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BEFORE THE WATER AND WASTE ADVISORY BOARD

STATE OF WYOMING

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HEARING ON STORAGE TANK RULES AND REGULATIONS  
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TRANSCRIPT OF HEARING PROCEEDINGS

Transcript of Hearing Proceedings in the above-entitled matter before the Water and Waste Advisory Board, commencing on the 22nd day of June 2012 at 9:25 a.m. at the Oil and Gas Conservation Commission Building Hearing Room, 2211 King Boulevard, Casper, Wyoming, Ms. Marge Bedessem presiding with board members Mr. Glenn Sugano and Mr. David Applegate in attendance and Ms. Lorie Cahn appearing via videoconferencing. Also present were Mr. Carl Anderson, Ms. Karen Halvorsen and Mr. Oma Gilbreth.

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

(Hearing proceedings commenced  
9:25 a.m., June 22, 2012.)

VICE CHAIR BEDESSEM: Now that  
reimbursement paperwork is done, let's reconvene with  
Water Quality Division.

MR. ANDERSON: Madam Chair, Carl Anderson  
with Solid and Hazardous Waste Division. Before we talk  
a little bit about the rule, I want to clarify for you a  
little bit. The rules that we're bringing before you are  
Water Quality Division rules and regulations. But the  
storage tank program, a number of years ago, was moved  
from the Water Quality Division into the Solid and  
Hazardous Waste Division. Because of some of the  
statutory language that currently exists, we continue to  
call them water quality rules and regulations, even  
though the program is housed in the Solid and Hazardous  
Waste Division.

VICE CHAIR BEDESSEM: So the rule package  
is affiliated with the Water Quality Division rules, but  
the program is housed with the solid waste program, solid  
and hazardous waste program?

MR. ANDERSON: That's true.

VICE CHAIR BEDESSEM: So, in a rule-  
making package, then, you end up presenting it, as

1           opposed to John Wagner?

2                       MR. ANDERSON:  Yes, because it's the Solid  
3           and Hazardous Waste Division's program.  Even though  
4           they're Water Quality rules and regulations, we have the  
5           responsibility for maintaining the regulations.

6                       VICE CHAIR BEDESSEM:  Thank you for  
7           clarifying, Carl.  Appreciate that.

8                       MR. ANDERSON:  You bet.

9                       Madam Chair, board members, we're here to  
10          present some fairly surgical changes to the storage tank  
11          regulations, primarily related to issues with respect to  
12          consistency and stringency with the federal program.  EPA  
13          has asked us to make some changes to the rules and  
14          regulations for consistency purposes.

15                      I would note that EPA has recently drafted a  
16          fairly significant draft rule, but they don't expect to  
17          finalize that rule until the end of 2013.  And we were  
18          hoping we could hold off making rule changes to Chapter  
19          17 until EPA finalized that rule.  But EPA raised these  
20          consistency, stringency issues, and we thought we needed  
21          to make those changes now.  But we will be back to the  
22          board in the future when EPA promulgates their final  
23          rules.

24                      MR. APPLGATE:  Carl, I'd like to respond  
25          to that, because this is a little different than the

1       stuff we've seen in my tenure on the board in the sense  
2       that we're making changes or imposing rules based on  
3       guidance. So I'm just curious what the Department's  
4       position is with EPA that the EPA somehow can say, oh,  
5       we're in the process of making rules, but your rules  
6       aren't consistent with our guidance. I don't think our  
7       rules have to be consistent with their guidance, do they?

8                   MR. ANDERSON: I'll take a crack at it.  
9       If I don't get it right -- if you look at the SOPR,  
10      you'll notice on the second page -- actually, the first  
11      page of the SOPR, in that first paragraph, it talks about  
12      less stringent than EPA guidance, grant guidelines to  
13      states for implementing the operator training provisions.  
14      The key word there is "grant" -- or, the key words are  
15      "grant guidelines."

16                   So we get some funding from EPA. And in order  
17      for us to continue to be -- have consistency with the  
18      federal program and be as stringent, there's some linkage  
19      between what they're calling their guidelines and our  
20      regulations.

21                   MR. APPLGATE: I don't want to make too  
22      much of this, but we're kind of being bullied by EPA.  
23      Because, basically, they don't have the rule change yet.  
24      They think they're going to have the rule change. But  
25      they're telling states, if you want our funding, you have

1 to make your rules consistent with our guidance. I don't  
2 usually make some statement based on federalism, but I  
3 find this to be a little bit concerning, to be honest  
4 with you. I just think EPA is being a little bit of a  
5 bully. But I guess we'll proceed with that.

6 MS. HALVORSEN: Madam Chair, to clarify a  
7 little bit, this is a grant guideline that we have been  
8 operating under. However, the Section 9010 of the  
9 federal law, the Energy Policy Act of 2005, required  
10 operator training. And so we have the Energy Policy Act  
11 of 2005, which is the law that was passed, and now we  
12 are -- and the feds never promulgated rules in response  
13 to the Energy Policy Act, but they did come out with  
14 guidelines so that we could --

15 MR. APPLGATE: I understand that. Again,  
16 I'm no expert in the law, either. But I just have a  
17 problem with them telling us that our rules have to be  
18 consistent with their guidelines before they have rules  
19 in place. I just think, from a process standpoint, it's  
20 better to do it the other way around.

21 MR. ANDERSON: Madam Chair, we recognize  
22 that we were probably going to get this question. And we  
23 get a certain proportion of our program funding in  
24 federal grants. And that federal grant money primarily  
25 supports FTE. We have other monies that we use for our

1 actual corrective action. So there is this link between  
2 us being consistent from EPA's perspective and them  
3 putting pressure on us with respect to the grant monies  
4 that we use to support our FTEs. That's good because we  
5 need the federal money for FTEs. And then the other  
6 money that we have available, we can use that for actual  
7 cleanup and don't have to take money from the cleanup  
8 funds to pay for FTEs. So we try to be responsive.

9 MR. APPLGATE: Thanks for the  
10 explanation. At least we have it on the record.

11 MR. ANDERSON: And I would just close that  
12 we were hoping today -- I'll turn it over to Karen and  
13 Oma. But we were hoping today, Madam Chair, that we  
14 could get a recommendation from the board to be able to  
15 move this package forward to the Environmental Quality  
16 Council.

17 Thank you.

18 MS. HALVORSEN: Madam Chair, board  
19 members, again, just a little background. The tank  
20 operator rules that are promulgated now were promulgated  
21 in 2008 in response to the Energy Policy Act of 2005.  
22 Again, our grant guidance came out from EPA in August of  
23 2007, and we have to follow those guidelines in order to  
24 receive funding for the program.

25 Our operator training implementation date is

1 August of 2012. And I think that's why it took EPA so  
2 long. Our rules have been promulgated for a while. But  
3 I think it took them a while to really look at those  
4 rules against the guidelines. So, when we had our grant  
5 at the end of the year in January, we had our meeting  
6 with the EPA with the grant, and they brought up the fact  
7 that they didn't think our rules were quite meeting the  
8 grant guidelines as the guidelines were written. I think  
9 it only took them this long to come to that because we  
10 have to have everything in place by August of 2012.

11 So, at the January 2012 meeting, they brought  
12 up five issues. One, the rules get six months for an  
13 operator to be trained or licensed. EPA wants that to be  
14 30 days. So they said we think 60 -- six months is not  
15 reasonable. The guidance says six months or some other  
16 time frame reasonable set by the State. Our rules gives  
17 six months. And they decided they thought that that was  
18 not reasonable. The rules don't give a time frame for  
19 the Class A, Class C operators to be trained. The rules  
20 do not require the tank owners to maintain a list of all  
21 Class C operators. The rules do not require retraining  
22 in the event of a major violation, which they call  
23 significant operation compliance violation, or SOC  
24 violation. And the rules do not require notification by  
25 tank owners to the Department when the Class A or Class B

1 operator resigns.

2 So, in response to that, we did these few  
3 changes that are in the SOPR to try to rectify those  
4 issues that EPA had with us being able to certify to get  
5 our grants.

6 And if you'd like to -- I don't know if -- I'm  
7 assuming you've had time to review everything. If you'd  
8 like to go through line by line, we can do that. We have  
9 the comments we received from the F.E. Warren Air Force  
10 Base, and we also received comments yesterday from one of  
11 our trainers that does the operator training, Bob Lucht,  
12 with Petroleum Testers. So I don't know if you want to  
13 handle comments first or if you want to go through the --  
14 it's at your pleasure. We'll do whatever.

15 VICE CHAIR BEDESSEM: Is there any  
16 preference on the part of the board members?

17 MR. APPLEGATE: Doesn't matter.

18 MR. SUGANO: No.

19 VICE CHAIR BEDESSEM: I think what I would  
20 like to do is have you just quickly go over your response  
21 to the written comments we've received.

22 MS. HALVORSEN: Okay.

23 VICE CHAIR BEDESSEM: Then I'll open it up  
24 to see if there are any additional comments from the  
25 public as of today and then talk about how to move

1 forward, and if there are any comments from the board.

2 MS. HALVORSEN: Madam Chairman, thank you.

3 The Department of the Air Force submitted  
4 written comments to us, which we have provided to you in  
5 your packet, with our response to those comments. The  
6 first comment --

7 MS. CAHN: Excuse me. I didn't receive  
8 those comments. I'm wondering if there's a way to maybe  
9 fax them over here.

10 MS. HALVORSEN: Those were in the packet.

11 VICE CHAIR BEDESSEM: Lorie, the first  
12 comments from the Air Force base were in the packet that  
13 would have been mailed to you.

14 MS. CAHN: When did we get that part of  
15 the packet? Because I have the red-line strikeout, and I  
16 have this --

17 VICE CHAIR BEDESSEM: I believe they all  
18 came together.

19 MS. CAHN: -- and this item, the SOPR.

20 VICE CHAIR BEDESSEM: I believe they all  
21 came together.

22 MS. HALVORSEN: Everything was sent  
23 together.

24 VICE CHAIR BEDESSEM: In particular, for  
25 Lorie's benefit, then, you know, if you would take the

1 time to just kind of go through them. They're not that  
2 complicated. I think you should be able to hit the  
3 highlights and help clarify.

4 Also, the second set of comments repeats some  
5 of the stuff in the first batch of comments. So I think  
6 you should be able to address those efficiently.

7 MS. HALVORSEN: So, Lorie, if you have any  
8 questions as we're going through, we'll try to get those  
9 answered.

10 The first comment from the Air Force base was  
11 that the Energy Policy Act of 2005 required states to  
12 develop an underground storage tank training program but  
13 did not require mandatory training. Proposed regulations  
14 would require retraining only when a facility is out of  
15 compliance. The mandatory periodic requirements for  
16 Class A and B operators to recertify are more stringent  
17 than currently proposed federal regulations.

18 Under that first bullet, we respond that the  
19 retraining requirement is currently in rule and was  
20 not -- and was promulgated through the rule-making  
21 process. The retraining requirement itself is not part  
22 of the proposed rule-making changes at this time and is  
23 therefore beyond the scope of this -- of what we're here  
24 before you today.

25 The proposed rule-making change only affects

1 the time allowed between retraining, increasing the time  
2 frame from two to five years. However, we can offer that  
3 the EPA guideline describes minimum requirements the  
4 State's training program must contain in order to comply  
5 with the federal requirements for funding.

6 The second bullet under that comment, the  
7 required ICC test W6 includes state requirements for  
8 aboveground storage tank -- for aboveground storage  
9 tanks. And the Energy Policy Act only requires UST  
10 operator training, requiring us, the operators, to be  
11 trained and certified on aboveground storage tank  
12 requirements more stringent than federal regulations.  
13 Again, we believe this comment is beyond the scope of  
14 this rule-making. Training requirement for ASTs is  
15 currently in rule as promulgated through the rule-making  
16 process. We're not proposing to change that. The State  
17 cleans up ASTs just as they do USTs, and we were informed  
18 that AST operators be operators just like UST operators.

19 Proposed Rule Amendment Number 2 from the Air  
20 Force, the required ICC test W6 includes -- it's the same  
21 as the bullet for Amendment Number -- for the proposal of  
22 the rule, so our comments seem to be the same.

23 They didn't have a comment on Rule Amendment  
24 Number 3. On Number 4, the Energy Policy Act of 2005  
25 required states -- Amendment 4 is the same as Amendment

1           1. Their comment on Number 4 is the same as it was on  
2           Number 1, so therefore, our response would be the same.  
3           Their Amendment Number 5, recordkeeping, tank owners  
4           shall maintain a list on site of designated, trained  
5           Class C operators. They believe that with the way the  
6           Air Force is set up with the emergency power generators  
7           and their missile silos, tanks, they don't have an  
8           on-site place to store those records. Our comment is  
9           that that recordkeeping doesn't apply to anything but  
10          fueling stations. So that part of the rule would not  
11          even apply to the Air Force at this time because they  
12          don't have a fueling station. A Class C operator is a  
13          service station clerk. They don't have service station  
14          clerks at those facilities.

15                   Proposed Rule Amendment Number 6 comment, the  
16          required ICC test W6 includes state requirements for  
17          aboveground storage tanks. Again, that's already been  
18          addressed. They did not have any comments on 7, 8 and 9.  
19          And they did Propose Amendment 10, inspection by the  
20          Class A or B operator, that that language be changed to  
21          whenever a Class A operator is in charge of more than one  
22          fueling facility. We don't have an Amendment 10, so  
23          again, we believe this comment right at this point is out  
24          of the scope of what we're trying to do before you here  
25          today.

1                   So that covers the Air Force comments. Is  
2 there any -- would you like any discussion?

3                   VICE CHAIR BEDESSEM: Board members have  
4 any questions?

5                   (No response.)

6                   VICE CHAIR BEDESSEM: Can you move on to  
7 the --

8                   MS. CAHN: Can you explain -- go over  
9 again what they were suggesting for Amendment Number 10?  
10 I didn't catch what their recommendation was.

11                  MS. HALVORSEN: They wanted -- they wanted  
12 us to add basically a Class A -- right now the rule is  
13 that whenever a Class A operator is in charge of more  
14 than one facility, a monthly inspection is required.  
15 They want us to add "fueling" in front of the word  
16 "facility." So it's just -- so that part of the -- that  
17 part of the regulation would only apply to fueling  
18 stations and not remote stations. And our comment,  
19 again, was that we hadn't -- we didn't have -- our SOPR  
20 does not include an Amendment 10.

21                  MS. CAHN: What do you think about the  
22 merit of that suggestion, I guess is what my question is  
23 really about?

24                  MS. HALVORSEN: Well, we have talked about  
25 that. And we do believe that it is -- it's true that

1       some of these facilities, not even for the Air Force, but  
2       also for remote repeater stations at the top of  
3       mountains, Yellowstone Park, where people can't -- they  
4       can't really get in on a monthly basis. However, the  
5       current EPA rules that are going through rule-making now  
6       at the federal level are going -- are stating that they  
7       want a monthly inspection done at all facilities. We've  
8       commented back to EPA that this may be hard at some of  
9       our remote facilities in Wyoming and other surrounding  
10      states, and not only just for the Air Force, but the more  
11      remote facilities.

12                 So what we are hoping to do is just wait and  
13      address that issue when the federal rules come out.  
14      Instead of changing our rules now and then have the feds  
15      come out and say, well, we want monthly or some other  
16      time frame, then we can change it again. I guess we  
17      don't have a problem adding that in just to make sure  
18      that they do the monthly inspections on fueling  
19      facilities. It was just not part of this package at this  
20      time. That's all we're saying.

21                 MR. GILBRETH: Just so you folks know, my  
22      name is Oma Gilbreth. I'm the compliance supervisor.

23                 The tanks we're talking about are emergency  
24      generator tanks, where they fuel an emergency power  
25      generator. They are not used for fueling -- fueling

1 vehicles. That's the ones that they are wanting us to  
2 exempt, rather than fueling tank facilities.

3 VICE CHAIR BEDESSEM: Thank you.

4 MR. APPLEGATE: I guess I want to follow  
5 up on Lorie. So, following up on Lorie's suggestion, if  
6 the comment is valid, is now not a good time to include  
7 that for some particular reason, or it would just require  
8 a revision to what you already put together? I'm trying  
9 to understand the process that we're on.

10 MS. HALVORSEN: It would require revision  
11 to what we've already -- would require revision to what  
12 you have before you, because this wasn't part -- it's  
13 outside the scope of what we're doing here now. It's  
14 outside --

15 MR. APPLEGATE: I know. But one of the  
16 things we have the ability to do today, I think, is add  
17 to or subtract to scope. And I think to some degree,  
18 Lorie is asking whether or not you believe that change --  
19 the board probably would benefit from you telling us  
20 whether or not you would support that change.

21 MS. HALVORSEN: We would support that  
22 change.

23 MR. APPLEGATE: So, if we were to support  
24 that change, then you could include that change in what  
25 you take forward to the council, I believe.

1                   MR. ANDERSON: Madam Chair, Mr. Applegate,  
2                   it really -- it just puts us in a position, if we could  
3                   make that change today, there's the potential that when  
4                   the federal rule gets finalized, that we might have to  
5                   make a -- do another change in response to the federal  
6                   regulations. Because the federal regulations right now  
7                   don't contemplate that kind of flexibility with respect  
8                   to these remote locations. So, when the EPA finalizes  
9                   their rules, you know, we may have to make a change.

10                  MR. APPLGATE: Does WDEQ believe that  
11                  degree of flexibility is warranted?

12                  MS. HALVORSEN: Yes, I believe we do,  
13                  because certainly --

14                  MR. APPLGATE: Then I would not worry too  
15                  much about what the EPA is going to do in their process,  
16                  because we're engaged in dispute with them all the time  
17                  on rules and guidance. Right?

18                  MR. ANDERSON: Madam Chair, I just wanted  
19                  to make the point that it may be a temporary thing,  
20                  depending on what EPA does with their rule and whether or  
21                  not we decide, you know, to -- if they adopt something  
22                  different than what we do today, we may be in conflict  
23                  with EPA, and that may have sort of repercussions in  
24                  terms of us seeking authorization for our storage tank  
25                  program.

1                   MR. APPLEGATE: I understand. It just  
2                   seems to me if we have a primary stakeholder, in this  
3                   case, Air Force, who believes there's rationale in this  
4                   degree of flexibility and they brought up the comment now  
5                   that it would make sense to include it -- I may be  
6                   misrepresenting what they would adhere to. But from a  
7                   process standpoint, we could make the change. It would  
8                   just require you to resolve that perhaps at a later date.  
9                   But there's still the risk that they could have other  
10                  changes to their rule-making that would require changes  
11                  to our rules.

12                 MR. ANDERSON: Madam Chair, no doubt.

13                 VICE CHAIR BEDESSEM: I believe I have a  
14                  little different opinion about this, in that if it's  
15                  truly outside of the scope of what you originally  
16                  proposed, if we make this change now, we -- and you want  
17                  to move forward on this rule-making package, we haven't  
18                  given the public opportunity to comment on the change  
19                  that we have made. And so my feeling is, if we make a  
20                  change like that, then we need additional comment, which  
21                  puts the Agency behind on their schedule to get these  
22                  things resolved for their sort of grant cycle.

23                 MR. APPLEGATE: I'm not sure I agree,  
24                  because we're not rule-making today. We're just  
25                  forwarding it on to the council. And we oftentimes made

1 changes --

2 MS. CAHN: Madam Chair, there will be  
3 another opportunity for public comment before this goes  
4 to the EQC. It seems like for emergency generator  
5 services that are not in service in the wintertime, to  
6 have to do these inspections, and they're difficult to  
7 get to, it seems like we could word something -- make a  
8 suggestion to you that something be worded very  
9 specifically to address this concern.

10 I mean, I don't think -- it's hard for me to  
11 believe somebody is going to object or that EPA would  
12 object to that if it's worded in such a way to explain  
13 very specific to the situation and then put that before  
14 EQC. Then EQC would have the -- there would be an  
15 opportunity for public comment before the EQC. So I  
16 guess that would be what I would be inclined to do.

17 VICE CHAIR BEDESSEM: I agree that we do  
18 have that other opportunity before the EQC for public  
19 comment. And we do have the ability to make this change  
20 if that is more flexible as far as the public, again, as  
21 a major stakeholder, has suggested.

22 In response to this set of comments, we haven't  
23 moved to the second set. We have two potential changes  
24 here. One is you suggested in your responses to these  
25 comments to -- I think there was a note that you were

1 going to add fueling -- no, it wasn't the fueling  
2 stations. It was the attendants. And so could you  
3 summarize, if we wanted to go forward with this, what  
4 those two changes would be in response to the set of  
5 comments? And then we can move to the next and then vote  
6 yea or nay on each of those suggested changes. Thank  
7 you.

8           Actually, I'd like comment from the public  
9 before we vote on any of those changes. Thank you.

10           MS. HALVORSEN: Madam Chair, yes. The one  
11 area that we could add for was under the recordkeeping  
12 section. We could clarify the Class C operators are  
13 service station clerks. And that would just be in  
14 parentheses after the recordkeeping -- tank owners shall  
15 maintain on site a list of designated, trained Class C  
16 operators, parentheses, service station clerks. That way  
17 it would be clear to folks like the Air Force and others  
18 that they don't have service station clerks. So that  
19 part of the rule would not apply. So it would just be  
20 adding in parentheses after that one part.

21           For the other rule or the other portion  
22 suggested, we would -- they've suggested -- the Air Force  
23 has suggested language that whenever a Class A operator  
24 is in charge of more than one -- currently it says just  
25 one facility. We'd add "one fueling facility" so that

1       it's clear that it's a gasoline -- it's a fueling  
2       station, not a remote power generator or a -- what do  
3       they have out there for generators?

4               MR. GILBRETH:   Emergency power generators.

5               MS. HALVORSEN:  -- emergency power  
6       generators or remote repeater locations up at the top of  
7       the mountains, that type of thing.

8               VICE CHAIR BEDESSEM:  So that's just the  
9       addition of one word to clarify?

10              MS. HALVORSEN:  Addition of one word.

11              VICE CHAIR BEDESSEM:  To clarify intent?

12              MS. HALVORSEN:  To clarify.  Unless it has  
13       an avalanche effect somewhere else in the rule.  But I  
14       don't think that does.

15              VICE CHAIR BEDESSEM:  You don't think that  
16       does.  You don't need to do a word search to find --

17              MS. HALVORSEN:  I don't think I -- because  
18       it's just the inspection that they're concerned about,  
19       the monthly inspection paragraph.

20              VICE CHAIR BEDESSEM:  And the monthly  
21       inspection paragraph is only covered in that one location  
22       in the rule?

23              MR. GILBRETH:  Correct.

24              VICE CHAIR BEDESSEM:  Thank you.  So we'll  
25       revisit this after you go through the second set of

1           comments and we get public comment. We'll go back  
2           through those proposed changes and vote on those. Okay?

3                       MR. GILBRETH: Madam Chairman, may I make  
4           a comment here? Regarding the Class C operators, in the  
5           rules and regulations, it already defines a Class C  
6           operator must be trained prior to assuming responsibility  
7           for responding to emergencies or alarms. Managers and  
8           fuel clerks who work at a service station or convenience  
9           store, those are people that are defined as a Class C  
10          operator. If they're working -- if they're at an  
11          emergency power generator site, they are not working at a  
12          service station or a convenience store, so a Class C  
13          operator is not required in that situation. So I don't  
14          see why we would have to change that portion as far as  
15          the rules and regulations concerning the documentation  
16          for the Class C operator. Do you see what I mean there?

17                      MS. HALVORSEN: We could just add that in.  
18          It just provides more clarification.

19                      VICE CHAIR BEDESSEM: I think it does  
20          provide clarification, because you can have a Class C  
21          operator who doesn't happen to be working at that type of  
22          facility. So there could be some confusion.

23                      Go through the remaining two comments.

24                      MS. HALVORSEN: Madam Chairman, board  
25          members, we received comments yesterday from Petroleum

1 Testers. They provided two comments for us. And I  
2 didn't have a chance to get those out to you, obviously.  
3 We just got them today. But I provided them to you. And  
4 I'm sorry, Lorie, that you don't have those with you.

5 Comment 1, Mr. Lucht was basically just  
6 supporting going from a two- to five-year recertification  
7 schedule and encouraging that we continue the  
8 certification process. So we had no comment with that.  
9 Basically, Mr. Lucht is just providing support of that  
10 part of the rule change.

11 His comment, too, is a little more in depth.  
12 Here's what he states. DEQ is proposing to shorten the  
13 time interval that new Class A and B operators have --

14 THE REPORTER: Could you go a little  
15 slower?

16 MS. HALVORSEN: Sure.

17 DEQ is proposing to shorten the time interval  
18 that new Class A and B operators have to pass the test  
19 the first time. The justification was that the rule was  
20 less stringent than federal guidance. Training  
21 requirements in Wyoming are undoubtedly the most  
22 stringent in the entire country. The original six-month  
23 time period was set because that allows a new operator  
24 time to take the ICC test twice if he or she fails the  
25 first time. Shortening the time interval does nothing to

1 enhance the environmental protection, but it imposes a  
2 large burden on new operators, many of whom must travel  
3 to testing centers to take the test.

4           So our response to that first item was we  
5 had -- EPA had wanted 30 days. Once you're an A or B  
6 operator and you start work, you have 30 days to become  
7 licensed. They say that's reasonable. We say that's  
8 unreasonable to get the test done. But we still agree.  
9 The Department feels that six months is too long. So  
10 we're giving them 90 days. And we think that's a  
11 reasonable time period. And the guidance allows us to  
12 set a reasonable time period. When we set the six  
13 months, EPA came back and said, we don't really think  
14 that's reasonable.

15           So Mr. Lucht just feels that -- he believes six  
16 months is reasonable. The Department does not. So we're  
17 doing something in between 30 days and six months, 90  
18 days.

19           The rest of his comment is, he's suggesting  
20 that something could be done to lessen the burden on the  
21 regulated community. He would like to see the phrase  
22 added "or another test approved by the Department  
23 everywhere that the ICC test is presently specified."  
24 Mr. Lucht not only does training, but he also is more  
25 than willing to offer the test.

1           We have -- when the rules were promulgated --  
2           again, this part we believe is outside the scope of  
3           this -- what we're trying to do here. Our training  
4           method has been properly promulgated in 2008, and we are  
5           not -- we are not interested in changing that. We went  
6           through a lot of public comment at that time. And at  
7           that time when Mr. Lucht actually wrote our rules, he was  
8           very much against any other kind of testing being  
9           allowed. Now he's offering the test, so now he feels  
10          that this is something that he could do for us.

11           We don't have the staff to approve. I mean,  
12          we've been down the road before. We don't have the staff  
13          to approve all these different tests that could come up,  
14          that people could come up with. We don't have -- those  
15          tests then become out of our control. We don't know  
16          where all his paper-copy tests are. And so somebody  
17          might get ahold of one before they take the exam. We  
18          don't know that.

19           ICC is a very rigid, structured way to get the  
20          training. So we are going back to -- it's not part of  
21          what we're trying to get done here today with our rules,  
22          and we just don't believe that having an outside testing  
23          firm doing our testing is the way -- the proper way to  
24          go.

25           We also have a problem with a trainer who's

1 being trained to give the training and then give the  
2 test. There might be some kind of conflict in there.  
3 Because he definitely is going to want to make sure that  
4 his training is the training. This is going to get them  
5 to pass that test. And what if it doesn't? What if he  
6 doesn't get a very good pass rate? And I don't know what  
7 his pass rates are on his tests. But we just see a  
8 conflict of interest. We see some problems.

9 VICE CHAIR BEDESSEM: Thank you.

10 MR. APPLEGATE: Just have maybe one  
11 comment. Thanks for that response, by the way. I think,  
12 for the most part, your response was very clear.

13 The difference between reasonable, obviously,  
14 is an arbitrary term, what's reasonable.

15 MS. CAHN: David, it's a little hard to  
16 hear you.

17 MR. APPLEGATE: Can you hear me now? Can  
18 you hear me now?

19 MS. CAHN: Yeah.

20 MR. APPLEGATE: Reasonableness, obviously,  
21 is a term that can be debated. When we wrote the rules  
22 originally, we would have thought six months was  
23 reasonable. I notice you said several times no one  
24 believes six months is reasonable, based on partly EPA's  
25 comment to us that you'll get grant money if you change

1       your mind on what you think is reasonable. So let me try  
2       to explore what reasonable is. Could you tell me where  
3       the test is located? Where are the testing centers in  
4       Wyoming, and how frequently are the tests offered?

5                   MR. GILBRETH: Madam Chairman, there are  
6       multiple locations across the state that are test  
7       centers. There's one here in Casper. There's one in  
8       Gillette. Sheridan has one. Rock Springs. Or, no.  
9       Excuse me. Evanston and Laramie and Cheyenne are all  
10      test locations. They can take the test at their leisure  
11      as long as it's during business hours. Now, at certain  
12      test locations, you can take the test on a Tuesday and  
13      maybe a Thursday. Some test locations you can take it  
14      Monday through Friday as long as it's during business  
15      hours.

16                   MR. APPELATE: And has that development  
17      of testing centers and testing availability been  
18      something that's changed since you originally promulgated  
19      the rules? Has that developed more fully?

20                   MR. GILBRETH: Yes, it has. We've  
21      actually had -- ICC is the ones that promulgate it. And  
22      then Pearson Vue are the ones that actually have the  
23      testing centers. And when they -- when we first started,  
24      I think there was only three test locations, and now we  
25      have six, I do believe.

1                   MR. APPLGATE: Is there a cost associated  
2 with taking the test?

3                   MR. GILBRETH: Yes, there is. It's \$75.

4                   MR. APPLGATE: And the gentleman with the  
5 one set of comments alluded to the fact that people don't  
6 normally pass the first time. Is there any data that  
7 suggests that people are going to take the test more than  
8 once?

9                   MR. GILBRETH: Actually, at this time, I  
10 just talked to ICC the other day, and they had an 89  
11 percent pass rate on this exam.

12                   MR. APPLGATE: And normally people take  
13 the test -- is there any data suggesting when people  
14 normally take the test? If you look at the people that  
15 have been taking it over the last -- I don't know how  
16 long this program has been in place. A couple years.  
17 More than that. Are they normally taking the test within  
18 three months of their employment?

19                   MR. GILBRETH: I do not know.

20                   MR. APPLGATE: I mean, is there training  
21 classes? Is this on-line training? I guess this  
22 gentleman teaches a training. I'm trying to support your  
23 reasonableness. I think it's probably reasonable to do  
24 90 days. I'm just trying to better understand. It  
25 sounds like with the development of testing centers, a

1 pass rate of 89 percent, that 90 days is likely a  
2 reasonable time frame.

3 MR. GILBRETH: When we first started, the  
4 actual pass rate was in the 60 percentile. And so we've  
5 revamped the exam, et cetera, and now we're up to an 89  
6 percent. And we have offered training. The Department  
7 has offered training for each of the stakeholders when we  
8 have the chance.

9 MR. APPLGATE: Thank you.

10 VICE CHAIR BEDESSEM: Just a couple more  
11 questions to follow up on that. Do the operators, do  
12 they get their results for their training on the day that  
13 they do it?

14 MR. GILBRETH: Yes. In fact, as soon as  
15 they take the exam -- they take it electronically. They  
16 have computers. If they're taking it at these test  
17 centers, they find the results out.

18 VICE CHAIR BEDESSEM: Immediately?

19 MR. GILBRETH: Immediately. And they are  
20 issued a passing result.

21 VICE CHAIR BEDESSEM: And if they are not  
22 issued a passing result, is there any mandatory wait  
23 period? Because I know in some programs if you haven't  
24 passed the first time, you're not allowed to just go take  
25 it in an hour, you know.

1                   MR. GILBRETH: Madam Chairman, they are  
2 allowed to fail the test twice during a six-month period.  
3 If they fail it a second time, they have to wait for six  
4 months to take the exam again. But they can take the  
5 exam twice in two days.

6                   VICE CHAIR BEDESSEM: Thank you.

7                   MR. GILBRETH: Madam Chairman, may I add  
8 one other thing? There is a pencil-and-paper version of  
9 this exam. It is administered through the Wyoming  
10 Association of Municipalities. And each month the  
11 Wyoming Association of Municipalities goes to one city,  
12 and they administer the exams at that town. So they  
13 actually go to twelve different sites across the state.  
14 So they're not restricted to just those test locations.  
15 The only drawback to that is they do not find out the  
16 passing results at the time that they take the exam.

17                   VICE CHAIR BEDESSEM: Do you know what the  
18 lead time is, then, before they find out on the paper  
19 copies?

20                   MR. GILBRETH: It's approximately three to  
21 four weeks.

22                   VICE CHAIR BEDESSEM: Thank you.

23                   So, now, if that wraps up the DEQ presentation,  
24 we can move forward to public comment. Is there anyone  
25 in the audience here today that would like to present



1           it looks like you can move on to the EQC. Best of luck.

2                           MR. ANDERSON: Thank you, Madam Chair.

3                           VICE CHAIR BEDESSEM: We'll have a

4 five-minute break. Thank you.

5                           (Hearing proceedings concluded

6 10:06 a.m., June 22, 2012.)

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

Dated this 11th day of July, 2012.

\_\_\_\_\_  
RANDY A. HATLESTAD  
Registered Merit Reporter