

**RESPONSE TO COMMENTS
RECEIVED AFTER OCTOBER 18, 2006
DRAFT CHAPTER 17**

Comment 1: First, as far as having “each worker on the installation or modification” licensed is a little extreme. It is our feeling that the foreman of the job who is representing a company, should carry the license for an installation or modification, not every worker. It becomes very costly to have EVERY worker on an installation licensed, in addition to using part time or temporary help to work on an installation it would exclude using this type of labor on an installation.

Response 1: The point is well taken. The Department’s concern in the proposed rule is to insure that personnel actually doing the work are qualified. The department does not want to create a system like some craft licenses, where one individual somewhere in the company carries the license, but the work itself is done by persons with less qualifications. Under that type of system, the person who actually has the license may be present only rarely on the job site. The department wants to insure that at least one person on the job site at all times understands the requirements. At the same time, to require every person that finishes concrete, or pulls electrical wire to be licensed may be too extreme. In response to this comment, the Department proposes to re-word Section 45 (a) as follows:

(a) License Required. During the installation or modification of any UST or AST regulated by this chapter at least one person, present on the job site, shall be licensed by the department to install or modify fuel tanks. To obtain these licenses, each person shall submit documentary evidence that he or she has passed the following tests within the three years preceding the application date:

The above change also makes Section 45 (b) un-necessary. As written in the draft, Section 45 (b) states:

(b) Persons recently hired. Persons who have not received the above license(s) may work on the installation or modification of an AST or UST under the direct supervision of an on-site supervisor who has passed the required tests until six (6) months after the date of their first employment. After six (6) months, persons who have not been licensed shall not work on installing or modifying Storage Tanks in Wyoming.

Section 45 (b) will be removed from the draft chapter.

Comment 2: Second, there is not enough change in our industry that would make it necessary to renew every (2) years. (3) Years would be sufficient, if at all, as long as the license holder works for a reputable installation company.

Response 2: The department accepts the comment and has changed the wording for the installer’s license to a three year license as shown in Response 1, above.

Section 45(c) will be re-numbered as Section 45(b) and will be changed to the following:

(b) License Renewal. Persons who are licensed as UST or AST Installers shall renew their license every three years.

Comment 3: Third is, in the proposal it also talks about “reciprocity with other states”. Will that same grace be shown for Licenses that are given by Cities in our own state? I am referring to the City of Cheyenne specifically. We believe that the process has already been established, so why try to reinvent the wheel.

Response 3: The point is well taken. The department is concerned about the burden to evaluate other state and city programs. The concern is, we might be asked to evaluate an entire state’s licensing program just to accommodate a single individual. For this reason, the department would like to limit reciprocity to adjacent states and cities within Wyoming. Section 45 (d) will be re-numbered as Section 45 (c) and re-worded as follows:

(c) Reciprocity with other states and cities. After evaluation of the other state or city’s licensing requirements, the State of Wyoming Storage Tank Program, may accept a license from any adjacent state, or any City in Wyoming, in lieu of the International Code Council tests required in Section 45(a)(ii) and (iii).

The same change will be made to other sections dealing with reciprocity.

Comment 4: Lastly is, there needs to be some tie in with the license and the company that the worker works for. So if the worker leaves the current company the individual would then have to Re-license with the current company of employment.

Response 4: The department disagrees. Even though the company may well pay for the training and experience necessary for the individual to obtain an installers license, the State of Wyoming should not be placed in a position of requiring a new test just because the individual chose to leave his former employer. These types of issues should be addressed by the companies in their labor contract agreements with their own employees.

Comment 5: In Part K, Section 47 (a) Cathodic protection testers – why is ICC certification not acceptable for Cathodic Protection tester and is acceptable for tank installers?

Response 5: ICC certification covers only the requirements of the regulations. The ICC test does not attempt to cover the technical aspects of how to do a cathodic protection test. With a very highly technical subject like cathodic protection, the department believes that the technical training courses offered by the National Association of Corrosion Engineers and the Steel Tank Institute are much better than the test provided by the ICC.

Comment 6: In Part K, Section 47 (b) Corrosion Experts – do you mean that you have to be, or be supervised by, a corrosion expert when doing a repair to a cathodic protection system, i.e. replacing depleted anodes, broken wire, or replacing wire runs.

Response 6: That is exactly what Section 47 (b) is intended to mean. There is a clear distinction in all existing regulations, both state and federal, between a cathodic protection tester, and a

corrosion expert. Cathodic protection testers do not have the training or experience to fully assess a system and properly design a repair. For example, when the factory installed anodes fail on an STI-P3 tank, it requires a different approach if it happens at the first required three-year test than it does if it happens after the eighth required test. In the first case, it may mean that the soil is so corrosive that sacrificial anodes are not appropriate for the site, or it may indicate that there is a severe stray current problem at the site. In the second case, it may only mean that the anodes reached their life expectancy, and replacing the anodes may be all that is needed. Only a corrosion expert can make a proper assessment.

Comment 7: We understand that the Department will apply any delivery prohibition only to a non-compliant tank system (i.e. any connected tanks and piping), and not to other compliant tank systems at an installation.

Response7: No response necessary, that is the correct interpretation of the draft rule.

Comment 8: We understand that the Department will apply Section 35-11-701 of the Wyoming Statutes to any proposed delivery prohibition. Thus, written notice of an alleged violation will be provided to a responsible party, who may request a hearing before the Wyoming Environmental Quality Council and an order imposing a delivery prohibition will be stayed pending the final determination of the Council.

Response 8: No response necessary, Section 35-11-701 applies to whenever an Administrative Order is issued. The Notice of Violation, which is always a part of an Administrative Order, is a “written notice which shall specify the provision of this act, rule, regulation, standard, permit, license, or variance alleged to be violated and the facts alleged to constitute a violation...”

Comment 9: Section 47, Subsection (a) (i) delineates a requirement for testers to be certified by NACE within two years of the application date. NACE Cathodic Protection tester certifications as issued by NACE do not expire, given that requirements for practicing cathodic professional hours are met on a three year basis; therefore, I would suggest that the time period used by the state of Wyoming be congruent with the NACE guidelines.

Response 9: The commenter has a point. The NACE Cathodic Protection tester’s course is a six-day course including homework assignments and a rigorous test. NACE then renews their certification every three years based on continuing education criteria. The STI course is much less rigorous, it is only two days in length, and STI does not renew the certification unless the same course is taken again. These differences should be recognized in the rules. For this reason, Section 47 (a) will be re-worded as follows:

(a) Cathodic Protection Testers. Persons who perform any cathodic protection testing shall obtain a license from the department. To obtain this license, each person shall submit documentary evidence that he or she is:

(i) certified by NACE as a cathodic protection tester within the three years preceding the application date; or

(ii) certified by the Steel Tank Institute as a cathodic protection tester within two years preceding the application date.

This change will insure that existing testers, who may already have either or both of these certifications, can become licensed. The comment brings up another issue. The license issued by the State of Wyoming should expire on the same date when the underlying certification expires. Section 47 (c) will be re-worded as follows:

(c) License Renewal. Licenses issued for Cathodic Protection Testers and Corrosion Experts shall expire on the date when the underlying certification by NACE or STI expires, or on the same date when an underlying license issued by another state or city expires. Persons holding those licenses shall renew their license within 90 days prior to the date when the license expires.

Comment 10: Many states offer reciprocity with other states in which cathodic protection testers and corrosion experts can operate in more than one state. As most state recognize NACE criteria as acceptable training requirements to perform work within the state, it would benefit both cathodic protection professionals and state regulatory agencies to either (1) accept NACE certifications as a license to perform work within the state, or (2) accept reciprocity with other states, adjacent states in particular, as acceptable criteria to work.

Response 10: A new subsection, Section 47(d), will be inserted to allow reciprocity with other states.

(d) Reciprocity with other states and cities. After evaluation of the other state or city's licensing requirements, the State of Wyoming Storage Tank Program, may accept a license from any adjacent state, or any City in Wyoming, in lieu of the NACE certification or STI certification required in Section 47(a) and (b).

Comment 11: According to the "Draft EPA Guidance on Operator Training," all of the clerks that work at a convenience store are also required to be trained. Draft Chapter 17, Section 46, does not address this requirement.

Response 11: The Department drafted the amendments to Chapter 17 before the above document was available. Now that it is, it is clear that a change is needed to meet the federal mandate. At the same time, the Department does not wish to impose even more regulatory burden on the industry. For this reason, the following language will be inserted in Chapter 17, Section 46:

(c) Service Station Clerks. Persons who work at a service station or convenience store, but who are not in responsible charge of the location must be trained by the Level 1 Operator for that location in the following areas:

(i) Proper procedures to follow in the event of an accident involving the fuel system. Accidents include any incident that damages the dispensers or any part of the fuel system;

(ii) The location and operation of all emergency shutoff switches, breakers, and other controls necessary to completely control all pumps installed on the system;

(iii) The limits of maintenance items that can be performed by the clerk, and what items must be referred to more qualified individuals;

(iv) Procedures to be followed in the event of a fuel release, regardless of the reason for that release; and

(v) The records that must be kept (if any) on each shift to insure that release detection is properly done.

Comment 12: Comments 2 and 9 concern the licensing period for Installers and Cathodic Protection Testers. Perhaps these comments could also be applied to Level 1 and 2 Licensed Operators. Should these licenses have a term of three years?

Response 12: The International Code Council National UST Operator Certification test was set up by a panel of experts including state regulators in a number of other states. The State of Wyoming was not part of that effort. The International Code Council set up their requirement for a renewal period of two years.

The “Wyoming State Specific Storage Tank Laws” test and the AST Operator’s Test are being written by the State of Wyoming in cooperation with the International Code Council. The International Code Council has set a certification term for those tests at two years.

Comment 13: The “Wyoming State Specific Storage Tank Laws” test should be allowed as an alternative instead of the “National UST Operator Certification” test for Level 1 Operators. This change would allow Level 2 Operators to take only the “Wyoming State Specific Storage Tank Laws” test instead of having to take both tests. The Wyoming test is significantly more difficult than the national test in any case, so requiring both tests from Level 2 Operators seems redundant.

Response 13: That change would be a good idea. A new subsection will be added to the end of Section 46 (b) as follows:

; or

(iii) In lieu of both of the above tests, the International Code Council test on “Wyoming State Specific Storage Tank Laws.”

Comment 14: Comment 10 dealt with reciprocity issues with other states for cathodic protection testers. Perhaps this comment should be broadened to include Licensed Operators.

Response 14: The situation with Level 1 Operators and Level 2 Operators is different in several respects to the situation with installers, testers and cathodic protection testers. EPA Guidance requires that Level 1 and Level 2 operators receive “state specific training.” The draft rule

allows the department to evaluate any state's requirements to determine if they are equivalent to the National UST Operator's Test.

Comment 15: House bill 139 passed the Legislature and was signed by Governor Freudenthal. That bill removes the requirement to register tanks every year by July 1. That bill also changes the storage tank fees from fiscal years to calendar years.

Response 15: Chapter 17, Section 9 (c) will be stricken from the chapter. Section 9 (d) will be renumbered as Section 9 (c) and revised as follows:

~~(d)~~(c) *Fees.* Owners and/or operators of storage tank systems shall pay the annual fees specified by W.S. 35-11-1425 no later than ~~July~~ January 1 of each year or thirty (30) days after the first invoice, whichever is the later date. Fees are not prorated, the fee is assessed based on a fiscal calendar year ~~which begins July 1 of each year.~~ Fees begin on the date when the tank is first filled with a regulated substance and end on the date when the tank is placed permanently out of service or converted to a non-regulated use under these regulations.

Comment 16: House Bill 309 passed the Legislature and was signed by Governor Freudenthal. This statute effectively changes the deadline for compliance with all aboveground storage tank upgrading requirements in Chapter 17 to October 1, 2008.

Response 16: There are four places in Chapter 17 where the deadline date of October 1, 2007, is found. Section 35 (k) will be changed to:

(k) *Existing ASTs.* Tanks do not need to be UL labeled but must be designed, constructed, and tested to the approved standards. Non-UL labeled tanks shall bear an all weather label with the following information: name and address of the tank manufacturer, year the tank was built or date of re-certification, capacity of the tank in US gallons, and the tank construction or inspection standard used. Existing ASTs must meet the substantial requirements of Section 35 no later than October 1, ~~2007~~2008. Section 35 (o) will be changed to:

(o) *Upgrading existing tanks.* All existing ASTs ~~which~~ that do not meet the requirements of this chapter must be upgraded no later than October 1, ~~2007~~2008, to meet all ~~of~~ the requirements of this chapter for new ASTs.

Section 36 (a) will be changed to:

(a) *Methods.* No later than October 1, ~~2007~~2008, all owners and/or operators of ASTs covered by this chapter shall provide ~~for~~ leak detection for the tank itself using one of the following methods:

Section 37 (c) will be changed to:

(c) *Suction Piping with single wall pipe.* Owners and/or operators shall not use suction systems with single walled pipe on AST Systems after October 1, ~~2007~~2008.

Comment 17: House Bill 139 makes the requirements of Section 14 (h) applicable statewide. Section 14 (h) should be revised to be consistent with the new statute.

Response 17: Section 14 (h) will be changed as follows:

(h) ~~New UST installations and repairs within one thousand (1,000) feet of an existing community water system or any existing potable drinking water well.~~ Regardless of any other section in this chapter, after the effective date of this chapter, all new and replacement installations and repairs of existing piping shall meet the following secondary containment criteria:

Comment 18: With the introduction of Biodiesel and E-85 Ethanol into retail trade, are these tanks regulated by the storage tank program or not?

Response 18: The Department believes that the legislative intent of all legislation that created this program is to regulate tanks because of the environmental problems caused by leaking product. The properties of Biodiesel are very similar to petroleum diesel; they are both used for the same purpose, and they both represent similar environmental problems if they leak. For this reason, Biodiesel should be classified as diesel for all purposes of this program. E-85 Ethanol is used in place of gasoline, and is usually (although not always) denatured using gasoline. When it is released to the environment, it poses significant risks, some of which are at least as serious as a release of gasoline. Ethanol is soluble in water, and it tends to carry insoluble denaturing agents into solution by co-solubility. Ethanol-based fuels should always be regulated as if they were gasoline.

A new definition of “Ethanol” and a new definition of “Biodiesel” will be added to Section 2 as follows:

(j) “Biodiesel” means a fuel composed of mono-alkyl esters of long fatty chain acids derived from vegetable oils or animal fats, meeting the requirements of ASTM specification D6751. “Biodiesel” is interchangeable with Diesel for all purposes of this chapter.

(u) “Ethanol” means an alcohol derived from the fermentation of sugar, grain, or other biomass and used as fuel for internal combustion engines. Ethanol is usually denatured using gasoline, petroleum condensate, or some other petroleum prior to being marketed for fuel. For purposes of this chapter, “Ethanol” will be treated interchangeably with “gasoline.”

Comment 19: The exclusions found in Chapter 17, Section 4 (b) were placed in the Environmental Quality Act when House Bill 139 was passed. These should be removed from Chapter 17.

Response 19: The Secretary of State’s Rules on Rules do not allow the same language found in statute to be repeated in regulations. Section 4 (b) will be removed and the rest of Section 4 will be renumbered so that there will not be an (a) without a (b).

Section 4. **Applicability.** The requirements of this chapter apply to all owners and/or operators of storage tank systems as defined in W.S. 35-11-1415; except ~~that for the following deferrals:~~

~~_____ (a) Exemptions. Parts B, C, D, E, and G of this chapter do not apply for any of the following types of UST systems:~~

~~(i)(a) Wastewater treatment tank systems;~~

~~(ii)(b) Any UST system containing radioactive materials that are regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 and following);~~

~~(iii)(c) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;~~

~~(iv)(d) Airport hydrant fuel distribution systems; and~~

~~(v)(e) UST systems with field-constructed tanks.~~

~~_____ (b) Exclusions. The following UST systems are excluded from all the requirements of this Chapter:~~

~~_____ (i) Any UST system holding hazardous wastes listed or identified under Subtitle C of the federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.~~

~~_____ (ii) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act.~~

~~_____ (iii) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.~~

Comment 20: Section 3401.2.9.6.6 of the International Fire Code of 2006 requires that all aboveground storage tanks have a positive shutoff overfill device set at 95% full. Chapter 17, Section 35(f) only requires the positive shutoff overfill device to be set at 98% full. Thus, Chapter 17 allows something that state law, found in IFC 2006 does not allow.

Response 20: IFC 2006, 3401.2.9.6.6 states: “**Overfill prevention.** Protected above-ground tanks shall not be filled in excess of 95 percent of their capacity. An overfill prevention system shall be provided for each tank. During tank-filling operations, the system shall comply with one or more of the following: 1. The system shall: 1.1 Provide an independent means of notifying the person filling the tank that the fluid level has reached 90 percent of tank capacity by providing an audible or visual alarm signal, providing a tank level gauge marked at 90 percent of tank capacity, or other approved means; and 1.2 Automatically shut off the flow of fuel to the tanks when the quantity of liquid in the tank reaches 95 percent of tank capacity. For rigid hose fuel-delivery systems, an approved means shall be provided to empty the fill hose into the tank

after the automatic shutoff device is activated. 2. The system shall reduce the flow rate to not more than 15 gallons per minute (0.95 L/sec) so that at the reduced flow rate, the tank will not overflow for 30 minutes, and automatically shut off flow into the tank so that none of the fittings on the top of the tank are exposed to product because of overflowing.”

Chapter 35 (f) will be re-worded as follows:

“(f) *Overflow protection.* All ASTs regulated under this section shall have overflow protection as follows:

(i) systems shall sound an audible or visible alarm at the filling rack when the AST is 90% full;

(ii) systems shall close valves and prevent overflowing the tank before the AST is 98.5% full; and

(iii) For tanks larger than 100,000 gallons, the following shall also be provided: a systems shall ~~start restricting the flow and~~ sound a second audible and visible alarm at the filling rack when the AST is 95% full.”

Comment 21: The State Fire Marshall’s Office requires a plan review whenever any aboveground storage tank is installed or modified. Section 35 (p) only requires a plan review during new installations.

Response 21: Section 35 (p) will be re-worded as follows:

(p) *Fire Marshall plan review.* All AST systems installed or modified after the date of these rules shall provide documentary proof to the department that the plans have been reviewed and passed by the appropriate authorizing authority under the State Fire Marshall. This “plan review” insures compliance with the applicable fire code as adopted into Wyoming State Statutes.

Comment 22: Certain UL-2085 tanks are certified by the manufacturer as providing vehicle impact protection. Under Section 35 (c), the State of Wyoming does not recognize this form of vehicle impact protection. The State of Wyoming should recognize those tanks that are certified by the manufacturer to provide vehicle impact protection.

Response 22: A new paragraph (iv) will be added to Section 35 (c) as follows: (iv) UL-2085 tanks do not require separate vehicle impact protection, provided that the manufacturer certifies that the tank provides vehicle impact protection.

Comment 23: We understand that any delivery prohibition will apply only to a non-compliant tank system (i.e., any connected tanks and piping), and not to other compliant tank systems at an installation.

Response 23: That is correct. No response necessary.

Comment 24: We understand that the Department will apply Section 35-11-701 of the Wyoming Statutes to any proposed delivery prohibition. Thus, written notice of an alleged violation will be provided to a responsible party, who may request a hearing before the Wyoming Environmental Quality Council and an order imposing a delivery prohibition will be stayed pending the final determination of the Council.

Response 24: No response necessary. The draft chapter provides that delivery prohibitions will be imposed through the Administrative Order process. Administrative Orders may be appealed to the Council. W.S. 35-11-701 applies to all Administrative Orders.

Comment 25: Section 3404.2.7.5.5 of the International Fire Code of 2006 requires that drop tubes terminate within six-inches of the bottom of the tank. Chapter 17, Section 16(a)(iv) requires that the drop tubes terminate within one-foot of the bottom of the tank. Chapter 17 should be changed to accurately reflect the fire code requirement.

Response 25: This department agrees with the comment. Section 3404.2.7.5.5 of the International Fire Code of 2006 states: “For top loaded tanks, a metallic fill pipe shall be designed and installed to minimize the generation of static electricity by terminating the pipe within 6 inches (152 mm) of the bottom of the tank, and it shall be installed in a manner which avoids excessive vibration.” This section also applies to top loading aboveground storage tanks. The wording of Chapter 17, Section 16(a)(iv) will be changed to:

“(iv) Deliveries shall be made through a drop tube that extends to within ~~one (1) foot~~ six (6) inches of the UST-Storage Tank bottom;”

Comment 26: The wording in section 44(a) should be changed from “Prohibition of delivery of regulated substances to a storage tank system shall be required when...” to “Prohibition of delivery of regulated substances to a non-compliant underground storage tank and appurtenances shall be required...”

Response 26: The department does not agree that the proposed language is better. Storage tanks are not non-compliant in any case, operators of storage tanks are non-compliant. The term “storage tank system” includes the tank and all connected piping. Since deliveries are always done to the tank itself, there appears to be no advantage to the use of the term “appurtenances.” The term “storage tank system” was used because it covers such eventualities as a manifolded tank system, or a compartmented tank system. Several tanks that are manifolded together are one tank system, a single tank with multiple connected lines is one tank system, and a tank without connected piping is one tank system. A “storage tank system” does not include all of the tanks on a “facility.” For most facilities there are 3 or 4 independent systems located at a facility.

Comment 27: In Section 44 (a) (iv) and (v), can 60 days be changed to 90 days to have it be the same time frame as other items in this section and to ensure that contractors and subcontractors can be lined up and the job can be completed?

Response 27: The department allowed 90 days on the cathodic protection test because that test

is only required once every three years. Tests of the automatic line leak detectors and pressure tests of the lines, on the other hand, are required every year. The department believes that allowing more than 60 days on a test that is required annually is more than enough time for the operator to schedule the test. Don't forget, the operator is supposed to be scheduling the test before it is due, not waiting until the due date is passed to begin scheduling the required tests.

Comment 28: "In section 44 (a) (vii), can the term investigation be defined? Can the required investigation time be changed from 7 days to 14 days to allow for ensure that contractors and subcontractors can be obtained?" Can the word be changed to initiate rather than perform in the third line?

Response 28: The investigation required is outlined fully in Section 20. The time frame of 7 days is required in federal UST rules found in 40 CFR 280.52. The department believes that a company that tries can initiate an investigation within 7 days. The department can agree to change the word "perform" to "initiate" in the third line.

Comment 29: In section 44 (a) (viii) the wording should be changed from storage tank system to non-compliant underground storage tank and appurtenances.

Response 29: The department does not agree that the proposed change in the language is better. Storage tank system includes the storage tank and all connected piping.

Comment 30: In section 44 (a) (xi), please provide a definition of "turning off" monitoring device. Is silencing an alarm turning it off?

Response 30: Turning off an alarm when the intent is to allow the operator to continue operations while ignoring the alarm condition is a form of tampering with an alarm. Silencing an alarm while it is being worked on is not tampering with the device, but silencing an alarm or programming a device out of the system is tampering. The type of actions that we intend to cover with the word "tampering," include permanently breaking or disconnecting a speaker on an automatic tank gauge, stuffing rags into the speaker cabinet to muffle the sound, or unscrewing the light-bulb on an alarm circuit. The department will change the wording of section 44 (a) (xi) as follows:

(xi) Any required monitoring device has been purposely tampered with or turned off (except if it is being worked on); or any record required to be kept under this chapter has been falsified;

Comment 31: In section 44 (a) (xvi) please add the wording "of one year from enactment of this section or six (6) months whichever is later" between "grace period" and "for a new employee."

Response 31: The department can agree to this change. Section 44 (a) (xvi) has been changed to read:

"(xvi) The department becomes aware that there has been no Licensed Level 1 Operator for a facility for ninety (90) days or more beyond the initial grace period of six (6) months for a new

employee, or one year from enactment of this section, whichever is the later date.”

Comment 32: In section 44 (b) add the following wording to the end of the first paragraph: “This Administrative Order will be sent to the owner of the facility where the prohibition is being enacted. It will be delivered by certified mail.”

Response 32: The department believes this change is unnecessary. The overall rules of practice and procedure require that every Administrative Order issued must be served on the respondent. Service may be obtained by certified mail, and that is always done as a first step since the time to appeal starts when service has been obtained. Failing to obtain service by certified mail, the department proceeds to obtain service using the services of a deputy sheriff to deliver the notice to the facility itself. In any case, service must be obtained for any Administrative Order to be valid.

Comment 33: In section 44 (b) (ii), change the appeal time from 10 to 15 days to allow time for the mail to be delivered and sufficient time for an appeal to be made.

Response 33: The commenter does not understand the appeals process. The 10 day limit, under rules of practice and procedure is 10 working days, and it starts from the date when service was accomplished through certified mail or other methods such as having a deputy sheriff deliver the Order. The department believes that this wording should remain unchanged to conform to the Rules of Practice and Procedure.

Comment 34: In section 46 (b) (iii), add “This will be delivered to the owner of the facility where the prohibition took place by certified mail” to the end of the section.

Response 34: The department would prefer not to be required to send such a notice by certified mail. When the Notice of Compliance has been issued, the owner could be notified by telephone or the internet or by regular mail. All of these methods are likely to be faster than a certified mailing. The actual receipt of the paper by the owner is not necessary for the fuel delivery prohibition to be lifted.

Comment 35: In section 46 (c), add the following to the end of the section: “The Department will send an email to owners to notify them that the Notice of Compliance has been posted on the internet.”

Response 35: The department will make every effort to notify everyone concerned when a delivery prohibition has been lifted, and to do that as quickly as possible. This includes the owner of the facility, the operator of the facility if he or she is not the owner, and those companies listed as the fuel supplier. Such notice will be done as quickly as possible, but the department does not wish to be bound to an email notification system. Not all owners even have an email account.

Comment 36: In section 46 (a) change the person in responsible charge to allow the same person to be in charge of multiple locations within a 30 mile radius.

Response 36: The clear intent of the EPA guidance is to require that the person in responsible charge of a location be licensed. It is a key part of the overall requirement that the same person cannot be in responsible charge of more than one location when we are talking about storage tanks at service stations, whether public or private. The Level 1 Operator must be the general manager of each location. The department does not agree with this comment, and recommends that no change be made to the draft chapter.

Comment 37: What are the requirements for the ICC test, who provides training, how many times can the test be taken, where can the tests be taken?

Response 37: The National Underground Storage Tank Operator's Test (U6), covers the contents of 40 CFR 280 and related EPA Guidance Documents. The Wyoming State Specific Laws test covers Chapter 17 requirements, a few of the requirements in the Fuel Tax Law, the Storage Tank Act of 2007, and the International Fire Code of 2006. The Wyoming AST Operator's test covers requirements in Chapter 17 and the SPCC Rules. All of these tests are open book tests; they are all available by prior reservation to be taken in at least 20 locations in and around Wyoming. They are all available in two forms at any given time. The two forms are changed on January 1 and July 1 of each year. That means that someone could take them twice before they would have to wait until the forms changed to take them again.

Comment 38: In section 46 (c) change the wording to allow a Level 2 operator to act as a Level 1 operator of up to four sites within a 30 mile radius.

Response 38: See the response to Comment 13. The change we agreed to make in response to Comment 13 will allow a Level 2 operator to obtain that license without taking the Level 1 test. The response to Comment 32 is also relevant. The clear intent of the Underground Storage Tank Compliance Act of 2005 and the associated EPA guidance is to require that the on-site operator be the one that is licensed, not to allow a single person to carry a license for multiple locations.

Comment 39: In section 46 (c) leave out "have a Level 1 Storage Tank Operator's License, and" from the first paragraph.

Response 39: The department will agree to the change. A change was already made to allow the Level 2 test to be taken instead of the Level 1 test in order to obtain the Level 1 License. This section will be changed to read:

"(d) Level 2 Operator. Each facility shall also be under the supervision of a person who has obtained a Level 2 Storage Tank Operator's License. To obtain a Level 2 Storage Tank Operator's License, each person shall submit documentary proof that they have passed The International Code Council test on Wyoming State Specific Storage Tank Laws. A Level 2 Storage Tank Operator shall not be responsible for more than fifteen (15) facilities that are used to fuel vehicles."

Comment 40: In Section 46 (e) insert language to allow an operator not to re-take the test every

two years.

Response 40: The department believes that re-taking the test is necessary as a review process for even good operators. The tests themselves were written and reviewed by an ad-hoc committee representing operators of commercial gas stations, storage tanks used only for emergency generators, and operators of private gas stations. It is the intent of the department to periodically re-convene this committee and to add to the question bank. The tests, while they still cover the same material will evolve over time, some questions will be dropped and others will be added. Even excellent committed operators forget some of the requirements. The department believes that requiring a re-test once every two years is reasonable to accomplish the intent of the underlying laws.

Many licensing programs allow a person to take the test only once and be licensed for life. For example, the Professional Engineers license and the Professional Geologist license. In those programs, continuing education courses are required annually. The department does not want to require any form of continuing education and believes that taking the test over every two years is a good alternative.

Comment 41: “Can the implementation guides in Section 50 mirror those of the federal government as outlined in the Energy Bill of 2005, i.e. 3 years from the date of enactment or August of 2012.”

Response 41: The commenter misquotes the Underground Storage Tank Compliance Act of 2005. That act requires that the EPA publish a guidance document within 2 years of the date of the Act, or August 8, 2007. EPA has published a draft of the guidance document and expects to finalize that document on August 8, 2007. States must have a rule in place within 2 years of the date of the Guidance Document. That is a federal deadline, but there is no reason to wait until the deadline to implement this important provision. To quote Mr. Sugano of the Advisory Board: “I guess I would just talk from a municipal background. I think it is important that we recognize that storage tank problems are occurring. Here in Rock Springs, we’ve had numerous calls of either tank overfills or leaking storage tanks. And it’s a real threat to health and safety when you think that the product is running underground someplace. And in interviewing some of the store employees, they were never able to speak to whether or not they keep good leak detection records or whether or not there was ever a problem with overfilling tanks. So I think – I don’t know how soon this set of rules would really go into effect. But it’s something that’s needed. Because there are safety issues out in the communities.”

Comment 42: “The Congress passing the Energy Policy Act of 2005 required the EPA to publish guidelines that specify training requirements for the three classes of operators of petroleum storage tanks: The EPA in May of 2007 issued guidelines for operator training. The guidelines are for the classifications of :

- Persons having primary responsibility for on-site operations and maintenance of underground storage tank systems.
- Persons having daily on-site responsibility for the operation and maintenance of underground storage tank system.

- Daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

Within the Energy Act of 2005 it required EPA to consider:

- Training programs that are being used by owners and operators as of August 5, 2005
- The high turnover rate of tank operators
- The substantial differences in the scope and length of training needed for the three classes of operators.
- Are developed in cooperation with tank owners and operators.

Wyoming started the proposed storage tank regulations prior to the EPA guidelines being final. Wyoming is requiring the regulation to be in place by August 9, 2009. The Association recommends to table Chapter 17 until meeting can be held with tank owners and operators as required by EPA Guidelines. As proposed by Chapter 17 the state would use the International Code Council as the certification for the training of petroleum storage tanks operators, which is used by one other state, which is California.”

Response 42: It is true that the department began drafting Chapter 17 before the EPA Guidance Document was published. Some of the comments in this document were drafted to cover changes necessary in the chapter after that guidance was published. The department believes that the draft chapter correctly reflects the three levels of operator responsibility outlined in the guidance.

The proposed chapter clearly recognizes existing training programs. The proposed chapter leaves it entirely up to the operator to provide whatever training is necessary, without mandating any specific training course. There are a number of internet based training courses, including one being created by the Petroleum Equipment Institute. Some companies, including most of the larger chain stores have their own internal training. The proposed Chapter 17 does not interfere with any of those existing structures. Chapter 17 will provide a bench-mark test to insure competency on the part of trained operators. The National ICC test was written with participation from at least 15 states. Various states also require ICC tests for different parts of the program. Alaska, Arizona, California, Connecticut, Illinois, Indiana, New Hampshire, New Mexico, Oregon, Washington, and Tennessee all either require an ICC test or they are promulgating rules to require an ICC test.

The department will provide, free of charge, training sessions for operators to ease the transition into this new requirement. These training sessions will be carried by compressed video to allow operators to attend without the necessity to travel very long distances.

The commenter has stated that the Energy Policy Act of 2005 or the EPA Guidance Document on Operator Training in some way require that the state set up a committee of operators to draft regulations. That is not true. The rules promulgation process in Wyoming provides the operators with ample opportunity to comment on individual rules, and to propose alternate rules. The commenter was given the opportunity to comment on and propose alternative rules before a hearing on June 6, 2006 and again before the Advisory Board hearing on October 18, 2006. The

only comment offered by the commenter at either of those occasions was essentially the same comment offered today.

The department did set up two ad-hoc committees to study the wording of individual questions for the Wyoming State Specific Laws Test and the Wyoming AST Operator's Test. These committees were also given the opportunity to review every question on the National Underground Storage Tank Operator's test. These committees were made up of operators ranging from cities and counties, to those operating chain stores with many locations. A good deal of work went into each of those tests to insure that they contain questions that actual operators may encounter. Both of these committees had representatives who are also on the Board of Directors for the Colorado Wyoming Petroleum Marketer's Association, one member is the President of that association.

The department believes that it has met the requirement to develop these rules in cooperation with the owners and operators of storage tanks.

The high turnover rate of operators is also recognized in the draft rule. Whenever anyone is hired as general manager of a location for the first time, or is promoted into such a position, that person is given six months to pass the required test. During that six month period, that person will have as many as four opportunities to take the test. The test can be scheduled by the person to fit that person's individual schedule. With some effort, the department believes that most persons will be able to pass the required test on the first or second try.

In the event that a general manager quits before six months, then the six month period would start over for the next person. This proposal will also provide a pool of potential employees who have already passed the test.

The department has issued numerous Notices of Violation in recent years to companies who have failed to either perform leak detection properly or have failed to take the proper actions when the leak detection method indicates that a leak may be occurring. The enforcement actions have resulted in Settlement Agreements requiring the payment of penalties of as much as Thirty Thousand Dollars (\$30,000.00). The common thread in all of these enforcement actions seems to be that the person in responsible charge of each location does not understand the requirements. The department has expended considerable effort to train operators of storage tanks in these requirements. The department does not enjoy penalizing people who are trying to compete in an increasingly difficult business. The department believes that the requirements found in this draft chapter will materially increase the understanding of the requirements on the part of storage tank operators statewide. It is our hope and belief that requiring operators to periodically pass a test on the regulations will decrease the number of enforcement cases and ultimately result in more effective leak detection. The department urges the Council to adopt the rules as presented, with all of the changes recommended in this response to comments document.