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BEFORE THE WATER AND WASTE ADVISORY BOARD
STATE OF WYOMING

HEARING ON STORAGE TANK RULES AND REGULATIONS

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.

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

2 (Hearing proceedings commenced
3 9:25 a.m., June 22, 2012.)

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

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

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

23 MR. ANDERSON: That's true.

24 VICE CHAIR BEDESSEM: So, in a rule-
25 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
guidelines so that we could --

15 MR. APLEGATE: 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. APPLGATE: 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. APPLGATE: 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. APPLGATE: 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. APPLGATE: 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. APPLGATE: 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. APPLGATE: 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. APPLGATE: 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. APPLGATE: Can you hear me now? Can
18 you hear me now?

19 MS. CAHN: Yeah.

20 MR. APPLGATE: 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. APPLEGATE: 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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C E R T I F I C A T E

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

RANDY A. HATLESTAD
Registered Merit Reporter