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Jim Ruby, Executive Secretary
Environmental Quality Council

**RESPONSE TO COMMENTS
RECEIVED AFTER JULY 10, 2008
ON DRAFT CHAPTER 17**



EXECUTIVE SUMMARY: At the hearing May 29, 2008, the Council directed the department to meet with industry to resolve the outstanding comments on Chapter 17, Section 46. The department accordingly met with an ad hoc committee representing all those who had comments prior to the hearing on May 29, 2008, the Colorado Petroleum Marketers Association, and others. This meeting was held July 10, 2008, in the Herschler Building in Cheyenne. The department changed the draft chapter in response to comments received at that meeting, and the result is the draft chapter sent to the Council for consideration at the hearing scheduled for September 29, 2008. This response to comments contains only those comments received after the public notice for the hearing on September 29, 2008.

COMMENT NUMBER 1: Questar Gas Company commented as follows: "We are concerned with paragraphs (d), (e), and (f) of Section 46 as they pertain to monthly inspection by the operator. For Underground Storage Tanks, W.S. 35-11-1416(a)(i) states that the Wyoming rules can be no more and no less stringent than the federal rules. The Federal Underground Storage Tank Compliance Act of 2005 also referred to as the Energy Policy Act of 2005, is cited for the proposed changes in section 46, but nowhere in the Act is a monthly inspection suggested. EPA document 510-R-07-004, 'Grant Guidelines to States For Implementing The Inspection Provisions of the Energy Policy Act of 2005' (attached) clearly states that inspections are required of the State as contained under Section 9005(c) of Subtitle I. It is our opinion that the additional requirement of a monthly inspection by the operator constitutes rules significantly more stringent than the federal rules and should be deleted from Section 46."

RESPONSE NUMBER 1: The department has requested an opinion on the legality of requiring a monthly inspection from the Attorney General's Office. John Burbridge has verbally informed me that there is no legal problem, and the department has sufficient statutory authority to include this section in the rule. Mr. Burbridge will be in attendance on September 29 to speak to this issue.

COMMENT NUMBER 2: Questar Gas Company commented as follows: "In addition, paragraph (g) requiring a daily site visit by a Class A or B Operator for unattended stations would effectively require at least two Class A or B operators to be on staff to accommodate vacations. We would suggest that a Class C operator could effectively fulfill this role given adequate information from the Class A or B operator."

RESPONSE NUMBER 2: The point is well taken. The department will modify paragraph (g) as follows:

(g) Unattended Stations. For unattended stations, the Class A, B, or C Operator shall visit the site on a daily basis as required by the International Fire Code, Section 2204.3.1.

COMMENT NUMBER 3: Spradley Barr commented as follows: "I am having trouble trying to rationalize licensing either Class A or Class B operator at our franchised automobile

dealership. I think the law of unintended consequences applies here in spades. I would propose that there be a provision in the regulation for a case-by-case examination of the circumstances and qualified waivers to the requirements (or some like accommodation) for situations such as ours.”

RESPONSE NUMBER 3: The federal guideline allows states wide latitude in how operators are certified. The one thing that is very clear in the Energy Policy Act and the EPA guideline is that every facility must have a Class A, B and C operator. There is no way for a state to exempt a facility from this requirement and still comply with the federal mandate.

COMMENT NUMBER 4: Spradley Barr comments as follows: “It seems so far-fetched that a business with a facility such as ours has to have a minimum of two employees, each meeting one of the Class A or Class B operator testing requirements, ‘learning’ all about leak detection systems that they will never encounter at this location.

The logical person to hold a Class A license, following the definition in the revised Section 46(a), would be the store’s Vice-President/General Manager level, if only because there is only one person below him in the Service Department chain of command (the Service Director/Manager) who could logically function as the Class B license holder. We have no administrative staff, no ‘fat’ to otherwise absorb either the Class A or Class B work. As a matter of fact, the functions of what would be both the Class A and B operator have largely been for 13-plus years combined in one person – me. I am a department of one.”

RESPONSE NUMBER 4: The draft rule will not require two separate people to be licensed. What it will require is that one person hold a Class A license and that same person can also hold the Class B license. When a person takes the examination for a Class A license, they will also get a Class B license with nothing further required. The definitions in Chapter 17, Section 46 (a) are sufficiently broad that Spradley Barr could delegate anyone to be in charge of the single underground storage tank. The designated operator could be the General Manager, the Service Manager, the Dealership Support Manager, or someone who works for the Service Manager at the discretion of the management of Spradley Barr.

COMMENT NUMBER 5: Spradley Barr commented as follows: “All I am asking for is a reasonable accommodation with regard to the Wyoming testing requirements for underground storage tank (UST) operators. The testing requirements as currently stated in the proposed Chapter 17, Section 46, and the study references for these tests that you provided at the all-day information session in March of this year are unreasonable for small operators such as our company. We have only one UST system; why must we become intimately familiar with all the other kinds, just to pass a test? Why can’t we just be quizzed on our knowledge of our own system and given a conditional or restricted (or whatever phraseology you wish to use) license, good only for our location?”

RESPONSE NUMBER 5: To allow operators to be quizzed about only their own location sounds good in theory. However, such a procedure would require so much time commitment by the state as to be impossible to implement. If an individual test were structured just for Spradley

Barr, then why not every other facility in Wyoming? Such a procedure would be very labor intensive for the state, with minimal savings for the individual operator. Clearly, such a procedure takes the responsibility for compliance with the Energy Policy Act away from the operator and places it on the state. Almost all facilities are subject to only certain sections of the rules.

The requirement for one person in a company to pass the test is not unreasonable. As Mr. Seniawski pointed out, the department has offered training at no cost to the operators, the department has provided the reference material at no cost to the operators, and the department has developed the test in cooperation with the operators. The regulations themselves have been developed after public comment periods conducted no less than five times. The only issue seems to be whether one individual can pass a test or not.

As a test to see if the testing requirement is reasonable, or if the test is too difficult, the Wyoming State Specific test has been taken by three temporary employees of the department. These employees normally file documents, scan documents into pdf format, and do misc. data entry. The temporary employees are paid about what a typical clerk at a convenience store is paid, it not less. The temporary employees were allowed to attend one of the free training sessions offered by the state and were allowed to study for a few hours prior to the test. All three have been able to pass the test, although one person had to take the test twice. This test is the test required for a Class A Operator's License.

COMMENT NUMBER 6: Wyoming Financial Properties commented as follows: "As I understand Section 46 we would be required to be licensed operators and to satisfy the requirement that 'each facility shall be under the supervision of a person who has a Class A Storage Tank Operator's License' we would be required to have someone on staff who has passed the ICC W-6 Wyoming State Specific Storage Tank Laws exam. Neither the Class B nor Class C operator would appear to be applicable in our situation. Am I reading this correctly? If not, please advise as to what is required and if so, is it possible to include an exemption for operators of small tanks used infrequently and not used for vehicle fuel or public sale."

RESPONSE NUMBER 6: The Energy Policy Act and the EPA guideline require that every facility must have a Class A, B and C operator. All three of these can be fulfilled by the same person if that person is an on-site person. There is no way for a state to exempt a facility from this requirement and still comply with the federal mandate. The draft rule will not require two separate people to be licensed. What it will require is that one person hold a Class A license and that same person hold the Class B license. When a person takes the examination for a Class A license, they will also get a Class B license with nothing further required.

COMMENT NUMBER 7: The Top of the World Store commented as follows: "I believe it is unfair and unsafe not to have a licensed operator at EACH facility. We have to have one at our single store, the large chains should have one on each individual store also."

RESPONSE NUMBER 7: A convincing case was made by the operators for chain

stores that a monthly inspection by a Class A or Class B operator would be better than requiring someone on each site to be licensed.

COMMENT NUMBER 8: The Top of the World Store commented as follows: "My second concern is the monthly inspection requirement. This would be physically impossible with our snow load. The tops of my pumps are over a foot under snow for several months."

RESPONSE NUMBER 8: The department is sensitive to both of the last two comments. As a response, the department recommends changing the draft rule to require the monthly inspection only when a Class A operator is in charge of more than one facility at a time. Section 46 (d) would then read:

" (d) Inspection by the Class A or B Operator. Whenever a Class A operator is in charge of more than one facility, a monthly inspection is required. Either the Class A or B Operator for each facility must perform a monthly visual inspection of each storage tank system for which they are designated. The results of each inspection shall be recorded on a monthly inspection checklist.

(i) Every facility subject to this paragraph must be inspected monthly. The monthly visual inspection shall include inspections for all of the following:

(a) the presence of any sensor alarm conditions, responding to alarm conditions appropriately;

(b) the integrity of the spill containment (cracks, holes, bulges, etc.) and for the presence of regulated substance, water, or debris in spill containers (fill and vapor recovery);

(c) the condition of all single wall piping sumps; and

(d) the hanging hardware on dispensers and other visible piping for the presence of regulated substance leakage.

(ii) Double wall piping sumps shall be inspected quarterly. If there is any alarm condition on any double wall system, the appropriate sump(s) must be opened, inspected, and cleaned if necessary. The sump sensors must be placed back within one half (1/2) inch of the bottom of the sump."