WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

# Agenda: Introductions, Presentation, Analysis of Comments & Question/Comment Period

Department of Environmental Quality

WYOMING

## Solid and Hazardous Waste Division Rules and Regulations, Storage Tank Program, Chapter 1


Grace Chapel
XERXES
a sps company
XERXES
CAT


Grace Chapel
DIESEL
POWER
HI
LO
SPARE


Grace Chapel


EXXON

# WYOMING ENVIRONMENTAL QUALITY COUNCIL

**MAY 23, 2018**

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

WYOMING

Solid and Hazardous Waste Division Rules and Regulations, Storage Tank Program, Chapter 1

# History of the DEQ Storage Tank Program (STP)

1988 – The U.S. EPA enacted 40 CFR 280 and 281

1990 – The Wyoming Legislature enacted WS 35-11 Article 14, The STP became part of the Water Quality Division

# WS 35-11-1414 (b)

"The legislature recognizes the threat to the public health, safety, welfare and the environment caused by pollution to soil and water from underground and aboveground storage tanks. The purpose of this article is to take primacy of the underground storage tank program and to provide funding to take corrective actions at sites contaminated by underground storage tanks and aboveground storage tanks."

# WS 35-11-1414 (c)

"The legislature also recognizes that owners and operators cannot take corrective action without placing their businesses' existence in financial jeopardy. The legislature finds that, because Wyoming is a large rural state, it is in the public interest to take corrective action at contaminated sites so that fuel will continue to be readily available throughout Wyoming."

# Regulatory/Statute Changes in 1990s

1994 – Wyoming Water Quality Rules and Regulations (WWQRR), Chapter 17 initially adopted

1995 – Wyoming Legislature allows retail Aboveground Storage Tanks (ASTs) into the Program

# 2005 US Energy Policy Act (EPACT)

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

Required state programs to implement:

- UST Operator training/certification
- Secondary containment requirements
- “Red Tag” requirements for delivery prohibition

# 2005 Changes to WWQRR, Chapter17

- Double wall USTs and connected piping
- New aboveground storage tank (AST) regulations adopted, to include upgrade requirements

# Storage Tank Act of 2007

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

- Double wall UST and double wall underground piping requirements

# 2008 Revisions to WWQRR, Chapter 17

- Operator licensing requirements
- Red tag requirements for delivery prohibition

# 2012 Revisions to WWQRR, Chapter 17

- Operator licenses changed to 5 years
- Retraining requirements
- 90 days to get a license instead of 6 months

# 2015 Revisions to 40 CFR 280 and 281

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

- First changes since 1988
- Includes new operational requirements to be implemented by October 13, 2018

# 2017 Legislative Revisions to Storage Tank Act of 2007

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

- Moved STP from WQD to SHWD
- Changes made to remove deferrals

# STP Operator Outreach

- Written
  - **Letters**
  - **Inspection reports**
  - **Emails**
  - **Reminders included with invoices**

# STP Operator Outreach

- Meetings (over 250 attendees)
  - 2016
    - Cheyenne(2)
    - Cody
    - Casper
  - 2017
    - Cheyenne
    - Riverton
    - Rock Springs

# STP Tester and Installer Outreach

- Meetings (over 70 attendees)
  - 2016
    - Evanston
    - Sheridan
    - Casper
    - Cheyenne
  - 2017
    - Evanston
    - Jackson
    - Sheridan
    - Cheyenne

# STP Tester and Installer Outreach (Continued)

- 2018
  - Afton
  - Sheridan
  - Casper
  - Cheyenne

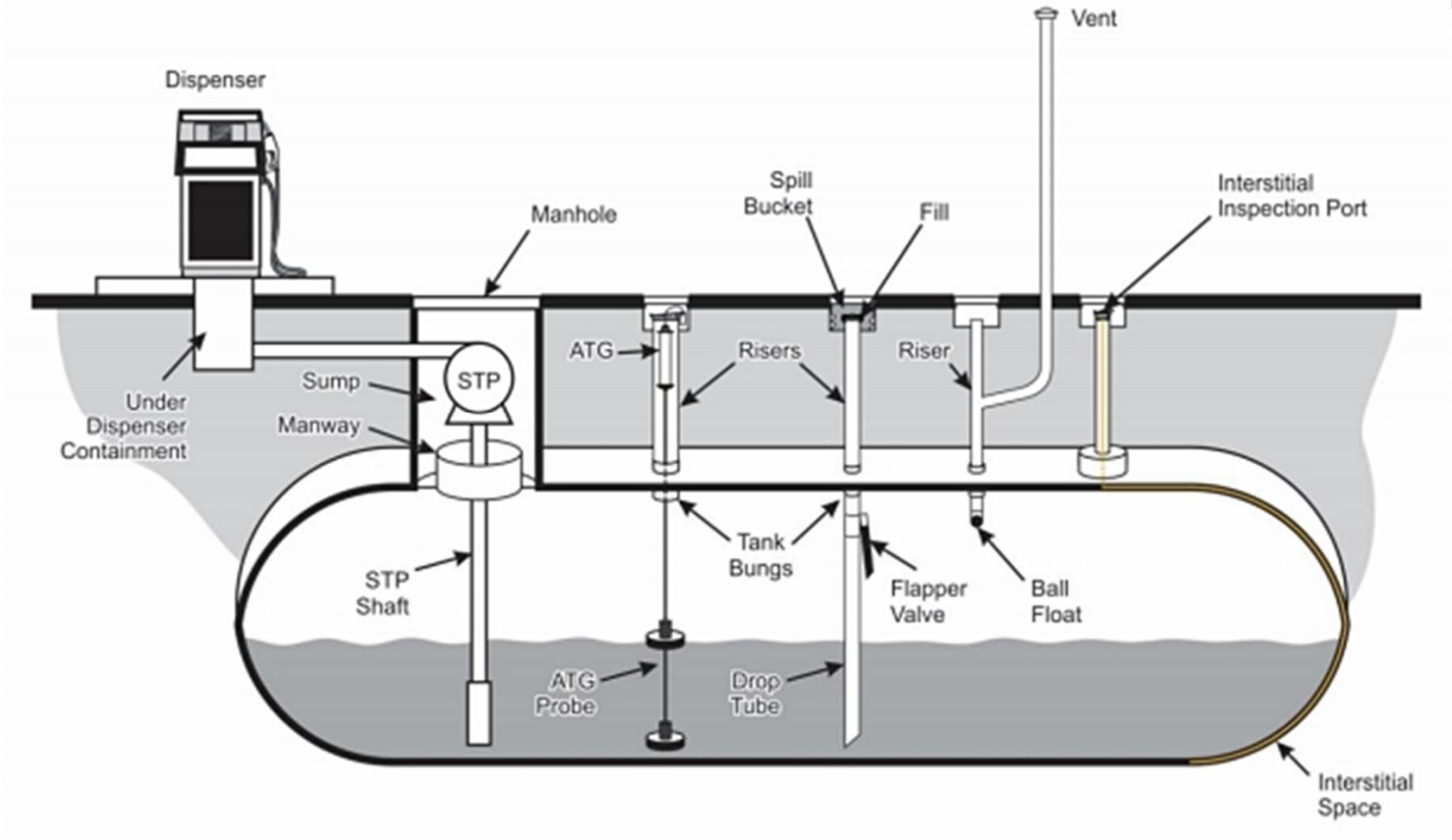
# Pre-WWAB Meeting Outreach

- Met with Wyoming Petroleum Marketers Association (WPMA) April 2017
- Rulemaking outreach sessions with the WPMA during August 2017
  - Kemmerer
  - Cheyenne
  - Gillette
  - Thermopolis
  - Casper

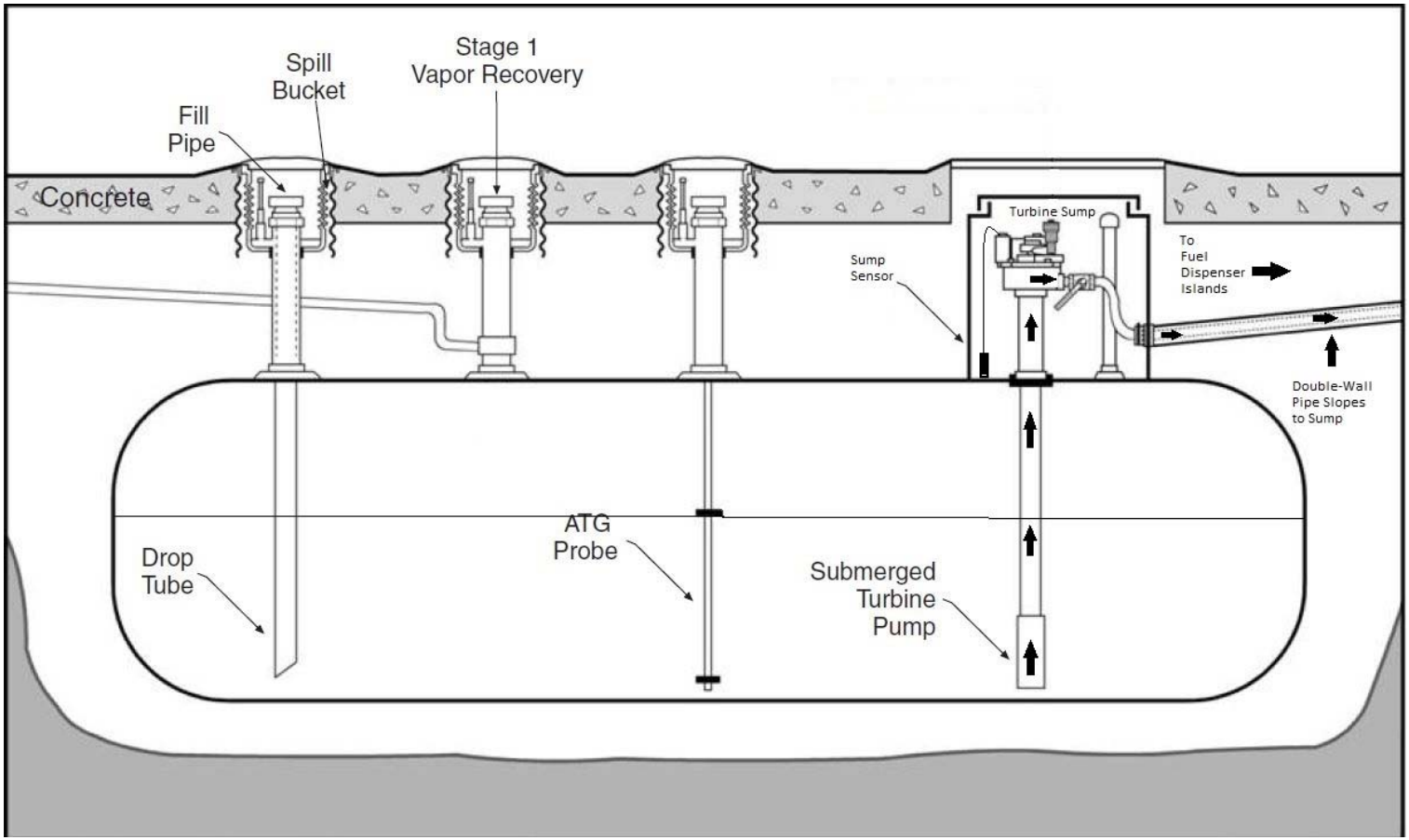
# Introduction to USTs

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

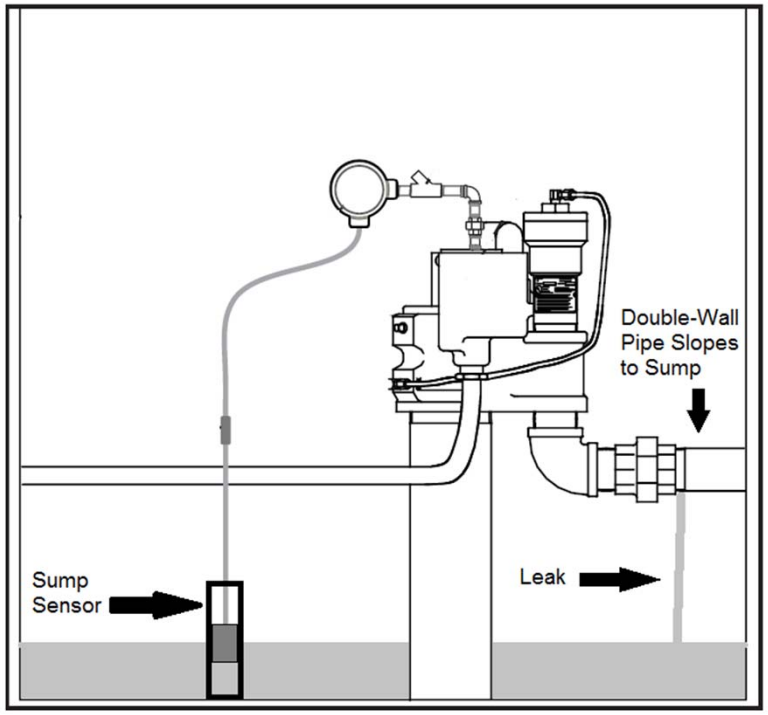
# UST System


Vent
Dispenser
Manhole
Spill Bucket
Fill
Interstitial Inspection Port
ATG
Risers
Riser
Sump
STP
Under Dispenser Containment
Manway
Tank Bungs
Flapper Valve
Ball Float
STP Shaft
ATG Probe
Drop Tube
Interstitial Space

# UST System


Spill
Bucket
Stage 1
Vapor Recovery
Fill
Pipe
Concrete
Turbine Sump
To
Fuel
Dispenser
Islands
Sump
Sensor
Double-Wall
Pipe Slopes
to Sump
ATG
Probe
Drop
Tube
Submerged
Turbine
Pump

# INTERSTITIAL MONITORING SUMP

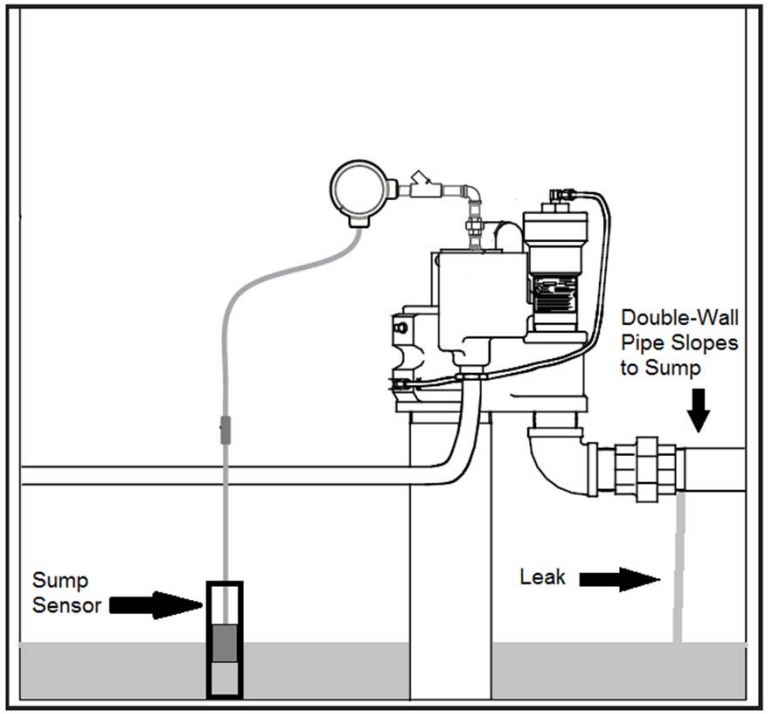



- Double-wall pipe is a pipe within a pipe. Area between the two pipes is the interstice.
- If there is a leak in the pipe, fuel will flow through the interstice back to the sump.
- The level in the sump will rise and cause the sensor to send an alarm to the automatic tank gauge console.

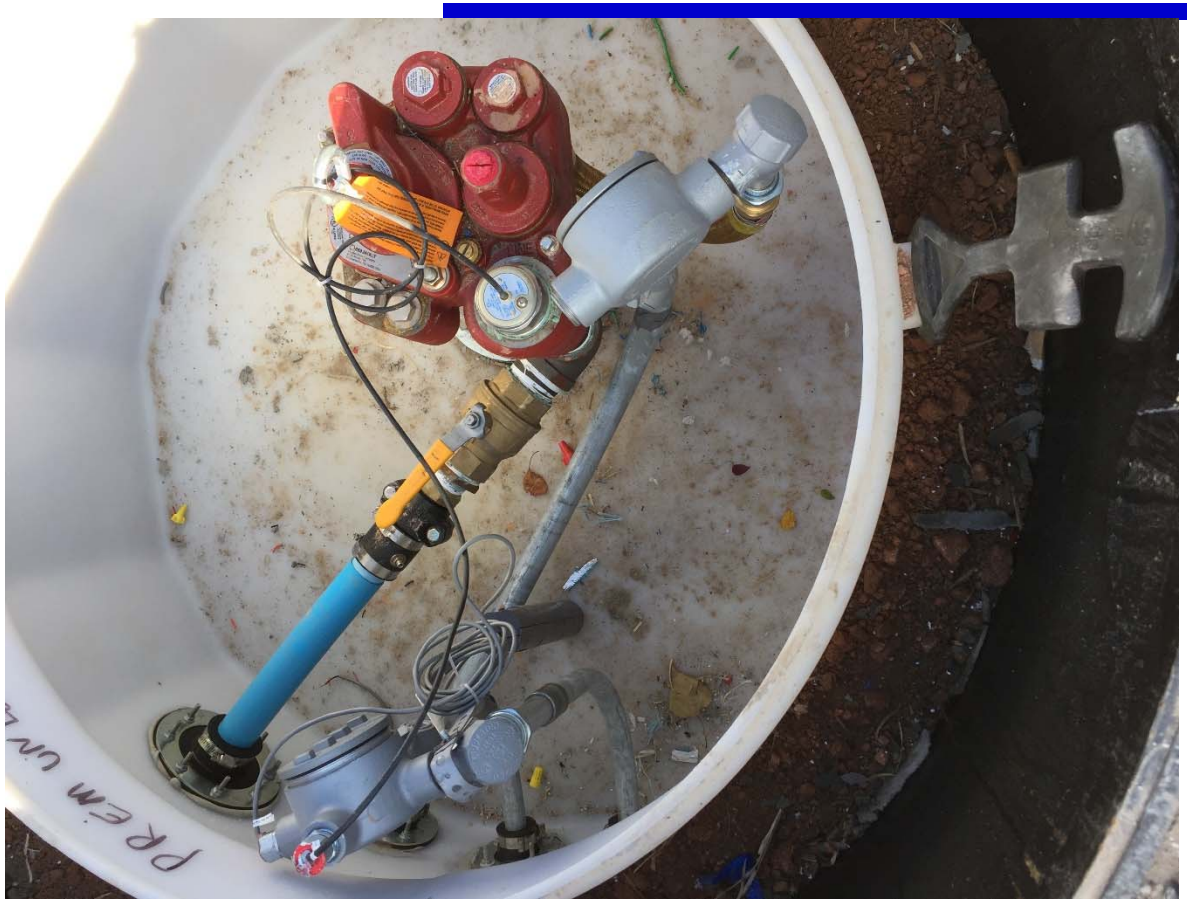
# INTERSTITIAL MONITORING SUMP (CONT.)

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

- Integrity testing will be required every 3 years



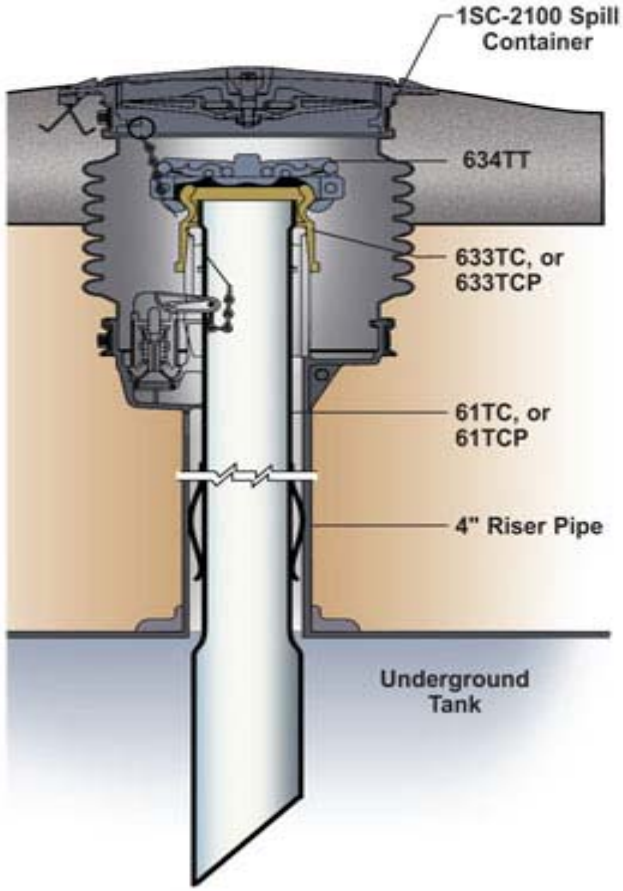
# Typical Interstitial Turbine Sump



# Under-Dispenser Containment Sump

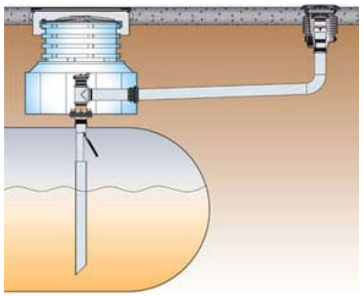
# SPILL BUCKET/SPILL PREVENTION DEVICE

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY




- Catches product whenever delivery hose is disconnected from fill pipe
- Must be integrity tested every 3 years

# OVERFILL PREVENTION DEVICES



- Must be function tested every 3 years
- Ball float valves can no longer be installed or repaired

# Federal Rule Changes - Summary

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

- New EPA Regulation changes include:
  - Walkthrough inspections
  - Spill prevention equipment testing
  - Overfill prevention equipment testing
  - Integrity testing of piping secondary containment equipment used for interstitial monitoring/containment sump testing

# Federal Rule Changes - Summary (Continued)

- Added requirement for operator training, which was already included in our rule in response to the EPAct
- Added requirements for secondary containment for new and replaced tanks and piping
- Required compatibility of emerging fuels (ethanol greater than 10% [E15 or greater] and biodiesel) with system components
- Updated codes of practice and made editorial and technical corrections

# Proposed Chapter 1 Changes

- Incorporated changes made to the federal rules and the 2017 statute changes
- WQR Chapter 17 will become Chapter 1 STP Rules under SHWD
- Moved WWQDRR Chapter 19 (Financial Responsibility) into this Chapter as Part N
- Reformatted to meet Rules on Rules
- Updated all standards, publications, etc., and moved reference full citation (name, date) to Section 2

# Draft Chapter 1 Changes - Summary (Continued)

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

- Clarifications, editorial and formatting changes
- Updated release reporting information (on-line spill reporting)
- Included EPA language from the CFR for previously deferred tanks (airport hydrant systems and field-constructed tanks) as Part M
- Eliminated Appendix A (referenced CERCLA)
- Removed language no longer relevant

# PART “A” Introduction

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTIONS 1-5, Codes and Standards

- Codes, standards, and recommended practices were added or updated
- Tanks that were previously exempted are no longer exempted
  - Airport hydrant systems
  - Oil water separators not regulated by WYPDES
  - Field constructed USTs
- Definitions were updated, to include certain EPA definitions

# PART “B”
# Technical Specifications

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 6, Design and Construction Standards for USTs

- New ball float valve overfill devices cannot be installed
- Existing ball float valve overfill devices cannot be repaired or replaced with new ball float valves
- New dispenser system replacements

# PART "B"
# Technical Specifications

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 7, Substandard USTs

- Substandard USTs out of service for longer than one year cannot be brought back into service
- Permanently closed USTs cannot be brought back into service unless they:
  - Meet Section 6 requirements
  - Are double-wall
  - Are interstitially monitored

# PART “B”
# Technical Specifications

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 8, Repairs allowed

- Integrity testing within 30 days of repairs
- Primary or secondary containment failures
- Spill or overfill prevention equipment testing

# PART “C”
# General Operating Requirements

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

## SECTION 10, Spill and Overfill Control

- Spill prevention equipment (spill buckets) integrity testing
- Overfill prevention equipment function testing
- Integrity testing of  interstitially monitored sumps, transition sumps, and under dispenser containment (UDC) sumps

# PART “C”
# General Operating Requirements

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 11, Corrosion Protection

- Repairs to CP systems are to be designed by CP expert
- Repairs are to be completed within 90 days of failure
- Stake anodes

# PART “C”
# General Operating Requirements

SECTION 12, Compatibility

- Biofuel blends
- Notification
- Certification of compatibility
- Checklist
- Authorization

# PART “C”
# General Operating Requirements

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 13, Inspection and Right of Entry, Reporting, and Recordkeeping

- Inspections
- Recordkeeping
- Monthly inspections (to be conducted by Class A or B Operator or a licensed tester)
- Operator’s Annual Inspection (OAI)
- Records availability

# PART “D”
# Release Detection

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 14, Requirements for All UST Systems

- Automatic line leak detectors (ALLDs)
  - Reference to sump sensors as ALLDs was removed

# PART “D”
# Release Detection

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 16, Petroleum USTs With a Capacity of More Than 2,000 Gallons

- Site assessments required for vapor/groundwater monitoring

# PART “D”
# Release Detection

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 18, Release Detection Recordkeeping for UST Owners and/or Operators

- Tank tightness testing

# PART “E”
# Release Detection

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 19, Release Reporting, Investigation, Confirmation and Response

- Confirmed releases to be reported to fire department having local jurisdiction
- Liquid in the interstitial space

# PART “E”
# Release Reporting, Investigation, Confirmation and Response

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 20, Release Investigation and Confirmation

- Secondary containment testing

# PART “E”
# Release Reporting, Investigation, Confirmation and Response

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 22-24, Spill and Overfill Reporting and Cleanup

- Contacts updated
- Reporting to National Response Center

# PART “F”
# Minimum Site Assessments (MSAs)

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 29, MSAs

- TOU longer than a year
- Tanks18 to 20 years old

# PART “G”
# Out of Service Tank Systems and Closures

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 30, Temporary Closure (Temporarily Out of Use (TOU) Status)

- Notification
- Class A and B Operators
- TOU for 3 months
- TOU status for 1 year

# PART “I”
# AST Systems

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 35, Construction Requirements

- CP testing
- Replacement piping
- Tank top access
- Piping connections below product level
- Compatibility

# PART “I”
# AST Systems

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 36, AST Leak Detection

- Inventory control

# PART “K”
# Delivery Prohibition At Non-Compliant Facilities

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 44, Delivery Prohibition

- Line leak detector function testing and tightness testing
- Fee deadline
- Written authorization to operate
- Spill buckets, sumps, or overfill prevention testing has not been performed
- Pressurized piping being operated without an automatic line leak detector

# PART “L”
# STORAGE TANK, OPERATORS, INSTALLERS, AND TESTERS LICENSING

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 45, Installer Licensing

- License valid for 5 years

# PART “L”
# STORAGE TANK, OPERATORS, INSTALLERS, AND TESTERS LICENSING

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 46, Storage Tank Operator Licensing

- Owner and/or operator recordkeeping of training of Class A, Class B, and Class C Operators must be kept onsite
- Retraining – Class B must retake the Class A Operator’s Exam within 30 days of an NOV being issued

# PART “L”
# STORAGE TANK, OPERATORS, INSTALLERS, AND TESTERS LICENSING

SECTION 47, Cathodic Protection Tester and Corrosion Expert Licensing

- STI Licenses

# PART “L”
# STORAGE TANK, OPERATORS, INSTALLERS, AND TESTERS LICENSING

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 48, Tank and Line Tester Licensing

- License valid for 5 years

# PART "M"
# FIELD CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 50, General Requirements

- Tanks installed prior to October 13, 2015
- Previously deferred UST systems in use after October 13, 2015
  - Must be registered
  - Must have financial responsibility
- Previously deferred tanks, besides hydrant systems and field-constructed USTs that contain more than 50,000 gallons, must follow UST operating requirements except the MSA requirements

# PART "M"
# FIELD CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

SECTION 51, Additions, Exceptions, and Alterations for UST Systems with Field-Constructed Tanks and Airport Hydrant Systems

- Must be upgraded by October 13, 2018
  - CP
  - Without CP longer than 10 years, tanks must be assessed
  - Overfill prevention
  - Leak detection for tanks and piping
  - 30-day inspections
  - Must have financial responsibility

# PART “N”
# FINANCIAL ASSURANCE

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

WQRR Chapter was transferred to Part N and Chapter 19 was eliminated

# Analysis of Comments Received During Public Comment Period for EQC Hearing

**NOTE 1:** Language that is both underlined and struck through was originally proposed by the Department and approved by the Water Waste Advisory Board. Based on EPA review, that language has been determined to be less stringent than federal requirements or requires additional clarification. Therefore, the language has subsequently been removed.

**NOTE 2:** Language that is double underlined has been added based on comments received during the March 19-May 4 public comment period.

**NOTE 3:** Bold, struck through text has been removed based on comments received during the March 19-May 4 public comment period.

## COMMENTS:

**United States Environmental Protection Agency (EPA) Comments.**
Received March 26, 2018 via Public Comment Input Manager

**Comment 1 – Part C General Operating Requirements, Section 12 Compatibility,** Wyoming needs to add all compatibility requirements for any substances identified by the agency (and not just for fuels above E10 and B20). Section 12 (b) and (c)(i)(b) refers to "biofuel blends" to be stored. This must include other substances as identified by the implementing agency. Wyoming should consider listing a specific set of components that compatibility must be demonstrated instead of stating "all" in Section (c)(i) unless "all" refers to the items spelled out on the checklist and then they need to at least reference the checklist. "All" may be difficult to accomplish.

**Response** – The department agrees. The following rule revisions are proposed for Section 12(b). The Section 12(c) heading will be removed and requirements in Section 12(c) will become requirements under Section 12(b).

(b) Owners and/or operators shall notify the department at least 30 days prior to changing to a regulated substance containing greater than 10 percent ethanol, ~~or~~ greater than 20 percent biodiesel, or any other STP-regulated substance identified by the department. In addition, owners and/or operators shall meet the following:

~~(c) *Biofuel Blends.*~~

(i) Prior to storing ~~a biofuel blend~~ these substances in an existing or new tank system, owners and/or operators shall demonstrate that ~~all~~ storage tank system components are compatible with the ~~biofuel blend~~ substance to be stored. Compatibility demonstration shall be made by one of the following:

(B) Equipment or component manufacturer certification that the tank system components are compatible for use with the ~~biofuel blend~~ substance to be stored. This certification shall be in writing, indicating an affirmative statement of compatibility, including the biofuel blend range (if applicable), for which the component is compatible.

(ii) Compatibility Checklist. The storage tank owner and/or operator shall complete the compatibility checklist developed by the department. The completed checklist and compatibility demonstration for each component of the tank system shall be submitted to the department. The department will issue written authorization to store the substance ~~biofuel blend~~ after review and acceptance of the submittal.

**Comment 2 - Part D UST Systems: Release Detection, Section 14(g)(i)(B).** Wyoming categorically allows sump sensors in lieu of conventional ALLD if sensors can detect 3 gallons of liquid in the sump regardless of sump size or shape. This does not meet the requirements for detecting a release within an hour. Unless a site specific analysis of sump sensors as stand-alone methods is completed it cannot be proven to meet requirements in all cases. Recommend addressing this on a site by site basis.

**Response –** The department agrees. The following rule revisions are proposed for Sections13(g)(iii)(C) and 14(g)(i)(B). Section 14(i) will be removed, and Section 14(j) will become Section 14(i).

[Section 13(g)(iii)(C)]

(C) ~~Function-test sump sensors to demonstrate that they meet the requirements of Section 14(g)~~ **W~~w~~hen sump sensors are used to meet the requirement for an A~~a~~utomatic L~~l~~ine L~~l~~eak D~~d~~etector.~~,~~** ~~they shall be configured to meet the requirements of Section 14(g) and t~~The annual inspection shall include a manual tripping of each sump sensor. ~~The automatic device used to monitor sump sensors shall be triggered by the manual tripping of the sensors, and a~~ A record shall be made showing the date when the test was done, the facility number, and recording ~~the fact~~ whether or not ~~that~~ the sensor operated as required. ~~After the sump sensors have been function tested, they shall be placed in the sump at a location that allows the detection of 3 gallons of liquid if the sensor is being used as an automatic line leak detector. If the sensor is used solely for interstitial monitoring, t~~ The sensor shall be placed in accordance with Section 14(h)(v).

[Section 14(g)(i)(B)]

(B) Be equipped with an automatic line leak detector. ~~in accordance with the following:~~ Automatic line leak detector ~~M~~methods~~, including sump sensors~~ ~~which~~ that alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm~~,~~ may be used only if they detect leaks of ~~three (~~3~~)~~ gallons per hour at ~~ten (~~10~~)~~ pounds per square inch line pressure within ~~one (~~1~~)~~ hour. ~~If sump sensors are used as an automatic line leak detector, the sensor shall be placed in the sump such that it can detect 3 gallons of liquid in the sump regardless of the sump size or shape, and whether or not the sump is level. If sump sensors cannot detect 3 gallons of liquid, the sensors shall be relocated in the sump such that 3 gallons of liquid can be detected or another type of automatic line leak detector shall be installed.~~ An annual test of the operation of the leak detector shall be conducted. Manufacturers are required to recommend procedures to be used for testing their ~~own~~ equipment, but all automatic line leak detectors shall be tested annually. No manufacturer shall recommend that its equipment not be tested nor interfere with the testing of its equipment in any way. In addition, all underground pressurized piping shall:

[Section 14(i) is removed]

~~(i) *Piping Installed After June 30, 2017.* When a new piping interstitial monitoring system is installed and sump sensors are used as standalone automatic line leak detectors, the system shall be configured to shut off the flow of product in that piping run when a sump sensor triggers an alarm. Essential homeland security systems, emergency generator systems, and systems used for other disaster relief efforts are exempt from this requirement.~~

[Section 14(j) becomes Section 14(i)]

**~~(j~~i)** *Interstitially Monitored Pressurized Piping Installed Prior to December 1, 2005.* If double-wall piping systems using sumps for interstitial monitoring were installed before December 1, 2005, the owner and/or operator may install mechanical or electronic line leak detectors and perform annual line tightness testing in accordance with Section 14(g)(i)(B)(I) or an alternative tank leak detection method as described in Section 14(g)(i)(B)(II) to meet leak detection requirements. In this case, the owner and/or operator will not be required to perform periodic integrity testing of containment sumps used for interstitial monitoring.

**Comment 3 - Article 14, Storage Tank Act of 2007,** 35-11-1415. Definitions. (a)(ix)(F). Federal regulations do not exclude oil/water separators from the definition of an UST. Wyoming must regulate the same universe as the federal regulations to obtain SPA.

**Response –** The department agrees and will request a statute change during the 2019 legislative session.

**Comment 4** - Does Wyoming require all tanks to have Cathodic Protection(CP)? If not, we suggest adding language at 280.11(3)(b) that requires a determination by a CP expert for USTs installed without CP.

**Response -** Yes; Wyoming requires all steel tanks to have cathodic protection. To clarify this requirement, the department proposes to revise Section 6(a)(ii):

(ii) ~~**Cathodically Pp**~~**rotected** ~~**-**~~ Steel USTs shall be cathodically protected or isolated from ground contact and manufactured and installed to meet the following requirements:

**Comment 5 -** Part M, Section 50 (a)(i). Wyoming is using the federal dates which is acceptable. Wyoming may wish to ensure this is what they want to do.

**Response -** Wyoming does not have primacy for the program; therefore, the federal dates are being used. No change proposed due to comment.

**Comment 6** – [Section] 13(d) Implementation dates for both 30 day and annual inspections don't seem to be included. These requirements appear to be immediate as written. This is fine, however Wyoming may want to consider other dates.

**Response** - Wyoming does not have primacy for the program; therefore, the federal rules are in effect. No change proposed due to comment.

**Comment 7 -** Section 13 (c ) (viii) requires documentation of Class C operator training, We suggest adding language here that requires owners and operators to maintain documentation of Class A/B/C operator training. Add reference to sections 46(h) at a minimum. This needs to be referenced here and not just in the operator training section.

**Response** – The department agrees, and proposes the following change to Section 13(c)(viii):

(viii) ~~Documentation of Class C Operator training.~~ Documentation for all operator licensing and training as referenced in Section 46(h).

**Comment 8 -** Section 13 (c) - Does not specify how records are to be kept.

**Response** - Availability and records maintenance are addressed in Section 13(i). No change proposed due to comment.

**Comment 9 -** We suggest adding where records are to be maintained.

**Response** - Availability and records maintenance are addressed Section 13(i). No change proposed due to comment.

**Comment 10 -** Section 10(d)(iii) – Is Section 18 the correct reference here?

**Response -** Yes; Section 18 refers to record maintenance requirements in Section 13. Section 18 includes additional requirements. No change proposed due to comment.

**Comment 11 -** 13(c) (iii) - Should this be Section 13?

**Response** - No. Section 13(c)(iii) refers to documentation for system compatibility. System compatibility is addressed in Section 12. No change proposed due to comment.

**Comment 12 -** 13(c) & 10 – Add how long records of walkthrough inspections must be maintained.

**Response -** Section 13(f) requires records to be maintained for 12 months. No change proposed due to comment.

**Comment 13 -** Wyoming allows petroleum UST systems with a throughput less than 15k gallons per month to use inventory control as the sole leak detection method and restricts the use of SIR on UST systems greater than 500k gals. Additional methods like tracers and passive acoustic methods are considered equivalent to inventory control for monthly monitoring. In addition to allowing inventory control for 15k gallons per month UST systems, we suggest requiring a tightness test.

**Response –** The department believes the requirements in Section 14(f) are as protective as other leak detection methods including tightness testing. Federal law allows states the flexibility to determine alternate methods that are as protective as the federal rule. No change proposed due to comment.

**Comment 14 -** Sections 20 and 21. Splits the requirements into those with and without fund coverage. Wording issue: What is Wyoming's definition for "leak"? Action required only if tests results show a "leak" exists. Ensure this action is required in the case of a release to the environment. Ensure a release is a leak.

**Response –** The department agrees that a leak is a release because EPA has changed federal language from leak to release. "Leak" will be changed to "release" in every appropriate instance it occurs in the rule.

**Comment 15 –** [Sections] 20 and 21 differ in that site check and further action in [Section] 20 is required by the state. [Section] 21 directs owner to follow corrective action; [Section] 20 leaves it to the state. We cannot determine if this is acceptable under 281 – need additional information on how the state runs the corrective action sites where state is the lead.

**Response** - The department may put a new release into a project to be completed by one of the department's contracted engineering firms. The engineer will then complete a subsurface investigation, which is the "site check." Conversely, the department may complete the investigation (site check) using an "Investigation, Confirmation, and Mitigation (ICM) work orders. The department follows Storage Tank Program Guidance Document #11 (Immediate Response) procedures. No change proposed due to comment.

**Comment 16** - Section 25 – Owners and Operators (O/O) are eligible for State Corrective Action Account– regulations are very broad and not as detailed as federal regulations – How does Wyoming ensure they meet all of 281 for fund led sites.

**Response -** The fund was originally approved by EPA as a mechanism to pay for cleanup of contaminated sites. When the state legislature set up the fund in the late 1980's in response to the federal law requiring owners/operators to cleanup sites, the state recognized the negative impact federal law could have on small operators in rural Wyoming. In some instances, the federal law could have put small operators out of business; leaving rural residents without fuel. The fund has been operating as the cleanup mechanism since 1990 without any issues. The Corrective Action Account is funded by a mineral severance offset equal to 1 cent per gallon of gasoline or diesel sold. The fund goes through an annual "fund soundness" review by EPA. No change proposed due to comment.

**Comment 17 -** Overarching issue on cleanup program - State does not write regulations for themselves on the sites they are the lead on. This may be ok under 281 but we cannot determine if it is based on the regulations. We need additional information on the state's policies and procedures for the state lead sites to determine if they meet the requirements of 281.

**Response –** The department follows the rule when completing cleanup. When a release is confirmed, the department puts the site into a project, selects three prequalified engineering firms that have an "As-Needed Engineering Services Contract" with the department to submit a proposal, and selects an engineer. The department issues a Task Order under the contract, and the engineer begins work. Work includes an investigation of the extent of contamination, selection and design of the remedial alternative, implementation of the remedial alternative, operation and maintenance (including monitoring) of the remedial alternative as appropriate, and site closure when cleanup objectives have been met. MCLs in groundwater must be reached to obtain closure. If the department closes a site and contamination is later found that could have been caused by eligible tanks, the department reopens the site and begins more work. The department does not issue "no further action" letters. This process has been used since program inception in 1990. The department has closed (closure objectives met including reaching MCLs in groundwater) over 1600 sites using this process. No change proposed due to comment.

**Comment 18 -** Section 24 and 25 - If a site is eligible for a release, the state will take on the investigation and mitigation of any immediate threats. The O/O is responsible for system repairs and stopping any further release. State will conduct the site check and then the state will prioritize the site for cleanup after initial abatement procedures. The ranking system for prioritization considers free product (present or likelihood). Part J lists Environmental remediation standards for leaking storage tanks. It has a section for free product stating that for free product more than 0.05 thick, restoration should begin as soon as possible. Section 24 is similar to federal requirements and is not similar or missing for Sections 25 for state led sites. Section 25 - O/O Eligible for State Corrective Action Account - says "*Site Characterization and Corrective Action.* The department will prioritize the site pursuant to Section 27 after completion of initial abatement measures. No other details are provided such as free product removal requirements for state as required for non-fund eligible sites. O/Os outside the state corrective action program are required to investigate and begin free product removal as soon as practicable.

Policy question for the state: What is the state timing requirement for sites under the state corrective action program with free product?

**Response –** The department follows the rule when completing cleanups. The department will contract with an engineer as soon as possible and the engineer will begin work to remove free product as soon as possible. The department may also begin work immediately using the Investigation, Confirmation, Mitigation (ICM) work order mechanism. The department follows Storage Tank Program Guidance Document #11 (Immediate Response). No change proposed due to comments.

**Comment 19 -** The Fund cleanup regulations only say: The department will prioritize the site pursuant to Section 27 after completion of initial abatement measures. The department will also collect sufficient data for classification of the affected groundwater under Chapter 8, Wyoming Water Quality Rules and Regulations.

**Response -** True. See response to Comment 21 below. Wyoming no longer has a backlog of sites not being addressed due to lack of resources. Sites are now put into a project within 3 months of release regardless of priority. Department policy is to wait up to 3 months (action will be taken sooner to address immediate threat to human health or the environment) to select an engineer to begin work. No change proposed due to comment.

**Comment 20 -** Part E Section 25 (fund cleanups) does not reference the standards found in Part J?

**Response -** The statute indicates that rules will be developed that establish cleanup standards. Per statute, Part J lists the standards for all cleanups completed in the state whether done by the department or by the owner/operator. The department follows the rule when completing cleanups. No change proposed due to comment.

**Comment 21 -** Section 27 – This appears to determine priority order for cleanups for sites the state is the lead on. For sites where the O/O is the lead the cleanups must all move forward no matter what the priority order. What happens to low priority sites where the state is the lead? If these sites are not addressed in a timely manner that is not consistent with 281 and the state cannot receive SPA.

**Response -** When the program began in 1990, there were 475 contaminated sites that joined the program. The state did not have personnel or funds to address all sites at once, and a priority ranking system was developed. Wyoming no longer has a backlog of sites not being addressed due to lack of resources. Sites are now put into a project within 3 months of release regardless of priority. Department policy is to wait up to 3 months (action will be taken sooner to address immediate threat to human health or the environment) to select an engineer to begin work. It is more cost effective to combine several sites into one project rather than working on one site at a time. Therefore, to reduce costs to Wyoming taxpayers and limit liability on the fund, the program completes up to three sites at a time if the sites are in the same geographical location. As documented in the FY2017 EPA fund soundness review, the department had 17 new releases during the fiscal year, and 17 new releases were put into a project during the fiscal year. No change proposed due to comment.

**Comment 22 -** Section 24(f) - Part J lists standards required for remediation of soil and groundwater. Section 24 is similar to federal requirements and is not similar or missing for Sections 25 for state led sites. In Part J, there is a reference to eligible tank systems and eligible constituents. What does the term eligible refer to?

**Response -** Eligible constituents are the same as those requiring to be addressed under the federal law and include gasoline, diesel, biodiesel, ethanol blends, and hazardous substances defined in section 101(14) of CERCLA. The department proposes to develop a Guidance Document listing the eligible constituents. As part of the Governor's initiative to reduce the number of pages in rule, Appendix A has been removed the rule. Appendix A listed the eligible constituents, which will now move to a Guidance Document.

**Comment 23 -** How does the state ensure there is a corrective action plan for fund led sites?

**Response** - The template scope of work provided to the engineer under contract to complete the work includes submittal of a Remedial Action Plan (RAP), or Corrective Action Plan. The RAP is reviewed by the STP Project Manager to ensure it complies with the requirements of the Scope of Work. The project manager works with the engineer to ensure the remedial approach identified by the engineer is appropriate and the best available technology for cost-effective site cleanup. "Fund led sites" are completed by the department's contracted engineer. The STP project manager is involved in every step of the cleanup at every site. The STP project manager oversees the work being completed by the engineer under contract by the department. No change proposed due to comment.

**Comment 24 -** Section 31(b) states that owners must perform site assessment as defined in section 29. Does this mean that [Section] 20(a) is not considered here because you already know a site assessment is required? To make this clear we suggest you reference exactly which part of 29 you are referring to.

**Response -** A minimum site assessment (MSA) as required by Section 29 constitutes the site assessment. The MSA provides data to determine whether or not the site is contaminated when the tanks are closed. A system test is not needed to determine if the site is contaminated. A system test is not needed to close the tank. All of Section 29 applies. No change proposed due to comments.

**Comment 25 - Section 53. FR Amount and Scope.** This section applies to petroleum USTs or contaminated site owners and/or operators not eligible for the state corrective action account. Do Wyoming regulations or statutes require the Corrective Action Fund to meet requirements of 281 – such as $1 million in coverage, etc? Need additional information on what the fund covers in order to determine if Wyoming's FR meets 281.

**Response -** The Financial Responsibility Account (FRA) has a dedicated $1 million balance. Because the majority of sites in Wyoming are covered by the Corrective Action Account (CAA) for cleanup and Wyoming pays to cleanup affected third-party sites, the FRA has never been used since it was created by the legislature in 1990. The CAA pays for cleanup of source sites and third party sites. This mechanism was approved by EPA when the program was established. No change proposed due to comment.

**Comment 26 - Section 46. Storage Tank Operator Licensing.** Wyoming allows Class A and B operators 90 days to be trained. Recommend Wyoming add "testing and inspections" to the list of topics for the ICC Wyoming Exam required for Class A and B operators. This will ensure new state requirements such as spill, overfill, and containment sumps for piping interstitial monitoring testing, release detection equipment testing, and walkthrough inspections are covered.

**Response -** The Exam will be revised after the new regulations have been adopted. No rule change proposed due to comment.

**Comment 27 -** Part A, Section 4 does not address previously deferred EGTs. Were emergency generator tanks always required to have release detection? If not, please update the applicability section to reflect the new requirement. Release detection is required for emergency generators.

**Response –** Yes; emergency generator tanks (EGTs) were always required to have release detection. No change proposed due to comment.

**Comment 28 -** Wyoming does not include the federal definitions listed below in its regulations; however, at Sec. 5 introductory paragraph, the State makes it clear that definitions in 40 CFR Part 280.12 apply for those terms not defined in the State's regulations. At Sec. 2(c)(iv)(G), the State specifies July 1, 2016, as the incorporation by reference date of provisions from 40 CFR Part 280. 280.12 definitions not in Wyoming regulations but covered under Incorporated By Reference (IBR) at Sec. 2(c)(iv)(G) and Sec. 5 intro.: Beneath the surface of the ground, Cathodic protection, Cathodic protection tester, Consumptive use, Dielectric material, Dispenser, Dispenser system, Electrical equipment, Excavation zone, Existing tank system, Farm tank, Flow-through process tank, Free product, Gathering lines, Liquid trap, Motor fuel, New tank system, Noncommercial purposes, On the premises where stored, Person, Petroleum UST system, Pipe or piping, Pipeline facilities (including gathering lines), Release detection, Residential tank, SARA, Secondary containment or secondarily contained, Septic tank, Storm water or wastewater collection system, Surface impoundment, Tank, Under-dispenser containment or UDC, Underground area, Underground release

**Response -** Section 5 states that the definitions in the rule supplement those found in statute and the CFR. Not all definitions were included in an effort to reduce the number of pages in the rule per the Governor's initiative. Only definitions that are routinely used are included in the rule. No change proposed due to comment.

**Comment 29 -** If possible, please add the language found in 280.34(b)(1).

**Response -** The department does not allow steel tanks to be installed without cathodic protection. Therefore, 280.34(b)(1) is not applicable. No change proposed due to comment with the exception of clarification made to Section 6(a)(ii) under Comment 4 above.

**Comment 30 -** Section 61. Release from the Requirements. In 2015, EPA replaced "properly closed" with "permanently closed or undergoes a change-in-service." Recommend Wyoming match federal revision.

**Response –** The department agrees. Proposed change to Section 61:

**Section 61. Release from the Requirements.** An owner and/or operator is no longer required to maintain financial responsibility under this Part for a UST after the tank has been ~~properly closed~~ permanently closed or undergoes a change-in-service or, if corrective action is required, after corrective action has been completed and the tank has been properly closed in accordance with Part G.

**Comment 31 -** Section 62. Bankruptcy or other incapacity of owner and/or operator or FA guarantor. This section only discusses what guarantor needs to do if guarantor is named in a Title 11 proceeding.
Section 62. The title of this section might be inaccurate. The section seems to only deal with the bankruptcy of the FA guarantor. The rest of the title isn't addressed (i.e., there is no other incapacity and doesn't talk about bankruptcy or other incapacity of O/O). Wyoming may wish to consider revising.

**Response -** The fund mechanism (Corrective Action Account) used in Wyoming to cleanup both source sites and third-party sites adequately addresses this issue. Bankruptcy or other incapacity of the owner and/or operator is not an issue because the department will continue to cleanup the site using the Corrective Action Account. The FA guarantor is the State of Wyoming. Section 62 in the federal regulations is not applicable in Wyoming. No changes proposed due to comment.

**Comment 32 -** Wyoming does not require facilities that are ineligible for the CAA to immediately investigate and confirm releases onsite.

**Response** - The department does require facilities ineligible for the CAA to immediately investigate and confirm a release; see Section 21. No change proposed due to comment.

**Comment 33** - Wyoming does not have an analog to this federal provision [280.110] requiring notification of current evidence of financial responsibility within 30 days after identification of a reportable release from a UST.

**Response -** Owner/operators do not use the mechanisms referenced in 280.110; they use the state fund. If the owner/operator has paid fees, they are covered by the state fund. The department tracks fee payment, issues late fee invoices, and red tags (delivery prohibition) facilities that do not pay fees. The department will complete cleanup at facilities that do not pay fees and seek cost recovery. Fees are only $200 per tank; average cleanup costs are over $500,000. Facilities typically pay their fees when faced with delivery prohibition and cost recovery. No change proposed due to comment.

**Comment 34 -** The state provision indicates Class A and Class B operator operators must obtain a license (the state's corollary for the federal training requirements) within 90 days of employment with a UST company. The federal requirement is limited to "within 30 days of assuming duties."

**Response –** The department agrees and proposed the following change to Section 46(c):

(c) *Timing.* Within ~~**ninety (90)**~~ 30 days of assuming duties, ~~**the first date of employment with the company**~~, the Class A and Class B ~~o~~Operators shall obtain a Class A or B Storage Tank Operator's license from the department. To obtain this license, the operator(s) ~~each person~~ shall submit documentary evidence that he or she has passed the following tests within the ~~five (~~5~~)~~ years preceding the application date:

**Comment 35 -** The federal retraining provision at 280.244 requires Class A and B operators at facilities out of compliance to be retrained within 30 days of the determination of non-compliance. While the state has the leeway to waive the retraining under 280.244(a) where annual refresher training is demonstrated, or 280.244(b) at the agency's discretion, the program must make these requirements and exceptions explicit. The Wyoming regulations with respect to Class A operators do not require retraining for this class of operators at all. The state's retraining with respect to Class B operators allows the retraining to be completed within 90 days of the notice of violation, instead of the federal 30-day limit. This may be acceptable if the state intends for the Class B operators to have annual refresher training. The state may wish to consider demonstrating their intent with respect to this aspect of the retraining provisions.

**Response** – The department agrees that the Class B operator should be retrained within 30 days. The department intends to waive retraining for the Class A operator as allowed by 280.244(b). The following changes are proposed for Sections 46(i) and 44(a)(xvii)

Section 46(i):

(~~m~~i) *Retraining Required.* When a Notice of Violation ~~and Order~~ is issued to a facility for any of the reasons listed in Section 44(a)(i) through (xxii~~xviii~~), the Class B Operator ~~must~~ shall be retrained. Retraining shall be in the form of retaking (if previously taken) or taking (if not previously taken) and passing the "Wyoming State Specific Storage Tank Laws – ICC Test W-6" exam. The Class B Operator shall take this test within ~~**ninety (90)**~~ 30 days of the Notice of Violation date. If there is more than one Class B Operator for the facility, at a minimum one of the Class B Operators ~~must~~ shall take the exam.

Section 44(a)(xvii):

(xvii) The department becomes aware that there has been no ~~**L**~~licensed Class A or B Operator for a facility for ~~ninety (~~90~~)~~ days or more; or the Class B Operator has not been retrained per Section 46(i) within 90 days of a Notice of Violation being issued;

**Comment 36 -** Wyoming does not have analogs to 40 CFR 280.245(b)(1) – (3) requiring certain types of records be kept with respect to the training of facility operators of all classes. The state may wish to incorporate these provisions regarding training documentation.

**Response –** The department does require record documentation in Section 46(h). No change proposed due to comment.

# Questions, Comments and Discussion

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

Solid and Hazardous Waste Division Rules and Regulations, Storage Tank Program, Chapter 1