inspected all tank systems in Wisconsin. Instead, the agency contracted with private entities as local program operators (LPOs) and permitted municipal entities to create their own inspection programs. Wisconsin Admin. Code § ATCP 93.110 (1) (a) authorized private entities to act with the authority of the department. However, since Wis. Stat. § 93.06(11)(a) does not authorize private entities to enforce DATCP rules, DATCP amended ATCP 93.110(1)(a). Since that work had been performed as part of an LPO contract, the definition of an LPO in Wis. Admin. Code § ATCP 93.050 (66) also changed to reflect that private entities cannot fulfill the function and only certain public entities can as well.

Forms Management

DATCP has adopted an internal procedure, Procedure Number 378, to fulfill its statutory forms management requirements under Wis. Stats. §§ 15.04 and 16.97. Since form numbers can frequently change and those changes require rulemaking if stated in the rule, DATCP considered removing form numbers such as TR-WM-130 and TR-WM-133 from the rule. The *Manual* states:

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

For this reason, DATCP considered eliminating references to form identification numbers in the substantive provisions of ch. ATCP 93 and only listing form identification numbers in notes to the rules explaining how to obtain forms. However, for ease of industry compliance and ease in enforcement, DATCP elected not to remove form identification numbers from the substantive rules and will continue to reference form identification numbers within the rule. DATCP has kept references in the Notes explaining how to obtain these forms. In this way, readers and users of the rule will find the forms readily.

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

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

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

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

The department received no comments to the scope either at the public hearing or in the comment period following.

Comparison with Rules in Adjacent States

Illinois

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

Iowa

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

Michigan

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

Minnesota

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

Summary of Factual Data and Analytical Methodologies

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

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

Chapter ATCP 93 incorporates approximately 75 standards by reference in the tables in § 200. Dependent on the nature of the entity, a business may need to purchase or access some of these standards but not all. Because the EPA requires many of the same standards, some businesses would likely bear this cost regardless of whether ch. ATCP 93 requires them or not. The cost of the updated standards cannot be determined because it would depend on individual buying decisions and circumstances of the regulated businesses and industries. For regulatory purposes, the State needs to purchase all standards. DATCP anticipates it will spend \$15,578 for standard purchase plus the shipping and handling. Reference copies for the Legislative Reference Bureau will double the costs.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

A complete *regulatory flexibility analysis* is attached.

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

Email at Bradford.Steine1@wisconsin.gov

Telephone at (608) 224-5024

Standards Incorporated by Reference

This rule updates numerous standards incorporated by reference to the most current standards. As required by Wis. Stat. ch. 227, consent will be received from the Attorney General to incorporate these standards by reference after the public hearings and prior to seeking the Governor's assent to the final draft rule. A copy of these documents will be kept on file with the department and with the Legislative Reference Bureau.

Department Contact

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Where Comments May Be Submitted

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After the final hearing, the department will accept formal written comments for an additional two weeks.

RULE TEXT

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

(b) Aboveground storage tanks ~~and intermediate bulk containers~~ that have a capacity of less than ~~40~~ 5,000 gallons.

SECTION 2. ATCP 93.050 (1) is amended to read:

(1) “Aboveground storage tank” or “AST” means any vessel that has a liquid capacity of ~~40~~ 5,000 gallons or more, is intended for fixed installation, is not solely used for processing and does not meet the definition of an underground storage tank.

SECTION 3. ATCP 93.050 (59) is repealed.

SECTION 4. ATCP 93.050 (66) is amended to read:

(66) “Local program operator” or “LPO” means ~~an a public entity, either public or private,~~ under contract with the department to enforce the provisions of this chapter and provide tank system plan review and inspection services in a specific region of the state.

SECTION 5. ATCP 93.050 (114) (k) is amended to read:

(k) “Portable tank” means an aboveground closed vessel that has a liquid capacity of ~~40~~ 5,000 gallons or more; is not otherwise defined in this chapter; is equipped with skids, mountings or accessories to facilitate handling of the tank by mechanical means; and is not intended for fixed installation or for highway vehicle fueling. ~~“Portable tank” includes intermediate bulk containers.~~

SECTION 6. ATCP 93.100 (1) (b) 1., 3., 9., and 9. (Note) are repealed.

SECTION 7. ATCP 93.110 (1) (a) is amended to read:

(1) DEPARTMENT APPROVAL OF LPO. (a) With the approval of the chief elected municipal official, the municipality shall determine if a municipal department ~~or other agent~~

~~approved by the department~~ will exercise jurisdiction over the provisions of this chapter as the local program operator.

SECTION 8. ATCP 93.140 (1) is amended to read:

(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~~ 5,000 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 IIB 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.

SECTION 9. Table ATCP 93.1605 is amended to read:

Table 93.1605

Plan Examination and Inspection Fees for Liquid Storage Tanks

Tank System Category	Plan Review 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 through 48,000 gallons capacity	\$125	\$250	\$100	\$100
Aggregate capacity 48,001 gallons through 80,000 gallons capacity	\$150	\$300	\$100	\$100
Aggregate capacity 80,001 gallons through 120,000 gallons capacity	\$180	\$450	\$120	\$150
Aggregate capacity 120,001 gallons capacity or greater	\$360	\$600	\$150	\$200
Addition of corrosion protection to an existing system	\$35	\$100	\$100	\$100
Conversion of existing system to a point-of-sale (POS) type of dispensing system**	\$35	\$100	\$100	\$100
Underground storage tank pre-lining inspection	Aggregate as above	\$50/tank	\$100	\$100

Upgrade, exchange or conversion of existing leak detection methodology to another approved methodology or manufacturer***	\$35	\$100	\$100	\$100
Upgrade of secondary containment only, for tanks	\$150	\$100	\$100	\$100
Installation or modification of vent piping on existing system	\$60	\$100	\$100	\$100

SECTION 10. ATCP 93.200 is amended to read:

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 <u>ACI PRC-350.2-21</u>	Concrete Structures for Containment of Hazardous Materials <u>Hazardous Material Containment in Concrete Structures</u>
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Table 93.200-2

API American Petroleum Institute 1220 L Street, NW Washington, DC 20005	
Standard Reference Number	Title
1. 570 (4th edition, 2016)	Piping Inspection Code: In-service Inspection, Rating, Repair, Alteration, and Rerating of In-service Piping Systems
2. RP 575-14 <u>20</u> (3rd <u>4th</u> edition, 2014 <u>2020</u>)	Guidelines and Methods for Inspection of Existing Atmospheric and Low-pressure Storage Tanks
3. Std 650- <u>20</u> With addenda 1 and 2 (<u>13th</u> edition, 2020)	Welded Steel Tanks for Oil Storage
4. RP 651 (4th edition, 2014)	Cathodic Protection of Aboveground Petroleum Storage Tanks
5. RP 652 (4th <u>5th</u> edition, 2014 <u>2020</u>)	Lining of Aboveground Petroleum Storage Tank Bottoms
6. Std 653 (5th edition, 2014)	Tank Inspection, Repair, Alteration, and Reconstruction

9. RP 1604 (3rd <u>4th</u> edition, 1996 <u>2021</u>)	Closure of Underground Petroleum Storage Tanks
10. RP 1615 (6th edition, 2011)	Installation of Underground Petroleum Storage Systems, Sixth Edition
11. RP 1621 (5th edition, 1993)	Bulk Liquid Stock Control at Retail Outlets
12. RP 1626 [2nd edition, 2010 (with errata and addendum)]	Storing and Handling Ethanol and Gasoline–Ethanol Blends at Distribution Terminals and Filling Stations
13. RP 1631 (Fifth edition, 2001)	Interior Lining and Periodic Inspection of Underground Storage Tanks
14. RP 1632 (3rd edition, 1996, R 2010)	Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems
15. RP 1637 (3rd <u>4th</u> edition, 2006 <u>2020</u>)	Using the API Color–Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals
16. Std 2000 (7th edition, 2014)	Venting Atmospheric and Low–Pressure Storage Tanks
17. Std 2015 (8th edition, 2018)	Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks
18. RP 2200 (5th edition, 2015)	Repairing Hazardous Liquid Pipelines

19. Std 2350 (4th <u>5th</u> edition, 2012 <u>2020</u>)	Overfill Protection for Storage Tanks in Petroleum Facilities
20. Std 2610 (2nd <u>3rd</u> edition, 2005 <u>2018</u>)	Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities

Table 93.200–3

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

Table 93.200–3j

EI	
Energy Institute 61 New Cavendish Street London W1G 7AR, UK	
Standard Reference Number	Title
1. EI 1529 (7th edition, 2014)	Aviation fuelling hose and hose assemblies

2. EI 1542 (9th edition, 2012)	Identification markings for dedicated aviation fuel manufacturing and distribution facilities, airport storage and mobile fuelling equipment
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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	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. SP0169–2013	Control of External Corrosion on Underground or Submerged Metallic Piping Systems
2. SP0178–2007	Design, Fabrication, and Surface Finish Practices for Tanks and Vessels to Be Lined for Immersion Service
3. SP0188–2006	Discontinuity (Holiday) Testing of New Protective Coatings on Conductive Substrates
4. SP0193–2016	Application of Cathodic Protection to Control External Cathodic Protection of Carbon Steel On–Grade Storage Tank Bottoms
5. SP0285– 2011 – <u>2021</u>	External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection
6. SP0286–2007	Electrical Isolation of Cathodically Protected Pipelines
6m. TM0101–2012	Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Tank Systems
7. TM0497– 2012 – <u>2022</u>	Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems

Table 93.200–6

<p>NFPA®</p> <p>National Fire Protection Association®</p> <p>One Batterymarch Park</p> <p>Quincy, MA 02269</p>	
Standard Reference Number	Title
1. 10 (2018 <u>2022</u>)	Standard for Portable Fire Extinguishers
1m. 20 (2016 <u>2022</u>)	Standard for the Installation of Stationary Pumps for Fire Protection
2. 30 (2018 <u>2021</u>)	Flammable and Combustible Liquids Code
3. 30A (2018 <u>2021</u>)	Code for Motor Fuel Dispensing Facilities and Repair Garages
4. 30B (2015 <u>2019</u>)	Code for the Manufacture and Storage of Aerosol Products
5. 31 (2016 <u>2020</u>)	Standard for the Installation of Oil–Burning Equipment
5m. 35 (2016 <u>2021</u>)	Standard for the Manufacture of Organic Coatings
6. 37 (2018 <u>2021</u>)	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines
7. 68 (2018)	Standard on Explosion Protection by Deflagration Venting
8. 110 (2016 <u>2022</u>)	Standard for Emergency and Standby Power Systems

9. 326 (2015 <u>2020</u>)	Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair
10. 385 (2017 <u>2022</u>)	Standard for Tank Vehicles for Flammable and Combustible Liquids
11. 407 (2017 <u>2022</u>)	Standard for Aircraft Fuel Servicing
12. 410 (2015 <u>2020</u>) - Chapter 6 only	Standard on Aircraft Maintenance
13. 418 (2016 <u>2021</u>)	Standard for Heliports
14. 704 (2017 <u>2022</u>)	Standard System for the Identification of the Hazards of Materials for Emergency Response

Table 93.200-7

PEI	
Petroleum Equipment Institute	
PO Box 2380	
Tulsa, OK 74101	
Standard Reference Number	Title
1. RP100- 17 <u>22</u>	Recommended Practices for Installation of Underground Liquid Storage Systems
2. RP200- 13 <u>19</u>	Recommended Practices for Installation of Aboveground Storage Systems for Motor-Vehicle Fueling

3. RP300- 09 <u>19</u>	Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites
4. RP400- 18 <u>23</u>	Recommended Procedure for Testing Electrical Continuity of Fuel-Dispensing Hanging Hardware
5. RP500- 11 <u>19</u>	Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment
6. RP600- 12 <u>18</u>	Recommended Practices for Overfill Prevention for Shop-Fabricated Aboveground Tanks
7. RP800- 13 <u>20</u>	Recommended Practices for Installation of Bulk Storage Plants
8. RP900- 17 <u>21</u>	Recommended Practices for the Inspection and Maintenance of UST Systems
9. RP1000- 14 <u>22</u>	Recommended Practices for the Installation of Marina Fueling Systems
10. RP1200- 17 <u>19</u>	Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities
11. RP1300- 13 <u>20</u>	Recommended Practices for the Design, Installation, Service, Repair and Maintenance of Aviation Fueling Systems
12. RP1400- 14 <u>21</u>	Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems

Table 93.200–8

SSPC The Society for Protective Coatings 40 24th Street Pittsburgh, PA 15222	
Standard Reference Number	Title
VIS 2 (2001)	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 (2007 <u>2016</u>)	Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks
2. R051 (2017)	Cathodic Protection Testing Procedures for sti-P3® USTs
4e. R111 (2016)	Storage Tank Maintenance

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

Table 93.200-10

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

3. UL 1746 (2007)	Standard for External Corrosion Protection Systems For Steel Underground Storage Tanks
4.UL 1856 (2013 <u>2020</u>)	Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems
5. UL 2080 (2000)	Standard for Fire Resistant Tanks for Flammable and Combustible Liquids
6. UL 2085 (1997)	Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids
7. UL 2258 (2010)	Nonmetallic Tanks for Oil–Burner Fuels and Other Combustible Liquids

Table 93.200–11

<p>U.S. Department of Energy 1000 Independence Ave. SW Washington DC 20585</p>	
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 (Fifth Edition, Revised, November 2016)	Biodiesel Handling and Use Guide

SECTION 11. Table ATCP 93.400 is amended to read:

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

SECTION 12. ATCP 93.400 (1) (c) is amended to read:

(c) Tanks for Class IIIB liquids. Tanks which have a capacity of ~~1,100~~ 5,000 gallons or more and which are used for aboveground storage of Class IIIB liquids shall be listed or shall be acceptable to the department.

SECTION 13. ATCP 93.440 (3) (a) 2. b. is repealed.

SECTION 14. ATCP 93.440 (4) (a) Intro is amended to read:

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

SECTION 15. ATCP 93.465 (2) (b) is repealed.

SECTION 16. ATCP 93.610 (1) and (2) are repealed.

SECTION 17. ATCP 93.610 (4) is amended to read:

(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 sub. (3)~~.

SECTION 18. ATCP 93.615 (3) (b) 3. is amended to read:

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

SECTION 19. Table ATCP 93.615-A is amended to read:

Type of Tank	Individual Tank Capacity (gal)	Setback from Nearest Important Building on Same Property (ft)	Setback from Nearest Retail Dispenser (ft)	Setback from Lot Line That Can be Built Upon, Including the Far Side of a Public Way (ft)	Setback from Near Side of a Public Way (ft)	Minimum Distance Between Tanks (ft)
Vaulted ¹	0 <u>5,000</u> –15,000	0	0	0	0	Separate compartment for each tank
Protected ²	0 <u>5,000</u> –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 5,000–12,000	25	25	50	25	3
Other code–	0–2,000	25	30	50	50	3
complying tank	2,001 5,000–12,000	50	50	100	50	3

SECTION 20. Table ATCP 93.615-B is amended to read:

Type of Tank	Individual Tank Capacity (gal)	Setback from Nearest Important Building on Same Property (ft)	Setback from Nearest Dispenser (ft)	Setback From Lot Line That Can be Built Upon, Including the Far Side of a Public Way (ft)	Setback from Near Side of a Public Way (ft)	Minimum Distance between Tanks (ft)
Vaulted ¹	0 5,000–15,000	0	0	0	0	Separate compartment for each tank
Protected ²	0 5,000–6,000	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 5,000–12,000	25	0	50	25	3
Other code— complying tank	12,000 for Class I 20,000 for Class II or III	25	0	50	25	3

SECTION 21. ATCP 93.630 (3) is repealed.

SECTION 22. ATCP 93.630 (4) is amended to read:

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

SECTION 23. Table ATCP 93.630 is amended to read:

Table 93.630

Tank System Setbacks for Tanks with Secondary Containment

Aggregate Capacity (gallons)	Distance to Nearest Building, Haystack or Combustible Structure or Nearest Side of Any Public Way	Distance to Property Line That Is or Can Be Built Upon, Including the Opposite Side of a Public Way
275 or less	5 feet	5 feet
276–750	5 feet	10 feet
751 <u>5,000–12,000</u>	5 feet	15 feet

12,001–30,000	5 feet	20 feet
Any size	The minimum setback between multiple tank fueling systems is 200 feet.	

SECTION 24. ATCP 93.700 (2) (b) 1. is repealed.

SECTION 25. EFFECTIVE DATE: This rule takes effect on the first day of the month following publication.

(END OF RULE TEXT)

Dated this 22 day of January, 2024.

WISCONSIN DEPARTMENT OF
 AGRICULTURE, TRADE AND CONSUMER
 PROTECTION

By: Randy Romanski

Randy Romanski
 Secretary