

SECTION 1. Comm 2.43 (title) and (1) are amended to read:

**Comm 2.43 (title) Storage tanks for flammable and combustible 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 ~~flammable and combustible~~ liquids that are flammable, combustible or federally regulated hazardous substances shall be determined in accordance with Table 2.43.

SECTION 2. Comm 10.050 (15) is amended to read:

**Comm 10.050 (15)** “Bulk plant” means a facility ~~used for temporary bulk storage of gasoline, diesel fuel, and similar liquid products~~ where flammable or combustible liquids are stored or blended in bulk, prior to the further distribution of these products by tank vehicle to retail, commercial, or consumer outlets.

SECTION 3. Comm 10.050 (51m) is created to read:

**Comm 10.050 (51m)** “Hazardous liquid” means any liquid that is a federally regulated hazardous substance as defined in s. 101.09, Stats.

**Note:** The definition of federally regulated hazardous substances in section 101.09 (1) (am) of the Statutes corresponds to the CERCLA List of Hazardous Substances and Reportable Quantities contained in 40 CFR 302.4, Table 302.4.

SECTION 4. Comm 10.050 (114) (f) Note is created to read:

**Comm 10.050 (114) (f) Note:** See paragraph (p) for a definition of “fixed tank.”

SECTION 5. Comm 10.050 (114) (k) is amended to read:

**Comm 10.050 (114) (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.

SECTION 6. Comm 10.050 (114) (p) and (q) are renumbered Comm 10.050 (114) (q) and (r).

SECTION 7. Comm 10.050 (114) (p) is created to read:

**Comm 10.050 (114)** (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.

SECTION 8. Comm 10.050 (117) Note [2] is amended to read:

**Comm 10.050 (117) Note [2]:** *Assessment and Reporting of Suspected and Obvious Releases From Underground and Aboveground Storage Tank Systems (Publication # ERS-10874)* is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division’s Web site at <http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html>.

SECTION 9. Comm 10.100 (1) (b) 6. is amended to read:

**Comm 10.100 (1) (b) 6.** Aboveground tank systems that store ~~liquid~~ hazardous ~~substances~~ liquids which are not also flammable or combustible liquids, if the construction is supervised by a qualified engineer.

SECTION 10. Comm 10.130 (3) (b) 3. Note is amended to read:

**Comm 10.130 (3) (b) 3. Note:** Section Comm 10.515 (5) (~~d~~) (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.

SECTION 11. Comm 10.150 (2) (e) is created to read:

**Comm 10.150 (2) (e)** A copy of the newly recorded deed showing the new owner.

SECTION 12. Comm Tables 10.200-2 and 10.200-9 are amended to read:

**Table 10.200-2**  
(Partial Table)

API	American Petroleum Institute 1220 L Street, NW Washington, DC 20005
<b>Standard Reference Number</b>	<b>Title</b>
6. 653- <del>0409</del>	Tank Inspection, Repair, Alteration, and Reconstruction.

**Table 10.200-9**  
(Partial Table)

STI	Steel Tank Institute 944 Donata Court Lake Zurich, IL 60047
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Standard Reference Number	Title
6. SP031-0608	Standard for Repair of <del>In-Service Shop-Fabricated</del> Aboveground Tanks for Storage of <del>Combustible and</del> Flammable <u>and Combustible</u> Liquids.

SECTION 13. Comm 10.220 (2) (d) is created to read:

**Comm 10.220 (2) (d)** NFPA 5000<sup>®</sup> – Building Construction and Safety Code<sup>®</sup>.

SECTION 14. Comm 10.225 is created to read:

**Comm 10.225 Alternate standards. (1)** Alternate standards that are equivalent to or more stringent than the standards referenced in this chapter may used in lieu of the referenced standards when approved by the department or if written approval is issued by the department in accordance with sub. (2).

**(2) (a)** Upon receipt of a fee and a written request, the department may issue an approval for the use of the alternate standard.

**(b)** The department shall review and make a determination on an application for approval within 40 business days of receipt of all forms, fees and documents required to complete the review.

**(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.

SECTION 15. Comm 10.230 (4) Note is created to read:

**Comm 10.230 (4) Note:** The flash point as noted in the MSDS will be used to resolve any disputes of the flammability or combustibility classification for the respective liquid product.

SECTION 16. Comm 10.250 (2) (d) is created to read:

**Comm 10.250 (2) (d)** Aboveground used-oil tanks at a scrap recycling or auto recycling facility that are exempted from these requirements under s. Comm 10.300 (9).

SECTION 17. Comm 10.250 (3) is repealed and recreated to read:

**(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.

SECTION 18. Comm 10.300 (2) (b) Note and (h) are amended to read:

**Comm 10.300 (2) (b) Note:** See section Comm 10.250 for minimum marking requirements for newly manufactured or constructed ~~or erected~~ tanks.

(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.

SECTION 19. Comm 10.300 (9) is created to read:

**Comm 10.300 (9) SCRAP RECYCLING AND AUTOMOBILE RECYCLING FACILITIES.** Subsections (1) (a), (2) (a), (2) (c) to (h), (3) to (5), (6) (a), (7) 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.

SECTION 20. Comm 10.330 (4) (c) is amended to read:

**Comm 10.330 (4) (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.

SECTION 21. Comm 10.340 (5) and (6) (a) (title), (a), (b) (title) and (b) are is amended to read:

**Comm 10.340 (5) TRANSFER OPERATIONS.** In order to prevent a spill from moving beyond the loading or unloading area, any new or existing aboveground tank that has a capacity of 5000 gallons or more shall be provided with a catchment basin or treatment facility to contain the maximum capacity of ~~any single~~ 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 December 31, 2009.

**(6) (a) *Aboveground tanks at existing facilities.*** Aboveground ~~tanks~~ tank systems at existing bulk plants and terminals shall comply with subch. IV.

**(b) *Underground tanks at existing facilities.*** Underground ~~tanks~~ tank systems at existing bulk plants and terminals shall comply with subch. V.

SECTION 22. Comm 10.340 (6) (c) is created to read:

**Comm 10.340 (6) (c) *New facilities.*** New bulk plants and terminals shall comply with PEI RP800; aboveground tank systems there shall also comply with ss. Comm 10.400 (3), (4), (5) and (7) to (11); and underground tank systems there shall also comply with subch. V.

SECTION 23. Comm 10.350 (2) (a) to (c) are amended to read:

**Comm 10.350 (2) (a) *General.*** 1. 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, except as provided in subd. 2.

2. Construction supervision by a qualified engineer is not required where all of the following occur:

- a. Plans for the tank system are approved by an authorized agent or the department.
- b. Construction is by a certified installer.
- c. An authorized agent or the department inspects and accepts the construction.

(b) *Notification.* The qualified engineer shall notify the department, on form ERS-9198, of an impending installation of a tank system under this section, unless this notice is provided under s. Comm 10.115 (2) (b) 3. ~~for a UST.~~

(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 ~~section~~ sections 11 and 14, before the tanks and pipe systems are placed into service.

SECTION 24. Comm 10.370 is amended to read:

**Comm 10.370 Emergency shut-off for transfers.** An emergency electrical shut-off 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. Existing systems shall comply with this section within 2 years after December 31, 2009.

SECTION 25. Comm 10.400 (2) (b) (title) and (intro.) to 3., and (3) (a), (c) and (d) are amended to read:

**Comm 10.400 (2) (b) (title) ~~Tanks~~ *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.
3. The tank system is protected by a sacrificial anode or impressed current system.

(3) (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. (f) ~~(g)~~.

(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 December 31 of the fifth year following February 1, 2009, except as exempted in par. (e).

SECTION 26. Comm 10.400 (3) (e) to (g) are renumbered Comm 10.400 (3) (f) to (h), and Comm 10.400 (3) (h) 2. and 3. as renumbered are amended to read:

**Comm 10.400 (3) (h) 2.** Piping ~~for~~ that is installed or replaced on or after [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE] 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 [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE] 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.

SECTION 27. Comm 10.400 (3) (e) is created to read:

**Comm 10.400 (3) (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.

SECTION 28. Comm 10.410 (6) (c) and (9) are amended to read:

**Comm 10.410 (6) (c)** The basin shall be equipped with a method to remove product or a ~~push-to-drain~~ system that directs spilled product into the tank.

**(9) (a)** The following new and existing tanks that have a fill point not located within a diked area 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, and which automatically shuts off flow when the quantity of liquid in the tank reaches 95 percent of the tank's capacity:

- ~~(a)~~ 1. Tanks using tight-connect delivery.

~~(b)~~ 2. Tanks located remote from the fill point, that use delivery nozzles with latch-open devices.

(b) Existing tank systems shall comply with this subsection within 2 years after [the effective date of this paragraph . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE].

SECTION 29. Comm 10.420 (5) is amended to read:

**Comm 10.420 (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 ~~any single~~ the largest compartment of a tank car or tank vehicle loaded or unloaded at the facility.

SECTION 30. Comm 10.445 is repealed and recreated to read:

**Comm 10.445 Seldom-used and temporarily-out-of-service tanks. (1)**  
OPERATIONAL REQUIREMENTS. Owners or operators of aboveground seldom-used and temporarily-out-of-service tanks shall comply with the applicable requirements of s. Comm 10.545 (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) Tank systems out of service for more than 365 days shall have a pressure test of the ullage portion to assure that tank connections are tight before the tanks are placed back into service.

**(3) NON-COMPLYING TANKS.** Tanks that are placed out of service which do not comply with this section shall be permanently closed in accordance with s. Comm 10.460 within 60 calendar days.

SECTION 31. Comm 10.465 (1) Note is amended to read:

**Comm 10.465 (1) Note:** For further information on sampling and reporting for these assessments, see the Department's *Assessment and Reporting of Suspected and Obvious Releases From Underground and*

*Aboveground Storage Tank Systems* (Publication # ERS-10874), which is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's Web site at <http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html>.

SECTION 32. Comm 10.500 (1) (b) 3. and 4., (5) (a) 2. a. and (f) 2. and 3., (6) (b) 2. a. and (9) (c) 14. are amended to read:

**Comm 10.500 (1) (b) 3.** Piping of safe suction systems, that is installed before [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE].

4. A pipe manifold connecting 2 or more tanks, that is installed before [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE].

(5) (a) 2. a. Underground Sumps for new or replacement underground fill piping that does not drop vertically into a tank may ~~have secondary containment that includes a sump which is be~~ monitored visually on a monthly basis, instead of monitored with an electronic sensor.

(f) 2. Piping ~~for~~ that is installed or replaced on or after [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE] 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 [the effective date of this subdivision . . . LEGISLATIVE REFERENCE BUREAU TO INSERT DATE] 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.

(6) (b) 2. a. All new tanks and pipe systems shall have pressure or vacuum testing that shall assure that the tank, pipe and all connections are tight in accordance with NFPA 30 section 21.5 and PEI RP100 ~~section~~ sections 11 and 14 before the tanks and pipe systems are placed into service.

(9) (c) 14. Product inventory verification in accordance with s. Comm 10.503, ~~and~~ inventory control in accordance with s. Comm 10.515 (2), or statistical inventory reconciliation in accordance with s. Comm 10.515 (6) – 10 years.

SECTION 33. Comm 10.500 (9) (c) 14. Note is renumbered Comm 10.500 (9) Note [1] and amended to read:

**Comm 10.500 (9) Note [1]:** 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.

SECTION 34. Comm 10.500 (9) Note [2] is created to read:

**Comm 10.500 (9) Note [2]:** Section Comm 10.870 has recordkeeping requirements for operator training, for USTs that are required to have a permit to operate from the department.

SECTION 35. Comm 10.503 (1) and (2) (intro.) and (c) are amended to read:

**Comm 10.503 Product inventory verification at retail facilities. (1)** This section applies to ~~all facilities~~ any tank system from which products are offered for retail sale to the public that are subject to the requirements of ch. Comm 48.

**Note:** Inventory verification can be particularly effective during regulatory investigations of consumer complaints about the quality of purchased fuels.

(2) (intro.) To verify and maintain the integrity and quantity of delivered products, product inventory verification shall be conducted monthly for the life of the tank system, and reconciled on a monthly basis, in the following manner:

(c) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery. Where ~~blend pumps tanks~~ are used interconnected by a manifold, reconciliation may address all of the interconnected tanks as a group rather than as individual tanks.

SECTION 36. Comm 10.503 Notes are created to read:

**Comm 10.503 Note:** Where inventory control is used as the leak detection method, under section Comm 10.515 (2), the measurements and procedures followed there will satisfy the requirements for inventory verification in this section.

**Note:** Where statistical inventory reconciliation (SIR) is used as the leak detection method, under section Comm 10.515 (6), the same data may be used for the SIR and the inventory verification in this section, provided the requirements of the SIR vendor and this section are both met, including the monthly reconciliation in this section.

SECTION 37. Comm 10.505 (2) (a) 2. is amended to read:

**Comm 10.505 (2) (a) 2.** The basin shall be equipped with either a ~~push-to-drain~~ system that directs spilled product into the tank, or a mechanism to pump product out of the basin.

SECTION 38. Comm 10.510 (2) (title), (c) and Note are amended to read:

**Comm 10.510 (2) (title)** ANNUAL CALIBRATION VERIFICATION.

(c) Annual monitoring equipment certification shall be made on the department's underground tank system ~~release and leak monitoring~~ prevention and detection functionality verification form (ERS-10778) and shall be maintained onsite in accordance with s. Comm 10.500 (9) (a).

**Note:** Form ERS-10778, Underground Tank System Release and Leak Monitoring Prevention and Detection Functionality Verification, is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's Web site at <http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html>.

SECTION 39. Comm 10.515 (2) (b) 3. b. is amended to read:

**Comm 10.515 (2) (b) 3. b.** Where ~~blend pumps tanks~~ tanks are ~~used~~ interconnected by a manifold, reconciliation may address all of the interconnected tanks as a group rather than as individual tanks.

SECTION 40. Comm 10.515 (5) (b) and (c) are repealed.

SECTION 41. Comm 10.515 (5) (d) and (6) (b) to (g) are renumbered Comm 10.515 (5) (b) and (6) (c) to (h).

SECTION 42. Comm 10.515 (6) (b) is created to read:

**Comm 10.515 (6) (b)** The daily tank product inventory records shall be maintained current and be maintained on site.

SECTION 43. Comm 10.520 (1) (b) 1. is amended to read:

**Comm 10.520 (1) (b) 1.** To allow for periodic testing, new and replacement factory- or field-installed corrosion protection systems shall ~~include~~ have appropriate connections, insulated lead wires and accessible test stations, including as specified in subds. 2 and 3.

SECTION 44. Comm 10.520 (2) (b) 4. is created to read:

**Comm 10.520 (2) (b) 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. Comm 10.515 (4). The tightness test shall test 100 percent of the tank's volume.

SECTION 45. Comm 10.530 (1) (c) is created to read:

**Comm 10.530 (1) (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.

SECTION 46. Comm 10.535 (9) is created to read:

**Comm 10.535 (9)** Prior to placing any tank back into service under this section, both of the following shall occur, in the following order:

(a) An access way for an inspector to enter the tank shall be installed from the tank interior to finished grade, if not already provided.

(b) A precision tightness test shall be performed on the tank system in accordance with s. Comm 10.515 (4). The tightness test shall test 100 percent of the tank's volume.

SECTION 47. Comm 10.545 (1) (a) 2. b., (2) (b) and (c), (3) (title) and (3) are amended to read:

**Comm 10.545 (1) (a) 2. b.** The tank system is empty when all liquid has been removed from the tank and the associated piping so that no more than 1 inch of residue, or 0.3 percent by weight of the total capacity of the tank system, remains in the system.

**(2) (b)** Tank systems out of service for more than 365 days shall have a pressure test of the ullage portion to assure that tank connections are tight and 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.

**(c)** ~~Tanks~~ Tank systems covered in par. (a) shall immediately have the leak detection system verified in accordance with s. Comm 10.510 (2).

**(3) (title)** ~~NON-COMPLYING TANKS~~ TANK SYSTEMS. ~~Tanks~~ Tank systems that are placed out of service which do not comply with this section shall be permanently closed in accordance with s. Comm 10.560 within 60 calendar days.

SECTION 48. Comm 10.545 (2) (d) and Note are created to read:

**Comm 10.545 (2) (d)** Tanks covered in par. (b) shall have all the respective components documented as functional on form ERS-10778.

**Note:** Form ERS-10778, Underground Tank System Release and Leak Monitoring Functionality Verification, is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's Web site at <http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html>.

SECTION 49. Comm 10.575 (2) (intro.) is amended to read:

**Comm 10.575 (2)** (intro.) ASSESSMENT. The owner or operator shall evaluate and confirm all suspected or obvious releases by taking one or all of the following actions ~~at the direction~~ and shall also do so in accordance with any corresponding directive of the department:

SECTION 50. Comm 10.580 (3) (a) Note [1] is amended to read:

**Comm 10.580 (3) (a) Note [1]:** For further information on sampling and reporting for these assessments, see the Department's *Assessment and Reporting of Suspected and Obvious Releases From Underground and Aboveground Storage Tank Systems (Publication # ERS-10874)*, which is available from the Division of Environmental and Regulatory Services at P.O. Box 7837, Madison, WI, 53707-7837, or at telephone (608) 266-7874, or from the Division's Web site at <http://www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html>.

SECTION 51. Comm 10.605 (1) (f) (title) and (g) (title) are created to read:

**Comm 10.605 (1) (f) (title)** *Emergency shut-off valve.*

(g) (title) *Water level in tanks.*

SECTION 52. Comm 10.615 (1) is amended to read:

**Comm 10.615 (1) GENERAL.** ~~Fixed-tank~~ Aboveground fixed-tank fuel dispensing facilities shall comply with NFPA 30, NFPA 30A, PEI RP200, ss. Comm 10.445 to 10.470 and this section.

SECTION 53. Comm 10.615 (5) (a) 1. and 2. are renumbered Comm 10.605 (1) (f) 1. and 2.

SECTION 54. Comm 10.615 (5) (a) (title), 3. to 6. and Notes are repealed.

SECTION 55. Comm 10.615 (5) (b) to (p) are renumbered Comm 10.615 (5) (a) to (o).

SECTION 56. Comm 10.615 (6) (b) and (c) are renumbered Comm 10.605 (1) (g) and 10.615 (6) (b).

SECTION 57. Comm 10.740 (2) (a) is amended to read:

Comm 10.740 (2) (a) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in s. Comm ~~10.743~~ 10.753, the owner or

operator shall obtain alternate coverage as specified in this ~~section~~ subchapter within 60 days after receipt of the notice of termination.

SECTION 58. Comm 10 subchapter VIII is created to read:

### **Comm 10 Subchapter VIII – Training for Operators of Underground Storage Tank Systems**

**Comm 10.800 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 USEPA operator-training requirements, as contained in publication EPA-510-R-07-005, are available through the following Web site: [http://www.epa.gov/OUST/fedlaws/final\\_ot.htm](http://www.epa.gov/OUST/fedlaws/final_ot.htm).

**Comm 10.805 Scope.** This subchapter applies to all underground storage tank systems that are required by s. Comm 10.145 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 section Comm 10.605 (1) (a), which requires fuel dispensing facilities to have periodic and annual inspections and maintenance in accordance with PEI RP500 and RP900.

**Comm 10.810 Definitions.** In this subchapter:

(1) “Class A operator” means an individual who has primary responsibility to operate and maintain an underground storage tank system in accordance with this chapter.

**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 an individual who implements, on-site, the day-to-day aspects of operating, maintaining and recordkeeping for an underground storage tank system.

**Note:** This individual generally focuses on field implementation of applicable UST requirements and the day-to-day aspects of operating, maintaining, and recordkeeping for USTs at one or more facilities.

(3) “Class C operator” means an individual who has on-site responsibility to respond to emergencies or alarms relating to spills, leaks or releases from an underground storage tank system.

**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.

**Comm 10.820 Designation of Class A, Class B and Class C operators. (1)**

GENERAL. Beginning no later than January 1, 2012, 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, except as provided in sub. (2).

(2) SMALL BUSINESS EXCEPTION. For any entity demonstrating to the authorized agent or the department that it meets the definition of small business in s. 227.114 (1), Stats., the beginning date for having an accredited Class A, Class B and Class C operator is August 8, 2012.

**Note:** Section 227.114 (1) of the Statutes reads in part: “ ‘Small business’ means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.”

**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.

**Comm 10.830 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) Managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

(b) 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, recordkeeping and reporting are met.

(b) Requirements for leak or release prevention equipment, recordkeeping and reporting are met.

(c) All relevant equipment complies with performance standards.

(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 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. Comm 10.605 (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 shut-off procedures and the name, address 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 Comm 10.605 (5) (a) reads as follows: “To be considered as being an attended fueling facility, there shall be at least 1 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. Comm 10.605 (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.

**Comm 10.840 Training elements for Class A operators.** Each Class A operator shall be trained in all of the following:

**(1)** Basic underground storage tank system requirements, so that he or she can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance, and recordkeeping 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.

**(2)** Financial responsibility documentation requirements.

(3) Notification requirements.

(4) Requirements for reporting obvious and suspected releases.

(5) Requirements for permanently closing a tank system and for placing a tank system temporarily out of service.

(6) Operator training requirements.

**Comm 10.841 Training elements for Class B operators.** (1) Compared with training for a Class A operator, training for a Class B operator shall provide a more in-depth understanding of operation and maintenance aspects, but may cover a more narrow breadth of applicable regulatory requirements.

(2) Each Class B operator shall receive either of the following:

(a) Site-specific operator training that is focused only on equipment used at the operator's underground storage tank system facility.

(b) Broader training regarding regulatory requirements that encompass all of the following:

1. Components of underground storage tank systems.
2. Materials of underground storage tank system components.
3. Methods of leak and release detection, and leak and release prevention applied to underground storage tank system components.
4. Operation and maintenance requirements of this chapter which apply to underground storage tank systems and which address each of the following:
  - a. Spill prevention.
  - b. Overfill prevention.
  - c. Leak and release detection.
  - d. Corrosion protection.
  - e. Emergency response.
  - f. Product compatibility.
5. Reporting and recordkeeping requirements.

6. Class C operator training requirements.

**Comm 10.842 Training elements for Class C operators.** (1) Each Class C operator shall be trained to take appropriate action in response to both of the following:

- (a) Emergencies, including situations which pose an immediate danger or threat to the public or to the environment and which require immediate action.
- (b) Alarms caused by spills, leaks or releases from an underground storage tank system.

(2) Each Class C operator shall be trained to understand the instructions specified in s. Comm 10.830 (2) (e).

**Comm 10.850 Acceptable training and certification processes.** (1) Operator training shall include evaluation and accreditation of the operator's knowledge of the applicable requirements in ss. Comm 10.840 to 10.842.

(2) Acceptable methods for meeting the requirements in sub. (1) and ss. Comm 10.840 to 10.842 include all of the following:

(a) *Class A and Class B Operators.* Class A and Class B operators shall obtain either of the following, except as provided in sub. (4):

1. A certificate issued by the International Code Council® showing that the individual has passed the Wisconsin UST operator examination for the class the individual is designated to.

2. a. Written proof of successfully completing an equivalent, alternate operator training program that has received prior written approval from the department.

b. Any alternate program under subd. 2. a. shall include an evaluation and accreditation of operator knowledge through testing, practical demonstration or other tools that the department determines are acceptable.

(b) *Class C Operators.* Class C operators shall obtain a certificate issued by an accredited Class A or Class B operator 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.

(3) For a Class B training program that focuses on the site-specific training specified in s. Comm 10.841 (2) (a), the written proof in sub. (2) (a) shall also include identification of the type of tank system addressed in the training.

(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 that have equivalent operator training requirements.

(b) Class A and Class B operators who choose to proceed under this subsection shall obtain written proof of their training verification and the department acceptance, as specified in par. (a).

**Comm 10.860 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. Comm 10.850 before assuming their responsibilities under this subchapter, except as provided in sub. (2).

(2) EXISTING, COMPLIANT FACILITIES. An incoming Class A or Class B operator for a facility that was complying with section Comm 10.820 immediately before that personnel change may obtain the documentation specified in s. Comm 10.850 no later than 30 days after assuming the responsibilities under this subchapter.

**Comm 10.870 Recordkeeping.** (1) The owner or operator shall maintain the documentation specified in s. Comm 10.850 at the underground storage tank system site and have it immediately available for inspection by the authorized agent or the department, except as provided in sub. (2).

(2) For fueling facilities that are not attended as specified in s. Comm 10.605 (5) (a), and facilities that typically are unmanned, such as emergency generators, the owner or operator shall maintain the documentation specified in s. Comm 10.850 at a readily available site and provide it for inspection to the authorized agent or the department upon request.

**Note:** Section Comm 10.605 (5) (a) reads as follows: “To be considered as being an attended fueling facility, there shall be at least 1 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) or (2) shall be accompanied with contact information for each designated operator, including a telephone number and mailing address.

**Comm 10.880 Retraining.** (1) (a) If the authorized agent or the department determines that an underground storage tank system is not in significant compliance with this chapter, the Class B operator shall be retrained within either 60 days or another time period prescribed by the department, in the areas that are determined to not be in compliance, except both the Class A and Class B operators shall be retrained if so directed by the department.

(b) 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: <http://www.epa.gov/oust/cmplastc/soc.htm>.

(2) In this section, “significant compliance” means, in addition to release prevention and release detection efforts, that an ample amount of the required activity is performed through a concerted effort aimed at total compliance. A determination of significant compliance is obtained through a common-sense approach to evaluating whether enough effort was made to comply with the applicable requirements. Substantial compliance is not a specific number or percent of compliance.

**Note:** Section Comm 10.115 (3) (c) allows shutdown of any underground storage tank system for which there is a continuing violation of the requirements in this chapter.

**(END)**

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EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after the date of publication in the Wisconsin administrative register.

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