

1 BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

2 STATE OF WYOMING

3

4 WQD CHAPTER 17, STORAGE TANKS Docket No. 07-3102

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7 TRANSCRIPT OF RULEMAKING HEARING PROCEEDINGS

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10 PURSUANT TO NOTICE duly given to all parties in

11 interest, this matter came on for hearing on the 29th day

12 of May, 2008, at the hour of 9:01 a.m., at the Casper

13 College, 125 West College Avenue, Strausner Student

14 Center, Room 216, Casper, Wyoming, before the Wyoming

15 Environmental Quality Council, Chairman Dennis M. Boal,

16 and Vice-Chairman Kirby Hedman presiding, with

17 Mr. John Morris, Mr. Thomas Coverdale, Mr. Richard Moore,

18 Mr. F. David Searle, Mr. Tim Flitner, Council Members.

19 Ms. Terri Lorenzon, Executive Director to the

20 Council, and Marion Yoder, Assistant Attorney General,
21 Mr. Joe Girardin, Paralegal and Technical Advisor also in
22 attendance.

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1 P R O C E E D I N G S

2 (EQC hearing proceedings commenced
3 9:01 a.m., May 29, 2008.)

4 CHAIRMAN BOAL: All right. We're going to
5 bring this meeting to order.

6 This is a meeting of the Environmental Quality
7 Council, and today is May 29th of 2008. I am Dennis Boal.
8 I'm the chairman of the Council. With me today I have
9 Marion Yoder, who is with the Attorney General's Office. I
10 have David Searle, who is a member of the Council. I have
11 Tom Coverdale, who is also a member of the Council. And
12 Kirby Hedrick, who is a member of the Council. Beside him
13 is Terri Lorenzon, who is the Director of the Environmental
14 Quality Council. John Morris, who is a member; Rick Moore,
15 who is a member; Tim Flitner, who is a member. Sitting
16 behind the computer is Joe Girardin, who is the Council's
17 paralegal and technical person.

18 The first matter before the Council today is a
19 continuation of the hearing to consider changes to the

20 Chapter 17 Storage Tank Rules, and I'm going to turn this

21 hearing over to Mr. Hedrick, who will conduct the hearing.

22 Mr. Hedrick.

23 VICE-CHAIRMAN HEDRICK: I'm Kirby Hedrick,

24 and we're reconvening the meeting to discuss the Chapter 17

25 Water Quality Rules.

1 At the last meeting for this, we recessed
2 requesting that the Department of Environmental Quality
3 come back to us with revised rules pointing out where they
4 had incorporated changes that had been proposed. So what
5 we'd like to do today, because we've got a lot on our
6 agenda, is to not rehash the old business, but get right to
7 trying to understand, one, what changes the Department of
8 Environmental Quality has incorporated, that have been
9 proposed; secondly, where you still see disagreement, and
10 then we'll ask for comments regarding those areas. And
11 hopefully -- we're going to try to make a decision today,
12 so we'll -- Terri Lorenzon, our director, is going to
13 assist me in trying to run the hearing, but we're going to
14 try to move pretty expeditiously to get through these, and
15 our chairman asked we try to make a decision, so we'll try
16 to do that today.

17 So with that, I'll turn it over to Terri.

18 MS. LORENZON: Thank you, Kirby.

19 I'm looking at the list for sign-up, and we have

20 a number of people who signed up to speak. I don't think
21 we need to set a time limit at this point, but would ask
22 you to be expeditious in your comment. The Council will
23 probably follow up with questions. And I'll just start
24 down the -- before I start down the list, our tradition
25 with the Council is to have DEQ go first. And the Council

1 has told me, Bob and LeRoy, they'd like you to address the
2 changes, what's been done since the last meeting, and we
3 will focus on those items, adjustments, changes, any new
4 issues that may have arisen and then we'll go into the
5 public comment.

6 So, Bob, the floor is yours -- or LeRoy.

7 MR. FEUSNER: Thank you, Mr. Hedrick and
8 Terri, Council members.

9 We have a short presentation we'd like to make
10 today. First off, what I would like to do is we were
11 charged with the responsibility to go back as one item to
12 the Attorney General's Office to answer the question
13 whether or not the Department has the jurisdiction to issue
14 orders directing a wholesale fuel supplier to cease
15 delivery of fuel to a storage tank when the owner/operator
16 of the storage tank is in violation of Chapter 17, Part K
17 of the Wyoming Water Quality Rules and Regulations. We did
18 do that, and we got a response back, for which I believe
19 you folks have a copy dated April 9, 2008, where the

20 Attorney General agreed that the Department does have that
21 jurisdiction and the opportunity to issue notices of
22 violation and orders to suppliers of fuels for storage tank
23 facilities that are in violation of the state rules. So I
24 wanted to cross that bridge first.

25 And next, if there are no questions on that,

1 Bob Lucht has a very short presentation on where we're at
2 after the meeting that we conducted last time. And with
3 that, I'm going to turn it over to Bob right now.

4 MR. LUCHT: Okay. In drafting Chapter 17,
5 Part L, covering the licensing of operators of storage
6 tanks, the Department has always taken the position that
7 each and every facility should be under the direct control
8 of the trained operator. By a trained operator we mean
9 someone who has demonstrated his or her knowledge by
10 passing a test covering the requirements of the program.

11 The test is administered by the International
12 Code Council. It has always been our intention to require
13 the trained operator be an onsite manager. This, and we
14 originally limited the number of stations under the control
15 of the Class B operator to one. After receiving comment we
16 amended the chapter to allow one Class B operator to be in
17 charge of up to three locations, as long as that individual
18 is physically present on those locations at least twice a
19 week.

20 This was done because there are facilities that
21 are unmanned gas stations in Wyoming, and there may be more
22 in the future. Unmanned gas stations are presently
23 required to be visited daily by someone from the company
24 controlling the facility. The entire reason for the
25 requirement to visit the site twice a week was to ensure

1 the Class B operator was actually the onsite manager. The
2 Colorado Wyoming Petroleum Marketing Association has stated
3 in their letter of April 8, 2008, that the status quo of
4 operational experiences in Wyoming relative to
5 implementation of overly stringent Class B operator
6 training facility oversight limitations are incongruent.
7 The entire crux of this discussion is on a number of the
8 facilities that can be directly controlled by a Class B
9 operator.

10 The CWPMA's position is that the status quo is
11 working, proposed from small operators and large operators.
12 The Department's view is quite different. From the
13 Department's view a large number of violations are present
14 each year specifically caused because the general manager
15 on each location is largely ignorant of the requirements.

16 The number of individual violations is somewhat
17 masked by the bookkeeping requirements imposed on the
18 Department by the EPA. On EPA reports a facility's either
19 compliant or noncompliant for significant operational

20 compliance measures 1 and 2. It matters not how many
21 individual violations are discovered during an inspection.
22 A facility is noncompliant and it counts the same whether
23 there are one violation or 32 violations, as long as the
24 violations fit into one or the other of the two categories.
25 The EPA does not count facility noncompliance if

1 it's discovered through some means other than a direct
2 onsite inspection. Using EPA methods, our state appears to
3 have a very high compliance -- degree of compliance, and
4 certainly this is true whenever a requirement is something
5 that can be taken care of from a home office. Thus, annual
6 line leak director tests, three-year cathodic detection
7 test, payment of fees and requirement for ensuring the
8 facilities are properly equipped are being complied with a
9 high percentage of the time.

10 The current system fails when the requirements
11 can only be met by the local operator. When requirements
12 directly require the involvement of the general manager on
13 each facility, those requirements are not being met on a
14 routine basis.

15 Now, from the Department's view, some of the
16 chain stores have very high compliance rates and some do
17 not. Maverik Country Stores, for example, is nominated by
18 this Department for an EPA external award because they've
19 not had a single instance of noncompliance in three years.

20 Unfortunately, rules are written for those who do not

21 comply, not for those who do.

22 The Department is today provided copies of three

23 settlement agreements, and that's what's in that handout

24 with the red cover. You'll find settlement agreement to

25 Loaf N' Jug, which is Mini Mart, Incorporated; Kum & Go,

1 which is Krause & Gentle Corporation; and Red Eagle Oil
2 Company and associate companies.

3 These settlement agreements cover 194 individual
4 violations, all within three years prior to the date when
5 they were signed. The Department has taken all those
6 violations covered by these agreements and placed them into
7 one table to make formatting as consistent as possible.

8 Those marked in red on the attached table are the
9 items that should, in our opinion, start with a general
10 manager. Most of these violations are failure to properly
11 perform one leak detection method or the other, failing to
12 report and investigate releases when the leak detection
13 method fails, failing to conduct 60-day checks on
14 rectifiers and failure to respond to alarms.

15 Out of 194 violations on the list, 165 are the
16 type of thing that the general manager of each location
17 should have noted and responded to. In our opinion, the
18 reason that general managers are not responding 86 percent
19 of the time is they are largely ignorant of the

20 requirements of the program.

21 Now that these settlement agreements have been
22 signed the companies are trying harder to comply, but the
23 results are disappointing. All of these reports of
24 suspected release are coming more than 60 days after the
25 event, because they're still being originated by the

1 company home office, where the few people who actually know
2 the requirements are located. In a state where the state
3 has taken a lead on cleanup, this is not good enough.
4 Suspected release investigation, if they are to be
5 effective in minimizing and stopping releases, must begin
6 before the release continues for many weeks.

7 Failing results from automatic tank gauges,
8 inventory control and statistical inventory reconciliation
9 must be responded to in a timely manner. Requiring general
10 managers on each location to pass the ICC test will go a
11 long way toward making the response timely.

12 Now, if CWPMA's position is accepted by the
13 Council, Loaf 'N Jug will only have five trained Class B
14 operators for 49 facilities. Kum & Go will have only two
15 Class B operators for 22 facilities. Red Eagle will only
16 have one Class B operator for 11 facilities. The
17 Department believes that the compliance district for these
18 companies illustrates that this is insufficient.

19 As part of the CWPMA's letter, they provided a

20 copy of the Colorado Department of Labor's new rule for
21 operator training. And they are correct in stating that
22 the -- that that rule reinforces the status quo. That
23 requires -- rule requires almost nothing in the way of
24 operator training from a chain store. One individual can
25 have -- can be both a Class A and Class B operator for an

1 unlimited number of facilities.

2 CWPMA has been quick to point out that every
3 Class B operator's required to perform a rudimentary
4 inspection each month. The Colorado rule actually allows
5 the Class B operator to delegate that monthly inspection to
6 anyone he or she chooses, regardless of that person's
7 qualifications. That approach may be sufficient for
8 Colorado, where the operator is still responsible for the
9 cleanup of all releases, but the approach is not sufficient
10 for Wyoming, where the state pays for cleanup.

11 The CWPMA has submitted a letter from Mark S.
12 Morgan, regulatory counsel for Petroleum Marketers
13 Association of America. In his letter he states that a
14 Class B operator for small business convenience stores was
15 identified as an offsite UST manager. That's an
16 interesting statement for two reasons. First of all, the
17 companies we're talking about are not by definition small
18 businesses. Loaf 'N Jug is unit of Kroger Foods
19 Corporation, one of the largest corporations in America.

20 Krause Gentle operates 450 convenience stores in Iowa and a
21 dozen other states, according to their own website. Even
22 Red Eagle, LC, a Wyoming limited liability corporation,
23 probably does not meet the federal definition of a small
24 business.

25 Secondly, the concept that a Class B operator is

1 an offsite manager is not found anywhere in the guidance
2 document. If you have a copy of the guidance document,
3 look on page 6 and you'll see what a Class B operator is
4 actually defined in that guidance document as. In fact,
5 the Energy Policy Act itself specifically states that these
6 are the onsite managers.

7 The bottom line on operator training is clearly
8 acknowledged by CWPMA that states are free to implement
9 whatever rules are appropriate for that state. EPA does
10 not impose any regulations regarding operating -- operator
11 training, nor is the guidance document particularly binding
12 on a state.

13 The Council agrees with the Department's position
14 there should be no legal reason why this passage -- this
15 chapter cannot be passed. Thank you.

16 MS. LORENZON: Thank you, Mr. Lucht.

17 Are there any questions from the council members?

18 Questions?

19 CHAIRMAN BOAL: So Mr. Lucht, did we adopt

20 DEQ's suggestions we would require one Class B operator for

21 up to three locations to visit twice a week?

22 MR. LUCHT: Right. The only way that a

23 Class B operator could be in charge of more than one

24 location is if he was actually a general manager for more

25 than one location, which would imply, actually, he is going

1 there more than a couple times a week.

2 CHAIRMAN BOAL: So this means, for
3 instance, that Loaf 'N Jug would have to have how many
4 Class B operators?

5 MR. LUCHT: Well, the way this is written,
6 Loaf 'N Jug would have to have 50 Class B operators, 49,
7 because I don't know of a single instance where Loaf 'N Jug
8 has one general manager that's over two stores. They might
9 have one or two, I don't know.

10 CHAIRMAN BOAL: So I didn't understand
11 that. So in order to supervise more than one location,
12 you'd have to be a general manager?

13 MR. LUCHT: That was the only reason for
14 the requirement that they issue -- that they visit the
15 twice a week. We're trying to -- we don't want to see
16 something where the people just seize on 3 and say, okay,
17 divide the number of stores by three and that's how many
18 licenses we have to have. The intention was for them to be
19 the general manager on each location.

20 The crux of the matter is CWPMA is arguing that
21 we should have 12 locations under one Class B operator and
22 virtually no restrictions on who that Class B operator
23 actually is.

24 CHAIRMAN BOAL: Okay. Thank you.

25 MS. LORENZON: Other questions? Mr. Moore.

1 MR. MOORE: Thank you, Miss Lorenzon.

2 Mr. Lucht, we have your response to comments
3 received after the last hearing we had, during or after.
4 If I'm looking at it correctly, you apparently made some
5 changes to the rules in response to those comments?

6 MR. LUCHT: I believe we added the section
7 to allow up to three operators. When we went to the
8 hearing last time we were saying one operator.

9 MR. MOORE: Okay. And I guess really the
10 crux of my question, then, later on in our notebook here
11 we've got revised Chapter 7. Does that incorporate all the
12 suggested changes that the Department is recommending at
13 this time?

14 MR. LUCHT: The part that we gave you in
15 the response to comments includes all the changes that we
16 made to the draft rule after the last hearing now, with one
17 exception. I was going through the chapter and I found
18 that we had a lot of technical mistakes in numbering.
19 Throughout the chapter sometimes we wrote out 90

20 parentheses with an Arabic number 90, and then sometimes we

21 said 90 and parentheses and write out the word 90, so I

22 made them consistent, but that was an editorial thing. I

23 didn't -- there's no other substantial changes.

24 MR. MOORE: Okay. So if we move to adopt

25 the proposed regulations today, we can work off the version

1 that we currently have? And part of my concern is it's not
2 dated, at least the copy I've got, so I'm --

3 MR. LUCHT: You can work off the part that
4 was part of the response to comments document, that's
5 correct.

6 MR. MOORE: You're not understanding my
7 question. I understand that you incorporated the changes
8 that you recommend in the response to comments, but do we
9 have a version of the regulation that's proposed that
10 incorporates those changes? You understand what I'm trying
11 to get to? I want to make sure we move to adopt that we
12 have a copy that reflects all the changes that you're
13 requesting, suggesting.

14 VICE-CHAIRMAN HEDRICK: Rick, could I help
15 you a little bit.

16 MR. MOORE: Certainly.

17 VICE-CHAIRMAN HEDRICK: There's a document
18 in our folder here that -- it's Chapter 17, Storage Tanks,
19 and it was filed April the 17th, and it appears to be part

20 of the comments response to comments, the hearing on
21 March 18th on Chapter 17. Is that -- I think what Rick's
22 trying to get at, is that your proposed final document.

23 MR. LUCHT: That is our proposed final
24 rule. We just -- the only changes we made were in Part L,
25 so I didn't generate a whole new copy.

1 MR. MOORE: Right, but does this
2 document -- I see now, thank you, Kirby, for the --

3 VICE-CHAIRMAN HEDRICK: I don't know if I
4 helped you or not.

5 MR. MOORE: The date stamp by our office is
6 the only date I see on it. Does that document you filed on
7 April 17 incorporate the changes that are reflected in the
8 response to comments?

9 MR. LUCHT: Yes, it does.

10 MR. MOORE: Okay. That's what I'm trying
11 to get to.

12 MS. LORENZON: Anything additionally?

13 MR. COVERDALE: Terri, I --

14 MS. LORENZON: Okay.

15 MR. MOORE: One more question. Did you
16 make any revisions to the statement of reasons and do we
17 have an updated copy of that?

18 MR. LUCHT: You have a statement of
19 reasons. There were no changes to the statement of

20 reasons. It's right here.

21 MR. MOORE: Thank you.

22 MS. LORENZON: Mr. Coverdale?

23 MR. COVERDALE: Good morning, Mr. Lucht.

24 Could you explain to me, or just clarify, we've

25 now gone to the Class A, B, C thing like the EPA regs have,

1 right?

2 MR. LUCHT: Right.

3 MR. COVERDALE: Would you explain any
4 differences between what the EPA calls a Class B and what
5 we're calling Class B or Class A? I'm a little confused by
6 the six different definitions.

7 MR. LUCHT: Well, that's because it's a
8 little confusing, to tell you the truth.

9 MR. COVERDALE: That's why I'm hoping you
10 can clarify.

11 MR. LUCHT: Under EPA definitions, and I
12 think we're defining things the same way now, a Class A
13 operator is someone that represents the company in a -- in
14 a mid-level management level, so that person is over a lot
15 of stations. How many stations is not something that EPA
16 has put into guidance at all. Some states, like Colorado,
17 are not limiting these operators to any number of stations.
18 A Class B operator, in our view, is general manager of a
19 station. That seems to be the crux of the disagreement.

20 Petroleum Marketers Associations is arguing that a Class B
21 operator is actually a mid-level manager that is the not an
22 onsite operator.

23 And then there is no disagreement that I can see
24 as far as a Class C operator, that's a service station
25 clerk that may be the only person on the location during a

1 night shift or might even be a day-shift employee that's
2 there when the general manager is there, but that is the
3 crux of the disagreement between us and the Petroleum
4 Marketers Association.

5 MR. COVERDALE: So there's no difference
6 between EPA definition of Class B and the Wyoming State
7 definition of Class B?

8 MR. LUCHT: I don't believe there is, no.

9 MR. COVERDALE: Thank you.

10 MS. LORENZON: Mr. Hedrick?

11 VICE-CHAIRMAN HEDRICK: Yeah, a couple of
12 questions, please.

13 My recollection the last meeting was there was a
14 lot of discussion about training for the different classes
15 of operators and where that would be done and the burden.
16 If I recall correctly, it was a lot of discussion about the
17 Class B operators having to be trained at various locations
18 throughout Wyoming to get the ICC certification and the
19 burden this would place. Did you make any changes at all

20 in that area?

21 MR. LUCHT: No, we did not. In fact, we
22 have just completed seven training sessions all over the
23 state of Wyoming. We had about 400 people attend all those
24 training sessions, but our rule, actually, doesn't require
25 anybody to ever go to training. It just requires that they

1 pass a test. The tests are available from ICC testing
2 centers that are located all around Wyoming and other
3 states near Wyoming, and within the state there are four
4 test centers in Wyoming.

5 When we considered all this in writing the rules,
6 we were trying to figure out how far somebody would have to
7 go to take a test. Well, unfortunately, if you're in
8 Rock Springs, you have a choice, either go to Casper,
9 Cheyenne or Salt Lake City. Those are the nearest test
10 centers. That's the longest drive anybody would have to
11 make in order to take one of those tests. If you're in
12 Jackson, you can go over to Idaho. There's a place about
13 60 miles away in Idaho, or maybe 90.

14 The reason we felt that ICC was the way to go is
15 that these tests are available to be taken at the
16 convenience of the operator, so you don't have to wait
17 until the EPA or -- I mean until the DEQ gets around to
18 coming to Rock Springs to do a testing. You can sign up
19 and take the test in one of the existing test centers, and

20 the only drawback is you have to drive to that location.

21 I was considering this, comparing it to our

22 operators licensing. Our operator certification program

23 does tests three or four times a year, and if you can't do

24 one of those test centers -- or one of those locations on

25 the day when they're doing it, you're just out of luck.

1 This system, in my view, is much better because you have a
2 lot of flexibility on the date you can take the test.

3 VICE-CHAIRMAN HEDRICK: My second question
4 was, in trying to sort through and understand the comments
5 from the various petroleum marketers and the associations,
6 the three versus 12 span of control, if you will, I sort of
7 boil down to the issue that really becomes one of how often
8 does the Department feel that thorough inspections of the
9 equipment are necessary in order to ensure the integrity?
10 I think you made a good point about the state paying the
11 bill here, so you can't have it both ways. You know, you
12 have -- if the state pays you have regulations to go with
13 it, we've seen that in other things, too.

14 I keep seeing references to a once-a-month
15 inspection, and I'll just give you my impression was, well,
16 if all we require and all we think is necessary is a
17 once-a-month inspection, then the span of control can be
18 much larger than if -- and what I thought I heard us
19 talking about at the last meeting was really we expected

20 the C-store manager to be the person that ensures the daily
21 integrity of that equipment, and that's a broad difference
22 there in terms of what we think is necessary, and I guess
23 I'd like to hear your view of what the Department thinks is
24 necessary to ensure the integrity of the leak detection
25 equipment.

1 MR. LUCHT: Okay. This concept of a
2 once-a-month inspection comes from California, believe it
3 or not. The California Storage Tank Program requires, and
4 has required for five or six years, a licensed operator to
5 inspect once a month. They don't place any limitations on
6 who that class -- that licensed operator is, and, in fact,
7 most of their licensed operators are consultants. They're
8 not employees of the company at all.

9 I heard a presentation where they -- the people
10 from California told me that the largest number that they
11 have under the control of one licensed operator is 80
12 stations. Now, in California that is a very thorough
13 inspection, they're not talking about kicking the hoses
14 around and seeing if they're cracked and opening the
15 dispenser and seeing if there's any obvious leaks. They're
16 talking about a full-blown inspection that would be very
17 similar to what we require on an annual basis.

18 The rule that came out of Colorado requires a
19 once-a-month inspection, and it's pretty rudimentary. You

20 check the hanging hardware and you check under the
21 dispensers to see if you have any obvious leaks, and
22 perhaps you open the manhole covers and look to see if
23 there's any obvious leaks, and that's all they're talking
24 about. So to me it's like apples and oranges. We don't
25 think that monthly inspection will accomplish nearly as

1 much as having someone who knows what they're required to
2 do on the location. Does that answer your question or did
3 I skirt around it?

4 VICE-CHAIRMAN HEDRICK: I think so. Let me
5 repeat back what I understand and you can correct me if I
6 don't. Then your -- I take it your understanding of the,
7 quote unquote, monthly inspection that we've received --
8 that's been referred to in the comments that we've received
9 is similar to it the Colorado inspection that you just
10 described; is that correct?

11 MR. LUCHT: That's right. That's my
12 understanding of the comments from the petroleum marketers.

13 VICE-CHAIRMAN HEDRICK: Okay. Now, to be
14 sure I have this in context, could you come back and then
15 just briefly explain to me, in comparing to what the
16 California system was, the Colorado system, now put what
17 we're proposing in context, how will the -- what do you
18 expect the Class B operator to be doing in the way of
19 inspections?

20 MR. LUCHT: We don't require the Class B
21 operator do any inspections. In fact, if you look at that
22 handout with all the red on it, you'll find that almost
23 none of those violations are addressed by doing a physical
24 inspection of the facility. The problem we're running into
25 is that alarms are going off, they don't even know what the

1 hell alarms are supposed to do. Sorry for that. The leak
2 detection is going into noncompliance showing that, you
3 know, they didn't pass a leak detention method for an
4 entire month and they don't know enough to even tell their
5 upper management that they have a violation. So what's
6 happening in most cases is if a company is conscientious
7 enough to even have an environmental department, when the
8 environmental department finally notices a violation two,
9 three, four months after the fact then it gets reported.

10 VICE-CHAIRMAN HEDRICK: So --

11 MR. LUCHT: So the inspection is not
12 addressing what we're asking for at all.

13 VICE-CHAIRMAN HEDRICK: The Class B does
14 not do the annual inspection that you were referring to
15 earlier that we require?

16 MR. LUCHT: Our present rules requires an
17 operator's annual inspection, and we don't specify who does
18 that, but we do require the operator's annual inspection if
19 they test the leak detectors, has to be a qualified person

20 that does that. So if this is passed the way we propose,
21 that operator's annual inspection will be done by a
22 licensed line leak detector tester and a licensed cathodics
23 protection tester, which is another issue nobody's even
24 brought up, but, yeah, it wouldn't be the Class A or Class
25 B operator doing the operator's annual inspection for the

1 most part.

2 VICE-CHAIRMAN HEDRICK: So is it fair to
3 say your view would be that our proposed system is not
4 comparable to Colorado, nor is it comparable to California,
5 but it is a unique solution for Wyoming, given the issues
6 that we are facing, and to try to compare 12 and 3 or 12 --
7 or unlimited and three is not a valid comparison?

8 MR. LUCHT: That is exactly the crux of it.
9 In fact, there's so much leeway in EPA guidance documents,
10 you're likely to see 50 different approaches to operator
11 certification, no two of which will be identical to each
12 other. In Colorado's proposing an ICC test, but they're
13 proposing that as one of three or four options. We're just
14 requiring an ICC test.

15 VICE-CHAIRMAN HEDRICK: Thank you.

16 MS. LORENZON: Any further questions from
17 the Council?

18 Mr. Searle?

19 MR. SEARLE: Thank you.

20 Bob, what's the status right now of licensing?

21 Obviously we're looking at the regulatory package that

22 we're adopting. Are they required to be licensed now?

23 MR. LUCHT: No. This is a new rule. It's

24 actually under the Secretary of State's definition a

25 constructed rule, because it's a rule in response to a

1 federal mandate. It's not -- it's never been in Wyoming
2 rules before. There is no such thing as an operator
3 license. What we have done, before the rule even got
4 passed, we did write the ICC test. They are available to
5 be taken right now. We have conducted training sessions,
6 and we've done this in advance so that the operators, under
7 this rule, they have to get a license within 12 months from
8 the time the governor signs his name on this law.

9 I don't want 5 or 600 people trying to take the
10 test 11 and a half months from now, because it will never
11 work. And so we are -- we've done all of this work up
12 front so that, you know, if the governor signs this bill,
13 or even if they -- if the people wanted to, they could go
14 in and take the test right now and we would recognize that
15 test and give them license as soon as they applied for it.
16 But, no, there's no requirement right now that anybody have
17 a license.

18 MR. SEARLE: So to look at the data you
19 provided to suggest there's certainly some compliance

20 issues out there would be an indictment that the current
21 system having no licensing is working -- it is not working;
22 is that right?

23 MR. LUCHT: Well, that's exactly the
24 problem that I perceive, from my point of view. And we go
25 out to locations and we have the general manager there --

1 and I'll give you an illustration. A couple years ago we
2 went out to a Loaf 'N Jug and the subsensors, which is the
3 only leak detection on the lines in a double wall system,
4 have been going off. We asked the general manager how long
5 that's been going off. She doesn't even know what the
6 alarm is. She said I've been here nine months, it's been
7 going off since I got here.

8 So we wrote a letter of violation and Loaf 'N Jug
9 fixed the problem. And we went back one year later and the
10 same alarm's going off and it's been going off for 11
11 months. So, no, the system, as presently structured, is
12 not working because the people that are on the location
13 don't know the significance of the equipment they're
14 looking at every day. There's really no accountability in
15 the system we have right now unless we go and fine people.

16 I believe that this system of requiring training
17 for the people that are actually onsite will benefit the
18 industry. I think you're going to stop seeing so many
19 notices of violations where we fine people a bunch of

20 money, because they'll know what they're supposed to do and
21 they'll do it. Most of the people I deal with are
22 perfectly happy to deal with what the requirements are, if
23 they just knew what they were.

24 MR. SEARLE: I guess -- appreciate that.

25 Where I'm struggling a little bit is you've made an

1 assumption from the Department's perspective that this is
2 what you need to have, you need to have a general manager,
3 somebody that's onsite at least, maybe three facilities at
4 max, but I guess I'd still think it's reasonable, because
5 we're kind of comparing apples and oranges, you're
6 comparing a system now that has no licensing requirements
7 to a system that we're moving to that has licensing
8 requirements, that there may be some other span of control
9 that might be just as effective. We really don't have data
10 to prove that's not the case.

11 MR. LUCHT: Well, in fact, you don't have
12 data to prove that it is the case, either. You know, to me
13 we change the rule to allow up to three people -- three
14 facilities under one operator for the simple reason there
15 are people out there that are managing two or three
16 stations and they go there every couple of days and make
17 sure everything's going right, because they're the actual
18 person in charge of that unattended gas station or maybe a
19 chain store might even have two locations that are a mile

20 or two apart, and they have one guy that's over both

21 locations.

22 We changed it to try to comply -- to conform to

23 what's actually going on in industry. In the process of

24 trying to get to this hearing, we talked back and forth.

25 At one point I said to the petroleum marketers, if we gave

1 you the six operators and required the monthly inspection,
2 would you come in and support the proposal? They came back
3 and said absolutely not. They're basically saying give us
4 the 12 or we'll look at our other alternatives. That's
5 what they told me.

6 To me it was a little bit of a situation we want
7 this, I thought maybe we could negotiate something that
8 everybody could come and agree to. It appears that there
9 isn't going to be any negotiation unless you people decide
10 what you want to do. So we have -- we've come to the
11 Council with our position and they have their position. I
12 think it's kind of drawn in the sand right now. I mean --

13 MR. SEARLE: Okay.

14 VICE-CHAIRMAN HEDRICK: Dave, could I
15 follow up on your question?

16 The thought occurs to me, and I think I
17 understand your point, and I bought into this last time,
18 the C-store manager ought to be responsible for the
19 integrity of the operating equipment. I had a little

20 experience in that industry, we always expected that of our
21 managers, so I can buy into that concept, but each company
22 operates a little bit differently.

23 I'm going to give you a hypothetical. Let's say
24 one of the companies comes to you and says instead of
25 three, our span of control is four and here's how we're

1 managing this issue. Would the Department be willing,
2 under these rules that you're proposing, if you actually
3 thought they could do it with a span of control of four or
4 five and achieve the objective, would you be willing and
5 able to give a dispensation?

6 MR. LUCHT: Well, it's an interesting
7 issue, and one of the companies, Pilot Travel Centers, when
8 I was doing an inspection last month, they said they had a
9 full-time maintenance person, and that full-time
10 maintenance person has 11 facilities under their direct
11 control and they require that maintenance person to go to
12 every single facility every month, and that is their
13 protocol right now. The problem that I have with that
14 facility is that it might work very well for Pilot Travel
15 Centers because the person that they're talking about is
16 fully versed in all the rules and regulations and
17 understands all the systems that they have at every
18 facility, including all the paperwork, but most of the
19 maintenance people that I've dealt with are not that way.

20 They understand the technical issues in making the
21 equipment work, they don't necessarily know what the rules
22 are for that equipment.

23 And I would have to question -- I mean, if you're
24 going to 80 locations in a month, they better be in Los
25 Angeles, because, you know, 80 locations in Wyoming, it

1 would be scattered all over the state. You'll be driving

2 20,000 miles a month to do that.

3 VICE-CHAIRMAN HEDRICK: Let me interrupt

4 you. I want to get down to a finer point. And give me a

5 second just to gather my thought here.

6 We adopt -- presume the Council approves your

7 recommendation, and that's for three, would you be willing

8 to grant a dispensation if someone can come in and satisfy,

9 to the Department's sole discretion, that they have a

10 management process in place that you believe achieves the

11 objectives of the Department but does not comply with the

12 span of control of the three, would you be willing to give

13 that dispensation? And it's your discretion, it's not --

14 MR. LUCHT: Personally I would not be

15 willing to give that dispensation, unless there was some

16 verbiage in the rules that actually allowed that.

17 VICE-CHAIRMAN HEDRICK: Well, that's my

18 next point.

19 MR. LUCHT: I don't know how you go about

20 writing a rule that says everybody gets to do it this way
21 unless we do it some other way. I mean, if you do that,
22 then you end up with a rule that really becomes almost
23 meaningless.

24 VICE-CHAIRMAN HEDRICK: I guess I disagree
25 with that point. It seems to me if it's written such that

1 companies can petition just as they petition for permits,
2 and you have the right to approve or disapprove, I don't
3 see that's a difficulty. Am I missing something?

4 MR. FEUSNER: Mr. Kirby -- or Hedrick, I'm
5 sorry, I think there could be a way of saying that if the
6 rule provided the administrator grant a waiver based on a
7 justification that an owner/operator sent into the
8 Department, that could be a possibility. Wouldn't be our
9 choice. And I think for the reasons that Mr. Lucht has
10 indicated, we need to have a firm rule in place with which
11 to operate and regulate all facilities.

12 Now, we could consider that administrator waiver
13 capability, but it's used rarely and would have to be
14 incorporated into the rule itself.

15 MR. LUCHT: The basic problem I would have
16 with that system is that you just write some wording that
17 says the administrator can grant a waiver based on what?
18 Going to write two pages of rules on what we base that
19 waiver on? I mean --

20 VICE-CHAIRMAN HEDRICK: I guess I'm a
21 little -- I guess I'm a little disappointed, because I was
22 picking up on Mr. Searle's comments, and in the oil
23 industry, it's very common to use process safety management
24 as a tool to try to design policies, procedures, audits,
25 inspections that ensure the reliability of equipment. And

1 I understand the Department's objective in trying to
2 establish a baseline that ensures the integrity of the
3 equipment we're talking about, because the State's paying
4 for it, that's very clear, but I guess I find it somewhat
5 disappointing that the Department of Environmental Quality
6 would not be willing to consider a well-thought-out design
7 plan that maybe didn't comply with the letter of the rule,
8 but maybe even exceeded the intent of the Department.

9 And I was only trying to search for some middle
10 ground, and I guess my reaction to what you said is there
11 is no middle ground, it's three and we're done.

12 MR. LUCHT: I guess my problem with that is
13 we have violations that really don't have anything to do
14 with the equipment. If you look at that list of violations
15 that are not being responded to, it's not that the
16 automatic tank gauge doesn't work, it's that it didn't
17 provide a passing result for the entire month. They have
18 to respond. They didn't. It's not that the SIR system
19 won't work, it's --

20 VICE-CHAIRMAN HEDRICK: I don't disagree.

21 MR. LUCHT: -- it's they don't respond.

22 VICE-CHAIRMAN HEDRICK: I don't disagree

23 with that. Let's go on. I think I understand your

24 position.

25 MS. LORENZON: Mr. Flitner.

1 MR. FLITNER: Yeah, on -- in those lines,
2 why would it be not possible to base some of those numbers,
3 like the 2 to 1 or 6 to 1, whatever it is, on performance
4 record? If the performance record is clean, who cares how
5 many they operate? I mean, if they don't have violations,
6 I don't really care what they're doing as long as they're
7 clean. If they're not clean, then they immediately move
8 down to where they're restricted and where they have to do
9 some of these things, but if they can prove, through lack
10 of this kind of thing, that they can run them clean, and if
11 they don't get those violations, then use that as an avenue
12 to waive some of these restrictions. Why wouldn't
13 something like that be very simple? I mean, the
14 documentation's here, it's just a matter of looking at it
15 and saying, no, we're not waiving this for you because
16 you're not clean, but you, on the other hand have been
17 clean for 12 months, 18 months, or whatever, then, fine, go
18 ahead.

19 MR. LUCHT: Well, the problem I've always

20 had with it is the performance is a function of time. I've
21 mentioned Maverik Country Stores has had no violations in
22 three years. Until their current environmental coordinator
23 took over, they were one of the worst compliers we had in
24 the state. And if he were to leave to some other company,
25 I can't -- I don't think there's a logical assumption to be

1 able to assume that everything is just going to continue

2 the way it's always done, because --

3 MR. FLITNER: But on the other hand you

4 can't really -- it's really not fair to assume it's going

5 to be a total wreck, either. I mean, given the

6 opportunity, checking on them anyway, if it does go the

7 other way, then, of course, they're no more -- they're no

8 worse off than they are now, and at least they've got an

9 opportunity and some motivation and some incentives to do

10 their own homework, instead of the state and you doing it

11 for them.

12 MR. LUCHT: Well, if you try to come up

13 with that kind of a system, then what do you do when the

14 guy whose performance has been perfect for three years

15 suddenly shows up with 8 or 10 violations, and 8 or 10

16 violations very easily when you've got 30-some stations to

17 deal with. Then you come back and just write a letter and

18 say, okay, now you have to comply with this rule and now

19 you have to get 30 people licensed and you've got six

20 months to do it? I mean, it becomes really difficult to
21 administer some of these alternatives. Even if they might
22 be logical, it's almost impossible to administer those
23 kinds of systems.

24 MS. LORENZON: Anything further from the --

25 Mr. Searle?

1 MR. SEARLE: Mr. Hedrick gets me thinking.

2 VICE-CHAIRMAN HEDRICK: That's always
3 dangerous, isn't it.

4 MR. SEARLE: You know, part of my thinking
5 on it, again, seeking middle ground is -- we all feel
6 uncomfortable using the term waiver, kind of a four letter
7 word in regulatory language. I'm not sure it needs to be
8 that complicated, okay? I think if you put together
9 language that basically says the Department would use the
10 language you have limited control over three facilities,
11 and put simply a phrase at the end, unless otherwise
12 approved by the administrator, I think that would give you
13 the flexibility to put together administratively a plan to
14 allow contemplation of further span of control.

15 Frankly what I think about in this case is
16 Maverik service stations that has performed well, they've
17 done good things, and what is that carrot that we can give
18 them and other operators to perform at a higher level, and
19 you should be able to put together, in my opinion, a policy

20 that would support that administrator decision, run it
21 through your advisory board for approval, and one component
22 would clearly be a compliance history. If some people
23 can't show a high level of compliance history, then they
24 would not be eligible for any sort of expanded area of
25 control.

1 So I'm going to let go of this one, but I can
2 tell you that would be my preference, because what I see
3 happening is we're throwing out a lot of data that shows
4 the current system, without licensing, is not working.
5 It's not showing me that span of control of three
6 facilities is working, or a span of 12 facilities doesn't
7 work. What it shows me is the current system is not
8 working. And I see operators that are obviously getting
9 out, getting trained. You said you had several hundred. I
10 think we're moving into a new world. I just don't want to
11 go into what I consider an extreme position without having
12 the opportunity for players who want to play by the rules,
13 do the responsible thing, to have an opportunity for a
14 little bit more flexibility.

15 MR. LUCHT: I think the Department could
16 fully support the inclusion of -- or another -- as you
17 stated, or another number as approved by the administrator.
18 That we can handle. It would be -- it would be fine.

19 MS. LORENZON: Mr. Moore?

20 MR. MOORE: Following up on that question,
21 though, Mr. Lucht, Mr. Feusner, how many staff do you
22 currently have to implement these regs?

23 MR. LUCHT: That was a big reason that
24 these rules were written the way they are. We have a total
25 compliance staff of three people. That's -- we have an EPA

1 mandate we have to inspect about 350 stations per year.
2 That is one of the things that that staff of three people
3 do, the staff also maintains a database with compliance
4 histories on every facility. We main -- we collect the
5 fees for these tank fees and contaminated site fees.
6 Frankly, we haven't got a couple of extra people laying
7 around doing nothing just to administer the operator
8 certification program. The way it's structured right now
9 it will basically be very easy for us to administer.

10 We currently track due dates for every leak
11 detector, cathodic protection and all this other stuff.
12 It's just a matter of tracking the day when an operator's
13 license expires.

14 MR. MOORE: Okay. Do you have any
15 guesstimate, if we were to adopt language like that, how
16 many companies there are in the state that might be
17 applying for other administrative approval?

18 MR. LUCHT: Well, if you look back at the
19 response to comments, you'll see a list of every company

20 that has more than three in the state. There's like 12 or

21 15 of them. If they all ask for --

22 MR. MOORE: That's not -- what I was wanted

23 to know is how many companies we're talking about; 12 or 15

24 at least commented?

25 MR. LUCHT: My guess is the ones already

1 under enforcement won't even bother to ask, so that
2 eliminates about half of them. I would imagine five or six
3 companies will ask for some dispensation under that kind of
4 rule. And we might even approve about half of those.

5 MR. MOORE: The other question that occurs
6 to me is what we're talking about here is really a
7 prevention program to prevent contamination of groundwater.
8 What are the consequences of a leak contaminating an
9 aquifer?

10 MR. LUCHT: Well, that's an interesting
11 question. We had a leak up in Greybull about, what, 18
12 months ago? An operator ignored the signs that he had a
13 leak. He was losing product starting November the 15th --
14 to the day we know when he started losing product. He
15 didn't determine that -- he didn't think he had a leak
16 until it came up to about the 1st of March. This leak went
17 on for three and a half months and only came to his
18 attention because somebody next door to him complained
19 about gasoline in their basement. We ended up with an EPA

20 response team out of Idaho Springs, Colorado responding to
21 Greybull with who knows how many people. And after it was
22 all said and done, if the operator had understood what he
23 was required to do and done what he was required to do, we
24 wouldn't be in the position that we're in, which is we had
25 the site cleaned up, we had moved the equipment off the

1 site. We hadn't taken the subsurface equipment off. We
2 had to move all that equipment back in, and it cost the
3 state several hundred thousand dollars.

4 It also cost the operator probably 50 or \$60,000
5 because all that EPA response isn't free. The operator has
6 to pay for all that.

7 MR. MOORE: How long does it take to clean
8 up that aquifer after it's contaminated?

9 MR. FEUSNER: Mr. Moore, I'm going to try
10 to answer that question a little more direct, since I did
11 that program for a number of years.

12 On the remediation side, the state has spent
13 approximately \$70 million so far. We probably got at least
14 that to a \$100 million more work to do statewide. We're
15 only about 50 percent done. It takes about 10 years to
16 clean up all the soil and contaminated groundwater that
17 result from a spill, including the adjacent properties,
18 which is somewhat different from other states. The state
19 takes total responsibility for the whole process.

20 Average cleanup cost per site, per station, per
21 tank site, including the adjacent properties, is in the
22 realm of about \$325,000. So we -- the Department gets
23 approximately \$11 million a year to do this work. It's a
24 big commitment. It's going to go on until about the year
25 2040, before the state gets done, based on our projections

1 and cost revenue available. So it's not a small deal.
2 It's a big deal. And the more we allow stations to
3 continue to leak and release, the greater the State's
4 responsibility. What do we want to do? You want to allow
5 it to continue and give exemptions and give exceptions to
6 allow this to happen? I don't think that's very
7 responsible. A lot of difference between responsibility
8 and accountability.

9 MR. MOORE: Thank you.

10 MR. FEUSNER: I'm trying to point that out
11 a little bit.

12 MR. MOORE: You answered my question.
13 Thank you.

14 You said 10 years to clean up a site. You mean
15 all those pump houses on Third Street in Laramie are going
16 to go away pretty soon?

17 MR. FEUSNER: Well, I don't know about
18 that. Laramie Third Street was the largest project in the
19 state. We had 33 contaminated sites and we spent big bucks

20 there.

21 MR. MOORE: So longer in some cases.

22 MR. FEUSNER: Much longer.

23 MS. LORENZON: Thank you. Any additional

24 questions from the Council?

25 Okay. There being no further questions from the

1 Council, we'll start with public comment.

2 And Mr. Larson is first, if you'll just -- if
3 you'd use your mike. Be brief to the point, and in fact,
4 focus on those things in your comments that are different
5 from the prior speakers. If a comment's been made, just
6 focus on the things that you have that are in addition.

7 Mr. Larson.

8 MR. LARSON: Thank you, Madam Chair. I
9 don't normally need microphones.

10 MS. LORENZON: This room's not too bad for
11 acoustics.

12 MR. LARSON: Thank you.

13 A couple of things real quickly that have been
14 brought up. And we recognize that there was a -- there had
15 been a contamination level. In some cases no amount of
16 oversight is going to eliminate a spot contamination.

17 One of the issues that was brought up is if there
18 is a violation, then they have to go through the retest
19 process, according to this language. And then you also

20 continue to maintain the administrative penalties and fees
21 and processes that are in place, if you have an errant
22 operator. So if you have a violator, it is a re-violation,
23 they have to go back through the ICC test.

24 MS. LORENZON: Mr. Larson, excuse me for
25 interrupting, but could you -- I know I said your name, but

1 could you state for the record who you're representing?

2 MR. LARSON: Thank you. I know better.

3 Mark Larson with the Colorado Wyoming Petroleum Marketers
4 Association, executive director.

5 MS. LORENZON: Thank you.

6 MR. LARSON: I'd like to thank the Council,
7 Madam Chair and council members for indulging us in this
8 discussion. At the last meeting it would have been very
9 easy to pass something that was not effective and quite
10 possibly could have been onerous to the -- to the industry.

11 Since then much has happened. And that's my
12 point, I won't regurgitate what you saw then, but I will
13 tell you what happened since March 18th. I'd like to make
14 two or three quick points from a macro 30,000-foot
15 perspective. First, we totally agree the need to expand
16 oversight and training. We totally agree. I know about
17 Mr. Lucht's question about the EPA -- or stating the EPA
18 did not want this is absolutely true. Why do I know that?
19 Because it was the industry that promoted this through

20 Congress and got it passed. It was the industry that
21 recognized that you have some issues with funding and state
22 programs and that we as an industry are responsible and
23 willing to bring forward legislation that would enhance the
24 oversight responsibilities. We never intended it to go to
25 the level that it has gone in the Wyoming model.

1 In your packet there's a letter from
2 Mr. Mark Morgan. Mr. Morgan is the PMAA regulatory counsel
3 who sat on the EPA stakeholder group that devised the
4 guidelines in which we're working. He was a part of that
5 group. In that letter he said the industry championed the
6 act with the understanding that the EPA and states would
7 need a flexible approach administering the requirements in
8 a way that would be beneficial to both the environment and
9 the industry.

10 Our guys have grandchildren. We don't want to
11 trash the environment. We brought the legislation so that
12 we can work with the states and devise something that helps
13 protect the environment and be a partner with the industry.

14 The concept of combined, and I think Commissioner
15 Searle, you got to the point here, is that there's been
16 nothing before. You had regulations. If you violated the
17 regulation, you were done. You went through a process, you
18 were fined, end of story, no requirement on behalf of the
19 marketer in order to have the training necessary to

20 demonstrate that that person had an understanding of what
21 is going on with the facility. From the Class A, Class B
22 and Class C operator, we have significantly enhanced the
23 understanding of what the regulations are, and I think
24 that -- well, I'll get to that in my -- the comment that
25 Mr. Lucht said about the ignorance level at the facility is

1 going to basically go away.

2 We know that with the enhanced requirement that
3 we're going to see an exponential increase in understanding
4 of what their responsibilities are. The petroleum
5 marketers have absolutely no problem with assuring the
6 responsible party within each organization has taken the
7 ICC test to demonstrate their understanding of the
8 regulations. We don't have a problem with that. In fact,
9 we were participants when Mr. Lucht went through an
10 extraordinary process of doing testing -- of doing the
11 testing. We have exceptions on how the rules were
12 promulgated without us being at the table, but testing was
13 a very good job.

14 Third, the Department has chosen to take a strict
15 literal interpretation of the bill as written while knowing
16 full well the EP -- stakeholder group, we've had these
17 discussions over and over again, and the EPA itself never
18 intended the level of interpretation. Indeed, if you look
19 at the guidelines that we were talking about, and when the

20 Department has taken the stance of no, we shouldn't have
21 the ability to have operators be able to demonstrate
22 occasional expanding operations.

23 If you do take that staunch interpretation, I
24 guess I have to question whether the Department initially
25 then went away from a Class A operator going to 15

1 facilities, because indeed the Class A operator in the
2 guidelines is onsite operation, and the Class C operation,
3 we went from one at every facility, to two or three. Then
4 we got to six. And, indeed, my recollection of the six
5 discussion was not the same as Mr. Lucht's. When we got to
6 where he offered the six, it was not with the monthly
7 inspection, it was with twice weekly. And that's where we
8 have heartburn.

9 Indeed, I think if Mr. Lucht said, okay, six
10 facilities and once a month, we might not be having this
11 two-hour discussion.

12 CHAIRMAN BOAL: Mr. Larson, say that again.
13 What was your problem with Mr. Lucht's proposal?

14 MR. LARSON: We think, and as we were going
15 through that process, and when we got to the point that we
16 were talking about the six-facility oversight, that was --
17 there was -- we were under restraints. Unfortunately
18 Mr. Lucht informed us the meeting was on April 24, not
19 April 29th, so we thought you were under constraints in

20 order to strike a deal. I promised the Council or the

21 chairman --

22 CHAIRMAN BOAL: Just tell me what was your

23 disagreement with his proposal?

24 MR. LARSON: Oh, his proposal -- when we

25 kept stairstepping, trying to get to where we knew the

1 EPA's requirements. In Colorado you have no oversight. We
2 went from zero for -- or one for every facility to two or
3 three and then to six, but he, instead of saying six and a
4 monthly inspection by a Class B operator, Mr. Lucht's
5 recounted with what you see today of the twice weekly.
6 Only two -- only three is the limit. This is not what the
7 EPA intended. It's absolutely not what the stakeholder
8 group intended.

9 VICE-CHAIRMAN HEDRICK: Yeah, let me follow
10 up on that. And I think just to keep this moving, we can
11 talk about general differences of views and opinions and
12 how you think you were deceived in negotiations or whatever
13 that happens to be, but that isn't going to impact this
14 Council's view.

15 MR. LARSON: Thank you.

16 VICE-CHAIRMAN HEDRICK: You need to be very
17 specific about what's on the table today, what you want
18 changed --

19 MR. LARSON: Okay.

20 VICE-CHAIRMAN HEDRICK: -- and why.

21 And I think if you're going to argue this issue

22 of numbers, you have to explain to us why EPA's

23 requirements are not a minimum for states like Colorado,

24 that where the operators bear the cost, but the situation

25 in Wyoming is dramatically different, Mr. Larson, where the

1 State pays that cost. You cannot compare the two. It's
2 just not -- that's not going to work with us.

3 MR. LARSON: Understood, Mr. Chairman. And
4 I can make comparison to Kansas, where the operators are
5 advising the program. I can make --

6 VICE-CHAIRMAN HEDRICK: You need to tell us
7 why this will not work, is not --

8 MR. LARSON: For Wyoming. Got it.

9 VICE-CHAIRMAN HEDRICK: Does not work for
10 you.

11 MR. LARSON: Okay.

12 VICE-CHAIRMAN HEDRICK: Particularly, if
13 the Council would deem to approve some discretion, as
14 Mr. Searle proposed.

15 MR. LARSON: And I apologize to the Council
16 if it sounded like it was getting personal. There have
17 been many, many hours invested in this discussion of
18 process and I will keep --

19 VICE-CHAIRMAN HEDRICK: We're going to make

20 a decision today, and you better use your time very
21 effectively.

22 MR. LARSON: Yes, sir. Thank you for
23 pointing that out.

24 In referring to the PMAA regulatory counsel,
25 Mr. Morgan, I would submit his language, and I quote, I can

1 say clearly and unequivocally that it is not the intent of
2 the group to require the Class B operators to make multiple
3 weekly visits to each UST site. This would have been
4 considered unnecessarily and overly burdensome.

5 Class B operator for a small business convenience
6 store operators --

7 THE REPORTER: Sir, slow down, please.

8 MS. LORENZON: Slow down.

9 THE REPORTER: Sir, slow down, please.

10 MR. LARSON: I do talk fast, don't I.

11 The stakeholder group intent was that in cases
12 where a B operator was not located onsite, the C operator
13 would receive additional training on daily operation UST
14 systems. This is exactly what we were proposing. Since
15 March 18th, we've had the discussion about what is an
16 onsite operator. Clearly we demonstrated in the letter to
17 Mr. Morgan that onsite meant responsible for day-to-day
18 operations at each facility, not physically being at the
19 facility every day.

20 EPA, they gave us specific flexibility that would
21 say -- and we will demonstrate that the history of
22 violations that were in your packet, when you have the
23 multiple violations that Mr. Lucht addressed, if you look
24 at those individually and you reference that back to what
25 is being proposed by CWPA and CMA and the regulations, the

1 majority -- the vast majority of those are going to be
2 eliminated because they are automatically tank gauging,
3 they are repetitive automatic tank gauging, and with the
4 knowledge that the combined A, B and C operator is going to
5 provide, is going to eliminate a majority of those
6 violations. If it doesn't, you still have the violation
7 process, you still have the repeat testing issue to go
8 about -- to go along with it.

9 We have discussions about single operator
10 interests, and I don't know if everybody had time to read
11 this, and I apologize for the length of the documents I
12 sent, but we have to be thorough. The single operator, one
13 or two operators, we have some here today to address the
14 Council, has the ability to have one person be all three
15 positions. Okay? So I'm not sure I understand where that
16 disadvantage was.

17 I'll get to the points we were talking about, the
18 Council technical improvements --

19 VICE-CHAIRMAN HEDRICK: I think you're

20 rehashing the things --

21 MR. LARSON: I am, aren't I?

22 VICE-CHAIRMAN HEDRICK: -- that have been

23 given to us. You're not addressing the core issue here.

24 MR. LARSON: Let me move forward.

25 VICE-CHAIRMAN HEDRICK: Mr. Lucht has

1 defined the Class B operator as the C-store manager. I
2 have a hard time accepting that all the people here that
3 are operating C-stores do not have someone who is the,
4 quote unquote, manager/supervisor of the store. The clerk
5 is the Class C guy. I'm having a hard time at all
6 understanding why the Class B operator isn't the person
7 that's responsible for managing the day-to-day operations
8 of the store and why that person should not be the one
9 responsible, as Mr. Lucht has brought forward. You have to
10 explain that to me.

11 MR. LARSON: Yes, sir, because it's
12 overkill. Number one, you're having a Class B operator
13 that's going to have to travel to ICC tests at different
14 locations within the six months period, which,
15 incidentally, is a violation of regulations, because they
16 said within 30 days.

17 The other thing is that it's overkill. If you
18 got a Class -- what we propose -- let me go to what we
19 proposed. We propose a Class A operator should have the

20 ability to -- we agree with the 15 facility oversight,
21 although we somewhat disagree that they should have any
22 limitation. We got to the 12 facility oversight, because
23 this was a median point between the big facilities and the
24 small operators, who -- predominantly the small operators
25 have cleaner records.

1 What we offered then was a monthly inspection,
2 and, unfortunately, Mr. Lucht did not interpretate that
3 properly. It was not Colorado model, but I offered to
4 Mr. Lucht was you tell us --

5 VICE-CHAIRMAN HEDRICK: I don't think we
6 care what the Colorado model is.

7 MR. LARSON: No, and that's what I'm
8 saying. I'm telling you --

9 VICE-CHAIRMAN HEDRICK: I don't think we
10 care what the California model is, and I'm not even a
11 hundred percent sure we care what the EPA is, other than
12 that maybe sets the base standard.

13 MR. LARSON: May I finish?

14 We offered to the Department that you tell us
15 what you want the monthly inspection to look like and we
16 will live by that. The trade-off was -- is that we would
17 be able to have more people under the B operator facility
18 look at the history of violations. It's not necessary to
19 have a Class B operator for every three facilities. So

20 what we -- and you're right. I don't give a store about
21 any other model. What we've proposed to the Department was
22 you tell us what you want the inspection to look like,
23 we'll live by it, but it gives us the operational
24 flexibility to be able to send less people to the ICC test,
25 and you're still getting that oversight with that person on

1 a more regular basis, if you look particularly at the

2 history.

3 Then we offer an expanse -- expanded Class C

4 operator training. Indeed, I talked to the Department,

5 said what do you need in order to have a Class B operator

6 go to 12, what do you need to have for a comfort level?

7 The response back from the Department was and we're still

8 understanding the delivery procedures and hazards. We

9 understand that, but the ability to recognize and

10 differentiate between alarms, you heard the Department

11 testify to that, and what each of those alarms and

12 significance are.

13 If you look back to the historical violations

14 documents, a lot of those were based on the fact that they

15 didn't recognize the significance of having that test. The

16 location and basic function of leak detection and cathodic

17 protection systems, that makes sense. Your Class C

18 operator should know what those are. What the Department

19 proposed is based on what we listen to the Department to

20 say. We felt it was it a good compromise to be able to say
21 you could have up to 12 people under a Class B operator
22 license do the monthly inspection that you, the Department,
23 tell us what you want to inspect. We don't have a problem
24 with that.

25 That enhanced the Class C operator, because we

1 want to meet those things that you know from experience
2 that were going to be necessary to train that Class C
3 operator who is responsible for emergencies. Basically we
4 did not get any room beyond that when we proposed the Class
5 6 -- or the six facility oversight that came back with the
6 twice weekly, and this doesn't meet the operational mode.

7 With that, I'll answer questions and we do have
8 members here who can speak to that very issue, Chairman.

9 MS. LORENZON: Thank you, Mr. Larson.

10 Questions from the Council?

11 CHAIRMAN BOAL: So your association's
12 proposal is 12 locations for each Class B operator with
13 monthly inspections?

14 MR. LARSON: Yes, sir.

15 CHAIRMAN BOAL: And the rigors of the
16 inspections could be specified by the Department?

17 MR. LARSON: Yes, sir.

18 CHAIRMAN BOAL: And the second component
19 was we would upgrade the Class C training so that the

20 onsite Class C people would be -- would know what they

21 would do when an alarm goes off?

22 MR. LARSON: Absolutely.

23 CHAIRMAN BOAL: All right. Thank you,

24 Mr. Larson.

25 MR. LARSON: Thank you.

1 MS. LORENZON: Commissioner Moore.

2 MR. MOORE: Mr. Larson, Class C operators
3 are, in essence, service station clerks?

4 MR. LARSON: Can be the manager, as well.
5 The person responsible -- person -- if you look back
6 through the --

7 MR. MOORE: Your proposal is to have a
8 Class B supervise up to 12 locations?

9 MR. LARSON: Right.

10 MR. MOORE: So Class B guy would be
11 supervising 12 locations with Class C operators --

12 MR. LARSON: If I --

13 MR. MOORE: -- which is the --

14 MR. LARSON: Yes, sir.

15 MR. MOORE: -- gas station clerk.

16 MR. LARSON: The guideline states that the
17 Class C operator would have daily onsite employees with
18 primary responsibility for --

19 MR. MOORE: I'm not --

20 MR. LARSON: -- addressing emergencies.

21 MR. MOORE: I'm talking about proposed

22 rule, not guidelines. The proposed rule that we're looking

23 at --

24 MR. LARSON: Right.

25 MR. MOORE: -- is a Class C operator,

1 persons who work at service station or convenience store,
2 but who are not in responsible charge of the location.

3 MR. LARSON: That was the Department's
4 interpretation, yes.

5 MR. MOORE: So that's your average clerk in
6 your store.

7 MR. LARSON: That is the person responsible
8 when the Class B person is not there.

9 MR. MOORE: Right, which is your average
10 clerk, is it not?

11 MR. LARSON: It could be. You could
12 designate. Again, I keep going back, and I apologize, but
13 I keep going back to what the intent of the law was.

14 MR. MOORE: I'm just trying to focus on
15 what our proposed rule says.

16 MR. LARSON: Yes, sir.

17 MR. MOORE: It says -- the proposed rule
18 says you have the Class B operator can supervise Class C at
19 up to three locations, and you're asking for up to 12

20 locations. And what I'm trying to get to is, okay, if that
21 Class B operator has 12 locations under his direct
22 supervision and the Class C operator is, as I read it,
23 doesn't have responsible charge of that location, is the
24 gas station clerk, convenience store clerk, I've heard lots
25 of comment previously about the high rate of turnover in

1 gas station attendants. I know personally I've seen them
2 change in facilities I visit. I'm having a hard time
3 understanding why you think that you can bring in people as
4 clerks at a service station and teach them how to operate
5 everything that they have to do as far as taking money,
6 running cash registers, supervising the store, et cetera,
7 and at the same time have all these responsibilities to
8 make sure that the tank system is working correctly.
9 That's where I'm losing your thought process, is that
10 I'm -- I just -- it boggles my mind that the amount of
11 responsibility that you're saying these service station
12 clerks could be able to assume on their own with a manager
13 who has 12 facilities under his control.

14 MR. LARSON: I understand councilman's
15 objection. I guess that's the way that we train now. We
16 train people every day. The law of this guideline would
17 require that they have this amount of training, along with
18 the other training that was within the guidelines the EPA
19 required or expected. It's still coverage you don't have

20 now, as prescribed by law. It's enhanced coverage to make
21 sure that they know what's going on. And relative to the
22 historical violations that we've seen that the Department
23 made available to us, we're covering those bases.

24 I'm not sure I -- if you -- the intent is to go
25 back to a Class B operator for every facility, that

1 certainly was not the intent of the law.

2 MR. MOORE: That's not what I'm saying.

3 I'm asking, in your experience with service station clerks,

4 and the high rate of turnover that you have in those

5 positions, how you would expect them to know everything

6 that they need to know if they're not being visited more

7 frequently by the Class B operator, who has demonstrated

8 proficiency by passing a test.

9 MR. LARSON: Some other people will

10 probably have to address. I don't --

11 MS. LORENZON: No, no. Please, we're --

12 MR. LARSON: I guess what I want to get --

13 Council, if I may address it. In 30 years of owning

14 businesses with 300 employees, I can tell you that we

15 understand the significance of training. If you train even

16 a minimum wage employee and give them the tools, 9 times

17 out of 10 they'll act responsibly. The onus is on us, when

18 we have that turnover, to provide this expanded training,

19 but we accept that responsibility. When we have that

20 turnover relative to the -- it's not to say that the Class
21 B operator is not going to be there on a more frequent
22 basis, we're just saying why are we prescribing that. If
23 we're raising the bar and providing the training, which
24 we're offering to you. You tell us you want more, we'll
25 look at more, we don't have a problem with that. It's

1 onerous to require a Class B operator for up to only three
2 facilities is our point.

3 MR. MOORE: Thank you.

4 MS. LORENZON: Any additional questions
5 from the Council?

6 MR. MORRIS: I guess I have a comment that
7 you didn't -- you could have a full-time staff that would
8 never ever have any training because of the turnover.

9 MR. LARSON: Because of the turnover?

10 MR. MORRIS: Yeah. The turnover there, the
11 people would never ever get trained, so consequently you'd
12 never get the inspection.

13 MR. LARSON: The regulation says that
14 before they take the job, they will have the training for
15 the Class C operator. They will not be able to take that
16 job unless they have the training.

17 MR. MORRIS: Class C?

18 MR. LARSON: Class C. Class A and B,
19 there's a loophole in the current regulation that says up

20 to 60 days. Your scenario could absolutely be true. But
21 we're saying is the guidelines say 30 days, allow us to
22 have multiple oversight, we can make sure that we do a
23 Class B inspection the Department prescribes, we're still
24 getting -- we're probably getting better coverage with the
25 CWPMA proposal than what the Department's recommending.

1 That loophole is critical.

2 MR. MORRIS: Okay.

3 MS. LORENZON: Thank you.

4 Any additional as questions?

5 MR. COVERDALE: I have just a question.

6 MS. LORENZON: Mr. Coverdale.

7 MR. COVERDALE: When you keep referring to
8 the EPA guidelines, you emphasize the one or more
9 facilities. I'm just curious, what does it mean to you,
10 the opening part of that, when it says under the guidelines
11 that this individual Class B will implement day-to-day
12 aspects of operating, maintaining and recordkeeping,
13 doesn't that imply they're onsite every day? How do you
14 interpret that?

15 MR. LARSON: I believe --

16 MR. COVERDALE: Reading on the back --

17 MR. LARSON: Yes, sir.

18 MR. COVERDALE: I want you to explain the
19 beginning of that.

20 MR. LARSON: If you read on, it also says

21 in the field.

22 MR. COVERDALE: Yeah.

23 MR. LARSON: That is difficult, certainly.

24 And the Department and I had this conversation at length,

25 and that's why I got the PMAA letter from the people that

1 actually implemented the guidelines. When we go back to
2 the EPA for clarification, they will not give you a ruling.
3 They did not want this in the first place. Again, it was
4 our industry that brought it forward and said we recognize
5 the need, we recognize the lack of staffing. It was never
6 intended -- again the interpretation of onsite means has
7 the responsibility for the day-to-day operations of the
8 facility. It does not mean onsite meaning physical
9 location of the facility, according to the EPA working
10 group that devised the guidelines.

11 Does that answer your question?

12 MR. COVERDALE: It gives me your
13 interpretation.

14 VICE-CHAIRMAN HEDRICK: Let's recess
15 5 minutes.

16 MS. LORENZON: Thank you, Mr. Larson.

17 MR. LARSON: I apologize if I frustrated
18 the Council.

19 MS. LORENZON: It's all part of this

20 process.

21 MR. LARSON: Yes, it is.

22 MS. LORENZON: The next speaker --

23 VICE-CHAIRMAN HEDRICK: The only frustrated

24 are those of us who have had C-stores under their

25 supervision and having hard time understanding the

1 organization chart that fits with the span of control of

2 12. I do tell you that right now, so you understand.

3 MS. LORENZON: We are going to take a quick
4 recess. The next speaker will be Mr. McArthur.

5 How long a recess, Mr. Chairman?

6 CHAIRMAN BOAL: Let's just do 10 minutes.
7 We'll reconvene at 10:30.

8 MS. LORENZON: 10:30, thank you.

9 (Hearing proceedings recessed
10 10:23 a.m. to 10:30 a.m.)

11 CHAIRMAN BOAL: Mr. Hedrick.

12 MS. LORENZON: Are we ready?

13 We're ready to move on with public comment.

14 Paul McArthur, would you please state your name
15 and affiliation?

16 MR. MCARTHUR: My name is Paul McArthur,
17 and I'm the controller for Big D Oil Company. We have 12
18 sites in Wyoming. With the exception of one site, they're
19 all small businesses. I want to make that distinction.

20 I'll keep my comments brief. I was hoping that I
21 could add something that might lead to you asking some
22 questions from somebody that's actually, you know, in the
23 trenches.

24 Our store managers are in the stores from 5:00 to
25 3:00 every day, Monday through Friday. So after that, you

1 know, we're managed by, you know, the best that's available
2 in the -- in our cashier ranks, so I want to make sure that
3 folks understand that as we view these requirements, at the
4 end of the day it's going to require us to expand our
5 infrastructure, expand our staffing. It will be expensive
6 for us. And more importantly, I can't see where it's going
7 to help us to better comply with the regulations. And I'll
8 give you another example. You know, we have to -- there's
9 lots of important elements at the convenience store. And
10 I'll give you another example. Sales tax collection. You
11 know, I know we're talking about the environment, we're
12 talking about, you know, the product release, and that sort
13 of thing, but it's an important part of our business. And
14 on infrastructural requirement, or a staffing -- or
15 staffing requirement for me to collect sales tax isn't
16 going to help me to collect sales tax. If I don't pay the
17 sales tax, I'm in big trouble. Does that make sense?

18 If there are a lot of government agencies that we
19 have to submit information to, collect money and remit

20 money that they don't require us to maintain a certain
21 staffing level or a certain infrastructure to get those
22 things done. We're just required to get those things done.
23 So it is our opinion that the B operator portion,
24 especially, would just require us to increase staff,
25 increase the physical size of our company.

1 And as I stated earlier, I can't identify where
2 it's really going to help us to better comply. We keep our
3 managers and our store people on a short leash for a lot of
4 reasons. If we have an accident, a problem with an
5 employee, a problem with the tank monitor, a problem with
6 the POS system, I mean, we're the one to call. And I want
7 to make that distinction, you know, it's all important.

8 And the reporting that has to happen and the
9 chain of command that has to happen, you know, happens
10 every day in all these businesses, in all those systems.
11 And I want to point out that, you know, we approach the
12 tank monitor the same way we do with everything, as an
13 industry, I guess. Putting another layer of basically
14 management in there isn't going to help us to comply. It's
15 the same -- it's the same process. At the end of the day,
16 if somebody observes a problem, they've got to report it.
17 They've got to get it to their supervisor. You know,
18 everybody has various ways of notification, but that's my
19 comment.

20 MS. LORENZON: Yes, Mr. Hedrick.

21 VICE-CHAIRMAN HEDRICK: You're getting to
22 my point. Now, you said the manager was there from 5:00 to
23 3:00 --

24 MR. MCARTHUR: Yes.

25 VICE-CHAIRMAN HEDRICK: -- cashier the rest

1 of the time. That's what I'm used to.

2 How many stores is the manager supervising?

3 MR. MCARTHUR: Just one.

4 VICE-CHAIRMAN HEDRICK: Would the manager
5 not be the Class B operator under Mr. Lucht's proposal?

6 MR. MCARTHUR: I would -- I mean, for them
7 to go through the training, I just don't see a benefit. I
8 would have to say no. I'd say they're C.

9 VICE-CHAIRMAN HEDRICK: I find that
10 astounding, most times in our industry, we expect the
11 manager of a facility to know how to operate everything
12 that's on the premises. I mean, they are the first line
13 supervision, first line of responsibility to deal with
14 issues.

15 MR. MCARTHUR: Right.

16 VICE-CHAIRMAN HEDRICK: To me that was what
17 was described in Mr. Lucht's Class B operator. They're not
18 the experts, they don't know all the technical details, but
19 they know how it works and they can interpret if something

20 malfunctions, whether it's a real emergency or it's an

21 equipment failure or whatever.

22 MR. MCARTHUR: I'd say that's a fair

23 statement. Maybe I'm misunderstanding. They would be

24 required to travel, to take the test, to pass the test, to

25 understand how all the systems work, rather than just be

1 the alarm's on, this is my procedure.

2 VICE-CHAIRMAN HEDRICK: Cashier's got to
3 know to call the manager if the alarms goes off.

4 MR. MCARTHUR: Yeah. That's what we do
5 every day.

6 VICE-CHAIRMAN HEDRICK: Yeah.

7 MR. MCARTHUR: Just like anything else that
8 malfunctions, a pump or the POS device, or --

9 VICE-CHAIRMAN HEDRICK: Robs the building.

10 MR. MCARTHUR: -- somebody robs the
11 building. Exactly.

12 Just as example, you know, we like to post those
13 procedures right on the --

14 VICE-CHAIRMAN HEDRICK: So what your
15 opposition, then, is really to the training that the Class
16 B operator requires to be given to the manager. That's
17 really your problem with this.

18 MR. MCARTHUR: It is. I mean, it's a --
19 it's a tough situation, the travel, the turnover issues,

20 you know, we like that part of our business to be very
21 simple. If people are in doubt, they call, just like, you
22 know, we -- does that make sense?

23 VICE-CHAIRMAN HEDRICK: Yeah, why would you
24 not -- I guess then my next question is why would a
25 reasonable and prudent operator not want his store manager

1 to know those things that a Class B operator's required to
2 know?

3 MR. MCARTHUR: To my understanding, the
4 test was rather broad. I mean, we sent some of our techs
5 to take the test, and there were questions and things that
6 they needed to know in the test that were probably outside
7 of, you know, what you would typically expect in a
8 convenience store, you know, if this alarm is on, pick up
9 the phone and call. If you see this condition, pick up the
10 phone, call the police, you know, the fire department. It
11 was broader in scope than those basic things that we want
12 people to just automatically do when they see a problem.

13 VICE-CHAIRMAN HEDRICK: But would you
14 accept that the class -- the manager should have more
15 training and more knowledge than the cashier?

16 MR. MCARTHUR: Well, I would -- because of
17 the fact that the manager's only there from 5:00 to 3:00, I
18 think we have to take the approach in your business that
19 anybody that's there has got to understand the response and

20 the chain of command, just because the weekends we don't
21 have management coverage, evenings, you know, all that kind
22 of thing.

23 VICE-CHAIRMAN HEDRICK: You're not
24 reporting it -- this is where I'm coming apart.

25 MR. MCARTHUR: Right.

1 VICE-CHAIRMAN HEDRICK: I mean, we expected
2 our store managers to know what their state reporting
3 requirements were, what their safety reporting requirements
4 were, things that we didn't necessarily expect the cashier
5 to know who may not be here for four or five days, you
6 know, that could be a long --

7 MR. MCARTHUR: Well said.

8 VICE-CHAIRMAN HEDRICK: -- a long tenure,
9 you know. And this is where I'm just having -- I guess I
10 could accept there might be some legitimate difference of
11 opinion as to what training the store manager ought to
12 have, but it's hard for me to accept the store manager
13 shouldn't know a number of things you wouldn't expect a
14 cashier to know. I mean, I go in and cashiers don't even
15 know how credit card systems work. They just know you run
16 a card through it, they can't answer any questions. But a
17 store manager usually can.

18 MR. MCARTHUR: Yeah, and I would say that
19 comes through experience. And I guess I don't disagree

20 with what you're saying, but from a day-to-day -- from a
21 day-to-day operational standpoint, whoever's in the store
22 has got to be able to respond to, you know, a problem, an
23 alarm.

24 VICE-CHAIRMAN HEDRICK: Okay. But you're
25 telling me, if I understood you correctly, your belief is

1 the store manager should not have additional qualifications
2 or training in this area above and beyond what the cashier
3 has; is that correct?

4 MR. MCARTHUR: It wouldn't help us, yeah.

5 VICE-CHAIRMAN HEDRICK: Okay. Thank you.

6 MS. LORENZON: Any further questions from
7 the Council?

8 Mr. Flitner.

9 MR. FLITNER: Has anybody here seen this
10 test or taken it?

11 MR. MCARTHUR: I haven't. I've just had
12 some feedback from two folks that we sent.

13 MR. FLITNER: So we're beating this dead
14 horse about -- you've taken it?

15 MR. BAILEY: I was involved in generating
16 the test.

17 MS. LORENZON: Excuse me. Could you
18 identify yourself for the record?

19 MR. BAILEY: Mike Bailey. I was on the

20 committee that went through the test questions and all that

21 kind of stuff.

22 MR. FLITNER: We're talking about a lot of

23 training, a lot of this, a lot of that, so far I don't know

24 how in-depth this is. It may be so simple that the

25 training doesn't matter or it may be so complex that it's

1 counterproductive, I don't know. And I haven't -- I

2 haven't heard any comment on that yet.

3 MS. LORENZON: Mr. Flitner, if you'd like,

4 after Mr. McArthur's done, we can ask Mr. Lucht to answer

5 that question for you.

6 MR. FLITNER: Thank you.

7 CHAIRMAN BOAL: So Mr. McArthur, basically

8 you're saying we should keep what we've got now in terms of

9 regulatory scheme, and the problem with that, and I show

10 you this (indicating) --

11 MR. MCARTHUR: Yeah, exactly.

12 CHAIRMAN BOAL: -- and then we heard

13 Mr. Feusner talk about the immense cost that this state

14 faces fixing the problems, so --

15 MR. MCARTHUR: I'm not --

16 CHAIRMAN BOAL: I mean, this is what the

17 existing system is getting us. Okay?

18 MR. MCARTHUR: Uh-huh.

19 CHAIRMAN BOAL: It's getting us bills to

20 the tune, I think he said a hundred million dollars, but,
21 you know, I lose track after they get up to above a million
22 dollars -- I lose track after they get above \$500,000.
23 It's a huge cost.

24 MR. MCARTHUR: Right.

25 CHAIRMAN BOAL: And -- but that's basically

1 what you're asking this Council to do is maintain the
2 status quo, asking us to maintain this (indicating).

3 MR. MCARTHUR: That's not what I'm saying.
4 What I'm saying is I don't know that I can tell you that
5 the operator requirements will help that.

6 CHAIRMAN BOAL: Can you tell me that it
7 won't? Can you tell me whether it's logical that if people
8 who are onsite on a daily basis knew more about what they
9 should do and what they should inspect and what they should
10 work for, isn't it logical that maybe we'll see less of
11 this? Shouldn't we be trying to do something so that we
12 see less of this?

13 MR. MCARTHUR: Some of it --

14 CHAIRMAN BOAL: Shouldn't be we doing --

15 MR. MCARTHUR: Testing would have to be
16 whether it's willful. You know, I --

17 CHAIRMAN BOAL: In the end, does it matter?
18 If the aquifer is poisoned, if the aquifer is contaminated
19 so we have to spend 10 years, \$10 million to clean it up,

20 does it really matter whether it was willful or not?

21 MR. MCARTHUR: Right.

22 CHAIRMAN BOAL: I mean, shouldn't --

23 wouldn't a prudent person want to put things into place

24 that makes it less likely these things happen? I'm really

25 not asking you a question, I'm making a rhetorical

1 question.

2 And so, you know, do you have a lot of turnover
3 on your store managers?

4 MR. MCARTHUR: Not typically.

5 CHAIRMAN BOAL: See, so a person goes in --
6 I think this test takes a day, does it take two days? Just
7 nod your head. Takes a day. That person could go take
8 this test one day, and we would have a level of knowledge
9 on that site that right now we don't have. I just -- I
10 think that might be a good thing.

11 That's all I have. Thank you, Mr. --

12 VICE-CHAIRMAN HEDRICK: I've got to come
13 back to one point.

14 You made the point about sales tax, and you're
15 required to pay sales tax.

16 MR. MCARTHUR: If you don't, you're in a
17 lot of trouble.

18 VICE-CHAIRMAN HEDRICK: Okay. That's the
19 issue I think we need to explore. It seems to me there's a

20 difference here. The State pays for cleanup.

21 MR. MCARTHUR: Uh-huh.

22 VICE-CHAIRMAN HEDRICK: So the

23 repercussions to the operator for not performing are

24 minimal, other than fines, which aren't -- I mean, you

25 know, they're not significant in terms of size of these

1 businesses. So if the State were to adopt the philosophy
2 that you're talking about, then it would seem to be logical
3 that the operators ought to pay for all the cleanup costs.
4 Would you be willing to exchange the indemnity from cleanup
5 costs to have your proposal? Which way do you want it? I
6 mean, you can't have it both ways, you either got to be --
7 State pays for it, you got to be regulated. There has to
8 be some reasonable regulation.

9 MR. MCARTHUR: Right.

10 VICE-CHAIRMAN HEDRICK: If you want to be
11 self-regulating, then you have to bear the consequences of
12 not.

13 MR. MCARTHUR: I understand what you're
14 saying. All I'm saying is that as it pertains to our
15 business, it will be expensive for us to comply and it
16 isn't going to help me to be more compliant. That's what
17 I'm saying. Having the store managers more involved in
18 this process isn't going to help -- it isn't going to help
19 us. We've already got a process in place. We understand

20 the rules. We're compliant -- we want to be compliant. It
21 comes from, you know, the corporate entity, so taking that
22 further down into the organization isn't going to help us
23 to be more compliant.

24 VICE-CHAIRMAN HEDRICK: But I'm not sure
25 the State and the taxpayers who are funding the bill are

1 going to accept that argument. I mean, you've got -- you
2 don't want it the other way, so I think we're getting back
3 to the point we're going to have reasonable regulation.
4 That's in the view of the pulpit.

5 MR. MCARTHUR: Right.

6 MS. LORENZON: Mr. Moore.

7 MR. MOORE: Thank you, Ms. Lorenzon.

8 You really kind of tickled my brain with a
9 thought when you mentioned that your store managers are in
10 the store from 5:00 to 3:00 daily, and this is just kind of
11 following up on the questions Mr. Flitner and Mr. Kirby
12 (sic) were pursuing as well.

13 It seems to me that disagreement, if you will,
14 was cast in the light of the number of facilities that a
15 Class B operator should be allowed to supervise with a
16 twice-a-week visit per facility. After hearing you say
17 that the supervising manager is in the store from 5:00 to
18 3:00, it occurred to me that another way of casting the
19 disagreement is whether or not your store manager should be

20 trained and tested and licensed to be the Class B operator.
21 My thought originally, when we were back discussing this a
22 couple months ago, was the concept of the Class B operator
23 covering more than one facility was for the type of
24 organization where a manager was supervising two or three
25 stores, not that there was a separate person or individual

1 that was the Class B operator who had control over the
2 stores.

3 So it seems to me that you said it would require
4 increasing your infrastructure, which I interpreted to mean
5 hiring more people. You have an option, you can either
6 hire more people to be Class B operators to cover three
7 facilities, or you can make sure that the people that you
8 hire as managers, employ as managers, take the training and
9 the test and become the Class B licensed operators. And it
10 seems to me that you put it in that perspective, it's not
11 we have -- we have to increase staffing, but you have a
12 choice. You can increase staffing to hire more Class B
13 operators or you can train existing personnel or store
14 managers, whether they're supervising one, two or three
15 stores, to become Class B operators, and have six months to
16 do that after they're hired or adoption of the regulations,
17 two years -- every two years they have to renew the
18 license.

19 So tell me what's wrong with my lodge being here.

20 Why is it such a big issue when you've got an either/or
21 situation? And I understand a manager has a lot of
22 responsibilities, but it seems to me that should be one of
23 his responsibilities in managing a store, is making sure
24 it's conducted safely and in compliance, whether it's sales
25 tax or leaking underground storage tanks.

1 MR. MCARTHUR: You kind of lost me.

2 MR. COVERDALE: There wasn't a question in
3 there. It was a rhetorical question.

4 MR. MOORE: The question is you have a
5 choice, right, either hiring more Class B operators to
6 comply with three facilities per operator --

7 MR. MCARTHUR: Okay.

8 MR. MOORE: -- or training store managers
9 who are currently there to become Class B operators; is
10 that correct?

11 MR. MCARTHUR: Yeah, I'd say that's right.
12 I mean, in the scope of things, I mean, it's going to
13 require somebody to do the work. How we would approach
14 that, I don't know it just yet, but it's an increase in
15 our -- in what we need to do every day.

16 MR. MOORE: And you have not yourself taken
17 the Class B operator's test --

18 MR. MCARTHUR: I haven't.

19 MR. MOORE: -- so don't know how much

20 study -- how much time, all we know it's going to take some

21 study, going to take a day to go take the test.

22 MR. MCARTHUR: I've heard it's not easy

23 from our techs, but that's --

24 CHAIRMAN BOAL: Were they able to pass it,

25 Mr. McArthur?

1 MR. MCARTHUR: Pardon me?

2 CHAIRMAN BOAL: Did they pass the test?

3 MR. MCARTHUR: You know, I don't know. I
4 don't know.

5 CHAIRMAN BOAL: So you heard it was
6 difficult to take, but they didn't tell you whether or not
7 they passed it?

8 MR. MCARTHUR: Well, it was quite a while
9 ago. The guy that was supposed to be here couldn't come,
10 so I've been brought in on this project the last minute.

11 MR. MORRIS: Would you recommend paying
12 higher fees and letting the State do it?

13 MR. MCARTHUR: Do the inspection?

14 MR. MORRIS: Yeah, let Big Brother handle
15 it?

16 THE REPORTER: Could you repeat that,
17 Mr. Morris.

18 MS. LORENZON: The reporter wants to --

19 MR. MORRIS: I said would you be in favor

20 of paying higher fees and letting the State do all the
21 inspection?

22 MR. MCARTHUR: Boy I -- I don't know. I'd
23 have to give that some thought.

24 MR. MORRIS: I wouldn't think you'd want
25 that.

1 MR. MCARTHUR: It doesn't sound -- I guess

2 it --

3 MS. LORENZON: Mr. Searle.

4 MR. SEARLE: Did you want to go first? You

5 were waiting.

6 MR. COVERDALE: I'll go. He said I could

7 go.

8 MS. LORENZON: That's fine, Mr. Coverdale.

9 You can sort that out.

10 MR. COVERDALE: When I go to convenience

11 stores to get gas and buy other snacks, the thing that

12 strikes me in the area I live in, Green River and

13 Rock Springs, there's always somebody running the store,

14 there's always a manager there, and it's a business

15 decision. And I think part of the problem we have here

16 is -- and I go back to Mr. Larson's comment that industry

17 asked for these, you know, regulations from EPA and I think

18 part of the motivation there is almost in every other state

19 the industry bears the liability for underground storage

20 units. So having regulations gives some level of
21 protection or shield, because they're complying with
22 regulations. And here you don't have that liability to
23 drive you to make the right business decision to have a --
24 have the right people trained onsite every day to monitor
25 the system. And when I look at the requirements of Class

1 B, I don't see anything that onerous that pops into my
2 head.

3 And, furthermore, when I look at this position
4 from the industry, that now we want to propose giving even
5 more responsibility to Class C operators, as in
6 Mr. Larson's letter, thoroughly understand delivery
7 systems, ability to recognize and differentiate between
8 alarms systems and understand the significance of each
9 alarm, the location and function of leak detention and
10 cathodics protection devices. I know some clerks, if I use
11 the words cathodics protection, I don't know what's going
12 to happen, their eyes are going to roll up in their
13 forehead and they're going to go to sleep.

14 CHAIRMAN BOAL: Reach under the counter and
15 sell you something.

16 MR. COVERDALE: Yeah, they'll sell me some
17 more gin. But they can't -- they don't --

18 CHAIRMAN BOAL: That's cathodic protection.

19 MR. COVERDALE: Yeah, I know.

20 MR. MCARTHUR: I would say that's

21 consistent at the manager level, as well.

22 CHAIRMAN BOAL: But there's all this --

23 this incongruity between the position around the training,

24 and I think the basic problem is that you have a business

25 decision, if and when these regulations get passed, because

1 if the liability was out there, you guys would be doing it.
2 You would have onsite store manager that makes sure they're
3 not creating liability for them, but it's okay in our
4 state, because you don't have that liability. So you don't
5 want to have to be responsible for training your people. I
6 guess I'm asking a rhetorical question.

7 MR. MCARTHUR: I would respectfully
8 disagree. I mean, we -- we're doing it every day. I mean,
9 in order for us to even keep the records that we're
10 required to keep, you know, we've got to monitor all those
11 systems every day. If there's a problem with one of those
12 systems, we've got to get the system fixed.

13 MR. COVERDALE: Then where is the onerous
14 part, then, to go and comply with these regs, if you're
15 doing it already?

16 MR. MCARTHUR: We are already doing it.
17 There's no need for us to move that further down into the
18 organization.

19 MR. COVERDALE: You know, I don't know. I

20 don't know. Okay. Enough.

21 MS. LORENZON: Mr. Searle, did you have any
22 questions or did you delegate?

23 MR. SEARLE: No, I'm just going to ask -- I
24 appreciate your comments, pardon me, but you've left me
25 confused. It may be just an age thing, I don't know.

1 Some of your comments I would have interpreted as
2 saying you're suggesting we don't need any regulation in
3 regard to licensing, is that correct? That you're doing it
4 now, there's no reason to have any sort of operator
5 license, A, B or C.

6 MR. MCARTHUR: I would say that I would --
7 I would say that it's not necessary for the Class B
8 operator to be responsible for three sites. I would say
9 that there shouldn't be a limit on number of sites that the
10 Class B operator's responsible for.

11 MR. SEARLE: So you're okay with having
12 Class B -- clerks, Class C operators trained to a certain
13 level.

14 MR. MCARTHUR: Uh-huh.

15 MR. SEARLE: And you're okay with having a
16 Class B operator that has an expanded scope of coverage.

17 MR. MCARTHUR: Right.

18 MR. SEARLE: Is that what you're agreeing
19 to?

20 MR. MCARTHUR: Uh-huh. That's basically
21 what we do today.

22 MR. SEARLE: Do you have a limit? Are you
23 suggesting a number or you suggesting it should be
24 unlimited?

25 MR. MCARTHUR: I would say it would be

1 unlimited. I mean, if the organization is, you know,
2 focused on compliance, they'll take those steps to make
3 sure that that Class B operator is in those key areas,
4 where there's a need.

5 MR. SEARLE: I just wanted to make sure we
6 weren't suggesting there were no need for operator class
7 regulations. Thanks.

8 MR. MCARTHUR: Uh-huh.

9 MS. LORENZON: Anything further from the
10 council members?

11 Okay. Thank you --

12 MR. MCARTHUR: Thank you.

13 MS. LORENZON: -- Mr. McArthur.

14 We're going to break in the sequence briefly, in
15 the sequence of public speakers, and ask Mr. Lucht to step
16 up to the microphone, and/or Mr. Feusner could join him if
17 he likes, to answer a few specific questions on operator
18 training and what's required.

19 And I will turn it over to Mr. Hedrick.

20 VICE-CHAIRMAN HEDRICK: Mr. Lucht, and we
21 started out talking a little bit about training and were
22 there disagreements, but -- and I'll just give my personal
23 opinion. I bought into the idea of Class B operator and
24 store manager, even if he had three stores underneath him,
25 they were synonymous, but what I'm starting to hear is, oh,

1 the training for the Class B operator is just absurd and we
2 can't have -- store managers just can't live up to that.
3 That's higher than what they need or should know, and we
4 got to have some supervisor now for all of our store
5 managers, even if we don't have him at our organization
6 now, that is just going to be this Class B operator guy.
7 Could you talk to us a little bit about the training
8 requirements particularly for Class B, and then there were
9 some comments that maybe even the Class C was too stringent
10 for what they needed to know.

11 MR. LUCHT: Okay. The ICC test setup, the
12 way it's structured right now, a Class B operator has the
13 choice of taking this test, which is a test over federal
14 EPA rules on storage tanks -- and this is the actual book.
15 It's an open-book test, by the way, we're talking about.
16 If you learned that much of this book, that's the federal
17 rules that we're talking about. This test is so difficult
18 to take, it took me 15 minutes to get a perfect score on
19 it. Now, before I ever started writing this stuff, that's

20 what we investigated.

21 This is the Class A book and Class B operator has

22 a choice of taking the Class A operator or the Class B

23 operator's test. This is the book that we produced with an

24 ad hoc committee, and this is a compilation of every rule,

25 every regulation that applies to a commercial gas station

1 in the entire -- in the entire state of Wyoming, so this
2 looks like a pretty thick book. It's got a copy of our
3 statute, a copy of the statute on fuel taxes. It has a
4 copy of the Chapter 4 regulations on reporting releases.
5 It has a copy of Chapter 17 on the storage tanks, and it
6 actually has a copy of the International Fire Code.

7 There's almost no questions on this test that
8 directly relate to the International Fire Code. There's
9 maybe one or two. There are a number of questions on the
10 test that relate to reporting releases. But to give you an
11 idea of how difficult this test is, I have two Kelly
12 Services temps. I did a training session in Cheyenne and I
13 made both of my temporaries go to this training session.
14 Those temps have never worked in a gas station in their
15 life. They have no idea if you walked into a gas station,
16 they wouldn't be able to recognize the leak detection
17 equipment that -- to save their life. One of them scans
18 our documents and one of them files our documents.

19 Having gone to one eight-hour training session,

20 one of the temps had some time on her hands and spent about
21 four hours studying. She passed the level A test with no
22 problem at all. The other guy didn't have time to study
23 and he failed it by one or two points, but this test is not
24 some onerous requirement that's impossible for a manager to
25 make.

1 I would say that if you have a manager on one of
2 these truck stops -- and by the way, a manager on truck
3 stops supervises upward of 200 employees in a lot of cases.
4 If that guy can't pass this test, I would have to say that
5 guy needs to be relieved of his position, because this
6 isn't that hard.

7 VICE-CHAIRMAN HEDRICK: Just to follow up.
8 You said there had been 400 people trained so far. Is that
9 Class C, Class B, Class A, or what's the breakdown and what
10 could you tell us about the pass rate?

11 MR. LUCHT: We never said 400 people had
12 taken the test. We provided seven training sessions as a
13 review for their -- for the people that would have to take
14 the test. From what I have been told, and I haven't been
15 able to get the exact numbers, but 30 to 40 percent of the
16 people that have taken the test are not passing it the
17 first try. That's true, and it's a test. If everybody
18 could take it and pass it the first time, it wouldn't be
19 much of a test.

20 VICE-CHAIRMAN HEDRICK: Which level would
21 that be?

22 MR. LUCHT: Mostly the people are choosing
23 to take the Wyoming state-specific test, which is actually
24 the level A. If they're willing to put a little bit of
25 time into trying and studying, I don't see any reason why

1 anybody can't pass this test.

2 Now, this looks like a pretty thick book, but you
3 have to realize that most of the questions on this state-
4 specific test are on less than 20 pages of this entire
5 manual.

6 MS. LORENZON: Questions from the Council
7 for Mr. Lucht?

8 Mr. Searle?

9 MR. SEARLE: Is the training that these
10 operators are getting, is it just regulatory training,
11 understanding the regulations, or is there actual
12 systems -- operational systems training?

13 MR. LUCHT: The whole crux of this training
14 is purely understanding the rules. It does not try to
15 teach the technicalities of how a cathodic protection
16 system works, it merely requires that they know what their
17 part of implementing that system is under the rules. It
18 doesn't try to -- they're not required to know how an
19 automatic tank gauge works. They're only required to know

20 what they have to do if they have an automatic tank gauge.

21 So it's not technical training we're talking about, it's

22 regulatory training.

23 MR. SEARLE: Thank you.

24 MS. LORENZON: Additional questions from

25 the Council?

1 MR. LUCHT: If any of the Council would
2 like, I have copies of these books, you can all have copies
3 if you want.

4 VICE-CHAIRMAN HEDRICK: Why don't you hand
5 me the Class B book, at the next break I'll see if I can
6 pass the Class B test.

7 MS. LORENZON: And we'll time him.

8 MR. LUCHT: There's a testing center here
9 in Casper.

10 VICE-CHAIRMAN HEDRICK: Do you have a set
11 of questions for the Class B?

12 MR. LUCHT: The way this is structured with
13 ICC, the ICC closely guards the questions. I do not have a
14 copy of them. I don't have direct access to any of them.
15 They go to great lengths to ensure that nobody can cheat on
16 the test.

17 VICE-CHAIRMAN HEDRICK: Okay. Well, that
18 makes it a little bit problematic, because we seem to be
19 coming down to an issue being is the testing fair and

20 reasonable for the -- I don't know if you'd call it the
21 store manager level, how would you suggest that this
22 Council make that determination? You know, we heard your
23 testimony, we've heard the testimony of the petroleum
24 marketing representatives, how can we evaluate that
25 independently?

1 MR. LUCHT: The ICC test, in structuring
2 the test itself, we had an ad hoc committee with 12 people
3 from the industry evaluate every question. That committee
4 got a chance to approve every question that's on there.
5 They were asked do you think this question is relevant to
6 this level? And if they said no, then the test question
7 didn't get accepted.

8 They also were the ones that structured the
9 weighting of the test. There are different categories and
10 information, and it was part of the process for the ad hoc
11 committee representing people that operate storage tanks to
12 say we think that there ought to be eight questions on this
13 test for leak detection, there ought to be this many
14 questions on this. If I had had my way, there would be
15 more questions on leak detection and less questions on the
16 contents of the corrective action account, for example, but
17 it's weighted the way it is because of the committee's
18 desire.

19 VICE-CHAIRMAN HEDRICK: Do you believe the

20 committee looked at the Class B operator as being the store
21 manager in the context that we've been discussing it here
22 today?

23 MR. LUCHT: I am not sure that I have any
24 way of answering the question of what all the members of
25 the committee thought at the time. They -- there were

1 members on this committee that work for county governments
2 and city governments, there were members on the committee
3 that operated chain stores with 10 or 12 stations. There
4 was just a lot of mixture, and I -- I can't really venture
5 to guess what each one of them thought we were doing, to
6 tell you the truth.

7 Mike Bailey here was on the --

8 VICE-CHAIRMAN HEDRICK: I'm amazed, that's
9 all I can say.

10 MR. LUCHT: Well --

11 VICE-CHAIRMAN HEDRICK: How can you talk
12 about it without having some understanding as to what level
13 each of these were? I'm amazed that industry participated
14 without a full understanding of what they were
15 participating in.

16 MR. LUCHT: Well, I presented it to them
17 that we were talking about a Class B operator being a store
18 manager. That was the way it was always presented to the
19 committee. Whether or not that was their understanding how

20 that was going to work out is another thing.

21 VICE-CHAIRMAN HEDRICK: Okay. That's fair

22 enough. Thank you.

23 MS. LORENZON: Has that generated any more

24 questions from the Council?

25 Thank you, Mr. Lucht.

1 That will move to the next public speaker, Steve

2 Perkins.

3 If you'd state your full name and affiliation,

4 please.

5 MR. PERKINS: Good morning, Chairman,

6 Council. I'm Steve Perkins. I'm with Perkins Oil Company

7 in Rawlins, Wyoming. I'm what you might call a small

8 operator. I have four convenience stores, sites, that I

9 operate directly. From a standpoint of a who's the

10 manager, I would say I'm the manager. I would be the Class

11 B person, also the owner/operator, I would be the Class A

12 person.

13 From where I've kind of looked at this, my store

14 managers have -- they work their own shift. They work by

15 themselves at each store. I get to their store twice a

16 week, usually three times, stop in, gather the paperwork.

17 One of my employees would -- or one of my employees will

18 gather pertinent daily paperwork. It comes to our central

19 office for processing, for -- to need -- to have a B

20 operator have an oversight over three locations, somewhere

21 I'm going to have to come up with another B person for that

22 other location. I would be the one that would apply for

23 the variance or waiver to get an additional site for a B

24 operator to cover.

25 I guess from -- and I've been in this industry

1 for quite a while. I do have to say that Wyoming has the
2 best underground storage tank program in the country. I
3 want to thank Wyoming for that. Operator training, we've
4 got to work on that a little bit.

5 Thank you.

6 VICE-CHAIRMAN HEDRICK: Do you check your
7 underground storage tank system operation every visit you
8 make to the store?

9 MR. PERKINS: I do not, for the sole reason
10 I have the honor of having several types of tank monitoring
11 systems and several different types of cathodic protection
12 systems.

13 One, as we put the daily paper -- we put the
14 daily over in shorthand every day, monitor the daily over
15 and short, that is the sole leak detection. There is no
16 tank monitor at this site. It just has a stick. You
17 remember, take the stick, take the readings to the nearest
18 eighth inch, record it daily, record the sales from the
19 master meter, make it all work, over and short, balance it

20 out.

21 From a technical standpoint that's probably the
22 simplest and most accurate way. A lot of people might
23 disagree with me. Bob won't.

24 MS. LORENZON: Any other questions from the
25 Council?

1 CHAIRMAN BOAL: Thank you for coming up
2 here today, Mr. Perkins.

3 MR. PERKINS: Thank you.

4 MS. LORENZON: The next speaker is
5 Mike Bailey.

6 State your name and affiliation. Thank you.

7 MR. BAILEY: Good morning, Council. My
8 name is Mike Bailey. Me and my brother operate five
9 convenience stores in the Fremont County area; Riverton,
10 Lander, Dubois. I have 34 individual tanks under my
11 supervision, okay, at seven different locations.

12 We have a bulk plant that's separate from our
13 retail locations. All those systems are dual-walled tanks
14 with dual-walled lines with interstitial monitoring and
15 automatic tank monitoring systems. We have all those
16 systems hooked to an alarm system to where any alarm goes
17 off on these systems I am notified by my alarm company
18 there's a problem.

19 We -- as an organization, I don't have my store

20 managers, the person that's in the store every day,
21 managing the general affair of the stores, ordering
22 product, directing other employees, that kind of stuff, I
23 really don't have them deal with the intricacies of the
24 overall tank system, you know, those kind of things.
25 We do train them on when the alarm system goes

1 off, to notify us and, okay, this alarm means this and that
2 alarm means that, and we have those systems set up to where
3 if there is an interstitial alarm it shuts the system down
4 completely. Okay. So if there's a leak in one of my lines
5 and it goes into the sump and trips the sensor, it turns
6 off the pumps. I mean, so there's nothing for the store
7 manager to do technically, other than to call me and say my
8 pumps don't work anymore, I'll go find out what's wrong.

9 And I think in this process we've sort of got
10 stuck on whether we want 12 or 6 or 3 or 1 in every store.
11 I think the Council needs to maybe look at more of a goal-
12 based system to where you say I want that system checked
13 manually once a week or twice a month or once a month,
14 whatever you decide is an appropriate item for this Class B
15 operator to do, and then in my unique circumstances might
16 be different from somebody -- I know one of the other guys
17 here has stores in Cheyenne and Gillette. Well, for him to
18 be able to -- one person to monitor might not be effective.
19 For me, mine are all fairly close and I can monitor those

20 very effectively. So instead of picking a number and
21 saying, you know, three is the magic number, six is the
22 magic number, I think we need to be more goal based.

23 You know, I've been involved in this process
24 since 1988, when the first EPA regulations came out and
25 they said, okay, we're going to have tank leak protection,

1 here's your three choices, and you have to do X, Y, Z to
2 accomplish that. I think that's maybe more of an approach
3 that we need to look at is make sure we're monitoring these
4 tank systems more often.

5 You know, the red list you have up there I think
6 does come from the onsite people, whether it's a C-store
7 clerk or the manager, not knowing that they need to notify
8 somebody when that thing starts beeping, or, you know, that
9 kind of stuff. So I think we all agree that we need Class
10 C operators to be more trained, the person that's onsite
11 every day, whether it's the two-day-old convenience cashier
12 that doesn't know anything, the first thing we need to
13 train them is here's the tank monitoring system, when it
14 starts going off, here's what you need to do. And that's
15 probably the extent of what they need to know about
16 underground tanks. They don't need to know the intricacies
17 of cathodic protection and what a pressurized line is
18 opposed to a suction line, all terms in this book.

19 And I've been involved with this a long time.

20 That's 20, 30 years. And I can probably go pass the test,
21 but I have serious doubt that a convenience store manager
22 that just deals with their everyday, you know, making sure
23 we got gas in the tank, the tank alarm isn't going off, I
24 don't think they need to go to that extent. I think you
25 could have a Class B operator that oversees multiple -- or

1 more of an environmental manager, if you want to call it
2 that, oversees those tank systems, and for me that would be
3 maybe one person could adequately do it. For the person
4 spread out across the state, he probably needs more than
5 that so they can be onsite once a week, twice a week, that
6 kind of stuff.

7 So I think if we set up a set of specific
8 guidelines of what needs to be done on each site on a
9 specific basis, how I accomplish it shouldn't matter. It
10 goes back to as long as I pay my sales tax, it doesn't
11 matter whether I have three girls doing it in the office or
12 each store manager does it, as long as it gets to the
13 State, it gets done, that's, I think, what we're trying to
14 accomplish.

15 We want to make sure those tank systems are
16 monitored and that they aren't leaking and that if there is
17 a leak, we catch it and we catch it right away so it can be
18 stopped. And, I mean, that's all of our goal. It's our
19 money that's getting run down the drain into our system.

20 And, yes, we have wonderful underground storage
21 tank program that cleans up the mess, and we are all very,
22 very appreciative, I'll guarantee you every one of us, and
23 we don't want that fuel going into the water system. We're
24 the ones living there drinking it, just like all the rest
25 of you are.

1 So I think we're all here for the same goal. I
2 think we just need to come up with a set of specifications
3 that we all need to meet, and we will meet them. We have
4 in the past. We just need defined goals, not -- if you
5 have a Class B operator and they don't have a defined set
6 of things they're supposed to do, what's the point? They
7 just take a test and got a nice little plaque to put on the
8 wall.

9 VICE-CHAIRMAN HEDRICK: You raise a good
10 paint, do you have a specific goal-based proposal that this
11 council should consider in lieu of the type of regulations
12 that we've been talking about today?

13 MR. BAILEY: I think if we had a Class B
14 operator that oversee those locations, set up a set -- we
15 can work with Bob and come up with what those -- right now
16 we do monthly inspections anyway. We have to go physically
17 check every one of my sump sensors, manually stick the
18 tanks for water and inspect all the hoses and nozzles, all
19 the systems to make sure they're adequately operating.

20 Don't change that to twice a month or once a
21 week. I mean, we're all there doing that, like Steve said,
22 multiple times a week anyway. Whether I do that with just
23 me or whether I do it with three other people, so long as
24 it gets done, that's the key thing.

25 And I wouldn't have a problem having a couple of

1 Class B operators in my organization so that if I'm gone,
2 somebody else can take over for, you know -- but to say has
3 to be the store manager, it gets beyond -- I've got store
4 managers that would have a very difficult time passing that
5 test. I was involved in generating it. We brought those
6 comments up to Bob at the time, that, you know, maybe we
7 ought to wait until we have regulations so we know what
8 test we're designing for what section of the rules. I can
9 pass it, because I've been involved with it for 30 years.
10 You know, most of the guys in this room could probably pass
11 it because they're involved in those systems.

12 VICE-CHAIRMAN HEDRICK: Come back. I want
13 to hone in on what you've been talking about.

14 MR. BAILEY: Yes.

15 VICE-CHAIRMAN HEDRICK: In your view, what
16 inspection frequency, by -- and I'm not sure if it's the
17 Class A or the Class B or highly trained person, what
18 frequency of inspection would compensate and provide an
19 equal or greater level of operational integrity and

20 security than the current proposal? What would you trade

21 off on inspection frequency? Give me --

22 MR. BAILEY: I would not have any problem

23 with a weekly inspection.

24 VICE-CHAIRMAN HEDRICK: By someone

25 trained --

1 MR. BAILEY: By a Class B person now.

2 VICE-CHAIRMAN HEDRICK: As opposed to the
3 annual requirement -- in addition or as opposed to the
4 annual requirement.

5 MR. BAILEY: Right. Currently we have an
6 annual requirement to physically test all the systems, so I
7 have take all my sensors, make sure they function and all
8 that kind of stuff. Then we do more of a minor inspection
9 on a monthly basis, where we go and physically check each
10 sump and that kind of stuff to make sure there's no leaking
11 product and that kind of stuff, so --

12 VICE-CHAIRMAN HEDRICK: Then the trade-off
13 would be the span of control that we've been talking about
14 would be 12 or greater, but the frequency would be weekly?

15 MR. BAILEY: I think you could make
16 us prove that we were there once a week verifying those
17 systems are working adequately and it doesn't really
18 matter how many locations you're overseeing. You just
19 determine --

20 VICE-CHAIRMAN HEDRICK: True. You make a
21 good point. That's the point.

22 MR. BAILEY: My point is set up
23 specifications that we need to meet and we will meet them,
24 whether it takes us six people because we're very
25 geographically separated, or you take Steve, he's got four

1 locations in Rawlins, he can easily goes to them once a day
2 if he wanted. So I think we've got to keep it flexible
3 enough that we can accommodate all the specific
4 geographical things we have in Wyoming, and, you know, a
5 company in Casper might have multiple locations -- you
6 know, they could have 10 or 12 locations in Casper and
7 easily be able to go visit those once a week and adequately
8 make sure everything's working properly.

9 MR. MORRIS: Do you have any suggestion for
10 the specification?

11 MR. BAILEY: I think it would be similar to
12 what we do now as a monthly inspection, you know, where you
13 visually verify that all the piping is not leaking, the
14 sumps don't have fluid in them, hoses, nozzles, just,
15 again, overseeing, making sure the system is working
16 appropriately.

17 And then we still do our annual big test, where
18 we basically set off all the alarms in the system and make
19 sure that they operate and turn the system off and all that

20 kind of stuff.

21 MS. LORENZON: Thank you, Mr. Bailey.

22 Any questions from the Council?

23 MR. BAILEY: Thank you very much.

24 MS. LORENZON: Thank you.

25 Next speaker, Greg O'Donnell.

1 Greg, give us your name and affiliation, please.

2 MR. O'DONNELL: I work for Gasomat Oil
3 Corp. My name is Greg O'Donnell. My position is
4 environmental supervisor. I thank the Council for the
5 opportunity to speak.

6 Gasomat Oil Corp operates eight stations in
7 Wyoming.

8 THE REPORTER. Can you speak into the
9 microphone directly. Eight stations?

10 MR. O'DONNELL: Eight stations in all. We
11 operate 21 stations in three states, but eight in Wyoming.

12 Our Wyoming stations are primarily located along
13 the I-80 corridor, so we have a big geography to deal with
14 from Evanston to Torrington. We've operated stations since
15 1984. And we're proud of our environmental record. I
16 think we work closely with DEQ and have a pretty strong
17 record, so I understand there are significant problems
18 throughout the program, but I think we fall in this big
19 range company with a good track record.

20 We are members of the Colorado and Wyoming
21 Petroleum Marketers Association, and we have attended DEQ
22 training sessions in Cheyenne and we brought six people
23 with us. And as far as the training and -- I'd like to
24 comment that there was some example tests -- we have not
25 taken the test, but the example test we took, feedback from

1 six people that attended the training session viewed the
2 test as difficult. And at the time they took the practice
3 test, they felt that they would not pass.

4 CHAIRMAN BOAL: Mr. O'Donnell, do you have
5 a sample test with you?

6 MR. O'DONNELL: No, sir. We are not
7 allowed to leave the training session with the test.

8 CHAIRMAN BOAL: I was going to have
9 Mr. Hedrick take this test.

10 MR. O'DONNELL: I'm not sure we don't have
11 one in the room, though.

12 CHAIRMAN BOAL: It would be interesting,
13 just from a perverted sense of view, to have Mr. Hedrick
14 take --

15 VICE-CHAIRMAN HEDRICK: I'm perverted. I'm
16 willing to try.

17 MR. O'DONNELL: I'm from an environmental
18 background. I worked for two environmental companies
19 before working for the oil company. I think it's a pretty

20 serious test. It's not a gimme. I'm not surprised 30 to
21 40 percent of the test participants have failed. It's not
22 an easy test. It's actually a good test, but it's not an
23 easy gimme test.

24 You've asked to be very specific in my comments,
25 and I'm going to direct specifically to Bob's letter dated

1 April 17th with the revisions of Part L, and we would be
2 satisfied if we could change the three-facility limit on
3 Item B, page 13, to six, is what we wanted to present
4 today. And I think that was the majority of the written
5 correspondence that was included from Petroleum Marketers
6 so we would like to see six specifically in item B for
7 Class B operators.

8 VICE-CHAIRMAN HEDRICK: How do you feel
9 about the previous discussion regarding in exchange for
10 that having more frequent inspections?

11 MR. O'DONNELL: We see that as workable,
12 sir. I think it's worth commenting that we viewed the
13 Class B operators as a combination between supervisors and
14 store managers. We were going to -- in certain instances
15 we felt like we had managers that were probably going to
16 have great difficulty passing the test and going to kind of
17 cover that range with our supervisors and that's why we
18 wanted the additional number of facilities that they -- or
19 increased to six.

20 So if your goal is to have the actual -- in our
21 setup, I guess, since I'm the mid-range company, speaking
22 at the moment, I could define how we structure our company,
23 if that's necessary or helpful to the group.

24 VICE-CHAIRMAN HEDRICK: I think what would
25 be helpful is, to me, would be your opinion of whether --

1 let's just talk about your proposed span of six and weekly
2 inspections, whether -- when you stand back and you look at
3 ensuring the integrity of underground storage tanks, do you
4 think that would be superior, equal to or slightly inferior
5 to the Department of Environmental Quality's proposal.

6 MR. O'DONNELL: It could be increasing from
7 the current regulations. I believe currently we do it
8 monthly.

9 VICE-CHAIRMAN HEDRICK: But against the
10 plan.

11 MR. O'DONNELL: The proposed plan.

12 VICE-CHAIRMAN HEDRICK: Okay. So I guess
13 what you're saying, that would be increased.

14 MR. O'DONNELL: Increase.

15 VICE-CHAIRMAN HEDRICK: Fair enough.

16 MR. O'DONNELL: Yes, sir. That's my
17 comments.

18 MS. LORENZON: Let's see if we have
19 questions. Any questions from the council members?

20 Mr. Boal?

21 CHAIRMAN BOAL: Thank you for coming,

22 Mr. O'Donnell.

23 MS. LORENZON: Thank you.

24 Next speaker, Joey is it Capp or Cupp?

25 MR. CUPP: Cupp.

1 THE REPORTER: Can you spell that, please?

2 MR. CUPP: C-U-P-P, Joey Cupp. I thank you
3 guys for allowing us to come speak to you.

4 MS. LORENZON: Would you state who you work
5 for?

6 MR. CUPP: I'm the environmental manager
7 for Pilot Travel Centers. Pilot currently operates three
8 travel center truck stop facilities in Wyoming. I'll be
9 brief. I think I've taken down some notes just to kind of
10 address a couple of the -- I think kind of tie in some of
11 what we're discussing as our counterproposal to -- that
12 Mr. Larson put together with Mr. Lucht's proposal. And I
13 think we've kind of gotten off track with the testing and
14 everything. I don't think we've been really opposed to any
15 of the testing. And I think that's -- I attended, along
16 with two other folks, attended the Evanston, Wyoming -- the
17 training session that Mr. Lucht -- he put on back in April.
18 And it was very informative and I think it's definitely
19 worthwhile.

20 CHAIRMAN BOAL: Mr. Cupp, have you taken

21 the sample test?

22 MR. CUPP: I have taken the sample test,

23 yes.

24 CHAIRMAN BOAL: And how did you do?

25 MR. CUPP: I did well, but -- I did well,

1 but I also -- if you put me as a general manager in one of
2 our stores, I would probably be gone in a week and a half.
3 I'll just be honest with you. Some people have different
4 strengths and weaknesses, I would not do well at that -- I
5 could not manage 200 people. I could not manage -- I could
6 not manage trying to stop someone walking out of a facility
7 with a Twinkie. I could -- I can't -- it takes a different
8 person, and I really appreciate Mr. Hedrick's opinion that
9 we could have an expert that is an expert from the UST
10 facility and the fuel operating facility all the way over
11 to the OSHA regulations of hiring and firing and
12 immigration reform, and it's a broad range of what a GM, a
13 general manager, of one of our stores or one of any -- not
14 just our stores, convenience stores. And I commend anyone
15 that can do that. And what I'd like to do is just try to
16 bridge the gap a little bit and kind of give you a --
17 address just a couple of issues that have been brought up.
18 Mr. Searle brought up earlier that to -- the
19 first speaker, is he wanting to not see any additional

20 requirements. I don't think -- I think the fact that we've
21 offered up an additional -- an ultimate proposal, we are --
22 we're fine with additional regulations and we think they
23 are necessary. And we've seen it work for Pilot across the
24 country, this preventative -- the preventative maintenance
25 and the detecting of releases as early as possible, it

1 decreases costs in states for Wyoming that pays for
2 everything, all the cleanup, and states like Georgia, which
3 pays for none of the cleanup.

4 We have releases in states that have a trust
5 fund and don't have a trust fund, so we try to treat
6 everything -- we don't just leak in states with trust
7 funds, okay? So we -- but what I'd like to do is say that
8 our proposal, I think get back to a Class B operator, being
9 able to be an expert in the UST facilities of approximately
10 let's say 12, is what we've offered up, is 12 facilities,
11 he is an expert. That is his job to make sure that he is
12 underground storage tank operational expert on those 12
13 facilities. He visits them once a month, opens everything
14 up. And also not only that, we have a specified -- I think
15 we all kind of think when an inspection's going to be.
16 That's something that definitely can be worked out. I
17 mean, what do we accomplish in that once a month
18 inspection.

19 We talked about California, they do go into a

20 little more detail with the paperwork; however, you know,
21 it's -- it still only takes about half a day. I mean, it
22 is -- you know, it's pretty intense because takes about
23 three to four hours. And that would increase our level of
24 preventative -- preventing releases, I believe, from what
25 we have now. And I don't know that -- I guess we were not

1 sitting here saying that just because we don't want to go
2 to a twice-a-week inspection, that we're trying to keep
3 from preventing and detecting releases early. If we go to
4 a twice-a-week inspection, if it's an inspection that is
5 very limited and becomes just, you know, I did my
6 inspection today, that doesn't do us any good whatsoever.
7 I would rather it be monthly and actually be, okay, we
8 opened up the dispensers, we looked under there, is there
9 any fuel under there, do we see a leak, do we open up the
10 motor sumps, do we see a leak in the motor sumps, are we
11 noticing, you know, any unusual operating condition on a
12 monthly basis, not just, ya, checked it off, and, you know,
13 I've done my duty twice a week, because the more you do
14 that, the less likely -- the more routine it becomes and
15 less likely it's going to be helpful.

16 To Mr. Moore's comment, one of my -- I think
17 what you were mentioning earlier was the fact that the
18 folks at the store level have a lot -- you know, they have
19 a lot to do, and you were trying to make the correlation

20 between additional training for the levels -- the Class C
21 operator. Well, that person -- I mean, we're also -- we're
22 asking them, as a level B, to be the person. You're
23 talking about if they're going to be the person -- if I'm
24 holding my general manager as my -- if I'm an environmental
25 manager for a company that's just as Mr. Perkins is for his

1 oil company, if I'm the person that's holding that manager
2 responsible for that, he's going to be spending quite a bit
3 of time dealing with the underground storage tank
4 operational system at that facility.

5 And then the operations folks that everybody has,
6 we have to continue to sell fuel, we have to sell inside,
7 we have to do all the other stuff that we have to do, that
8 person's going to be torn. I'll just tell you right now.
9 We can't get it every day. We're constantly getting
10 operations telling us the managers need to take less of a
11 role, you need to provide us some sort of, you know, either
12 remote monitoring, you have to do something to take this
13 out, because these guys, like he said, they're 5:00 to
14 3:00, or, you know, our managers sometimes work 60, 70, 80
15 hours a week, whatever they work. It's a lot.

16 And the only reason they're there is they have to
17 be there and to make sure things are run smoothly. If
18 we're asking them to take on additional burden to be the
19 Class B operator, which is extremely important position, I

20 think it's asking a little bit more than what that person
21 probably signed on for with that position. And what I'm
22 kind of backing up and proposing is that not only -- it
23 fits with the model we proposed, but also fits with the
24 model that we have implemented across the country, knowing
25 that these different states are applying and implementing

1 these EPA guidance in different ways.

2 Everybody's doing -- this is not -- this is not
3 the only meeting like this that's going on. It's going on
4 everywhere. Everyone's trying to figure out how do we fit
5 into this role.

6 Okay. We don't want undue burden on the owner/
7 operator, and then we also don't want -- you know, we don't
8 want this golden opportunity to prevent and detect releases
9 earlier to go unchanged. Okay? So we want that to happen,
10 so we have to kind of meet in the middle. The 12
11 facilities that's kind of what we have is a 10 to 15
12 facility, based on distance, something that allows that
13 person to actually visit that store once a month.

14 VICE-CHAIRMAN HEDRICK: Can I maybe jump
15 in? Pilot, large company, big facilities, lots of fuel
16 going through, complex operation, guy runs one of those,
17 it's a big job.

18 MR. CUPP: We can have that facility.

19 VICE-CHAIRMAN HEDRICK: Take your point.

20 What I heard you say was, given your perspective
21 as an environmental professional, and your knowledge of the
22 Class B requirements that even for Pilot, the large truck
23 stops, the manager there is probably at a higher caliber
24 than for the convenience store by far, just supervise more
25 people --

1 MR. CUPP: Little bit more, yeah.

2 VICE-CHAIRMAN HEDRICK: -- more scope, just
3 all sorts of reasons. Even then the Class B requirement is
4 onerous, for that individual, and probably above what he
5 needs to know. Did I understand you correctly?

6 MR. CUPP: I think you did.

7 VICE-CHAIRMAN HEDRICK: Okay. Now, help me
8 understand -- as far as I know, Pilot's record's pretty
9 good. How do you ensure compliance and integrity? What is
10 your inspection schedule? What's the qualifications of the
11 type of person that does those and what's the frequency,
12 sort of relative to these Class -- can you explain that,
13 how you do it?

14 MR. CUPP: That person -- Mr. Lucht
15 explained that -- after our meeting we had a compliance
16 inspection at our Evanston facility after that, the
17 Evanston training class. And, you know, during that class
18 we talked a little bit about that. We have 23 individuals
19 across the country that handle 10 to 15 stores. That is

20 their sole responsibility, is to provide -- to provide

21 compliance inspections and actually physically visit and

22 open up and look and kind of get their hands dirty and look

23 at the facility on a monthly basis. Those are --

24 VICE-CHAIRMAN HEDRICK: And your frequency

25 is monthly.

1 MR. CUPP: Monthly, that's correct. And
2 that's the way -- we kind of developed our system based on
3 not knowing exactly how all the states are going to land on
4 the frequencies and of what -- for a Class B operator, but
5 I would -- you know, I definitely took the class, training
6 class that I was going to be -- I'm going to try to pass
7 the Class A operator, which is the same test for Class B
8 and Class A. So I can take that -- and I also had another
9 environmental project manager which reports to me out of
10 Austin, Texas, he came and actually sat in. I had him take
11 it.

12 And we also had our regional maintenance
13 technician, who is the person who would be responsible for
14 visiting those -- our three facilities on a monthly basis
15 and he would be responsible -- he would also take the test.
16 He would be designated as our B guy.

17 And that's exactly what -- but from the other
18 standpoint is that's just an inspection standpoint. Just
19 like several of the other folks have mentioned, the

20 paperwork, the statistical inventory reconciliation, the
21 line test, the leak detector tests, keeping up with all the
22 paperwork and documentation as required to stay compliant
23 and the monitoring system certifications in the state of
24 Wyoming, that is something that the general manager, we try
25 to do that -- as much of that as remotely as possible. We

1 don't allow -- I don't put that on him to remember that,
2 hey, you got a line test that's due on June 15th. We take
3 that and we have folks that work under me that actually --
4 they schedule those line tests and make sure they're done
5 by a licensed professional, they get those things done and
6 the paperwork issued, is then sent to the store and
7 available at the store on a monthly basis.

8 VICE-CHAIRMAN HEDRICK: We saw the long
9 list, not great for Wyoming.

10 MR. CUPP: No.

11 VICE-CHAIRMAN HEDRICK: None of us like it.

12 MR. CUPP: Absolutely not.

13 VICE-CHAIRMAN HEDRICK: You've got an
14 alternative and available process management system for
15 this area. What are the results of Pilot when you look
16 nationwide in terms of your violations and what can you
17 tell us about how successful that is?

18 MR. CUPP: It's extremely successful. I
19 can tell you right now what happened when we implemented

20 this regional maintenance program in April of last year, I
21 can tell you right now our spend increased the first nine
22 months dramatically, because you know why? We were looking
23 at every single dispenser, underneath every single monitor
24 sump on a monthly basis. We -- other states we're not
25 requiring that monthly looking in there. It was basically

1 whenever a compliance inspection would happen, or if you
2 had a problem, or if you had a situation that would occur
3 that would alert you to a real problem, but there are small
4 leaks and there are small problems that turn into big
5 problems that happen on these facilities, but that's why I
6 want to try to back away from just having something that's
7 just a checklist twice a week to where we find something
8 that will actually work, that is helpful in presenting and
9 detecting releases on a monthly basis.

10 And to me, we just -- we went with monthly
11 because that was something that we decided we could have
12 gone -- we could have gone with 12 guys and they could
13 travel around and visit stores every two months.
14 We decided we thought that was too much. We thought
15 monthly basis so it never goes more than 30 days that you
16 haven't looked in there, so if you have a small problem,
17 you know, 29 days is about as long as it's going to go
18 before you detect it and make -- do the repair on it.

19 VICE-CHAIRMAN HEDRICK: How long of a track

20 record do you have with this management system?

21 MR. CUPP: It's actually just a little over

22 13 months now, April of last year. And like I said,

23 initially it was enormous and it was one of those things

24 where everybody's looking at me and was like why you

25 spending so much money? And we did, we spent a ton of

1 money on drips, leaks and potential problems that we were
2 catching early, we're spending smaller amount of money on
3 all those systems to shut down any problems that could
4 not -- then we would not allow them to turn into big
5 problems.

6 But we're hoping that over time in states, not
7 like Wyoming, but this can also help Wyoming, as you do
8 spend all your -- you spend the money to clean it up, you
9 know, there's about a third of the states that do that,
10 that still have programs that have either very small
11 deductibles such as 2500 or \$5,000 deductible and they
12 cover the next \$995,000 of cleanup that don't have anywhere
13 near the twice-a-week inspection requirements.

14 You know what I mean? It's not -- they are --
15 like South Carolina, for example, it's a \$20,000
16 deductible. Once you pay the \$20,000 they pay the next
17 980,000. Well, they require the Class B operator once a
18 quarter. You know, that's what they came up with. And
19 it's -- you guys -- are in a position to where you're one

20 of the probably 25 -- well, 18 to 20 states that have a
21 good, you know, solid trust fund and it's good to do
22 business. It helps the owner/operator. I won't lie to
23 you, it's expensive in other states.

24 VICE-CHAIRMAN HEDRICK: What in terms of
25 training, then, am I understanding you correctly, even for

1 your managers at your service centers --

2 MR. CUPP: Yes.

3 VICE-CHAIRMAN HEDRICK: -- you would be

4 thinking the training would be similar to the Class C

5 requirement.

6 MR. CUPP: It would. And what I would like

7 to do, kind of what I wanted to make point, Class A and B

8 operator training and the -- we've gone through the

9 sessions, we've taken the practice test, are very broad,

10 and they have to be, because you could -- I could be a

11 Class A operator and I could have, like we talked about

12 earlier, site here that has cathodic protection, a site

13 here that has a single-wall tank, a site here that's

14 sensors, one here that's SIR. You have to kind of be a

15 jack of all trades, have to be an expert in all those

16 different things in order to pass that test, because you're

17 certifying that I could do that, I can be a Class B

18 operator.

19 What I would propose is that the Class C operator

20 would be -- we would actually work with Mr. Lucht to
21 develop more site-specific training that we would have a
22 collect list, if you have -- if you have this, this, and
23 this at your site, here's the training that your folks at
24 the facility need to go through. And I say all folks.
25 We talked about California. You know, nobody

1 likes to talk about California very much, I understand
2 that. We don't like to deal with them either, but what
3 they do is every year there's an annual, for somebody can
4 even work, within 30 days, before they can actually be a
5 certified facility employee, they have to take this
6 training. The training is specific. We walk them through
7 where are their tank pits, be where's the emergency stops,
8 what are these called, under dispenser containers, we take
9 them through that.

10 And I would contend we would give the general
11 manager and the facility employees a more site-specific
12 training that if something happened on their facility, they
13 would know what was going on, rather than teaching them
14 about how to, you know, detect a problem with an
15 aboveground storage tank. We're like we don't have
16 aboveground storage tanks. Well, you would tailor that to
17 their specific site, to where you would get, Mr. Hedrick,
18 you'd get your increased training, which you think is
19 required, but then we would also have an expert that would

20 be required to be the responsible individual, that then you
21 could -- you know, if you still are holding Pilot Travel,
22 Perkins Oil, Flying J, anybody else, you're holding them
23 responsible, that Class B operator is the responsible
24 individual for that facility and he's visiting it once a
25 month.

1 VICE-CHAIRMAN HEDRICK: Thank you.

2 MS. LORENZON: Let me see if we have
3 Council questions. Hold on.

4 Mr. Searle.

5 MR. SEARLE: Mr. Cupp, appreciate your
6 comments, appreciate -- sounds like you have a good system
7 in place.

8 When you're talking about current requirements in
9 Class B doing inspections twice a week, when they define
10 that, it says they need to visit the site twice a week. It
11 didn't necessarily say they need to do anything.

12 MR. CUPP: I think that comes back to my
13 point, if you just have them drive by the site -- I can
14 drive by and go, yep, the Pilot sign's still there, looks
15 great. Does that help detect a release or help prevent any
16 problem, potential problem? It doesn't. That goes back to
17 I'm just going to have a guy that's going to be driving
18 around, you know, that doesn't -- that's a waste of --
19 that's a waste of my time and of our energy and we don't

20 need that, and I don't think that's what the -- I don't
21 think that's what Mr. Lucht is implying. You know, I think
22 that's something that that twice-a-week inspection, I
23 believe that it was supposed to be a little more in-depth
24 than just, hey, I'm going to be there twice a week.

25 MR. SEARLE: The other question I have for

1 you, the only inspection that appeared showed up was the
2 annual inspection.

3 MR. CUPP: Right.

4 MR. SEARLE: There's a number of criteria
5 there that are laid out. Are you suggesting you would do
6 all those criteria on a monthly basis?

7 MR. CUPP: No, I would not. I would
8 suggest that we come up with a minimum, which is kind of
9 what we've done. We require our guys -- I mean, this is
10 something we can all work on. I'm not sitting here saying
11 we have the best -- you know, the best procedure, but what
12 we do, just require them to actually physically open each
13 dispenser and physically open the doors and the lids on
14 each of the motor sumps, the stuff you can't see.

15 If you -- if we have a release from a nozzle,
16 everybody knows it. Somebody's running inside, you got a
17 problem, you've got this. If we've got alarms that are
18 happening, people know that. We could have a small leak
19 that could eventually fill up a secondary containment,

20 overflow over time if we don't check that on a periodic
21 basis. And that's the kind of thing we try to catch, with
22 \$4 a gallon gasoline. We want to catch it. We don't want
23 to lose 10 gallons a month.

24 We may still be in our statistical inventory
25 reconciliation and be fine at 500 to a thousand gallons,

1 but we don't want to lose 500 to a thousand gallons.
2 That's \$4,000 that -- we can't do that. The margins just
3 aren't there. From a business standpoint and from a
4 cleanup standpoint we want to find it. If we're losing it,
5 it's not going to the customer, we're going to find it.

6 MR. SEARLE: Are we suggesting, then,
7 certainly looking at some of these on the red sheet, a
8 number of these, like failure to report a suspected
9 release, are we suggesting once a month is enough time to
10 look at that and actually make a report on the suspected
11 release?

12 MR. CUPP: Failure to report a suspected
13 release -- as soon as you become aware of a suspected
14 release or an unusual operational procedure or operation at
15 your facility, you're required to report a suspected
16 release. This doesn't have -- it's not just during an
17 inspection. That's required any time. If your inventory
18 control comes back and it's out of tolerance or if your
19 sensors -- sensors go off, like Mr. O'Donnell talked

20 about -- or Mr. Bailey talked about, if our sensor goes off
21 and there's fuel in that secondary containment that caused
22 that sensor to go off, that's an unusual operating
23 condition. You've got secondary release. It may not be a
24 release to the environment, but it is a suspected release
25 and that's required to be reported.

1 So those kind of things will continue to happen,
2 but the inspections that when we're talking about
3 inspection, would be internal Class B operator inspection
4 would be more we're actually physically looking for those
5 types of things on a monthly basis, rather than just
6 waiting until the annual inspection to have Mr. Lucht or
7 one of the state employees come out and actually go through
8 every single thing like we normally do during one of those
9 inspections.

10 MR. SEARLE: As we sit here today, do you
11 feel like you have a system in place where the nonClass B,
12 I guess we'll call them Class C people, people actually out
13 there working?

14 MR. CUPP: Right.

15 MR. SEARLE: Do you have standard operating
16 procedures in place they would know how to notify at least
17 internally --

18 MR. CUPP: Absolutely.

19 MR. SEARLE: -- and if needed externally?

20 MR. CUPP: Absolutely. That's one of the
21 things I know several of us have talked about. Our folks,
22 what we train them to do is kind of an if-then statement,
23 and we put procedures up on the wall saying, okay, if this
24 happens, call -- you know, if we see aboveground release
25 and it -- you know, if it goes near a storm drain, if goes

1 into storm drain, you have to report that immediately, call
2 911, call me, call our -- you know, we have numbers that
3 are designated 24-hour-a-day numbers, that you have to call
4 those sorts of things if there's any problems like this,
5 that has to be reported immediately.

6 MR. SEARLE: Is your industry, as a whole,
7 through your association or whatever organization you have,
8 do they develop best management practices in which they
9 share some of these ideas and process systems? It sounds
10 like there's a varying-degree system people are using where
11 they're sharing these ideas so that others learn from the
12 experience.

13 MR. CUPP: They do. And I think, I'll be
14 honest with you, a lot of the best management practices and
15 a lot of that industry knowledge went into the initial EPA
16 guidance document. A lot of that basically kind of put
17 together like what is everybody doing, okay? It ranges
18 across the board. And they try to come up with some sort
19 of just a framework that, okay, we need to work a little

20 bit more on prevention, rather than on what do we do after
21 we have a release? You know, we've been moving toward from
22 steel tanks to fiberglass tanks to double-wall tanks, to
23 double-wall lines, sensors in the sumps. We're moving --
24 moving more and more. You know, now there's
25 even -- there's vacuum systems in California that we're

1 having to put in. Literally puts a vacuum on the secondary
2 containment. So you don't even have to have a leak in
3 line, you can't have a vacuum loss in the secondary system
4 that if you had a leak, it could potentially get out of
5 that secondary system. It is completely down -- you know,
6 that's where things are heading.

7 And what we're doing, as we know more about these
8 systems and what we take away is a lot of times when we
9 have a release, you kind of do an investigation and you try
10 to figure out, okay, what was the cause of that, what do we
11 do to prevent that in the future? We do that internally,
12 and I know -- I'm sure Mr. Lucht's team looks at that, and
13 they have it, you know, broken out by, okay, is it a line
14 leak, a tank leak, a leak from a flex line or certain types
15 of materials, what causes these releases and what can we do
16 to keep those from happening again.

17 What we found is secondary containment, if you
18 have secondary containment on your facilities, physically
19 looking inside that secondary containment on a monthly

20 basis does help in finding something early.

21 MR. SEARLE: Great. Thank you.

22 MS. LORENZON: Any further questions from

23 the Council?

24 Thank you very much, Mr. Cupp.

25 MR. CUPP: Thank you.

1 MS. LORENZON: We're going to go one out of
2 order to accommodate someone who needs to be leaving. And
3 I can't read the writing, Dennis Roding?

4 MR. RIDING: Dennis Riding, thank you.

5 MS. LORENZON: Riding.

6 Please come forward.

7 MR. RIDING: Mr. Chairman, members of the
8 Council, I work for Maverik Country Stores. I'm
9 environmental director -- make the microphone higher --
10 and I appreciate the opportunity to talk for a few minutes
11 before the Council. I'll be brief. And I appreciate you
12 taking me out of order. I have to catch a flight at 1:00.

13 I think the collaboration that we're doing here
14 is great, and I feel like we're asking you to think out of
15 the box. And honestly, I apologize for that. I was
16 involved in the process pretty early on. I was on the test
17 committee, and it is a hard test. And I don't think it's
18 my fault, but it is a hard test.

19 And I don't know if the typical general manager

20 of the store could pass the test. Someone like me can,
21 someone like Mr. Cupp can, someone like Mike Bailey can,
22 but it would be a little bit harder for a general manager,
23 and so I think that's one reason that we ask for some
24 latitude on which person it is that we designate.
25 One, it fits in better with our operational

1 organization so that we can have a person who's less likely
2 to be gone tomorrow involved in the testing. Store
3 directors turn over a lot. In fact, that's one of the
4 considerations that in the 2005 energy bill they asked --
5 the Congress asked individual states to consider, is that,
6 the turnover in operational personnel. Store directors
7 don't stay around very long, as a rule, and so -- and
8 really probably is a little bit more than they signed on
9 for.

10 So if we give them a little bit of flexibility in
11 terms of having their immediate supervisors, someone a
12 little bit higher up than them, support them in that role,
13 and I think really what we ought to be looking at is the
14 outcome. What's the outcome that we're looking for?
15 What's the goal? Isn't that really what we care about here
16 more than -- more than who does it, how many times does it
17 get done, and how often do we want them to do it, isn't
18 that what we care about? What's the outcome in terms of
19 the history of violations? You have a list of -- red list

20 of -- red highlighted facilities in front of you. You
21 know, we don't want that list, right? We want that to go
22 away. Why is it that we shouldn't be focusing on that?
23 And to the degree whatever we do results in an
24 improvement in the number of red facilities highlighted,
25 there should be some accommodation for that. I encourage

1 and I support Mr. Hedrick and Mr. Searle and those who've
2 spoken to that issue. I think as we do better, we should
3 get some recognition for having done so.

4 I don't think that the status quo is likely to
5 continue. First of all, this is a new initiative.
6 Mr. Searle spoke to this earlier. There hasn't been
7 operator training until now. There's no benchmark to
8 compare against. Whatever we do will be an improvement.
9 We can try and -- we can try and tailor it in a particular
10 way, and I think that should be goal- and outcome-based and
11 not prescriptive- and process-based as much. Process,
12 okay, to a degree, but certainly not prescriptive. I think
13 it should be outcome- and goal-oriented.

14 And so -- and whatever you do, as an industry, we
15 appreciate the opportunity to speak before you today. I'm
16 sure I speak for everyone in saying so. And whatever you
17 do, we'll follow it. We'll abide by it. It's just we ask
18 you to give us a little bit of accommodation. That's all I
19 have.

20 VICE-CHAIRMAN HEDRICK: Do you have some
21 specific proposals on what the Council should recommend to
22 DEQ for goals? I think outcomes we can understand what
23 we're trying to get to, but --

24 MR. RIDING: I like the outcome -- or
25 argument that came up earlier.

1 VICE-CHAIRMAN HEDRICK: We heard some
2 things today that could arguably be presented. There are
3 better processes than the prescriptive one that is before
4 us today. Do you have something specific that we should
5 consider?

6 MR. RIDING: I support the Colorado Wyoming
7 Petroleum Marketers Association proposal of up to 12
8 facilities. I don't need that many. I can get by with 10,
9 but up to 12 makes sense to me, especially when the
10 facilities and the operational group is successful.
11 Whatever it is they do, if they're able to drop the number
12 of red facilities, they ought to have the latitude to do
13 little bit less oversight.

14 VICE-CHAIRMAN HEDRICK: What about the
15 issue Mr. Cupp brought up that detailed monthly inspections
16 as opposed to this, Mr. Searle referred to it, the
17 twice-a-week drive by which may or may not deliver results.

18 MR. RIDING: I'm not agreeable to that.

19 VICE-CHAIRMAN HEDRICK: Is there a better

20 minimum here than what we're considering.

21 MR. RIDING: Sure. A lot of the violations

22 I think on the list are failure to report things, at least

23 the ones I saw. Failure to report suspected releases,

24 failure to do inventory control, and that's really the

25 higher level than opening manhole covers. I can tell you,

1 most of my general managers are women, and most of my
2 general managers are going to have a rough time opening
3 those manhole covers. So that's another reason I'd like to
4 see one level above, so that I can send someone who can do
5 the job, honestly.

6 Now, how many would that be? I think, you know,
7 up to 10 or 12 facilities makes sense. And how often do we
8 want to do it? Opening manhole covers and looking inside
9 dispensers, I don't think you're going to see much change
10 over the course of a month.

11 VICE-CHAIRMAN HEDRICK: So if the Council
12 was to consider, say, 12, as you proposed, you'd be willing
13 to accept an additional requirement for a more detailed
14 monthly inspection, similar to what Mr. Cupp discussed.

15 MR. RIDING: I would.

16 VICE-CHAIRMAN HEDRICK: Okay. Thank you.

17 MS. LORENZON: Other additional questions?

18 Thank you. Have a nice flight.

19 MR. RIDING: Thank you.

20 MS. LORENZON: We have one more speaker.

21 Jim Miller.

22 MR. MILLER: Council, good morning. My

23 name is Jim Miller and I'm district supervisor with Kum &

24 Go Convenience Store. I appreciate the opportunity to come

25 before everybody. Little tough to do when there's a lot of

1 red --

2 CHAIRMAN BOAL: Kum & Go is pretty
3 prominent on this list I referred to.

4 MR. COVERDALE: This will be interesting.

5 MR. MILLER: And I do want to speak
6 briefly, and then be more than happy to entertain
7 questions, but certainly, you know, in hearing most
8 everyone here, I think -- I don't think anyone's in
9 disagreement that what's been going on has not worked. We
10 know better than anybody, probably, on this sheet. So
11 we're all for some sort of change.

12 The thing that I -- that kind of caught my
13 attention, I'm fairly new to industry. Most of these
14 happened before I took over out here, and I've been in the
15 industry a couple years. So I did go to Mr. Lucht's ICC
16 training, whenever it was in Cheyenne a couple months ago,
17 and there's a lot that I need to learn and I'm looking
18 forward to actually taking the test, regardless of who has
19 to take one whenever everyone decides.

20 But what I heard that I -- at least, you know,
21 made sense to me, and I think it was, you know, Councilman
22 Searle and maybe Councilman Flitner commented why does this
23 have to be an either/or right now to where it's a proposed
24 system or the way it is now, which we all know doesn't
25 work, hasn't been working, is not going to work. Almost

1 seeming brainstorming up, you know, top of the head, you
2 know, someone came up with what if there of a -- or for
3 those companies that get a good track record over whatever
4 time period, six months, one year, you know, could we lax
5 the stringency a little bit. I would like to at least say,
6 you know, it would be nice if there was some sort of couple
7 alternatives to look at.

8 So if you're going to ask me directly, you know,
9 what would you say, I like up to 12 stores, and would be
10 agreeable to a once-a-month type of inspection. How
11 in-depth that inspection is, I don't know, because I still
12 have a lot to learn about what's involved in an inspection,
13 but I'd be willing to do something like that, but, you
14 know, I would at least like to see some alternatives rather
15 than either nothing or proposed as is on the table.

16 So that's pretty much the extent of many
17 comments. I'll take any questions anyone has at this
18 point.

19 VICE-CHAIRMAN HEDRICK: Do you --

20 MS. LORENZON: Go ahead.

21 VICE-CHAIRMAN HEDRICK: Do you think the --

22 increasing the number to 12, but requiring a more detailed

23 monthly inspection is setting a higher standard or lower

24 standard than what's on the table from the DEQ?

25 MR. MILLER: I think that -- I don't know

1 if it's an issue of higher standard, lower standard. It
2 just seems to be something that would if I can use the word
3 compromise, from what's -- you know, we should be able to
4 see some progress with it, it's going to be better than
5 what we have now. And I think it would be on equal
6 footing. I mean, it's a doable, I would agree to it,
7 sounds like several other people would agree to it, so both
8 parties would be satisfied and I think that we could still
9 obtain good results and lessen this list.

10 VICE-CHAIRMAN HEDRICK: Thank you.

11 MS. LORENZON: Other council members?

12 MR. SEARLE: No.

13 MR. MORRIS: Under that proposal would you
14 get off of the red list?

15 MR. MILLER: We would get off the red list,
16 yes.

17 MS. LORENZON: Appears there are no more
18 questions. Thank you very much for your comments,
19 Mr. Miller.

20 MR. MILLER: Great. Thank you.

21 MS. LORENZON: Now, I'm at the end of the
22 list of those people who indicated they would like to make
23 a comment. Are there any other people in the audience who
24 would now like to say something on these regulations,
25 comments?

1 Sir, if you'd like to come forward.

2 We'll take you, too.

3 CHAIRMAN BOAL: Mr. Bailey, don't cover old
4 ground.

5 MR. BAILEY: I'll try not to here.

6 I noticed one thing when I was reading --

7 MS. LORENZON: Identify yourself.

8 MR. BAILEY: It's Mike Bailey from
9 Riverton, Wyoming again.

10 MS. LORENZON: Thank you.

11 MR. BAILEY: In the section regarding Class
12 C operators, I just noticed one section that's F down
13 toward the bottom of the page regarding reporting skills --
14 spills. The Class C operator shall notify a Class A or B
15 operator for his facility and the appropriate emergency
16 responders, and I think that should be probably broadened
17 to let the appropriate other people go to the Class A or B
18 operator, because then they have to call the Class A or B
19 operator. And again, dealing with convenience store clerks

20 and that kind of stuff, that's the challenge. I would have
21 a tendency to think they might even call the fire
22 department before they call me, which, if there's a fire
23 that's fine, but if there's a spill, we need to deal with
24 it, because we're set up to deal with it, not the fire
25 department. So that would be my only other comment. Thank

1 you very much.

2 MS. LORENZON: Thank you, Mr. Bailey.

3 You want to --

4 VICE-CHAIRMAN HEDRICK: Could you give me

5 your wording again, where you wanted it inserted so that --

6 I understood your point, I just wasn't sure I understood

7 the wording you'd like to see.

8 MR. BAILEY: I would like to see it say and

9 then the Class A or B operator would notify the appropriate

10 emergency responders, including the Department of

11 Environmental Quality.

12 MS. LORENZON: A or B operator, right in

13 here.

14 MR. BAILEY: If that makes sense to you

15 guys.

16 MS. LORENZON: It's coming together.

17 MR. BAILEY: Thank you.

18 MS. LORENZON: Thank you.

19 The gentleman in the back wish to make a comment?

20 Oh, I'm sorry.

21 MR. COVERDALE: I had a question for him.

22 MS. LORENZON: Hang on. Stay right where

23 you are.

24 MR. COVERDALE: I want to understand your

25 comment, though. Does that mean they do nothing if they

1 can't get ahold of the appropriate Class A or Class B? And
2 suppose it's Sunday afternoon and we're all fishing on the
3 Platte and they can't notify anybody. I mean, your
4 language seems to say that's all they do. Is that what you
5 intend? I mean, there has to be somebody --

6 MR. BAILEY: I would like to --

7 MR. COVERDALE: Everything happens on a
8 weekend, never happens on a Monday or Tuesday.

9 MR. BAILEY: I agree. And obviously you
10 haven't overseen convenience stores, because you don't get
11 to go fishing on Sundays.

12 MR. COVERDALE: Somebody must.

13 MR. BAILEY: Just in humor.

14 Yes. I think, again, me as the Class A and B
15 operator, I would set up a system where I have somebody
16 that's on call basically 24/7. I think a lot of the other
17 guys have similar situations where on the rare occasion we
18 do get to leave that we have somebody covering the bases
19 for us that would be qualified to deal with those

20 situations appropriately.

21 I had one occasion where we had a lady filling
22 up her gas tank and she had hit a rock and it was
23 leaking gas -- had a little stream of gas running out of
24 her gas tank. My clerk called 911, they sent the fire
25 department. Four hours later, with six fire trucks

1 blocking off the main thoroughfare going through Riverton,
2 Wyoming somebody stuck a piece of wood in the gas tank and
3 put floor dry on it, cleaned it up and we were done.

4 And I guess that's probably the sort of
5 worst-case scenario. I could have went up there myself and
6 taken care of that problem with very little fanfare and we
7 ended up having 15 or 20 emergency responders and fire
8 trucks and all that standing around watching somebody put
9 floor dry on a gasoline spill. So that's why I -- that's
10 what leads me to think they need to contact somebody,
11 again, that's trained, knows the procedures they need to
12 do. They need to be trained to do the immediate stuff, but
13 we need to get people involved that are knowing what needs
14 to be done. So if that makes sense.

15 MS. LORENZON: Any further questions?

16 Thank you again.

17 Now.

18 MR. TUCKER: I'm George Tucker. I'm with
19 Dooley Oil Company. I'm the branch manager here in Casper.

20 And I was thinking, listening to these guys and the
21 proposals, and I was also on the committee that created the
22 test questions. At the time when we were going through
23 these questions I was under the impression that Class B
24 operator would be someone like myself.

25 We offer a -- operate a couple of convenience

1 stores here in Casper and we have a card lock, and we have
2 cleaning store in Laramie and a card lock, and we card lock
3 in Cheyenne. At each of those places we have terminal
4 managers such as myself, and every morning, I guess I was
5 kind of close sighted on thinking about these regulations,
6 because there is, you know, numerous different tanks out
7 there and line leak detection. The ones that we have at
8 our facility, we have the automatic line leak detectors, we
9 have coated tanks, we have some that are cathodically
10 protected, and we're all aware of that.

11 I swing by every morning to check the store, just
12 to make sure we got all the employees there. See if we
13 have any issues with equipment, see if we have any
14 personnel issues. You know, it's not a big deal. A lot of
15 times I'll go in there and check to see if the monitoring
16 system's working every day, because we have the
17 interstitial monitoring.

18 We have a continuous statistical leak detection
19 that kicks out that shows a passing or failing result on

20 each of the tanks. If for some reason there is a failure,
21 this paperwork is collected daily. It's processed daily at
22 the office, so if we see one of these failures, we
23 immediately go and see, well, what caused this. You know,
24 there's several things outside of a leak that can cause
25 them. You know, temperature variations can cause them,

1 obviously leaks can cause them.

2 But in my viewpoint, I would view myself as being
3 the Class B operator for these facilities. We're a smaller
4 company. I don't view the store manager, although she
5 orders the groceries, manages the employees -- in our case,
6 she doesn't order the fuel, we order the fuel -- she's not
7 tracking prices, she's not seeing when things are going up
8 or going down, so the fuel deliveries are out of her
9 control as far as when they're ordered, and we monitor all
10 that from the main office.

11 So with that being said, we think there has to be
12 some flexibility in the rules as far as that would
13 accommodate, you know, the small operators and large
14 operators as well.

15 MS. LORENZON: Thank you.

16 Any questions, counsel members?

17 VICE-CHAIRMAN HEDRICK: I'll ask you the
18 same question we've been talking to the others. I mean,
19 the proposal from the Marketers Association was raise the

20 number to 12, we've heard people talk about a more detailed
21 monthly inspection, like the facts provide higher integrity
22 assurance than the DEQ proposal on the table. Do you have
23 a deal on that issue?

24 MR. TUCKER: We check our dispensers at
25 least monthly, if not more often. There was a point made

1 earlier that aboveground releases from nozzles are pretty
2 easy to detect. I got to tell you, we had an EPA
3 inspection here a year or two ago. Bob was there with me.
4 We had done everything right, we passed all the tests. We
5 opened up one of the dispensers, we had a small leak on one
6 of the diesel pipes. I didn't know it was there. And
7 here's the EPA gal from Region 8 looking at that and I go,
8 "Wow. Didn't know that. We're going to get that fixed
9 right away."

10 So that's the kind of thing that I think that
11 we're looking at preventing. It wasn't leaking enough to
12 accumulate enough for the sump sensor to go off, but the
13 piping was wet. And those are the kind of things you can
14 prevent by, you know, just opening up your dispensers once
15 a month.

16 And one other thing, too, I was concerned about
17 is the classification of manager/onsite manager. I'm not
18 the store manager, but I'm onsite every day, and I know
19 that's the case with Mr. Perkins, Dr. Bailey, they're not,

20 quote, the store manager, so I think there needs to be some
21 kind of clarification as to -- in the terminology as far as
22 the manager, that it's not necessarily the store manager,
23 someone that's managing a facility. I think there's a --
24 some problem with that wording.

25 MS. LORENZON: Any --

1 MR. MOORE: Just follow-up on that last
2 comment. Just remind you, I don't know if you actually
3 look at the regulation word for word, but we've been using
4 the store manager rather loosely up here in discussing
5 this, because that's what some people are saying the
6 concept of what Class B operator might be, but the
7 regulation itself says that the Class B operator is the
8 person who is responsible, charged with the day-to-day
9 operation of the storage tanks. That's not the store
10 manager necessarily, so --

11 MR. TUCKER: Okay.

12 MR. MOORE: That's what the wording is
13 right now.

14 MR. TUCKER: That would be me.

15 MS. LORENZON: Further questions from the
16 Council?

17 Thank you, Mr. Tucker.

18 MR. TUCKER: Thank you.

19 MS. LORENZON: Anyone else? Ah, a hand.

20 MR. JOHNSON: I'll throw in my 2 cents.

21 MS. LORENZON: Step on down.

22 MR. JOHNSON: My name is Bob Johnson. I'm

23 general manager of Quality Petroleum, different -- we're

24 not retail, we're wholesale. We have location in Casper

25 and Gillette. And to a certain extent, whether it's going

1 three operators or three locations or 12, that doesn't
2 affect us. The same token, it seems like there's room for
3 compromise in this whole situation, whether it's 12 or 6.
4 I had written a letter supporting the six thing.

5 I'm more of a proponent of a quality inspection
6 on a monthly basis versus twice a week, which occasionally
7 it's a checklist and did we actually do the inspection.
8 You know, I'm much -- quality over quantity is what I want.
9 And again, we don't -- nobody wants a release.

10 All of our wholesale employees, I'm assuming we
11 see fuel running down the island, our first chore is to
12 stop it. Keep it onsite, keep it out of water. And that's
13 my comment.

14 MS. LORENZON: Thank you.

15 Any questions from the council members?

16 Apparently not.

17 Thank you for your comment.

18 Okay. Any other hands? Any other people want to
19 make a comment while this is open?

20 Thank you.

21 Mr. Hedrick, we have a couple alternatives. We

22 can break for lunch and come back, and if you'd like, you

23 can have DEQ come back and respond a little, if they have

24 anything further, or at that time, whenever we can close

25 the record and then turn it over to you for decision.

1 VICE-CHAIRMAN HEDRICK: I think we need to
2 come back to DEQ, talk about some of these things and get
3 their perspective. That's very important. I'm a little
4 worried about our stenographer.

5 Are you doing okay? If we do one more, then that
6 would get us to a point maybe we could break for lunch and
7 come back.

8 How's the Council's pleasure?

9 MR. COVERDALE: I'm good, one more.

10 VICE-CHAIRMAN HEDRICK: I was just thinking
11 coming back to DEQ and investigating --

12 MR. COVERDALE: Do it while it's fresh.

13 VICE-CHAIRMAN HEDRICK: While it's fresh.

14 Everybody okay with that?

15 MR. MORRIS: You're the leader.

16 VICE-CHAIRMAN HEDRICK: I don't know if I'm
17 much of one, but I try.

18 I guess why don't you guys move up to the mike,
19 LeRoy and Bob, and I'll try to summarize what I've heard

20 and then perhaps get your reactions to it.

21 Despite my having said before that I bought into
22 the idea of the Class B operator and the store manager
23 onsite, the 5:00 to 3:00 guy, or lady, being the same
24 person, I think the testimony, in my mind at least, has
25 generated some questions about that, and I think it was

1 Mr. Searle brought up the issue of, you know, we started
2 calling this twice a week visit as being a drive-by, and,
3 yeah, I've had that experience personally, and you can get
4 into the checklist mentality and all at once you think
5 you're doing something, but you're not achieving the
6 results that you had hoped.

7 So sort of combining all the comments we
8 received, it looks to me like there's a suggestion out
9 there that where we'd increase the span of control of the
10 Class B operator, and whether you use 12 as the number -- I
11 don't know what number is, personally, could be unlimited,
12 I guess -- but required instead of the twice a week visit,
13 a more detailed monthly inspection, similar to what
14 Mr. Cupp described Pilot was doing, but that might, in
15 fact, be a higher standard than what we have on the table
16 and provide some more flexibility for a range of operators
17 from the Pilots to the Mavericks to the single-store owner
18 to achieve the results that we're looking for.

19 So I'd be interested in the DEQ's perspective

20 after having heard those comments. And either one of you
21 can respond to it.

22 MR. FEUSNER: Just a moment.

23 MR. MORRIS: Kirby, I would just like to
24 say I think you've got a good point to start with, because
25 you've got a lot of small Mom and Pop outfits. Bosler,

1 Wyoming, you know, got one store. We've been listening to
2 people who have big, large organizations and a lot of
3 activities, and -- but we really haven't talked about this
4 one little single operation out there. And that, you know,
5 you've got Bosler, Wyoming, Buford and places like that
6 that service a lot of people, but they're not -- so I think
7 we've got to consider how this is going to affect that
8 segment.

9 MR. MOORE: Kirby, could I add to your
10 question?

11 VICE-CHAIRMAN HEDRICK: Certainly, you may
12 elaborate, Council Member.

13 MR. MOORE: One of the things that
14 occurred to me, as listening to this discussion, is that
15 we haven't spent a lot of time talking about the Class A
16 operator. As I read the regulations, each facility has
17 to be under a Class A and Class B operator. The Class A
18 operator could be the B operator, but I'm looking at both
19 the Public Law 109-58, which started this whole thing off

20 about the guidelines and talks about A is the person having
21 primary responsibility for onsite operation and
22 maintenance, and Class B is the person having daily
23 onsite responsibility. And you kind of parallel that in
24 your Class A and Class B definitions, but could you, as you
25 respond to Mr. Kirby, elaborate, in your mind, what you

1 think the responsibilities are of the Class A operator, as
2 monthly test, yearly test, whatever, versus the
3 responsibility of Class B operator and daily -- or
4 day-to-day operation.

5 MR. LUCHT: Okay. A Class A operator,
6 under this rule, is someone that is the owner of a
7 facility, if it's a single station, single owner, only owns
8 one station, or it's a general -- a manager above the
9 general manager level in a chain store. That was our
10 understanding in the beginning. That's the intent that we
11 had.

12 In answer to Mr. Morris's question, the fact of
13 the matter is that if you're owning -- if you own one
14 service station, you're going to get the whole brunt of
15 this requirement in spades, because you have no choice
16 except to be a Class A operator. It's been one of my
17 points from the beginning, if we can go to that little guy
18 that owns one gas station out in Hulett, Wyoming and say
19 you have to pass this test -- and the way I read that

20 federal mandate, there is no choice about that, that guy

21 that owns that one gas station has to pass the level A

22 test.

23 Then why is it that multi-billion-dollar

24 corporations find this so onerous that three or four of

25 their managers have to take the same test that a guy that

1 has one gas station has to take? I mean, I'm always amazed
2 at how much controversy this thing has generated. I mean,
3 this is not go off and get a Ph.D. in operating a gas
4 station. This is an hour and a half open book test or what
5 the rules require. As far as --

6 MR. MOORE: Excuse me, Mr. Lucht. I may
7 have sidetracked you from the points Mr. Hedrick was
8 raising. Basically what we're asking is explain why you've
9 come up with the plan that you've had versus something
10 that's performance based, and my corollary question was it
11 seemed to me some of the stuff we were hearing about the
12 monthly inspections versus the two-week -- twice-a-week
13 drive-by. We're talking about maybe apples and oranges,
14 that maybe the monthly inspections that people have
15 described doing, what's appropriate for the Class A
16 operator to be doing on a monthly basis. What does the
17 Class B operator do on his twice-a-week visit, and why does
18 it take one person over three stores instead of one person
19 over six stores to do that Class B operator responsibility.

20 That's what we're asking.

21 MR. LUCHT: Okay. The way that we drafted

22 this, we put the up to three stores and twice a week to

23 make sure that the general manager on each store was

24 actually the one that was passing the test. The crux of

25 this issue is we're trying to require the general manager

1 on the store to be the one that's actually trained, not
2 somebody that may be based in a location two states away
3 from here who happens to be able to pass a test.

4 We do -- we have taken the Petroleum Marketers
5 Association's position, I have here a version of the rules
6 that accepts every suggestion they made. If that's where
7 you're leaning toward it. This would allow an operator to
8 be over 12 stores if he was a Class B operator. It gives
9 him the option of either being on location twice a week, in
10 other words, being the general manager on a location, or
11 doing this monthly inspection. It also expands the Class C
12 operator training requirements exactly the way that
13 Petroleum Marketers have suggested.

14 And last of all, this expanded rule has one
15 additional thing, and that would provide in Section 49 for
16 the revocation of a Class A or B operator's license if he
17 had three or more violations of leak detection at any of
18 the facilities where the guy's supposedly responsible for
19 it.

20 There are other ways of doing this, and if that's

21 the way the Council wants to go, then --

22 VICE-CHAIRMAN HEDRICK: Can I come back --

23 MR. LUCHT: Okay.

24 VICE-CHAIRMAN HEDRICK: The point I was

25 really trying to get to, and I've begun to look at your

1 proposal and what the DEQ is trying to do is to put a
2 reasonable baseline for integrity assurance in place that
3 works for the State, recognizes the State pays the bill,
4 and then, you know, I can't help it, my industrial
5 background says, gee, there's always a better way to
6 achieve superior results at less cost, and we learn as we
7 go along. And that was behind the suggestion earlier we
8 talked about, well, could there be some flexibility -- you
9 know, Pilot might come in and demonstrate we have this
10 program and look at the great record. Here's how we run
11 our program, but, you know, it doesn't meet the three span
12 of control criteria, would the State accept that. And
13 taking what they've said on face value, I'd say maybe
14 there's a high probability that the State might conclude
15 that, yes, that program may be better than this minimum
16 requirement we have in place.

17 So I was trying to come and address this second
18 issue, which it seems like the quality of the inspection
19 may be one that we haven't discussed in detail. And in

20 your view, if the span of control was increased to 12, but
21 there was a more stringent requirement for monthly
22 inspection, would that be better, worse or roughly the same
23 as the span of control of three, but with only a two --
24 twice-a-week drive-by, as we started calling it.

25 MR. LUCHT: Well --

1 VICE-CHAIRMAN HEDRICK: What's your view on
2 that?

3 MR. LUCHT: My view is it would be less
4 effective because you have less people that understand what
5 the requirements are under that kind of scenario. Now, can
6 I argue that monthly inspection wouldn't help? Of course
7 it would help. The problem I alluded to in Greybull, had
8 they done a monthly inspection, they would have seen a drip
9 before they lost 6500 gallons of fuel. But as far as
10 bringing that station into compliance with leak detection,
11 they weren't in compliance because the people in charge of
12 it didn't know what the requirements were, and that's then
13 the single most overriding problem with that in the program
14 since it started, trying to get people that are supposed to
15 comply with the whole book of rules to actually know what
16 those rules require them to do.

17 Now, is there other ways of doing it,
18 performance-based programs that you talk about, certainly.
19 The problem that we have in doing that is those are very

20 labor intensive on the State's point of view. If you are
21 going to start allowing every operator to decide how they
22 want to get the best performance and submit plans and all
23 that type of thing, it's simply beyond our ability to
24 manage that kind of a system when we've got three employees
25 to do it. We just don't have the resources to go in and

1 approve individual training plans for individual companies.

2 I think it's interesting, listening to the people
3 that have been here, because most of the people here
4 objecting are the ones that are in compliance. That's the
5 way it is. I mean, they -- if you have -- if everyone in
6 the state of Wyoming was equipped the way Bailey's equip
7 theirs, I would have no problem. I mean, what the heck,
8 let's just blow this thing off and get down the road and do
9 the minimal requirement necessary, but the fact of the
10 matter is most of them aren't equipped that way.

11 VICE-CHAIRMAN HEDRICK: I guess I perhaps
12 take issue with the manpower requirements to provide
13 flexibility, and I'll tell you why. One, you have
14 performance data. I mean, you've got your red list. You
15 know, if you make the red list, you don't get the
16 flexibility.

17 The second is you're much more experienced than I
18 am. I'm sure you've seen them. In industry we commonly
19 put together environmental process safety management plans,

20 we say here's how we're going -- here's how policies and
21 procedures, our training, our auditing, our testing, the
22 whole bit, qualifications. And then I would think -- I
23 know I could, I would think you are probably more qualified
24 than I am, would be able to sit down and read through that
25 and in your own mind, and knowing the company's track

1 record, say, you know, this is probably superior to what
2 our minimum benchmark is that you're talking about here,
3 and give them dispensation to do that by spending the
4 afternoon reading their proposal. And then if they can't
5 deliver results, they go back to whatever the minimum
6 requirements are, plus a fine, probably. I don't see that
7 this is a big deal.

8 MR. LUCHT: I guess when you start talking
9 about us spending an afternoon reading a report on one or
10 two facilities, when there are 920 facilities --

11 VICE-CHAIRMAN HEDRICK: It would be per
12 company, I would think. You wouldn't do it per facility,
13 it would be per operator. I mean, it would have to apply
14 to all their stations.

15 MR. LUCHT: I think we already took the
16 position that if you added the words or as approved by the
17 administrator, that we will allow that sort of thing for
18 those companies that have a good track record.

19 VICE-CHAIRMAN HEDRICK: That's fair enough,

20 but the bottom line is you don't believe higher span of
21 control in exchange for more detailed monthly inspections
22 is a good trade from the integrity assurance standpoint?

23 MR. LUCHT: Yes.

24 VICE-CHAIRMAN HEDRICK: Thank you.

25 MS. LORENZON: Council members?

1 MR. MORRIS: I've got one question, and I
2 guess I'm showing my ignorance and I haven't done my
3 homework, but we're just talking about people that are
4 pumping out gas for the dollars. How about contractors,
5 industrial and agriculture?

6 MR. LUCHT: Okay. Let's start at the top.
7 Contractors are subject to exact same rules, if they have
8 underground tanks, that a retailer is. So a contractor
9 that has his own underground storage tanks is going to have
10 exactly the same requirements as a retail gas station. If
11 he has aboveground storage tanks, he's not subject to our
12 program at all.

13 Most of the contractors have aboveground tanks in
14 their rule -- in their yards and they're not even under our
15 jurisdiction. When it comes to -- what was the next one?

16 MR. MORRIS: Ag.

17 MR. LUCHT: Agriculture tanks under
18 1100 gallons are exempt from our programs. We have very
19 few agricultural tanks. Under this provision agricultural

20 tanks we do have, if they're 4, 5,000 gallons, will be
21 subject to exactly the same requirements as a gas station
22 is. Now, there is one other set of tanks that you didn't
23 mention and that's underground storage tanks that are used
24 for emergency power generators.

25 The way that we worded this, we might wonder why

1 it says those that are used to fuel vehicles. Well, there
2 are tanks that are not used to fuel vehicles. And for
3 those people, like the Air Force, for Qwest that have
4 remote emergency power generators, they'll have to have a
5 Class A operator, probably the environmental coordinator,
6 and have to have a Class B operator, that's whoever
7 normally is over that facility. Mostly they have a
8 maintenance person that's over 8 or 10 of those facilities.

9 So we did make -- we did try to tailor this to
10 the actual real world, how these companies are organized,
11 and how many people they actually have.

12 MS. LORENZON: Mr. Flitner.

13 MR. FLITNER: Yeah, I still come back, and
14 I think this is where, to some degree, going to end up
15 eventually. We know there's a problem, we know it has to
16 be addressed, but I'm reluctant to dictate to people how
17 many people it takes them to do their job, and -- because
18 that's something we don't really want to get into. And I
19 don't mind throwing the book at the violators, and I don't

20 think they can ask for free lunch by asking the State to
21 pick up the tab on their mess. And I'm in agreement with
22 you there, but there are some people that aren't violating,
23 and I think -- I don't have any problem with the whole
24 program, except for the fact that there's nothing in there
25 to help the people who are really working hard to follow

1 the rules and have shown that they can follow them.

2 And until you get something in there like that,
3 to pull these people up, you're going to have to keep
4 dealing with these things, because all we're dealing with
5 is the people on the bottom of the barrel, and they -- and
6 there's no incentive, other than taking these tests to
7 solve this problem. On the other hand, if they can see
8 some light at the end of the tunnel and get away from these
9 restrictions and what they're going to come down to is
10 penalties. I mean, if you're going to have to hire more
11 people and do all these kind of things, it's going to cost
12 you more money. What these tests and requirements are
13 going to come down to is penalties.

14 So if you can provide an avenue for them to get
15 away from that on their own and bypass a lot of this, what
16 would be wrong with that? And can you see a simple way to
17 do that, just to look at this and say, okay, these guys are
18 in failure, they need to get their act together. These
19 restrictions are going to apply to them. These other

20 people haven't had a violation in three years -- is there a

21 simple way to separate it?

22 MR. LUCHT: Well, I think the proposal that

23 came out earlier in the day of adding "or as the

24 administrator approves" in the language of Section 46(b),

25 if you added that simple phrase it would allow us to

1 provide the kind of dispensation you're talking about, if
2 we had people that had perfect compliance records, and I
3 think we've already addressed that.

4 MR. FEUSNER: Yeah, we could do that. We'd
5 have to establish procedures and policy on that, would have
6 to be approved by Advisory Board before it was implemented,
7 but it is possible to do.

8 MS. LORENZON: Further questions, comments
9 from the Council?

10 CHAIRMAN BOAL: Let's close the record.

11 MS. LORENZON: Okay. There being no
12 further comment, the record in this matter is closed.

13 I'd like to advise you that our court reporter
14 today has been Kathy Kendrick. She is taking down all
15 these proceedings, as you notice. If you'd like a copy of
16 the record for any reason, we can provide you with her name
17 and phone number to obtain a copy.

18 There being no further business right now before
19 the council on this matter, we'll refer it to the Council

20 and they can consider the comments, proposals at the
21 meeting, public meeting, and make their decision at that
22 point in time.

23 Anything further?

24 VICE-CHAIRMAN HEDRICK: Go back to Dennis.

25 CHAIRMAN BOAL: We're going to take a

1 recess for an hour. We'll reconvene at 1:30. The first
2 item on the agenda will be whether or not we can make a
3 decision on Chapter 17.

4 If you're interested in that decision, I invite
5 you to come back then and hear the deliberation and
6 discussion at that time.

7 MS. LORENZON: Thank you for your comments.

8 VICE-CHAIRMAN HEDRICK: Thanks to everyone
9 for attending. We appreciate it.

10 (Hearing proceedings concluded
11 12:35 p.m., May 29, 2008.)

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

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3 I, KATHY J. KENDRICK, a Registered Professional

4 Reporter, do hereby certify that I reported by machine

5 shorthand the foregoing proceedings contained herein

6 constituting a full, true and correct transcript.

7 Dated this ____ day of _____, 200_.

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KATHY J. KENDRICK
Registered Professional Reporter

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