

**FILED**

**AUG 20 2012**

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Jim Ruby, Executive Secretary  
Environmental Quality Council

**BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

**IN THE MATTER OF THE NOTICE OF )  
VIOLATION AND ORDER ISSUED TO: )  
THOMAS KINDLER ) Docket No. 5017-12  
FIVE-K, LLC )  
P.O. BOX 21 )  
EVANSTON, WY 82931 )**

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE  
TO FIVE-K, LLC'S REQUEST FOR HEARING**

In accordance with the Wyoming Environmental Quality Council's August 1, 2012, Response Order, the Wyoming Department of Environmental Quality (DEQ) responds herein to Five-K, LLC's Request for Hearing in relation to Notice of Violation and Order number 5017-12.

1. DEQ is without knowledge or information sufficient to form a belief as to whether Thomas B. Kindler took the storage tank operator exam twice.
2. DEQ is without knowledge or information sufficient to form a belief as to whether Thomas B. Kindler paid one hundred dollars to take the storage tank operator exam.
3. DEQ is without knowledge or information sufficient to form a belief as to whether Thomas B. Kindler was denied the opportunity to review his storage tank operator exam results.
4. DEQ admits that several questions on the storage tank operator exam concern agricultural and above ground storage tanks.
5. DEQ denies that the storage tank operator exam is "made for big operations like Flying J."

6. DEQ is without knowledge or information sufficient to form a belief as to whether Thomas B. Kindler believes the storage tank operator exam "should be about [his] operation [and] not the operation of the big corporations."

7. DEQ is without knowledge or information sufficient to form a belief as to whether Thomas B. Kindler believes that he should be able to see his storage tank operator exam results.

8. DEQ has responded to the allegations contained in Five-K, LLC's Request for Hearing to the best of its abilities; to the extent there were allegations that were not specifically addressed above, DEQ denies them.

**Affirmative Defenses**

1. Five-K, LLC's Petition fails to state a claim upon which relief can be granted.

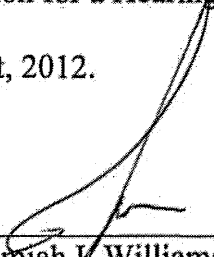
2. Five-K, LLC's Petition fails to join an indispensable party.

3. The Council lacks subject matter jurisdiction to hear Five-K, LLC's Petition.

4. DEQ preserves all other affirmative defenses to the extent Five-K, LLC's request for hearing does not make clear which other defenses may be relevant.

WHEREFORE, the Wyoming Department of Environmental Quality requests that the Council deny Five-K, LLC's Petition for a Hearing.

Dated this 20<sup>th</sup> day of August, 2012.

  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 20<sup>th</sup> day of August, 2012, a true and correct copy of *WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO FIVE-K, LLC'S REQUEST FOR HEARING* was served by placing the same in the United States registered mail, postage pre-paid, return receipt requested, to the following:

Thomas Kindler  
Five-K, LLC  
P.O. Box 21  
Evanston, Wyoming 82931

  
Wyoming Office of the Attorney General