

1 BEFORE THE STATE OF WYOMING
2 ENVIRONMENTAL QUALITY COUNCIL

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5 ENVIRONMENTAL QUALITY COUNCIL HEARING AND PUBLIC COMMENTS
6 ON CHAPTER 17, SECTION 46, STORAGE TANKS

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9 TRANSCRIPT OF HEARING PROCEEDINGS

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11 Transcript of Hearing Proceedings in the above-
12 entitled matter before the Environmental Quality Council,
13 commencing on the 29th day of September, 2008, at 10:00
14 a.m., at the Wyoming Game and Fish Office, 3030 Energy
15 Lane, Casper, Wyoming. Councilmembers Mr. Dennis Boal,
16 Mr. F. David Searle, Mr. John Morris, Mr. Thomas
17 Coverdale, Mr. Tim Flitner and Dr. Fred Ogden in
18 attendance. Also present were Mr. Jim Ruby, Executive
19 Secretary, Ms. Terri Lorenzon, Director/Attorney,
20 Ms. Marion Yoder, Counsel from Attorney General's Office,
21 Mr. Joe Girardin, Paralegal to the Council, and Ms. Kim
22 Waring, Executive Assistant. Also in attendance were
23 Mr. LeRoy Feusner and Mr. Bob Lucht from the Solid and
24 Hazardous Waste Division.

1 PROCEEDINGS

2 (Hearing proceedings commenced 10:00
3 a.m., September 29, 2008.)

4 CHAIRMAN BOAL: Let's bring this meeting
5 to order. I want to welcome everyone here today. My
6 name is Dennis Boal. The other members who are with us
7 today, the other councilmembers are Fred Ogden, Tim
8 Flitner, John Morris. Immediately to my right is the
9 executive secretary, Jim Ruby. I have Tom Coverdale next
10 to me, and next to him is Dave Searle.

11 Also present at the bench, sort of to speak, is
12 Marion Yoder, who is from the Attorney General's Office,
13 Terri Lorenzon, who is our administrator and attorney,
14 and Kim Waring, who is our staff, and Joe Girardin, who
15 is our paralegal.

16 We're here this morning for the purpose of
17 hearing an amendment to Section 46 of Chapter 17 of the
18 Water Quality Division rules and regulations of the
19 Department of Environmental Quality. This is Docket
20 Number 07-510. Today is September 29th of 2008.
21 According to my watch, it is just now 10:00 a.m. The
22 Department is present and represented by LeRoy Feusner.

23 Mr. Feusner, who is with you today?

24 MR. FEUSNER: Today with me is Karen

25 Halvorsen, who is the manager of the storage tank

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1 program, and Bob Lucht, who is the manager of the storage
2 tank compliance program.

3 CHAIRMAN BOAL: Good to see you again,
4 Mr. Lucht, and you, too, Mr. Feusner.

5 Today's hearing is very straightforward. The
6 issue is whether to adopt proposed amendments by the
7 Department or to modify them or remand them back to the
8 Department for further modification.

9 The way we will proceed today is that the
10 Department will make a presentation first. They'll
11 explain the proposed rule. They'll also talk about their
12 response to the comments that have been made. After the
13 Department has concluded their remarks, the Council will
14 have the opportunity to ask questions of the Department.
15 At the conclusion of those questions, anyone in the
16 audience who wishes to address the proposed amendments
17 will have an opportunity to testify.

18 And once we have concluded testimony in support
19 of the amendments, we'll accept testimony in opposition
20 to the amendments. At the conclusion of opposition
21 testimony, we will accept neutral testimony.

22 Do you really think we'll receive any neutral
23 testimony?

24 MR. RUBY: You never know.

25 MR. MORRIS: We wouldn't be here if there

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1 was.

2 MR. RUBY: Give it a chance.

3 CHAIRMAN BOAL: Anyone who approaches the
4 Council to speak may be asked questions by members of the
5 Council. You won't be cross-examined, but you may be
6 asked questions. The Council would ask you to keep your
7 testimony brief and to the point and, if possible, not to
8 repeat what other speakers have said. Believe it or not,
9 once the Council hears a point three or four times, we
10 usually understand it.

11 There is a sheet in the back of the room, I'm
12 told, where you need to sign up if you wish to testify
13 here today. And I guess it's a place where you can also
14 indicate whether you support the amendments, whether
15 you're in opposition or whether you're neutral. And I
16 suppose by "neutral," we mean there may be some of you
17 that like part of the proposed amendments and don't like
18 other parts. And that is a possibility.

19 Once the testimony has been -- has been
20 completed, we'll give the Department of Environmental
21 Quality the last opportunity to make any closing remarks.
22 And so that's how the hearing today is going to be
23 conducted.

24 Mr. Feusner, is that clear to you?

25 MR. FEUSNER: Yes, sir.

5

1 CHAIRMAN BOAL: Any questions from members
2 of the council?

3 (No response.)

4 CHAIRMAN BOAL: All right. In that case,
5 Mr. Feusner, I'll hand the proceeding over to you, and
6 you can proceed on behalf the Department.

7 MR. FEUSNER: Thank you, Mr. Chairman, and
8 members of the Council.

9 Very briefly, the EQC met on May 29th in Casper
10 to conduct a public hearing concerning Chapter 7 (sic)
11 rule-making. The primary purpose of that rule-making
12 exercise was to implement federal requirements mandated
13 by the Energy Policy Act of 2005 related to underground
14 storage tanks. During the May 29th public hearing, the
15 EQC received several oral comments during the meeting
16 concerning the Chapter 17 amendments.

17 Following discussion, the EQC voted and passed
18 the Chapter 17 amendments, with the exception of Section
19 46, dealing with operator training requirements. At that
20 public hearing, the EQC directed that the Department meet
21 with the industry to resolve outstanding comments
22 received for Section 46. The Department did meet with
23 representatives of the Colorado Wyoming Petroleum
24 Marketers Association and others on July 10th, 2008 in

25 Cheyenne to work on this matter. After a lengthy

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1 meeting, a consensus agreement was reached concerning
2 operator training requirements.

3 After the July 10th meeting, the Department
4 revised Section 46 to incorporate the changes agreed
5 upon, and the changes were sent to the EQC for
6 consideration today.

7 In addition to the work meeting conducted on
8 July 10, a few additional written comments were received
9 by the Department concerning the language in the revised
10 Section 46.

11 Now Bob Lucht, who is the storage tank
12 compliance supervisor, will present the Section 46
13 amendments for revisions for consideration and discuss
14 these revisions and additional comments that were
15 received by the Department.

16 MR. LUCHT: Okay. During the meeting on
17 July the 10th, we did make significant changes. The
18 draft before you that was sent on August the 11th was a
19 significant compromise from the original draft. During
20 this public comment period that just ended, eight
21 additional comments were received. Comment 2 and 8
22 resulted in recommended changes to the most recent draft.

23 Comment 2 stated that a Class C operator should
24 be allowed to make daily inspections of unattended gas

25 stations. The Department concurs and recommends that

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1 paragraph 46(g) be changed as shown in the response to
2 comments document. It was a four-page document before
3 you that has our official response to these eight
4 comments.

5 CHAIRMAN BOAL: Mr. Lucht, I want you to
6 back up. I want to you explain what the original rule
7 provided for and provide some background, particularly
8 for Dr. Ogden, who didn't receive the benefit of that.
9 And then you can focus on the specific changes. But I
10 want you to pretend for a minute that we weren't there,
11 and explain to everyone why we're here today. You know,
12 we weren't able to pass Section 46. I want you to
13 explain what the principal issue was, how that's been
14 resolved, and then focus on the most recent comments,
15 please.

16 MR. LUCHT: Yes, sir. On August the 8th
17 of 2005, Congress passed a law called the Energy Policy
18 Act of 2005. That federal law requires that every state
19 has to certify operators in some way. It provides that
20 there be a Class A, a Class B and a Class C operator for
21 every underground storage tank in the United States.

22 It provides very wide leeway for each state on
23 how they implement this requirement. What it doesn't
24 allow is for any exceptions to it. You have to have a

1 underground storage tank, whether it's an emergency power
2 generator tank, a used oil tank or a commercial gas
3 station.

4 The approach that our state and a number of
5 other states has chosen to use is to require a test
6 through the International Code Council. To that end, we
7 developed two tests, because the approach that we've
8 taken on this is that anything that is good for
9 underground storage tanks is also required for
10 aboveground storage tanks, since we provide all the same
11 benefits.

12 We went to the International Code Council now
13 two years ago, and we developed a Wyoming state-specific
14 test for operators of both underground and aboveground
15 storage tanks. This is one hour-and-a-half test of 60
16 questions. It was developed in conjunction with a lot of
17 the operators. I wrote all the questions, and some of
18 the other people in my staff wrote questions. We
19 proposed that to a committee. We set up an ad hoc
20 committee of operators of tanks.

21 That committee, along with a representative
22 from the International Code Council, was allowed to
23 review each and every question on the test. So they
24 reviewed them for, are they understandable? The

1 grammatic way that they want test questions to be
2 written. And the committee also had the ability to
3 reject a question. And they did. They rejected probably
4 a dozen questions out of the 300 or so that I proposed.

5 They also got a chance to rate how difficult
6 each of the questions actually is. So if you get a test
7 form that had more difficult questions, the test graded
8 on a curve. The test is an open-book test. And it
9 covers not only Chapter 17 of the rules, but it also
10 covers things like Chapter 4 of the rules.

11 Chapter 4, if you're not aware of it, is the
12 overall requirement to report oil spills from any source
13 whatsoever. So if you have an oil spill on your
14 property -- and it may not be associated with the
15 underground storage tank. Let's say a tanker truck came
16 in and turned over in the parking lot. Still reportable
17 even if it's not reportable under Chapter 17. So that
18 kind of stuff is all in this test.

19 The test is open book. It's 60 questions. You
20 have to get 75 percent right after they adjust the
21 scores. So this committee rated most of the questions
22 difficult. So, in effect, you have to get less than 75
23 percent to pass (sic). The original proposal and the way
24 I read the Energy Policy Act is very simple. Every

25 single operator of any tank has to pass this test. So

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1 you had to have a Class A operator, a Class B operator.

2 They could be the same person.

3 The way we structured it, if you pass the

4 Wyoming state-specific test, you'd get a Class A

5 operator's license and a Class B operator's license. If

6 you passed another test that existed before we started

7 this process, which is the national underground storage

8 tank operator's test, you'd get a Class B operator's

9 license.

10 A Class C operator is someone that's just

11 trained in some very rudimentary requirements by the

12 Class A or Class B operator. They're not required to

13 take any test of any kind.

14 The issue at the last meeting was whether or

15 not every single station and every single underground

16 storage tank had to have a Class A operator who had taken

17 the test. The Petroleum Marketers Association took the

18 stance that a single Class A operator should be allowed

19 to be over as many gas stations and as many underground

20 tanks as they wanted to be. The compromise we reached

21 was that a Class B operator could be in charge of up to

22 fifteen stations.

23 The effect of that is that if you own one gas

24 station, you're going to have to be a Class A and a Class

25 B and a Class C operator at one time. If you own 25 gas

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1 stations, you're going to have to have two -- or one
2 Class A operator for the entire chain and two Class B
3 operators. The part of the compromise with the petroleum
4 marketers was that once a month a Class A or B operator
5 would do a physical inspection of each station that
6 they're in charge of.

7 So that's a little bit of background of how we
8 came to where we're at. The specifics as it's written
9 right now, one person for a chain can be a Class A
10 operator, one person, no matter how many stations or
11 facilities you have. So Qwest or Loaf 'N Jug or Red
12 Eagle Petroleum would have one Class A operator that has
13 passed the test. Now, they could have more than one. It
14 would be up to them.

15 Then they could have a district manager that's
16 over as many as fifteen stations that passes a Class B
17 operator's test. And, again, it would be up to them
18 whether that district manager passes the A or the B or
19 how many stations is under that Class B operator, up to a
20 maximum of fifteen.

21 The Class C operators are the clerks on the
22 store locations. So the intent of this rule is that
23 every person that's operating a fuel station of any kind,
24 I mean, if there's somebody there, they're supposed to

25 know how to operate the emergency equipment. They're

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1 supposed to know what the emergency procedures are. It
2 doesn't necessarily mean that if you go into a Maverik
3 Country Stores and they have a night baker, that the
4 night baker necessarily has to know that. But everybody
5 involved in the fueling system has to know those kind of
6 things.

7 That's where we're at right now. We've
8 recommended --

9 CHAIRMAN BOAL: Who trains the Class C
10 operators?

11 MR. LUCHT: The Class A or the Class B
12 operator trains them himself.

13 As I said, we had eight comments after we
14 produced this draft. One of the comments by, I believe,
15 Questar Pipeline, had to do with unattended stations.
16 And part of this chapter requires that if you have an
17 unattended station, meaning a station that nobody's at at
18 all, then it's already part of the International Fire
19 Code. Somebody from the company has to come by on a
20 daily basis and look at that station just to make sure
21 that nothing's happened that they didn't know about.

22 The comment by Questar was that a Class C
23 operator should be allowed to make that inspection on a
24 daily basis. And we concur. We changed the wording of

1 operator would make that daily inspection.

2 The second comment that we concurred with had
3 to do with monthly inspections by a Class B operator.
4 The comment was from a guy that runs a remote gas
5 station. He would have to be a Class A and B operator to
6 run this under the proposal. He objects to being
7 required to do the monthly inspections, since he's there
8 all the time. I concur with that. We have proposed that
9 Section 46(d) be changed to only require the monthly
10 inspections when a Class A operator is over more than one
11 station at a time. This would be a significant lessening
12 of the impact of the rules for those people who only own
13 one gas station.

14 The remainder of the comments concern whether
15 or not it's even reasonable for the State to require a
16 test of this nature. We've done everything we can to see
17 to it that this is a reasonable requirement. The test is
18 not that difficult to pass. In fact, just to try to test
19 how reasonable a requirement this really is, I have three
20 persons who work for Kelly Services on a temporary basis
21 for us. These are people that normally scan documents
22 for us. They file documents for us. They're not experts
23 in the law. They don't make regulatory decisions. We
24 sent these three people to take the ICC Class A

25 operator's test. All three of them were able to pass it,

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1 although one guy took two tries before he could pass it.

2 Point of it is, it's not an unreasonable

3 requirement if someone that you could hire -- and these

4 folks, they're not stupid people. I'm not saying that.

5 But they're working for six, seven dollars an hour. And

6 if they can pass it, then the kind of people that an

7 operator can hire to run a gas station can certainly pass

8 it.

9 I think it's important to realize that this is

10 a federal requirement. We have to address it in one way

11 or the other. Some of the comments that we've received

12 would have to do with, why can't we tailor some kind of a

13 certification to the individual location? Well, a few

14 years ago I multiplied this all out to find out how many

15 different unique kinds of combinations of tanks and pumps

16 and lines and everything you could have and still be

17 legal. Turns out there's 1,420 combinations of

18 equipment, all different, that could be operated at any

19 given time, and each one of them would be legal.

20 So to have the Department tailor a

21 certification to an individual facility is just an

22 impossibly complex thing. No matter how we did it, you

23 would end up having to answer questions about a facility

24 that has equipment that you don't have.

1 Council certified test is that once the State licensed
2 this operator, that licensed operator can go to any
3 facility. You don't end up with a class of operator who
4 can only operate fiberglass tanks because they don't know
5 anything about corrosion protection. You don't have a
6 class of operator that can only operate underground tanks
7 because they don't know anything at all about aboveground
8 tanks.

9 I think our position is pretty clear. We don't
10 think this is an unreasonable requirement. And we'd like
11 to see the Council pass it the way it's written right
12 now.

13 CHAIRMAN BOAL: Mr. Lucht -- any questions
14 for Mr. Lucht from the Council right now?

15 MR. COVERDALE: I have a question.

16 CHAIRMAN BOAL: Mr. Coverdale?

17 MR. COVERDALE: I have a question. There
18 didn't seem to be any response to the comment concerning
19 inaccessibility of sites during the winter. You sort of
20 said we agreed, but then you didn't -- then there was no
21 comment about it.

22 MR. LUCHT: I think you probably bring up
23 a good point. The comment from the Top of the World
24 Store was that he couldn't make a monthly inspection

25 because there was so much snow covering everything that

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1 he couldn't even get into the dispensers. I suppose I
2 sort of wanted to dodge that issue a little bit, because
3 the fact of the matter is we have stations out there that
4 are inaccessible. Top of the World Store happens to be
5 right at the state line on the Chief Joseph Highway.

6 We also have a gas station at Grant Village in
7 Yellowstone Park that is completely inaccessible to
8 anything other than a snowmobile. They have been doing a
9 monthly inspection because their only leak detection is a
10 manual checking of an interstitial space on a double-wall
11 tank.

12 It's a problem, and I don't know what the
13 answer to it is. Because the bigger issue is not that
14 they do a monthly inspection, but the bigger issue is
15 what do you do with 40,000 gallons of gasoline and diesel
16 if you have a leak in January and you can't even get
17 there without a snowcat?

18 With the limitations of our statutory
19 authority, I don't have an answer for this. I mean, if
20 they have a leak at Grant Village in the middle of the
21 wintertime, they're going to have to figure out a way to
22 respond. And my guess is it's probably not going to
23 involve plowing the snow from the south entrance of
24 Yellowstone Park all the way to Grant Village. But I

25 don't know how you'd ever get the gas out of those tanks

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1 if it did ever release.

2 CHAIRMAN BOAL: Other questions?

3 Yes, Mr. Searle?

4 MR. SEARLE: Thank you, Mr. Chairman.

5 Bob, just -- if you could do it quickly at a
6 high level, just kind of point out in the draft that we
7 have the changes that you made as a result of your July
8 5th -- July 10th meeting. I think I followed some of
9 them during your testimony. But it sounded like you said
10 you made significant changes. I just was wondering where
11 those popped out at us.

12 MR. LUCHT: Let me find the --

13 CHAIRMAN BOAL: While Mr. Lucht's looking
14 at that, Kim or Joe, somebody, would you go get the
15 sign-up sheet for me so we can get those people?

16 Thank you, Joe.

17 MR. LUCHT: When we went into the hearing
18 in May, we had a proposal that would have limited a Class
19 A operator to twelve stations. We would have limited a
20 Class B operator to three stations. The point of that
21 was to ensure that someone on the actual station itself
22 was trained under these requirements.

23 It came down to a disagreement on what the
24 basic requirement is on a federal level. The federal

25 level says you have to have a Class A operator. And it

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1 is not real clear whether that Class A operator could be
2 one person for the Kroger Corporation, for example, or
3 Valero Energy. Valero has 17,000 gas stations
4 nationwide. And it always seemed to me that it wasn't
5 Congressional intent to require one person to get
6 certified for 17,000 gas stations when they wrote
7 something like this. The way that we'd change this, it
8 would allow one operator to be the Class A operator.

9 The most facilities that any one operator has
10 in Wyoming is 48 stations. So this was a compromise with
11 the petroleum marketers to allow their district managers
12 to be a Class B operator. The original proposal was that
13 district managers would have had to have been a Class A
14 operator, and the individual store manager would have had
15 to have been a Class B operator.

16 So the actual changes are in the wording of
17 Section 46(a) and (b), those particular paragraphs. And
18 then --

19 MR. SEARLE: So in (b) you went from --
20 you're up to fifteen. And that was what before? Just
21 remind me. That was twelve before?

22 MR. LUCHT: That was twelve before.

23 The other thing that was added is Section
24 46(d), which is inspection by the Class A or B operator.

1 Association. As a way of accomplishing what we were
2 trying to do is ensure that someone that was -- that was
3 licensed actually went to the facility once in a while
4 and verified that everything was according to the
5 regulations.

6 If you remember the last hearing, we had
7 representatives from some of the major truck stops. And
8 they said, we have these people that come out on a
9 monthly basis, and they are assigned up to -- I think at
10 the time the most that anybody actually has assigned is
11 eleven stations. But they were doing this monthly
12 inspection. And this was offered as sort of a compromise
13 in order to allow more people to be -- more stations to
14 be under the same operator.

15 MR. SEARLE: And that's also the section
16 that gives the single -- single-station operator the exit
17 from doing monthly inspections?

18 MR. LUCHT: Right. That was a comment
19 that came in. The comment on the Top of the World
20 Store -- and the problem that I've always had with this
21 is that you have a major company that has 50 stations,
22 and in order to compromise and make it acceptable to
23 them, we end up imposing another inspection on a guy
24 that's always out there every day because he only owns

25 one gas station.

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1 So that was -- that was my reasoning in
2 proposing that we change that. Because that guy that
3 only owns one gas station shows up for work every day,
4 and he sees for himself, probably on a daily basis,
5 whether or not the hoses are cracked and whether somebody
6 has run into the gas station pump with a car or something
7 like that.

8 CHAIRMAN BOAL: Anything else, Mr. Searle?

9 MR. SEARLE: Were those the only changes,
10 major ones, Bob?

11 MR. LUCHT: I believe that's the only
12 major changes we made from this draft that you saw in
13 May.

14 MR. SEARLE: I do appreciate you folks
15 getting together on July 10th. I appreciate you doing
16 that.

17 That's all, Mr. Chairman.

18 CHAIRMAN BOAL: Any other questions for
19 Mr. Lucht?

20 Yes, Mr. Ogden -- Dr. Ogden?

21 DR. OGDEN: Just a quick question with
22 regard to the removal of the requirement that a single
23 operator do the monthly inspection. Is that person
24 likely to see an underground leak condition?

1 underground leaks are very difficult to see. You
2 don't -- we don't see a whole lot of things that show up
3 because somebody's doing an inspection of the piping. If
4 it was that simple to find a leak, we'd probably have it
5 made.

6 The majority of the leaks are invisible to a
7 surface inspection. They happen in the lines halfway
8 between the pumps and the dispensers. The only chance we
9 have of finding most of these leaks is if -- the operator
10 has to know the requirements and follow the leak
11 detection rules exactly the way they're written. But
12 this monthly inspection would find things like, you know,
13 if a fitting worked loose under a dispenser. That
14 happens, but it doesn't happen a whole lot of the time.

15 It's not an unreasonable requirement to require
16 a monthly inspection, but I felt that it was the kind of
17 thing we wanted to have from the chain stores when they
18 have one guy who's over a bunch of stations and they have
19 a bunch of really very minimally trained employees on a
20 location.

21 DR. OGDEN: All right. Thank you.

22 CHAIRMAN BOAL: Did you want to say
23 something? Any other questions?

24 MR. SEARLE: I have one more,

1 CHAIRMAN BOAL: Mr. Searle?

2 MR. SEARLE: That was a sigh over there,
3 by the way.

4 This situation that we had brought to our
5 attention regarding the dealership that had the one used
6 oil tank and trying -- you made some comments about
7 site-specific or equipment-specific testing. Certainly
8 can appreciate it. How many of these situations do we
9 think we have out there that are not gasoline service
10 stations, but they're one-off tanks, whether they're oil
11 storage tanks or they're buried fuel tanks for remote
12 generators? How many of those do we think we have out
13 there?

14 MR. LUCHT: There's around 860 facilities
15 total. And out of those, close to 600 of them are
16 commercial gas stations. I don't have the exact number
17 off the top of my head. But there are 250 to 300
18 locations that are emergency power generator tanks and
19 tanks that are just used oil tanks. So there's a lot of
20 them.

21 MR. SEARLE: We just had gotten kind of a
22 sampling of comments. It didn't seem like we got
23 comments from a lot of these people who were likely in
24 this same situation. And I was wondering if you had,

25 during your -- during your deliberations in-house, had

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1 contemplated any sort of a system where perhaps, rather
2 than it falling on the Department to put together
3 site-specific training and testing, whether you could
4 have those people that wanted to try to do that put
5 together their own program that then you would evaluate.

6 MR. LUCHT: Well, that was one of the
7 things that we considered in the very beginning of
8 writing these rules. The reason that we internally
9 rejected that idea was simply a matter of the time. If
10 you required someone to put together their own training
11 program, that would require them to put together a
12 document, submit it to the Department. The Department
13 then would have to review those documents, determine
14 whether or not the training that they've proposed was
15 adequate and approve or reject it.

16 If you do that for a used oil tank, then why
17 not do that for a commercial gas station? If you start
18 doing that, the concern we had was that pretty soon
19 you've got hundreds of applications that take lots and
20 lots of time in order to say yes or no about individual
21 training sessions. We don't have a whole lot of people
22 in order to read volumes of paper just for this one
23 requirement.

24 In the underground storage tank program, this

25 is actually a pretty minor detail we're talking about.

24

1 If we have a standardized program with a standardized
2 test, then it's just another test that we track like a
3 leak detection test or SIR test. We felt that that was
4 the way we wanted to go, simply because we have to keep
5 in mind what the Department's resources are for this
6 program, as well.

7 MR. SEARLE: Appreciate that. Thank you.

8 CHAIRMAN BOAL: Any other questions for
9 Mr. Lucht?

10 MR. MORRIS: Yeah, I have one.

11 Would it be fair to say that a majority of
12 these inspections are paper inspections and also these
13 remote areas --

14 MR. LUCHT: Are you talking about --

15 MR. MORRIS: -- where you issue
16 enforcement?

17 MR. LUCHT: We have a couple of different
18 inspections that we do. There are inspections by the
19 Department. And I assure you those are not paper
20 inspections. We go through and we look at everything
21 that is accessible. We look at all the leak detection
22 records. We verify that everything they did is exactly
23 right.

24 We also require already in our rules the

25 operators annual inspection. And most of those are done

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1 by outside contractors who come in and verify that the
2 leak detectors work. They clean and check all the probes
3 for the automatic tank gauges. Most of those that I've
4 seen are -- they're not a paperwork exercise. They are
5 going through with a fine-toothed comb and checking
6 everything. We even -- we haven't put it into rule, but
7 we have asked them to photograph everything that they do.
8 So we're getting operators annual inspections that are
9 equal or better than the ones the Department does.

10 As far as these monthly inspections by the
11 operator, this will be a checklist that the operator is
12 supposed to go through and check it. And we did not
13 anticipate --

14 MR. MORRIS: So it's an honor system?

15 MR. LUCHT: It's an honor system. We
16 didn't anticipate a lot of documentation coming back that
17 said that they tested anything or photographed anything
18 or anything like that.

19 CHAIRMAN BOAL: Anything else, John?

20 MR. COVERDALE: I have another question.
21 Sorry. That's a sigh over there, too.

22 I'm back on this inaccessible sites during the
23 wintertime. Do there exist anywhere standards or
24 requirements of how they shut that down and set it up for

25 the winter, or is it just flip the switch and walk away,

26

1 leave the tank full? I mean, I'm just -- I'm just

2 curious.

3 MR. LUCHT: Okay. An operator has a

4 choice. He can register a tank as temporarily out of

5 use, meaning he empties it within an inch of the bottom,

6 and then he doesn't have to do any leak detection at all.

7 The ones that I'm concerned about, they're choosing to

8 leave these full. Like this Top of the World Store, you

9 can't get there without a snowmobile. But if you get

10 there with a snowmobile, he'll sell you gasoline. And

11 that's one situation. The one at Grant Village, the Park

12 Service chooses to leave all of the tanks in Yellowstone

13 Park full every winter. And their justification is that

14 that would be an emergency fuel supply they could get to

15 if they had to.

16 Now, how you'd ever get -- if you needed 20,000

17 gallons of diesel from Grant Village, how you'd get that

18 to Old Faithful is beyond me. But that's the ones that

19 we're concerned about. The ones that just register

20 temporarily out of use, they pose no threat whatsoever

21 because they're empty all winter along.

22 MR. COVERDALE: Thank you. That's

23 helpful.

24 CHAIRMAN BOAL: Any more questions for

1 Mr. Flitner, did you ask any questions? Do you
2 have any?

3 MR. FLITNER: Don't have any.

4 CHAIRMAN BOAL: Thank you, Mr. Lucht.

5 We'll now go to the sign-up sheet. I think the
6 first person we'll call on is Mr. Larson, who represents
7 the Petroleum Marketers Association.

8 How are you, Mr. Larson?

9 MR. LARSON: Good afternoon, Mr. Chairman.
10 My name is Mark Larson. I'm the executive director of
11 the Wyoming Petroleum Marketers Association. And I'm
12 here to testify that we are in support of the changes.
13 We have a lot of thank-yous to say over this arduous
14 process. We recognize that we were kind of Johnny-come-
15 latelies at the last time when the process was first
16 being laid out.

17 But we also can testify to the patience of
18 Mr. Lucht and his listening to us and going back at the
19 direction of the EQC, making sure that everybody got a
20 say and that due diligence was done. We're very
21 appreciative to the EQC for that. Also like to thank
22 Mr. Feusner and Ms. Halvorsen for their participation, as
23 well.

24 The art of compromise, there's an old saying

25 about legislation. If there's something that everybody

28

1 can have a dislike on, you'd probably have a pretty good
2 piece of legislation. In this case, I think that that's
3 probably the case. When we sat down and started looking
4 at the options that were available to us, what we
5 proposed, what the Department proposed, I think we came
6 on some good common ground that not only protects the
7 environment of the state of Wyoming, but also takes into
8 consideration the nuances of the operators involved.

9 Make no mistake, we do take this responsibility
10 seriously, as the Department does take their
11 responsibility seriously.

12 When we were going through the process, we took
13 care -- and I think this was the crux of the whole issue,
14 was looking at that -- you remember the red list that was
15 presented before you of all the violations you've seen
16 over the past period of time. We took care to make sure
17 that what we were doing was going to all but eliminate
18 any of the potential of those future exposures to be
19 eliminated by the monthly inspection, by the heightening
20 of the Class C operator training, by the A and B
21 operator, and allowing for those nuances to be developed
22 into the plan.

23 In listening to the discussions earlier
24 relative to the Questar request and having a Class C

25 operator at remote sites, we have no problem with that.

29

1 And the ones who are station operator, we certainly
2 understand.

3 With that, Mr. Chairman, I'll just say that the
4 board of trustees for the State of Wyoming Petroleum
5 Marketers Association took a vote and unanimously
6 approved me to come out and testify and say thank you for
7 your efforts, and we think we have a good regulation on
8 the books now.

9 CHAIRMAN BOAL: Thank you, Mr. Larson.

10 Let's see if there are any questions for you.

11 Questions from this side of the podium?

12 MR. MORRIS: Would you recommend approval?

13 MR. LARSON: Absolutely, yes, sir.

14 CHAIRMAN BOAL: How about you, Mr. Searle?

15 Questions?

16 MR. SEARLE: Not a question, Mr. Chairman.

17 Just really appreciate you folks stepping up
18 and working with the Department to try to find changes
19 that are comfortable for everybody.

20 MR. LARSON: Thank you.

21 CHAIRMAN BOAL: Thank you, sir.

22 MR. LARSON: Thank you, Mr. Chairman.

23 Thank you, committee.

24 CHAIRMAN BOAL: Now we'll hear from

25 Mr. Charles -- is it Seniawski?

30

1 MR. SENIAWSKI: Seniawski.

2 CHAIRMAN BOAL: Come forward, please, sir.

3 You represent Spradley Barr Motors out of Cheyenne. Is
4 that correct?

5 MR. SENIAWSKI: That's correct.

6 CHAIRMAN BOAL: Go ahead.

7 MR. SENIAWSKI: Mr. Chairman and
8 distinguished members of the Council, certainly
9 appreciate the opportunity to address you today. You've
10 already seen the correspondence that I had sent forward
11 to the Department and to the Council previously. I want
12 to say a couple things starting, though.

13 Mr. Searle, thank you for asking the questions
14 you did, because I haven't had a chance to ask that yet;
15 that is, how many tanks we have that fall under this
16 situation.

17 And, Mr. Morris, good seeing you. It's been an
18 FFA sale years ago, I think.

19 But, anyway, I am the dealership support
20 manager for Spradley Barr Motors in Cheyenne. And, of
21 course, as you can guess, we're an automobile dealership.
22 We do sales, service, parts, body shop. My comments
23 actually will be much shorter than planned -- there was
24 the plan -- because a lot of things have already been

25 addressed.

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1 All I wanted to do was renew the main point
2 that I was trying to make. I don't want to be exempt
3 from anything. But what I saw the testing requirement as
4 for a general manager and/or service manager -- because
5 I'm not going to be with the dealership much longer,
6 anyway. It's about time to retire.

7 So carrying on, what I was not -- or what I'm
8 trying to avoid is a situation of learning for learning's
9 sake. I know we have that throughout the school system
10 now, where we have to prepare for tests so that the
11 school system looks good. And I'm glad to hear
12 Mr. Lucht's comments on the success of his temporary
13 employees in passing the test, but I'll guarantee you,
14 I've been doing this for some thirteen years now for the
15 dealership, going back to when it was Fassett and Nickel
16 and then as it got sold to Spradley, and I thought I was
17 pretty familiar with things until I attended his training
18 session in Cheyenne that lasted all day. And that's
19 really what got me a bit concerned about the scope of the
20 testing.

21 CHAIRMAN BOAL: Did you take the test
22 following the training session?

23 MR. SENIAWSKI: I did not.

24 CHAIRMAN BOAL: So you don't know how you

1 MR. SENIAWSKI: Don't know how I would do.

2 But I suspect I'll probably do okay. But I've been
3 running the program for thirteen years at the dealership.

4 CHAIRMAN BOAL: Did you take anybody with
5 you from the dealership to the training?

6 MR. SENIAWSKI: No, we didn't, because we
7 don't have a lot of, as I would call it, administrative
8 fat. We've either got hourly workers or we've got the
9 manager directly over them that's supervising their work
10 that particular day. And it's tough to get people away
11 for -- they have enough distractions, I will say, without
12 doing something that they're not sure what's going to
13 happen.

14 And, in fact, going into the training, I really
15 didn't understand completely what was going on. It was
16 something that was in my bailiwick, and I said I better
17 go and see what's going on.

18 One of the things that concerns me a little
19 bit -- and it's just for what it's worth -- the rules
20 really seem to be aimed a lot at the -- those petroleum
21 retail operations. You can read my letter. We got a
22 used oil tank. It's well protected. You don't have to
23 worry about leaks going out into the dirt, because I've
24 got a double-walled tank and sensors and things like

25 that. And we must be doing okay, because we passed our

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1 last DEQ inspection, which was just a couple months ago.

2 But we're not in the retail dispensing business.

3 And his other point that this license would be

4 good for people to go throughout the state, our general

5 manager and our service director aren't going to be

6 leaving. They make good money where they're at. I don't

7 think they can make much better going monitoring tanks

8 around the state. That was why I asked if we couldn't

9 have something that especially is fitted to our

10 situation. And in one of our -- one of my earlier pieces

11 of correspondence, I said, you know, I will be glad to do

12 the hard work in putting together a training program for

13 our specific situation. All they've got to do is look at

14 it and approve it.

15 So, anyway, that's basically where I've been

16 coming from on this whole thing. The way I look at this,

17 it's probably going to be -- well, number one, people

18 have to get familiar with the reference work -- which I

19 think you've seen it. I hope you have. It's about yea

20 thick -- the reference work for either one of the Class A

21 or Class B licensing tests.

22 There are provisions in there where you can't

23 write in the book. You can't tab anything in the book to

24 find it quickly. These are some of the things that came

25 to mind as I started getting concerned about this, and,

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1 of course, the fact that we're going to be talking about
2 things that we have absolutely nothing to do with. We
3 don't have a pressurized system. We don't have piping,
4 because it's just a drop fill. There's a lot of stuff
5 that we don't have to worry about and that we'd have to
6 learn about. And I estimate it would probably take a day
7 of preparation, another half day of testing. And I'm
8 pulling my general manager out to do this. And I hope he
9 passes the test. But it just seemed to be learning for
10 learning's sake in our situation.

11 Any questions?

12 CHAIRMAN BOAL: Let's see if there are
13 questions.

14 Any questions? Anybody have any questions?

15 DR. OGDEN: I do.

16 MR. SENIAWSKI: Yes, Doctor?

17 DR. OGDEN: So you have an underground
18 storage tank you put waste motor oil in?

19 MR. SENIAWSKI: It's used motor oil, yes.
20 There's a difference between waste and used. And that's
21 why I point that out.

22 DR. OGDEN: And it's double-walled? It's
23 got leak detection?

24 MR. SENIAWSKI: It's double-walled. I've

25 got leak sensors. As a matter of fact, just a couple

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1 months ago they failed, and I got an indication on my
2 alarm panel. We called folks in to fix it. They
3 replaced some sensors, and we were back in business.

4 DR. OGDEN: How frequently is it inspected
5 by DEQ?

6 MR. SENIAWSKI: Every three years. That's
7 per their requirements.

8 DR. OGDEN: Is it in a vault, or is it --

9 MR. SENIAWSKI: No.

10 DR. OGDEN: -- buried in the earth?

11 MR. SENIAWSKI: It's just buried in the
12 earth. But it's an STIP-3, which is just a double-walled
13 steel tank with cathodic protection. And we have annual
14 operators checks, as well as the three-year check on the
15 cathodic protection system.

16 DR. OGDEN: And you have someone come pump
17 it out frequently?

18 MR. SENIAWSKI: Yeah. We used to wait
19 until the alarm went off, saying one side of the tank was
20 full, and we'll make sure that the technician closest to
21 the switch moved it over to the other tank. But that
22 proved to be an issue a couple of times. So for the past
23 few years, we've been having a pumper come in regularly.
24 We never get -- we don't even fill one compartment now

25 before he comes in and takes it out.

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1 DR. OGDEN: Thank you.

2 CHAIRMAN BOAL: Any other questions?

3 MR. SEARLE: I'll ask one.

4 CHAIRMAN BOAL: Yes, Mr. Searle?

5 MR. SEARLE: Appreciate your comments.

6 Here's the question I have for you. And I'm just trying
7 to -- you heard what I asked Mr. Lucht earlier about
8 site-specific situations. You opened up that you don't
9 want to be exempt. That's what your opening comment was.

10 MR. SENIAWSKI: We can't be exempt.

11 MR. SEARLE: So what's your potential
12 solution to this, realizing the limitations of personnel
13 that the Department would have? And also, frankly, I
14 started to think -- I've developed a number of these
15 plans for the organization that I work for. And you're
16 probably going to spend more time and energy developing a
17 site-specific plan yourself than it is to having somebody
18 go to a test once in a while.

19 MR. SENIAWSKI: Well, I guess if it were
20 just a technician, I wouldn't worry too much about that,
21 but it's not. The owner of the tank is our general
22 manager. And he's already trying to run a -- run a
23 business and keep up with all the other governmental
24 mandates that are often unfunded or self-funded, as it

1 MR. SEARLE: So you're saying that under
2 this, you're reading that as the only person that could
3 be your Class A operator?

4 MR. SENIAWSKI: That's what makes sense to
5 me. He's the one that's responsible for making sure that
6 everything gets done with that tank, make sure that the
7 tank fees are paid, make sure the regulations are
8 followed, make sure people are trained, that kind of
9 thing.

10 MR. SEARLE: In Class B, they talk about
11 owners and/or operators of storage tanks. I'm just
12 thinking I didn't see necessarily that it needed to be
13 somebody at that level in your company that had to take
14 the Class A or Class B test. But maybe I'm mistaken.

15 MR. SENIAWSKI: Well, and perhaps it's not
16 clear to either one of us.

17 CHAIRMAN BOAL: We'll find out from the
18 Department in their closing remarks.

19 Mr. Coverdale?

20 MR. COVERDALE: Yeah, I do have a
21 question. I didn't think of this earlier. So you have
22 cathodic protection?

23 MR. SENIAWSKI: Yes.

24 MR. COVERDALE: And you have sensor

25 systems, and you have an underground storage tank. So

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1 other than the pressurized piping sections of the test,
2 what other parts of the test don't apply to you? I'm
3 confused over -- because it would seem like you have
4 quite a bit of what I saw in the -- I didn't see the
5 whole test, but I saw an outline of it. It would seem
6 like you're hitting maybe more than half of what's in
7 there.

8 MR. SENIAWSKI: Here are some "I wonder
9 why." I wonder why we need to know that storage tanks of
10 110 gallons or less capacity are not included in the
11 definition of UST. What I'm doing is I'm pulling some
12 stuff that I highlighted out of that training session as
13 emphasis items.

14 Why do we need to know the definition of a
15 gasoline dealer? Why do we need to know the precautions
16 to be followed when filling a UST with gasoline? We're
17 not a dealer. Why do we need to know the requirements
18 for maintaining an impressed current cathodic protection
19 system? That's not the kind of cathodic protection we
20 have. Why do we need to know taxation rates on diesel
21 and gasoline?

22 We talked about line leak detection. Why do we
23 need to know about manual tank gauging? Why do we need
24 to know about petroleum UST systems with a capacity of

25 more than 2,000 gallons? And now we're talking inventory

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1 control, tank tightness testing, automatic tank gauging,
2 vapor monitoring, groundwater monitoring, statistical
3 inventory, reconciliation, tracer surveys, pass of
4 acoustic sensing detection methods. Those are the kind
5 of things I'm wondering, why do we need to know that?

6 CHAIRMAN BOAL: Thank you. Anything else?
7 Anything else you'd like to tell us, sir?

8 MR. SENIAWSKI: Just thank you very much
9 for the opportunity to come up here and visit beautiful
10 Casper and present my comments.

11 CHAIRMAN BOAL: Thank you.

12 Now, the sign-in sheet that I have doesn't
13 indicate that anyone else who's present wishes to speak
14 to this council on the proposed adoption of Section 46.
15 So if there is anybody out there that wishes to add
16 anything, this is a time to indicate it. Is there
17 anybody else present who wishes to address the proposed
18 amendment to Section 46 before we hear from the
19 Department one last time?

20 MR. CALLAHAN: Yes, sir.

21 CHAIRMAN BOAL: Yes, sir. Come forward.
22 What is your name?

23 MR. CALLAHAN: My name is Steve Callahan.
24 And I oversee the operations for King Soopers and City

1 CHAIRMAN BOAL: And, Mr. Callahan, you
2 left the box blank where it says, did you want to offer
3 arguments? So go right ahead.

4 MR. CALLAHAN: My question is -- and I
5 understand the training. I believe in all the training
6 and all that. My only question is I'm not quite sure why
7 the chain stores should be required for the monthly
8 inspections, where the single operators are exempt from
9 that. I mean, it seems like if we're going to be doing
10 monthly inspections, either it should be for all or for
11 none.

12 We are already doing inspections annually. And
13 what we do, we also, like Mr. Lucht said, that we do
14 inspect everything. We do take the pictures. We send in
15 the pictures, along with all of our records. We're
16 already doing that. We do monitor. Just because we are
17 a chain does not mean that we don't oversee and we don't
18 monitor our tanks and lines and all that. We do monitor
19 all of our alarms.

20 We do check our inventory. I check our
21 inventory at all of our stations daily of our
22 inspection -- of our inventory records so that if there
23 is any indication that something might be wrong, we could
24 have a sensor alarm or anything like that, then we react

25 immediately on that. We send out a technician to check

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1 calibration. We'll look at -- if there's an alarm, we
2 definitely investigate that. So the impression that the
3 chain stores are not monitoring this I think is something
4 I want to make clear that we do.

5 And, also, in talking about these inspections,
6 if we have a service technician that does these
7 inspections, do they have to be Class A, Class B
8 certified to do these inspections, or does it have to be
9 a store manager that does these? I think if they're
10 going to be opening up the sumps and getting into all
11 that, I would feel more comfortable with that being a
12 service technician that is familiar with the operations
13 to do that sort of thing.

14 And if we don't use an in-house technician and
15 we use an outside vendor for this, is that acceptable?
16 If it's a vendor, an outside vendor, do they have to be
17 Class A, B certified? And if so, are they able to do
18 that for all? I know Class Bs only are authorized for
19 fifteen stations. Is it something that they can do for
20 everywhere?

21 **CHAIRMAN BOAL:** The inspections can be
22 done by a Class A or Class B operator. And I don't know
23 about an outside service technician. My recollection was
24 the original draft we saw required somebody on site to be

25 either a Class B or a Class C operator. And this was a

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1 compromise from that requirement. So monthly inspections
2 actually came out of a suggestion from, I think, one of
3 the chain store operators. So that's where that came
4 from.

5 But at any rate, your main suggestion is that
6 if the King stores have to do monthly inspections, so
7 should a sole proprietor. Is that right?

8 MR. CALLAHAN: I feel the rule should
9 apply for all of us if there's going to be a change, yes.

10 CHAIRMAN BOAL: Let me see if there are
11 questions for you, Mr. Callahan.

12 Let me start over here. Do you have any
13 questions, Mr. Searle?

14 MR. SEARLE: Sure.

15 It's my understanding that one of the reasons
16 that they're giving the single operator, single store
17 operator, a break on monthly inspections is because their
18 Class A, Class B operator will be on site all the time.
19 With your chain stores that you operate, is your
20 intention to have a Class A and B trained operator on
21 that site at all times?

22 MR. CALLAHAN: Yes. We would make sure
23 the store manager would be there every day, manager or
24 assistant manager.

25 MR. SEARLE: And they will be trained in

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1 Class A or B?

2 MR. CALLAHAN: Yes.

3 MR. SEARLE: I will say that one of the
4 reasons they were giving the exemption is because I think
5 a lot of people in a similar situation did not plan on
6 doing that. But you were going to have the Class C
7 person on site, and the Class A and B are going to have a
8 broader responsibility. So you may be presenting a
9 situation slightly different than what the other chain
10 store operators are contemplating.

11 CHAIRMAN BOAL: Questions, Mr. Coverdale?

12 MR. COVERDALE: He asked it.

13 CHAIRMAN BOAL: How about on that side?

14 MR. MORRIS: I would like to hear the
15 comment from the DEQ on this.

16 CHAIRMAN BOAL: Oh, we will. We'll hear
17 from them last.

18 Okay. Thank you, Mr. Callahan. If we said
19 something or gave you the impression that we don't think
20 the chain stores monitor, let me correct that. We know
21 that the chain stores do. I notice that Loaf 'N Jug is
22 here. They had a terrible record for a while. And we're
23 told that they're doing a much better job. So if we gave
24 you the impression that we don't think the chain stores

25 are out there monitoring their underground storage tanks,

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1 please, that's not correct. Okay?

2 MR. CALLAHAN: Thank you.

3 CHAIRMAN BOAL: Anyone else who wishes to
4 address the Council regarding this proposed amendment to
5 Section 46 of Chapter 17?

6 (No response.)

7 CHAIRMAN BOAL: Okay. Having -- the
8 record should reflect that no one has indicated a desire
9 to speak to us on this.

10 Mr. Lucht, why don't you come forward, and
11 Mr. Feusner. And if you can, why don't you rejoin those
12 remarks that need to be answered.

13 MR. LUCHT: Mr. Seniawski's comment that
14 the general manager of the facility would be the only one
15 allowed to take the Class A operators test is not
16 correct. Anyone that is in charge of that underground
17 storage tank, including one of his service technicians,
18 can be a licensed operator.

19 As far as -- there's one other thing that I'd
20 point out. Most of the car dealerships in this state
21 have taken advantage of this. If you put a used oil
22 burner on an underground storage tank, then under federal
23 rules, it becomes a fuel oil tank. It becomes completely
24 exempt from regulation under this program. As long as

25 your fuel -- as your waste oil burner that's used to heat

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1 the shop actually burns all of the used oil that you
2 generate, you're completely out from under the
3 regulations.

4 Now, most of the car dealerships have done
5 exactly that. Most of the used oil tanks in the state
6 have done exactly that. We have a few -- the City of
7 Cheyenne, for example, has a used oil tank. And they
8 don't burn it on site. But most of the other places have
9 escaped regulation of any kind simply by doing that.

10 As far as the fact that he has a double-walled
11 tank and double-walled lines, that's all required under
12 current law by everybody. So it's not unique in that
13 respect. As far as his comment about having to know
14 about all these different leak detection methods, that's
15 all true. There are eight questions out of 60 on leak
16 detection. And you have to be able to at least know
17 where in the book to look up the answer. I don't think
18 that there's a lot of detailed answers.

19 You know, we talked about a whole lot of things
20 during those training sessions that aren't necessarily on
21 the test. Like the minimum size for an underground
22 storage tank of 110 gallons, there's no question on the
23 test that specifically says that. There's no question on
24 the test about what the fuel tax rate is.

25 There is one question out of 60 on the test

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1 about fuel tax licensing. And that's simply, what kind
2 of a license do you have to have to sell fuel? It's not
3 a great, big detailed question that you have to know a
4 whole lot of stuff about. We put that on the test for
5 the simple reason that an awful lot of people buy gas
6 stations, and the next thing you know, they're calling
7 us, complaining because they didn't follow the fuel tax
8 law, and they're in trouble with that side of the
9 government. And so by putting one question on the test,
10 we were able to put the entire licensing law into the
11 book, which makes the book a more valuable reference. If
12 anyone would like to see the books, I have them here.
13 You can see the Class A book and the Class B book.

14 CHAIRMAN BOAL: Okay. One last round of
15 questions for Mr. Lucht regarding Section 46 of Chapter
16 17.

17 Mr. Searle, why don't you start -- we'll start
18 with Mr. Coverdale, since he has a question.

19 MR. COVERDALE: Yeah, I have a question on
20 it. As far as the comments from the last speaker,
21 Mr. Lucht, what's your comments on this issue of
22 permanent on-site Class A operator? Could 47(b)
23 include -- whenever a Class A operator is in charge of
24 more than one facility, could that be turned around, that

25 whenever the Class A operator is on site, no inspection

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1 is required?

2 MR. LUCHT: That's exactly right. And, in
3 fact, King Soopers only has a couple of stations in the
4 state. They have one in Cheyenne that's under King
5 Soopers, and they have one in Rawlins that's under City
6 Market. If they don't want to do a monthly inspection,
7 all they have to do is have a general manager at each of
8 those two locations take the test and escape from that
9 requirement.

10 MR. COVERDALE: Do they the way it's
11 worded now?

12 MR. LUCHT: What's that?

13 MR. COVERDALE: Do they the way it's
14 worded now?

15 MR. LUCHT: The way it's worded right
16 now --

17 MR. COVERDALE: I see how that you're
18 interpreting it. As long as there's a Class A operator
19 and not in charge of more than one facility.

20 MR. LUCHT: That's right.

21 CHAIRMAN BOAL: Anything from you,
22 Mr. Searle?

23 MR. SEARLE: No, sir. Thank you.

24 CHAIRMAN BOAL: Questions down there?

1 MR. FLITNER: Just a clarification. The
2 way I read it, your regulations really aren't concerned
3 with the specifics of people's businesses. They're
4 concerned with underground storage tanks. So anything
5 else, what people are doing with their underground
6 storage tanks or not doing with them is really
7 irrelevant. I mean, you mentioned you could have
8 1,400-and-some different exemptions if you wanted to get
9 into that. So your regulations are designed for storage
10 tanks.

11 MR. LUCHT: Well, what I said was there's
12 1,400 different combinations of equipment. What you use
13 an underground storage tank for is relevant under the
14 rules. There are a number. In fact, if you look at the
15 35-11-14 -- what is it?

16 MR. FLITNER: But the fact that you have
17 them is why you're under regulation. That's what I mean.

18 MR. LUCHT: That's right, yeah. What you
19 use them for is relevant because there are a number of
20 exemptions that are in the statute. And in using the
21 tank for any of those things that are exempt, you're not
22 even under our program.

23 MR. FEUSNER: I think, Mr. Flitner, we
24 don't intend to manage business options for the business.

25 So we only want to regulate underground storage tanks.

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1 MR. FLITNER: Right.

2 CHAIRMAN BOAL: Anything else?

3 Mr. Morris?

4 MR. MORRIS: Yeah. Bob, I'm wondering if
5 you go to burning this waste to get out from under the
6 regulations, then what happens with the Clean Air Act?
7 Do you have to have a permit for that? You're just
8 eliminating one and creating another, aren't you?

9 MR. FEUSNER: I believe, Mr. Morris, the
10 answer to that question is if it was a large operation,
11 Air Quality might have to look at it. But I believe
12 there are exemptions that preclude that, based on the
13 quantity and amount of emissions that would come out if
14 you burn it. And that's all regulated by the Air Quality
15 Division. So I don't have a definitive answer for your
16 question.

17 MR. MORRIS: But you would have to have a
18 permit to burn waste oil.

19 MR. FEUSNER: Well, you might have to have
20 it looked at, yeah.

21 MR. LUCHT: You might have to have one.
22 You don't necessarily have to have an air quality permit
23 for burning used oil.

24 The other issue is if you put in the used oil

25 burner, you have to burn all of the used oil on site.

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1 That's what makes the tank exempt. You can't -- you
2 know, in the summertime, you can't haul off 1,000 gallons
3 a month and burn it all during the wintertime. It has to
4 be for consumptive use on site in order to get through
5 that exemption.

6 CHAIRMAN BOAL: Any other questions?

7 (No response.)

8 CHAIRMAN BOAL: Okay. Thank you,
9 gentlemen.

10 The hearing in this case, the hearing on Docket
11 07-5101, is concluded. And I suppose it's proper for me,
12 Terri, to close the record on this if I need to. The
13 record in this hearing is closed, as well. So at this
14 time the chair would entertain a motion.

15 Mr. Searle, were you indicating you wanted to
16 make a motion?

17 MR. SEARLE: Yes, sir. If I can make a
18 motion to remand it back, I guess I can make the motion.
19 Make it brief. I would just move that the Section 46 of
20 Chapter 17 be passed as presented to us with the changes
21 we saw today.

22 MR. MORRIS: I'll second.

23 MR. COVERDALE: Second.

24 CHAIRMAN BOAL: So it's been moved by

1 we adopt Section 47 -- 46 as set forth in the submittal
2 dated September 29th of '08, which would include the
3 amendments that were outlined in the comments -- in
4 response to the comments for DEQ.

5 Is there any discussion?

6 Mr. Morris, what did you want to say? You
7 leaned forward. I thought you wanted to say something.

8 MR. MORRIS: Question.

9 CHAIRMAN BOAL: I just want to express my
10 appreciation, DEQ and the Petroleum Marketers Association
11 and everyone who put some time and effort in this and
12 came to a couple meetings, including this one. I think
13 as a result, we have a pretty good Section 46, one that's
14 not perfect but one which everyone can live with. And
15 hopefully the end result will mean that we have much
16 fewer, much, much fewer leaks and dispersions from our
17 underground storage tank, which is what this is all
18 about.

19 So the Council wants to express our
20 appreciation for going through that arduous process,
21 which I know was frustrating for Mr. Lucht and
22 frustrating for Mr. Larson at times. But the process was
23 well worth it.

24 Any other discussion?

25 (No response.)

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1 CHAIRMAN BOAL: There being no further
2 discussion, all those in favor of the motion -- oh, we
3 need to do roll call, I'm told. We need to be doing roll
4 call votes on these decisions because that's required by
5 our rules of practice and procedure. So all those in
6 favor of the motion, please raise your hand.

7 (All members respond.)

8 CHAIRMAN BOAL: Is there anyone that is
9 opposed? Raise your hand.

10 (No response.)

11 CHAIRMAN BOAL: So, Mr. Ruby, that will
12 constitute a roll call thing.

13 Yes, Ms. Yoder?

14 MS. YODER: I just wanted to point out
15 that your rule -- Section 7 of your rule-making rules
16 does presuppose that there has to be an official
17 transcript prepared before voting. I think that's been
18 waived in the past, but I want to point that out.

19 CHAIRMAN BOAL: Tell me that again. What
20 does our rule say?

21 MS. YODER: Section 6 says, "All timely
22 comments shall be considered by the Council before final
23 action is taken on any proposal to promulgate, amend or
24 repeal any rule. Late filed comments may be considered

25 so far as possible without incurring additional expenses

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1 or delay." Section 7 decision, "As soon as practicable
2 after receipt of the official transcript or as soon as
3 practicable after the expiration of the time set for the
4 submittal of written comments, the Council or
5 administrator shall render a written decision on the
6 issues presented at the hearing."

7 MS. LORENZON: Has an alternative there.

8 MS. YODER: So I don't know if a time has
9 been set for receipt of written comments.

10 MS. LORENZON: Yes, in the public notice.

11 CHAIRMAN BOAL: So am I okay, Mr. Ruby?

12 MR. RUBY: Yes.

13 CHAIRMAN BOAL: Now, we still need a
14 motion to approve the statement of reasons which have
15 been provided by the Department of Environmental Quality.
16 Let's all find those.

17 MR. COVERDALE: I move we approve the
18 statement of principle reasons as laid out in the
19 document from the DEQ.

20 CHAIRMAN BOAL: Is there a second to that
21 motion?

22 MR. SEARLE: Second.

23 CHAIRMAN BOAL: Thank you, Mr. Searle.
24 So there's been a motion made to approve the

25 statement of principle reasons for the amendment of

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1 Section 46 of Chapter 17 of the Wyoming quality rules and
2 regulations.

3 Any discussion on the motion? Everybody had a
4 chance to read those? Discussion?

5 MR. SEARLE: I do have a question, I
6 guess. Just to make sure we're not -- that we're being
7 consistent, I guess, this is in the paragraph under the
8 heading of "Licensing of Storage Tank Operators." About
9 the middle of the paragraph, the sentence starts with, "A
10 Class A operator is a management-level employee of the
11 owner/operator of the facility." And I was under the
12 impression, in the comments that were made by Mr. Lucht
13 earlier, that the management level part of it, I was
14 under the impression that you could send anybody to that
15 testing. It didn't have to be necessarily management
16 level. I don't know if that's a defined term or what it
17 is. But that may be inconsistent in what we heard.

18 CHAIRMAN BOAL: Mr. Lucht, would you come
19 forward, please? Based on the discussion earlier today,
20 is the use of the word "management level" accurate in
21 that section of the statement of principle reasons?

22 MR. LUCHT: Probably not. You could line
23 that "management level" out before you sign it.

24 CHAIRMAN BOAL: So it should say Class A

25 operator is an employee of the owner/operator facility,

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1 and that would be more accurate?

2 MR. LUCHT: Yes, sir.

3 CHAIRMAN BOAL: Thank you.

4 So having heard that, Mr. Searle, do you move

5 to amend the statement of principle reasons?

6 MR. SEARLE: Yes, so moved.

7 CHAIRMAN BOAL: Mr. Coverdale, do you

8 second that motion?

9 MR. COVERDALE: Yes.

10 CHAIRMAN BOAL: So it's been moved by

11 Mr. Searle and seconded by Mr. Coverdale. If we'd all

12 take a look at the second-to-the-last sentence in the

13 statement of principle reasons in the paragraph that's

14 entitled "Licensing of Storage Tank Operators," we would

15 delete the words --

16 MR. SEARLE: Third from last.

17 CHAIRMAN BOAL: Go ahead.

18 MR. SEARLE: It will say -- the sentence

19 will read, "The Class A operator is an employee of the

20 owner/operator of the facility."

21 CHAIRMAN BOAL: Everybody understand the

22 amendment? All those in favor please say aye. Oh, let's

23 have everybody raise hands. All those in favor of the

24 amendment please raise your hand.

25 (All members respond.)

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1 CHAIRMAN BOAL: Any opposed?

2 (No response.)

3 CHAIRMAN BOAL: So the record should
4 reflect that everybody in the Council voted in favor of
5 the amendment.

6 All right. Any further discussion regarding
7 the statement of principle reasons for rule-making?

8 MR. COVERDALE: Could I have a second?

9 CHAIRMAN BOAL: Yes, you sure can.

10 MR. COVERDALE: Bob's still sitting here.
11 Maybe I'll just ask him.

12 I have a question for you. Is the very next
13 sentence correct -- or second? There are no limits
14 placed on how many facilities may be under one Class A
15 operator. Where was the fifteen number?

16 MR. LUCHT: The fifteen is under the Class
17 B operators.

18 MR. COVERDALE: Okay. All right. Thank
19 you.

20 CHAIRMAN BOAL: Other discussion?

21 (No response.)

22 CHAIRMAN BOAL: Okay. All in favor of the
23 statement of principle reasons as amended please indicate
24 by raising your hand.

25 (All members respond.)

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1 CHAIRMAN BOAL: Is there any opposed?

2 Raise your hand.

3 (No response.)

4 CHAIRMAN BOAL: So, Mr. Reporter, the

5 record should reflect that the statement of principle

6 reasons as amended is unanimously approved.

7 Okay. That completes the work we're going to

8 do on Chapter 27 today. I want to thank everybody for

9 being here. Chapter 17. And we're going to take a

10 ten-minute recess.

11 (Hearing proceedings concluded

12 11:20 a.m., September 29, 2008.)

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1 C E R T I F I C A T E

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3 I, RANDY A. HATLESTAD, a Registered Merit
4 Reporter, do hereby certify that I reported by machine
5 shorthand the proceedings contained herein constituting a
6 full, true and correct transcript.

7

8 Dated this ____ day of _____, 2008.

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RANDY A. HATLESTAD
Registered Merit Reporter

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