ORDER OF THE
DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce proposes an order to repeal Comm 5.003 (19), 5.82 (5) (b), 5.83 (5) (b), 5.86 (6) (b), and 5.87 (6) (b);

to renumber Comm 5.003 (17m) and (18), Comm 5.10 (1) (a) 12. h. to k., 5.82 (5) (a) 1. and 2., 5.86 (5) (f) and (g) to (j) and (6) (a) 1. and 2., and 5.87 (6) (a) 1. and 2.;

to renumber and amend Comm 5.83 (5) (a) 1. and 2., and 5.88 (1);

to amend Comm Table 5.02 Line 49; Table 5.06 Lines 42 and 49 to 53; 5.08 (1) (e) 2. a.; 5.68 (1), (3), and (7) (b) 1.; 5.82 (4); 5.83 (title), (1), (2) (intro.), (3), and (4); 5.84 (1) (intro.) and (5) (e) and (f); 5.85 (1) (intro.) and (5) (e) and (i); and 5.86 (title), (1) (intro.), and (5) (intro.); and 5.88 (3) and (4) (a);

to repeal and recreate Comm 5.003 (9), 5.81 (4) (c), 5.82 (1), and 5.87 (1) and Note; and

to create Comm 5.003 (10m); Table 5.02 Lines 54g and 54r; Table 5.06 Lines 54g and 54r; 5.07 (2) (b) 3.; 5.08 (1) (e) 2. c., (g), and (h); Comm 5.10 (1) (a) 12. i. and j. and 13. (intro), d., and e.; 5.68 (6) Note; 5.80 (2) (e) and (5) (c) 3.; 5.81 (2) (d); 5.82 (2) (c) and (5) (c); 5.84 (5) (g) and (7); 5.85 (5) (e) Note; 5.86 (5) (a) Note and (f), (h), and (m); 5.87 (2) (c), (6) (c), and (7); 5.88 (1) (b); and 5.89; relating to credentials for storage of flammable, combustible, and hazardous liquids; and for cleanup of properties contaminated by petroleum-product discharges; and affecting small business.

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Rule Summary

1. Statutes Interpreted.

Sections 101.02 (1), (20), and (21), 101.09 (3), 101.143 (2) (g), and 227.51.

2. Statutory Authority.

Sections 101.02 (1) and (15), 101.09 (3), 101.19 (1), 101.143 (2) (g), and 227.11 (2) (a).

3. Explanation of Agency Authority.

Section 101.02 (1) of the Statutes requires the Department to adopt reasonable rules relative to the exercise of the Department's powers and authorities. Section 101.02 (15) (j) requires the Department to protect public safety by promulgating reasonable rules for construction, repair and maintenance of places of employment and public buildings. Section 101.09 (3) (a) requires the

Department to promulgate rules for protecting the waters of the State from improper storage, handling and use of flammable or combustible liquids, or federally regulated hazardous substances; and requires those rules to include construction and maintenance requirements related to the prevention of leaks. Section 101.09 (3) (c) authorizes the Department to promulgate rules that require certification of persons who install or inspect tanks which are used for storing these liquids or substances. Section 101.143 (2) (g) authorizes the Department to promulgate requirements for the registration of persons who provide consulting services relating to cleanup of properties contaminated by petroleum-product discharges. Section 101.19 (1) requires the Department to fix and collect fees for offsetting the cost of determining and certifying the competency of inspectors. Section 227.11 (2) (a) authorizes the Department to promulgate rules interpreting the provisions of the statutes that the Department enforces or administers.

4. Related Statute or Rule.

Chapter Comm 10 of the *Wisconsin Administrative Code* provides fire and life safety, and environmental protection, by regulating the storage, display, installation, operation, use, maintenance and transportation of flammable, combustible and hazardous liquids; and by regulating the equipment, facilities and buildings that are used to store, transfer and dispense those liquids. Chapter Comm 47 contains requirements for reimbursing eligible costs that are incurred because of a petroleum-product discharge from a storage system.

5. Plain Language Analysis.

Chapter Comm 5 contains the Department's rules for issuing numerous credentials that businesses and individuals are either mandated or permitted to obtain. These credentials include certifications and registrations that relate to safe storage of flammable, combustible, and hazardous liquids, and to cleanup of properties contaminated by petroleum-product discharges.

The proposed rules would primarily modify chapter Comm 5 by creating (1) a certification category for individuals who conduct cathodic protection testing of any tank system that will hold flammable, combustible, or hazardous liquids which are regulated by chapter Comm 10; and (2) a certification category for individuals who design or install cathodic protection systems for those tank systems. The proposed rules would also limit this testing, design, and installation to individuals who are certified under these rules.

Other substantive changes relating to chapter Comm 10 in the proposed rules would (1) modify several specialty credential responsibilities by deleting outdated activities, and adding activities that have proven to better reflect the nature of the work; (2) remove references to past dates that have no relationship to current-day credential qualifications or administration; (3) eliminate continuing-education requirements from three specialties because the corresponding technical aspects do not change appreciably, and continuing-education opportunities within the industry are limited; (4) shorten the approval duration for continuing-education courses, from five years to three, unless otherwise specified in an approval letter; (5) require departmental notification if an approved, continuing education course is discontinued or modified; (6) no longer allow renewal of credentials after they expire, except by complying with all of the requirements for new applicants; (7) expand the reasons for denial, suspension or revocation of a credential to include failure to maintain required records, denial of Departmental access to requested records, failure to submit a required notice or report to the Department within a required time period, and submittal of

false or routinely inadequate reports to the Department; (8) directly link all credentials for storage of flammable, combustible, and hazardous liquids to the corresponding requirements in chapter Comm 10; (9) modify the site assessor specialty credential terminology to better reflect the scope of the credential; (10) require contractor liability insurance coverage for firms that install, remove, test, line, clean, or perform assessment, for tank systems; and (11) require that same liability coverage for tank system removers and cleaners.

Two sets of proposed changes relate to chapter Comm 47. The first set consists of expanding the reasons for denial, suspension or revocation of a credential to include (1) submittal of false or routinely inadequate reports to the Department; (2) performance of activities that result in both exceeding a cost cap established by the department, and submittal of a claim to the department for the cost in excess of that cost cap; and (3) failure to pay a financial penalty assessed under chapter Comm 47 for a grossly ineligible cost. The second set of changes expands a current requirement for PECFA consultants and consulting firms to have liability coverage, by requiring consultants and firms to submit proof of that coverage when applying for or renewing a credential.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

In Title 40 of the Code of Federal Regulations, under Section 20 of Part 280, a corrosion expert must design and oversee installation of field-installed cathodic protection systems for underground steel storage tanks and piping for flammable, combustible, and federally regulated hazardous liquids. Section 31 of 40 CFR 280 requires that a qualified cathodic protection tester periodically inspect all cathodic protection systems for these tanks and piping. Section 12 of 40 CFR 280 establishes definitions for corrosion expert and cathodic protection tester. Those definitions require corrosion experts to be accredited professionals, and require cathodic protection testers to meet specified criteria for education and experience. The proposed rules would incorporate these requirements and definitions into chapter Comm 5.

7. Comparison With Rules in Adjacent States.

<u>Cathodic protection credential</u>

In Michigan, corresponding cathodic protection professionals are required to be so certified by the National Association of Corrosion Engineers (NACE). Illinois requires the contractor to be State-certified to perform cathodic protection testing activities, and a NACE-certified individual must perform any design activity. Minnesota requires either Steel Tank Institute (STI) or NACE certification for cathodic protection testing activities, and a NACE-certified individual must perform any design activity. Iowa is revising their code to require certification from a recognized program, such as NACE or STI.

<u>Contractor liability insurance</u>

Under section 324.21107 of the Michigan Statutes, any person who installs or removes underground storage tank systems must maintain pollution liability insurance with limits of not less than $1,000,000 per occurrence. In Title 41 of the Illinois Administrative Code, section 172.40 (b) (1) (C) requires underground storage tank contractors to annually maintain a certificate of general liability insurance in a minimum of $1,000,000 – with the Office of the State Fire Marshall as certified holder. In Iowa, Administrative Code section 591–15.5(455G) requires all licensed installers, liners, testers and inspectors to have environmental liability insurance with minimum liability limits of $250,000 per occurrence and in the aggregate, as approved by the administrator of

the Iowa comprehensive petroleum underground storage tank fund program. Iowa expects to increase the $250,000 limit to $1,000,000 during 2007. In Minnesota's Rules, chapter 7105 requires contractors who install, repair or remove regulated underground storage tanks to have general liability insurance coverage, bonding or liquid company assets, equal to five times the largest regulated UST project completed by the contractor within the previous two years. Consequently, the contractor liability insurance coverage that would be required under the proposed rules would not be more restrictive than the coverage required in adjacent states.

8. Summary of Factual Data and Analytical Methodologies.

Cathodic protection has proven to be highly effective for protecting underground metal tanks and piping from corrosion, provided the protection system is properly designed, installed, operated, maintained, and tested. Over the past several years, the Department has become aware of a significant number of cathodic protection systems that have not provided adequate protection or have caused interference with adjacent protection systems or structures.

Factory-installed, galvanic, cathodic protection systems are relatively simple in construction and operation. They include anodes that are sacrificed or consumed in the process of generating a protective current which is required to prevent corrosion. However, for older, existing underground storage tank systems, impressed current is often needed, because any dielectric coating provided on the tank is usually deteriorated or nonexistent, and a bare-metal or poorly coated tank system needs significantly more protective current than can be generated by a reasonable number of sacrificial anodes. An effective cathodic protection system must be engineered to provide the correct amount of protection – too little or too much protection can potentially be as defective as no protection.

Testing of cathodic protection systems is an important part of assuring the integrity of an underground storage tank system. However, soil and seasonal conditions affect the accuracy of cathodic protection testing methods, and site-specific factors can result in false and otherwise misleading indicators that a tank system is or is not adequately protected against corrosion. Improper interpretation of the test measurements has led to many false conclusions about whether a tank system is adequately protected or unprotected. Also, because no standard currently accounts for every situation and site-specific environmental and soil conditions, experience and training in corrosion control is warranted.

Requiring Wisconsin-based certification of cathodic protection professionals would enable Wisconsin to directly enforce the associated requirements, rather than depend on federal enforcement. This direct enforcement would provide further assurance that cathodic protection activities are performed at a minimum level of competency, following nationally established and accepted standards. In addition, Wisconsin certification would establish a database of certified individuals that could be used to communicate to the general public those individuals who are qualified to perform the work. The Department could also use this database for communicating new or proposed requirements or informational announcements to certified individuals.

The proposed changes for chapter Comm 5 were developed with assistance from the Department's advisory committee for flammable, combustible and hazardous liquids. The members of that advisory committee are as follows:

Name	Representing

Randy Shervey	Wisconsin Fire Inspectors Association
Erin Roth	Wisconsin Petroleum Council
Tim Clay	Wisconsin Federation of Cooperatives
Paul Knower	Wisconsin Petroleum Equipment Contractors Association
Steve Danner	Wisconsin Aviation Trades Association
Elizabeth Hellman	Wisconsin Utilities Association
Gary Pate	Wisconsin Insurance Alliance
Bill Noel	Wisconsin Paper Council
Dale Safer	Wisconsin Innkeepers
Bob Bartlett	Wisconsin Petroleum Marketers and Convenience Store Association

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary document that was used to determine the effect of the proposed rules on small business was Part 280 of Title 40 of the *Code of Federal Regulations.* As noted in the above summary of federal regulations, the proposed Wisconsin credential requirements for corrosion experts and cathodic protection testers are essentially the same as the federal credential requirements in 40 CRF 280. Federal guidelines produced by the Small Business Administration's Office of Advocacy were also used in considering the potential effects on small business. The analysis for the expected effect of the new requirement for contractor liability insurance coverage was particularly based on outreach to current contractors.

10. Effect on Small Business.

The proposed rules are not expected to impose significant costs or other impacts on small businesses because the included requirements for performing cathodic protection activities, and the corresponding certifications, would not be significantly more restrictive than current, applicable federal requirements. Although the deletion of continuing-education requirements for three certification categories would reduce costs and impacts for individuals in those categories, that reduction may be offset by codifying a common practice of tank specialty firms, to have contractor liability insurance coverage. Outreach efforts to firms currently performing these activities indicate that this insurance is readily available, beneficial, and reasonably priced.

11. Agency Contact Person.

Sheldon Schall, Wisconsin Department of Commerce, Bureau of Petroleum Products and Tanks, P.O. Box 7837, Madison, WI, 53707-7837; telephone (608) 266-0956; e-mail sheldon.schall@commerce.state.wi.us.

File reference: Comm 5 & 10/rule analysis, LR2

SECTION 1. Comm 5.003 (9) is repealed and recreated to read:

Comm 5.003 (9) "Cathodic protection tester" means a person who demonstrates an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping systems and metal tanks.

SECTION 2. Comm 5.003 (10m) is created to read:

Comm 5.003 (10m) "Corrosion expert" means a person who is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience.

SECTION 3. Comm 5.003 (17m) and (18) are renumbered Comm 5.003 (18) and (19).

SECTION 4. Comm 5.003 (19) is repealed.

SECTION 5. Comm Table 5.02 Line 49 is amended to read:

Table 5.02
FEES
(Partial Table, column headings are provided for reference only.)

	License, Certification or Registration Category	**Type**	**Application Fee**	**Examination Fee**	**License, Certification or Registration Fee**
49.	Tank-System Site Assessor	Certification	$20	$15	$50

SECTION 6. Comm Table 5.02 Lines 54g and 54r are created to read:

Table 5.02
FEES
(Partial Table, column headings are provided for reference only.)

	License, Certification or Registration Category	**Type**	**Application Fee**	**Examination Fee**	**License, Certification or Registration Fee**
54g.	Cathodic Protection Tester	Certification	$20	NA	$50
54r.	Corrosion Expert	Certification	$20	NA	$50

SECTION 7. Comm Table 5.06 Lines 42 and 49 to 53 are amended to read:

Table 5.06
TERMS
(Partial Table, column headings are provided for reference only.)

	License, Certification or Registration Category	Term	Expiration Date	Continuing Education Cycle
42.	Tank System Inspector	2 Years	Date of Issuance	~~3 Months Prior to~~ Date of Expiration
49.	Tank-System Site Assessor	2 Years	Date of Issuance	~~3 Months Prior to Date of Expiration~~ NA
50.	Aboveground Tank System Installer	2 Years	Date of Issuance	~~3 Months Prior to~~ Date of Expiration
51.	Underground Tank System Installer	2 Years	Date of Issuance	~~3 Months Prior to~~ Date of Expiration
52.	Tank System Liner	2 Years	Date of Issuance	~~3 Months Prior to Date of Expiration~~ NA
53.	Tank System Remover-Cleaner	2 Years	Date of Issuance	~~3 Months Prior to Date of Expiration~~ NA

SECTION 8. Comm Table 5.06 Lines 54g and 54r are created to read:

Table 5.06
TERMS
(Partial Table, column headings are provided for reference only.)

	License, Certification or Registration Category	Term	Expiration Date	Continuing Education Cycle
54g.	Cathodic Protection Tester	2 Years	Date of Issuance	NA
54r.	Corrosion Expert	2 Years	Date of Issuance	NA

SECTION 9. Comm 5.07 (2) (b) 3. is created to read:

Comm 5.07 (2) (b) 3. a. Subdivisions 1. and 2. and par. (c) do not apply to a license, certification or registration issued under s. Comm 5.68 or ss. Comm 5.82 to 5.88.

b. A person who files for renewal after the expiration date of a license, certification or registration issued under s. Comm 5.68 or ss. Comm 5.82 to 5.88 shall comply with this chapter's requirements for initially receiving that license, certification or registration.

c. A person who files for renewal of a license, certification or registration issued under s. Comm 5.68, 5.84 or 5.85, and who has not obtained all continuing education credit required for renewal shall comply with this chapter's requirements for initially receiving that license, certification or registration.

d. For a license, certification or registration issued under s. Comm 5.68, 5.84 or 5.85, the time period for obtaining continuing education credits shall extend from the beginning date to the expiration date of that license, certification or registration.

SECTION 10. Comm 5.08 (1) (e) 2. a. is amended to read:

Comm 5.08 (1) (e) 2. a. ~~The~~ Except as provided in subd. 2. c., the approval of a course, program or seminar for continuing education credit shall expire 5 years after the date of approval.

SECTION 11. Comm 5.08 (1) (e) 2. c., (g) and (h) are created to read:

Comm 5.08 (1) (e) 2. c. An approval of a course, program or seminar for continuing education credit under s. Comm 5.68 or subch. VIII shall expire either 3 years after the date of approval, or as otherwise specified in the approval.

(g) Any individual or organization that obtains a course, program, or seminar approval for continuing education credit under s. Comm 5.68 or subch. VIII shall notify the department of any material changes to the information submitted for that approval.

(h) Any individual or organization that obtains a course, program, or seminar approval for continuing education credit under s. Comm 5.68 or subch. VIII shall notify the department if the course, program, or seminar is discontinued before the end of its approval period.

SECTION 12. Comm 5.10 (1) (a) 12. h. to k. are renumbered Comm 5.10 (1) (a) 13. a. to c. and 12. h.

SECTION 13. Comm 5.10 (1) (a) 12. i. and j. and 13. (intro), d. and e. are created to read:

Comm 5.10 (1) (a) 12. i. Performed activities that result in both exceeding a cost cap established by the department, and submittal of a claim to the department for the cost in excess of that cost cap.

j. Failed to pay a financial penalty assessed under ch. Comm 47 for a grossly ineligible cost.

13. (intro.) If registered or certified under s. Comm 5.68 or subch. VIII, has performed any of the following:

d. Submitted false reports to the department.

e. Exhibited a pattern of submitting substantially inadequate reports.

SECTION 14. Comm 5.68 (1) and (3) are amended to read:

Comm 5.68 (1) GENERAL. No person may inspect a tank system ~~which has held or will hold flammable or combustible liquids~~ that is regulated under ch. Comm 10, to ~~determine compliance with~~ administer and enforce ch. Comm 10, unless the person holds a certification issued by the department as a certified tank system inspector.

(3) QUALIFICATIONS FOR EXAMINATION. A person applying to take a tank system inspector certification examination shall have completed an approved educational course or training program that included at least 3 days of field exercises, within the 2 years immediately preceding the application.

SECTION 15. Comm 5.68 (6) Note is created to read:

Comm 5.68 (6) Note: Section 19.32 (2), Stats., considers a record to be material containing written or electromagnetic information. The department will consider computer records to be equivalent to written reports.

SECTION 16. Comm 5.68 (7) (b) 1. is amended to read:

Comm 5.68 (7) (b) 1. The renewal of a certification as a certified tank system inspector ~~which has an expiration date after December 31, 1999~~ shall be contingent upon the inspector obtaining at least 12 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

SECTION 17. Comm 5.80 (2) (e) and (5) (c) 3. are created to read:

Comm 5.80 (2) (e) Proof of the liability coverage specified in sub. (4) (a) 3. or (b), and (c).

(5) (c) 3. Holding the liability coverage specified in sub. (4) (a) 3. or (b), and (c).

SECTION 18. Comm 5.81 (2) (d) is created to read:

Comm 5.81 (2) (d) Proof of the liability coverage specified in sub. (3).

SECTION 19. Comm 5.81 (4) (c) is repealed and recreated to read:

Comm 5.81 (4) (c) The renewal of a registration as a PECFA consultant shall be contingent upon both of the following:

1. Being registered by the department of regulation and licensing as a professional engineer, professional geologist, professional hydrologist, or professional soil scientist, or proof of being supervised by a person who is so registered.

2. Holding or being covered by the liability coverage specified in sub. (3).

SECTION 20. Comm 5.82 (1) is repealed and recreated to read:

Comm 5.82 Tank specialty firms. (1) GENERAL. A corporation, partnership, sole proprietor or independent contractor that provides or offers to provide installation, removal, testing, lining, cleaning or assessments for a tank system which is regulated under ch. Comm 10 shall hold both of the following:

(a) A registration issued by the department as a registered specialty tank firm.

(b) Contractor liability coverage, including pollution impairment liability, of no less than $1,000,000 per claim and $1,000,000 annual aggregate and with a deductible of no more than $100,000 per claim.

SECTION 21. Comm 5.82 (2) (c) is created to read:

Comm 5.82 (2) (c) Proof of the liability coverage specified in sub. (1) (b).

SECTION 22. Comm 5.82 (4) is amended to read:

Comm 5.82 (4) RESPONSIBILITIES. An entity that provides storage tank system installation, removal, testing, lining, cleaning or site assessments as a registered specialty tank firm shall utilize the appropriate credentialed persons to install, remove, test, line, or clean storage tanks~~,~~; to design or install a cathodic protection system for a tank system; or to provide tank-system site assessments.

SECTION 23. Comm 5.82 (5) (a) 1. and 2. are renumbered Comm 5.82 (5) (a) and (b).

SECTION 24. Comm 5.82 (5) (b) is repealed.

SECTION 25. Comm 5.82 (5) (c) is created to read:

Comm 5.82 (5) (c) An application for a renewal under this section shall include proof of the liability coverage specified in sub. (1) (b).

SECTION 26. Comm 5.83 (title), (1), (2) (intro.), (3), and (4) are amended to read:

Comm 5.83 (title) ~~Site~~ Tank-system site assessors. **(1)** GENERAL. (a) No person may conduct a tank-system site ~~closure~~ assessment required under ~~s.~~ ch. Comm ~~10.734~~ 10 unless the person holds a certification issued by the department as a certified tank-system site assessor.

(b) Each tank-system site assessment shall be performed by a person who has no personal or monetary interest in the facility and whose employer has no personal or monetary interest in the facility.

(2) (intro.) APPLICATION FOR EXAMINATION. A person applying to take a tank-system site assessor certification examination shall submit all of the following:

(3) EXAMINATION. A person seeking to obtain a tank-system site assessor certification shall take and pass an examination in accordance with s. Comm 5.09.

(4) APPLICATION FOR CERTIFICATION. Upon notification of successfully passing the examination for a tank-system site assessor certification, a person may obtain the certification by submitting an application and the certification fee in accordance with ss. Comm 5.01 and 5.09 (7) (c).

SECTION 27. Comm 5.83 (5) (a) 1. and 2. are renumbered Comm 5.83 (5) (a) and (b) and amended to read:

Comm 5.83 (5) RENEWAL. (a) A person may renew his or her certification as a tank-system site assessor~~;~~.

(b) A tank-system site assessor certification shall be renewed in accordance with s. Comm 5.07.

SECTION 28. Comm 5.83 (5) (b) is repealed.

SECTION 29. Comm 5.84 (1) (intro.) and (5) (e) and (f) are amended to read:

Comm 5.84 (1) (intro.) GENERAL. ~~No~~ Except as provided in sub. (7), no person may install an aboveground tank system ~~which~~ that is ~~to hold flammable or combustible liquids~~ regulated under ch. Comm 10 unless:

(5) (e) Installation of monitoring or leak detection devices.

(f) Installation of pumps ~~and dispensers~~.

SECTION 30. Comm 5.84 (5) (g) and (7) are created to read:

Comm 5.84 (5) (g) Installation of any underground piping.

(7) EXCLUSION. This section does not apply to field-constructed aboveground tanks.

SECTION 31. Comm 5.85 (1) (intro.) and (5) (e) are amended to read:

Comm 5.85 (1) (intro.) GENERAL No person may install an underground tank system ~~which~~ that is ~~to hold flammable or combustible liquids~~ regulated under ch. Comm 10 unless:

(5) (e) Installation or activation of ~~corrosion~~ department-accepted, factory-supplied cathodic protection systems.

SECTION 32. Comm 5.85 (5) (e) Note is created to read:

Note: The Department has accepted factory-supplied cathodic protection systems that comply with the sti-P3® specifications from the Steel Tank Institute, and may accept other systems of this type without a rule change.

SECTION 33. Comm 5.85 (5) (i) is amended to read:

Comm 5.85 (1) (i) Installation of pumps ~~and dispensers~~.

SECTION 34. Comm 5.86 (title), (1) (intro.), and (5) (intro.) are amended to read:

Comm 5.86 (title) ~~Tank~~ Underground tank system liners. (1) (intro.) GENERAL. No person may line ~~a~~ or reline an underground tank system ~~which~~ that has held or will hold flammable or combustible liquids which are regulated under ch. Comm 10 unless:

(5) (intro.) RESPONSIBILITIES. A person who lines or supervises the lining of underground tanks as a certified tank system liner shall be present at the job site for at least all of the following activities:

SECTION 35. Comm 5.86 (5) (a) Note is created to read:

Comm 5.86 (5) (a) **Note:** Chapter Comm 10 requires plan submittal and approval prior to lining a tank.

SECTION 36. Comm 5.86 (5) (f) and (g) to (j) are renumbered Comm 5.86 (5) (g) and (i) to (L).

SECTION 37. Comm 5.86 (5) (f), (h) and (m) are created to read:

Comm 5.86 (5) (f) Notifying the owner if an internal tank assessment determines that a tank system assessment under ch. Comm 10 is required.

(h) Notifying and arranging for a certified tank system inspector to visit the site and authorize the lining, prior to applying the lining to the tank.

(m) Completing an API 1631 inspection form B, as required by ch. Comm 10, and submitting it to the owner, inspector and department.

SECTION 38. Comm 5.86 (6) (a) 1. and 2. are renumbered Comm 5.86 (6) (a) and (b).

SECTION 39. Comm 5.86 (6) (b) is repealed.

SECTION 40. Comm 5.87 (1) (intro.) is repealed and recreated to read:

Comm 5.87 (1) (a) GENERAL. Except as provided in sub. (7), no person may remove or clean a tank system that is regulated under ch. Comm 10 unless the conditions in either par. (b) or (c) are met, and the conditions in par. (d) are met.

SECTION 41. Comm 5.87 (1) (a) and (b) are renumbered Comm 5.87 (1) (b) and (c), and Comm 5.87 (1) (b), as renumbered, is amended to read:

Comm 5.87 (1) (b) The person holds a certification issued by the department as a certified tank system remover-cleaner~~; or~~**.**

SECTION 42. Comm 5.87 (1) (d) is created to read:

Comm 5.87 (1) (d) The person, or the person's supervisor under par. (c), holds contractor liability coverage, including pollution impairment liability, of no less than $1,000,000 per claim and $1,000,000 annual aggregate and with a deductible of no more than $100,000 per claim.

SECTION 43. Comm 5.87 (1) (b) Note is repealed.

SECTION 44. Comm 5.87 (2) (c) is created to read:

Comm 5.87 (2) (c) Proof of the liability coverage specified in sub. (1) (d).

SECTION 45. Comm 5.87 (6) (a) 1. and 2. are renumbered Comm 5.87 (6) (a) and (b).

SECTION 46. Comm 5.87 (6) (b) is repealed.

SECTION 47. Comm 5.87 (6) (c) is created to read:

Comm 5.87 (6) (c) An application for a renewal under this section shall include proof of the liability coverage specified in sub. (1) (d).

SECTION 48. Comm 5.87 (7) is created to read:

Comm 5.87 (7) EXCLUSIONS. This section does not apply to any of the following:

(a) Field-constructed aboveground tanks.

(b) Heating fuel tanks located aboveground or in basements of 1- or 2-family dwellings.

SECTION 49. Comm 5.88 (1) is renumbered Comm 5.88 (1) (a) and amended to read:

Comm 5.88 (1) (a) No person may conduct the tightness testing ~~of~~ specified in ch. Comm 10 for a tank system ~~which has held or will hold flammable or combustible liquids~~ unless the person holds a certification issued by the department as a certified tank system tightness tester.

SECTION 50. Comm 5.88 (1) (b) is created to read:

Comm 5.88 (1) (b) Tank system tightness testing shall be performed by a person with no personal or monetary interest in the facility and whose employer has no personal or monetary interest in the facility.

SECTION 51. Comm 5.88 (3) and (4) (a) are amended to read:

Comm 5.88 (3) QUALIFCIATIONS FOR CERTIFICATION. (a) A person applying for a tank system tightness tester certification shall have completed training in ~~one~~ 1 or more tightness test methods ~~which~~ that have been approved under ~~s.~~ ch. Comm ~~10.125~~ 10, within the 2 years immediately preceding the application.

(b) The test methodology training qualifying for certification shall have been provided by the person or entity that obtained the approval under ~~s.~~ ch. Comm ~~10.125~~ 10 for the methodology.

(4) (a) Conduct tightness tests in accordance with the material approval under ~~s.~~ ch. Comm ~~10.125~~ 10 and any additional manufacturer's instructions~~; and~~.

SECTION 52. Comm 5.89 is created to read:

Comm 5.89 Cathodic protection specialties. (1) GENERAL. (a) *Cathodic protection tester.* No person may conduct cathodic protection testing of a tank system that is regulated under ch. Comm 10 unless the person holds a certification issued by the department as a certified cathodic protection tester.

(b) *Corrosion expert.* 1. No person may design or install a cathodic protection system for a tank system that is regulated under ch. Comm 10 unless the person holds a certification issued by the department as a certified corrosion expert.

2. This paragraph does not apply to department-accepted, factory-supplied cathodic protection systems.

Note: The Department has accepted factory-supplied cathodic protection systems that comply with the sti-P3® specifications from the Steel Tank Institute, and may accept other systems of this type without a rule change.

(c) Cathodic protection activities covered under this section shall be performed by a person with no personal or monetary interest in the facility and whose employer has no personal or monetary interest in the facility.

(2) APPLICATION FOR CERTIFICATION. A person applying for certification as a cathodic protection tester or a corrosion expert shall submit all of the following:

(a) An application in accordance with s. Comm 5.01.

(b) An application fee and certification fee in accordance with s. Comm 5.02, Table 5.02.

(c) Documentation showing formal education relating to soil resistivity, stray current, structure-to-soil potential, component electrical isolation measurements of buried metal piping and tank systems, and corrosion control.

(d) Documentation from a cathodic protection certification entity recognized by the department, showing the applicant has successfully completed a certification examination that corresponds to the cathodic protection specialty addressed in the application.

Note: The department will accept the following certifications as demonstrating compliance with pars. (c) and (d), for a cathodic protection tester:
NACE certification as a CP1, CP2 or CP3 cathodic protection technician.
NACE certification as a senior corrosion technologist.
NACE certification as a corrosion technologist.
NACE certification as a corrosion technician.
STI certification in UST system cathodic protection monitoring.

Note: The department will accept the following certifications as demonstrating compliance with pars. (c) and (d), for a corrosion expert:

NACE certification as a corrosion specialist.

NACE certification as a CP4 cathodic protection specialist.

Note: NACE, formerly known as the National Association of Corrosion Engineers, can be contacted at NACE International, P.O. Box 218340, Houston, TX 77218. STI can be contacted at Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047.

(3) RESPONSIBILITIES. A person who conducts cathodic protection tests or who designs or installs cathodic protection systems shall do all of the following:

(a) Conduct all cathodic protection tests in accordance with ch. Comm 10 and any manufacturer's instructions.

(b) Employ only those methodologies for which training has been obtained and documented.

Note: Although several different levels of expertise may qualify for the same certification, this section is intended to prohibit performing cathodic protection activities unless the specific expertise for that activity has been attained and documented.

(4) RENEWAL. (a) A person may renew his or her certification as a cathodic protection tester or corrosion expert.

(b) A certification for a cathodic protection tester or corrosion expert shall be renewed in accordance with s. Comm 5.07.

(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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File reference: Comm 10/rules Comm 5 2006LRac