

**RESPONSE TO COMMENTS  
RECEIVED AT THE EQC HEARING MARCH 18, 2008 AND AFTER  
ON DRAFT CHAPTER 17**

**EXECUTIVE SUMMARY:** Throughout the process of drafting these rules, the department has been very receptive to changes proposed by the regulated community. A review of the administrative record shows that changes to the draft have resulted from the majority of the comments made. There is one issue raised where the department has not made every change requested and that is in the basic definitions of who must be trained. It is the department's position that the intent of the federal statute is that all three levels of operators be on-site personnel. This means that all three levels should be personnel directly involved with the day-to-day operation of each facility. The proposals by the Colorado Wyoming Petroleum Marketers Association (CWPMA) significantly reduce the level of training needed by the very persons who need to be trained the most. The department requests that the Council uphold our position on this issue.

**NOTE:** This document was prepared by responding to the comments in the order they were received. It is important that it be read in order. Some of the later comments requested that changes be made in the Level 1, 2, and 3 Operator and Service Station Clerk designations. The response to comments will not make sense if those sections are read before the earlier sections.

**Comment 1:** Clay Winn, Eaton Sales and Service, commented that Section 45(a)(i) should be modified to specify "licensed installers."

**Response 1:** The department concurs with the comment and recommends that the language of Section 45(a)(i) be modified.

**Comment 2:** Clay Winn, Eaton Sales and Service, also commented that UST installers should not be required to pass the UST Decommissioning and UST Tank Tightness Testing tests offered by the International Code Council.

**Response 2:** After much discussion, the department concurs with the comment and recommends that Section 45(a)(ii) be modified. The proposed changes to Section 45(a) will then read:

" (a) License Required. During the installation or modification of any UST or AST regulated by this chapter, at least one person, present on the job site, shall be licensed by the department to install or modify fuel tanks. To obtain these licenses, each person shall submit documentary evidence that he or she has passed the following tests within the three years preceding the application date:

(i) All Licensed Installers:

(A) The International Code Council test on Wyoming State Specific Storage Tank Laws.

(B) A current certificate for Hazardous Waste Operations and Emergency Response as required by the Wyoming Department of Employment, Occupational Health and Safety, Chapter 7, Section 1910.120.

(ii) Licensed UST Installers. UST installers shall pass the International Code Council UST Installation and Retrofitting test;

(iii) Licensed AST Installers. AST installers shall pass the International Code Council test entitled AST Installation and Retrofitting test;

(b) License Renewal. Persons who are licensed as UST or AST installers shall renew their license every three years.

(c) Reciprocity with other states and cities. After evaluation of the other state or city's licensing requirements, the State of Wyoming Storage Tank Program may accept a license from any adjacent state, or any city in Wyoming, in lieu of the International Code Council tests required in Section 45(a)(ii) and (iii)."

**Comment 3:** Mark Larson, CWPMA, commented that the requirement to have all managers of convenience stores and service stations obtain a license was illegal under W.S. 35-11-1416(a) because it is more stringent than federal standards.

**Response 3:** The federal standards in this case are not entirely clear. What is clear beyond a doubt is that the federal standards require three types of persons to be trained. Under the Guidance Documents issued by EPA, there is a Class A operator, loosely defined as "the individual who generally focuses on the statutory and regulatory requirements related to operating and maintaining the underground storage tank system." The Class A operator in the federal guideline is the Level 2 licensed operator. The Class B operator in the federal guideline is loosely defined as "The individual who is generally responsible for field implementation of applicable underground storage tank regulatory requirements and implements day-to-day aspects of operating, maintaining and recordkeeping for USTs at one or more facilities." The Class B operator from the federal guideline is the Level 1 operator in the draft. The Class C operator in federal guidelines is defined as "The individual who is generally the first line of response to events indicating emergency conditions or responding to alarms." In draft Chapter 17, the Class C operator from the federal guideline is the "Service Station Clerk" defined in Section

46(c). In response to a further comment by CWPMA, the titles of these levels have been changed to Class A Operator, Class B Operator, and Class C Operator with the Class A Operator being the highest level and the Class C Operator being the lowest level.

Federal guidelines are silent about how a state must implement these training requirements. A number of possible avenues are open to a state, including: 1) approving individual training programs written by individual operators, associations or consulting firms; 2) requiring attendance of all operators at training sessions conducted by the state; 3) requiring operators to hire consultants to train their operators using programs developed by or supplied by the state; or 4) requiring operators to pass some sort of benchmark test to show that training has been effectively conducted. Since federal guidelines are so broad, it would be hard to state exactly when a state is more or less stringent. It would be a mistake to assume that the state is limited to the very least stringent requirement, just as it would be a mistake to assume that the state is required to adopt the most stringent requirement.

In responding to this federal mandate, we have attempted to keep several cardinal principals in mind:

- 1) Whatever we do, it will cost industry, so we owe it to the people of the state and to the industry to insure that what is done is effective.
- 2) Whatever we do should be fair to everyone. Large operators should enjoy no competitive advantage simply by virtue of their size, and no one should be exempted simply because they are too small.
- 3) We are spending massive amounts of state funds to clean-up contaminated sites. Whatever we do should be structured to insure that regulatory requirements are clearly understood by those who have to collect the data.
- 4) There should be some benchmark to insure that training is actually effective.

The requirement to train operators will cost every company, no matter what we do. Training cost will be incurred, if they send their operators to training run by the state, if they do their own in-house training, or even if they set up some form of internet based training. Cost for training a single employee through a single 8-hour period will typically cost around \$100.00, for the cheapest training. Travel, salaries and expenses for these operators to attend training will add at least \$300.00 to that cost. It is a small thing to require those operators to be able to pass a test showing that training has been effective. The added cost of the testing requirement is \$75.00 plus expenses of \$150.00. The entire cost to the operator for the testing requirement as proposed is \$625.00, or \$312.50 per year per facility. This is the entire cost, assuming that the operator actually attends training every other year. This proposed rule does not require the operator to take any training. Operators who can pass the test without attending training will realize significantly lower costs.

The second item we are trying to insure is fairness to all. By going through the ICC, our tests have been carefully reviewed by specialists in testing to insure that they are not gender biased, racially biased, or that they favor any cultural group over another. By

requiring every manager to be licensed, we insure that the big company incurs the same cost per facility that the small company incurs.

The typical clean-up under this program costs the state around \$350,000 to complete. Some of these clean-up costs can be avoided if those on site are aware of the requirements and report releases earlier rather than later. In many cases, leaks from tanks have created plumes of contamination that extend over several blocks. Those same plumes could have been detected much earlier and remediated at much lower cost had the operator fully understood the requirements and complied with regulation. The approach we have chosen is designed to insure that, to the extent possible operators on each site know and understand their responsibilities.

The final item we are trying to insure is that there is some form of benchmark to insure the effectiveness of this costly requirement. Statewide, this rule will cost the industry around \$375,000.00. We have required a benchmark, in the form of ICC testing, to insure that individual operators actually learn something.

**Comment 4:** Mark Larson, CWPMA, commented that we are violating the federal mandate because that mandate requires that the regulations be promulgated “in cooperation with tank owners and operators.”

**Response 4:** The department has drafted these rules after much discussion with owners and operators of storage tanks. The federal mandate does not require that the CWPMA be allowed to write the rules. It is the department’s responsibility to draft proposed rules, the Council’s responsibility to carefully consider those rules and adopt them after due consideration of all opposing views, the Attorney General’s responsibility to insure that the rules are legally drafted and promulgated, and the Governor’s responsibility to sign the rules if he concurs with the final product. Nowhere in this process is any association allowed to circumvent the process for their own purposes.

During the time since August 2005, the department has worked diligently with operators in writing the actual tests to be required. The CWPMA was involved in the review of all of the questions on all of the International Code Council (ICC) tests. The President of the Association at the time was on the committee that reviewed all of the questions on the Wyoming State Specific UST Operator’s Test (W6). Major marketers, including Bailey Oil Company, Dooley Oil Company, Perkins Oil Company, Loaf N’ Jug, Maverik Country Stores, and Valero, were all represented during the approval of all of these tests. The department wrote all of the proposed questions, but each question was carefully considered, re-written by the ICC representative to meet their format and legal requirements, and then voted on by the committee. A number of questions were rejected by the committee. The department believes that it has done more than the minimum in involving industry in the promulgation process for these rules.

This response is not intended to imply that the CWPMA or the members of the ad-hoc committees that reviewed the test questions fully supported every aspect of the rules as they were drafted. In fact, some of the members of the ad-hoc committees were

definitely opposed to the requirement from the start. They were at least allowed to have input into the contents of the tests.

**Comment 5:** Mark Larson, CWPMA, commented that a single Level 2 Operator (Class A Operator) should be allowed to train the managers of each station under his control, with no testing of any kind.

**Response 5:** Industry has never had a stated requirement to train their operators in the past, but there has always been an implied requirement. After all, if an operator is required to perform tasks required by a particular leak detection method, it is clear that the operator cannot comply unless he or she is trained in at least that method. All of these leak detection methods require constant vigilance on the part of the on-site operator if they are to be effective. I would submit to the Council, that had the industry fulfilled these implied responsibilities, the Congress would never have passed the Underground Storage Tank Compliance Act of 2005 in the first place. Self certification by the owner and/or operator has always been the system and it simply does not work.

**Comment 6:** There was a good deal of discussion about the timing of the license requirements. Clearly, some locations, due to high turnover, may go a long time without having a Level 1 Licensed Operator.

**Response 6:** We are aware that no system of training, testing, or monitoring will ever be entirely perfect. One of the mandates in the federal law is that states must consider the high turnover rate of employees in this industry. This is why we did not require any form of standardized test for service station clerks. This is also why we allowed six months after a person is first hired as a general manager of a store before that person has to be licensed. We felt that six months is a long enough time that a person should be able to pass the required test. We also believe that turnover is less of an issue the higher up in the company the position is. Thus, service station clerks undoubtedly have the highest turnover rate, with lower rates found at the store manager level and higher.

We realize that this creates a certain loophole in the rules. Companies that are experiencing very high turnover could fail to train new employees at all until they were very close to the deadline. Such a situation would be unfortunate because it puts a lot of pressure on the employee to pass at the last minute. We believe that conscientious companies will not put themselves and their employees in that position.

Last of all, we believe that these training requirements are not too difficult for the people that a company is willing to entrust the responsibility for the entire location to. A typical chain store today sells around 80,000 gallons per month in gasoline and diesel. Many sell much more. Stations selling 150,000 gallons per month are not uncommon. At today's prices, the general manager is responsible for over a quarter of a million dollars in gross receipts every month, and that is just the fuel sales. These managers are often times in charge of a business that grosses ten million dollars a year. Is it really too much to ask that they should be able to pass a simple open book test about their own responsibilities?

**Comment 7:** One of the council members commented that the delivery prohibition section in Part K does not actually state that it is a violation of the rule for an operator to violate an Administrative Order issued under that part.

**Response 7:** The department requests that the following language be inserted as paragraph e under Section 44:

"(e) It is a violation of this Part for any person to purchase a regulated substance for delivery to, or to deliver a regulated substance to, any storage tank that is the subject of any Administrative Order issued under this Part."

**Comment 8:** One of the council members commented that Section 44 (b) (ii) may not accurately reflect the ability to appeal an Administrative Order issued under this Part.

**Response 8:** The department requests that the wording of Section 44 (b) (ii) be changed to:

"(ii) An Administrative Order issued under this section is final as soon as signed by the Director. Administrative Orders may be appealed to the Environmental Quality Council under W.S. 35-11-701;"

**Comment 9:** One of the council members commented that Section 44 (b) (iii) should be reworded to more clearly reflect who will be notified if a delivery prohibition has been lifted.

**Response 9:** The department requests that the wording of Section 44 (b) (iii) be changed to:

"(iii) The department shall immediately issue a Notice of Compliance to all entities covered by the Administrative Order that lifts the prohibition whenever the facility has been returned to compliance. Such notice shall include the same information found in Section 44(b)(i)(A) through (D);"

**Comment 10:** One of the council members questioned why we are striking out the requirement for monitor wells to be permitted by the State Engineer's Office.

**Response 10:** The department removed that requirement because the State Engineer's Office no longer requires a permit for monitor wells.

**Comment 11:** One of the council members commented that we may not have the authority to order a fuel supplier not to deliver fuel to a location when there is no violation on the part of that supplier.

**Response 11:** The department has obtained an Attorney General’s Office ruling on this issue. Their opinion is attached. The AGO stated that the Council does have the authority to order the fuel suppliers not to deliver to a non-compliant tank until notified otherwise by the department.

**Comment 12:** The State of Wyoming is changing its internet system and the internet address of the department mailbox. Section 22(a) should be updated to reflect the new address.

**Response 12:** The department recommends that the wording of Section 22(a) be changed to:

“Section 22. **Reporting and Cleanup of Spills and Overfills.**

(a) *Cleanup and 24 hour reporting:* Owners and/or Operators of storage tank systems shall contain and immediately clean up a spill or overflow and orally report to the department within twenty-four (24) hours all spills or overfills by telephone to (307) 777-7781, by FAX transmission to (307) 777-5973, or by electronic mail to ~~deg@state.wy.us~~ [deg@wyo.gov](mailto:deg@wyo.gov) and begin corrective action in accordance with Sections 23 through 25 in the following cases:”

**Comment 13a:** The CWPMA commented as follows:

“**Level 1 Operator:**’ This Level 1 classification should be renamed “Class B Operator” to more closely reflect the EPA guidelines. WPMA believes this Class B designation was intended for area managers, not single facility general managers. The EPA guideline states: ‘Compared with training for the Class A operator, training for the Class B operator will provide a more in-depth understanding of operation and maintenance aspects, but may cover a more narrow breadth of applicable regulatory requirements.’ Also and importantly, the guidelines state: ‘This individual implements day-to-day aspects of operating, maintaining and recordkeeping for underground storage tanks **at one or more facilities.**’ As I stated before the Council, many of our companies have one ‘manager’ that circulates between several facilities. We understand why you wanted to limit the number of facilities over which a Class B Operator may provide oversight, but we feel that restricting the allowance to only two or three additional facilities is still too restrictive. An area manager may be responsible for up to ten facilities over which he has total hiring, firing, training, and operations responsibility. Allowing oversight over only three or four total facilities is unrealistically low, especially with cardlocks. We hope we can compromise somewhere between the ‘15’ provided with a Class A Operator and the tentatively agreed upon three or four total units.”

**Comment 13b:** Quality Petroleum commented that a Class B Operator should be allowed to be responsible for up to six facilities.

**Comment 13c:** Big D Oil Company commented that a Class B Operator should be

allowed to be responsible for up to ten facilities.

**Comment 13d:** Link Oil Company commented that a Class B Operator should be allowed to be responsible for up to six facilities.

**Comment 13e:** Perkins Oil Company commented that a Class B Operator should be allowed to be responsible for up to six facilities.

**Comment 13f:** Fuel Depot, Inc. commented that a Class B Operator should be allowed to be responsible for up to six facilities.

**Comment 13g:** Knight Oil Company commented that a Class B Operator should be allowed to be responsible for up to six facilities.

**Comment 13h:** Hartman Distributing commented that a Class B Operator should be allowed to be responsible for up to six facilities.

**Response 13:** The department can easily agree to change the designation from “Level 1” to “Class B.” Under the federal statute and the federal guidance document, the Class B Operator clearly has to be an “on-site” person. The term “on-site” is repeated numerous times throughout the guidance documents, and the requirement is clear that the on-site personnel are the ones referred to in the Class B designation. The federal guidance document clearly shows that all three of these Classes are to be people who are actually on site, daily in the case of a Class B Operator, and perhaps less often in the case of a Class A Operator. It is DEQ’s position that a Class B Operator has to be the person on the site that collects the data necessary for compliance almost every working day.

DEQ disagrees that a Class B Operator is an area manager. The area manager under the federal guideline is clearly a Class A Operator while a Class B Operator is the manager of a single facility. In rare cases, a Class B operator may be in charge of a few other facilities, for example an unattended cardlock, or two locations separated physically by only a short distance. For this reason, the department is willing to allow a Class B Operator to be in charge of up to three locations provided that:

- 1) The Class B Operator actually visits each facility on a daily basis as is already required by state law for unattended stations and at least twice a week for any attended stations that he or she is also responsible for. The state law I am referring to is the International Fire Code of 2006 that was formally adopted by the State of Wyoming in 2007. Section 2204.3 of the fire code states: **“Unattended self-service motor fuel-dispensing facilities.** Unattended self-service motor fuel-dispensing facilities shall comply with Sections 2204.3.1 through 2204.3.7. **2204.3.1 General.** Where approved, unattended self-service motor fuel-dispensing facilities shall provide, and be accountable for, daily site visits, regular equipment maintenance and repair.” (Underlines added)
- 2) The Class B Operator is actually directly responsible for the operation of all of the stations under his control. A licensed operator who knows nothing about a station, and is not responsible for that station, cannot be designated to be the Class B Operator of a station just because he or she happens to be in the area.
- 3) In interpreting the site visit requirement, the department will use the working day.

During weekends, we will consider those times similar to night time hours.  
 During shifts when the Class B Operator is not normally on duty, the site is under the control of a Class C Operator who answers to the Class B Operator.

All of these comments are directed at allowing chain stores to enjoy a competitive advantage over their smaller counterparts when it comes to operator training. If any of these proposals are accepted, they will “benefit” only the following short list of companies:

Name of Company	# Facilities	Name of Company	# Facilities
Loaf N’ Jug	50	Maverik Country Stores	33
Kum & Go	22	Big D Oil Company	12
Red Eagle Oil Company	11	Red Horse Oil Company	10
Yellowstone Park Service St.	9	Quality Petroleum	6
Gasamat Oil Corp.	7	Homax Oil Company	11
J. H. Kaspar Oil Company	7	Valero	4
Perkins Oil Company	6	Perkins Investments	4
J. O. Enterprises	4		

To remove all controls over the number of stations that a single Class B Operator could be responsible for would allow the above 15 companies to operate 196 gas stations with only 15 people that had demonstrated any knowledge whatsoever. Those 15 people would not necessarily ever visit the stations or be responsible in any way for the operation of those stations. At the same time, all of the other companies that operate the remaining 360 stations would be required to have a Class A and a Class B operator. Not only is this unfair to the other operators, it also circumvents the clear intention of the federal legislation that the trained operators be “on-site” personnel.

**Comment 14:** The CWPMA commented as follows: “‘**Service Station Clerks:**’ We request that this section be renamed “Class C Operator” to more closely reflect the EPA guidelines. The guidelines state: ‘A Class C operator is an employee and is, generally, the first line of response to events indicating emergency conditions. This individual notifies the Class A or Class B operator and appropriate emergency responders when necessary.’ WPMMA feels this language should be added to the regulation for clarity. Also, we would like to include the EPA-allowed flexibility of, “For Class C operator training, the state may accept training conducted by a trained Class A or Class B operator.”

**Response 14:** The department concurs with the comment and will make the changes. This actually requires that the Class C operator be allowed to directly report spills, something that many companies presently do not allow at this level. At the same time, the department believes that a Class C Operator is a “service station clerk” and will retain that phrase in the title.

**Comment 15:** The CWPMA commented as follows: “‘**Level 2 Operator:**’ This ‘Level 2’ classification should be renamed ‘Class A Operator’ to more closely reflect the EPA

guidelines. WPMA believes this classification was intended for company owners and/or environmental contractors. The guidelines state that a Class A Operator should have a “general knowledge of underground storage tank system requirements so he or she can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance and recordkeeping requirements...” Clearly this person has ultimate responsibility for entire training programs and is either the owner of the company or a designated operator employed by large chain organizations. While WPMA has not made any previous recommendations here, we feel it is an important point that guidelines are silent as to the number of facilities a Class A Operator may have oversight over. Since this is an administrative level operator it seems superfluous to limit how many facilities this person may have oversight over. It is WPMA’s position that the department should consider removing any numerical restriction on this Class.”

**Response 15:** The department will change the title to “Class A Operator.” The department addressed the issue of how many facilities could be under one Class A Operator during the Advisory Board hearings on this chapter. The original draft required no more than 5 facilities to be under each Level 1 Operator. That number was written based on the general management theory that any one individual can only properly supervise about five persons. This “span of control” concept is taught in many management training courses, including the U.S. military. Comments were received indicating that the most facilities any mid-level manager is actually responsible for is 11. The department reluctantly made the change to 15 as a result of these comments. The department does not concur that there should be no limit on the number of facilities under a Class A operator’s license. Under that idea, Kroger Stores, a company that operates under at least 23 different brand names, in at least 25 states, with thousands of locations, would only have one trained Class A operator, nationwide. Clearly this was not the intent in passing this law.

The department also does not concur that the Class A Operator was intended to be a consulting firm. All of the guidance documents language clearly states that the Class A Operator has to be someone with the authority to act on behalf of the company. Clearly, a consultant does not have the authority to order changes in procedure, that a tank be emptied, or that lines or tanks be tested.

Removing the limit of 15 locations under a Class A Operator will benefit only 3 companies in Wyoming, Loaf N’ Jug, Kum & Go, and Maverik Country Stores. The change requested only means that those very large companies would have 3 less trained Class A Operators in the case of Loaf N’ Jug, 1 less trained Class A Operator in the case of Kum & Go, and 2 less trained Class A Operators in the case of Maverik Country Stores.

**Comment 16:** The CWPMA commented as follows: “‘Level 3 Operator’ WPMA believes that this item can be eliminated altogether. This provision is not mentioned anywhere in the guidelines.”

**Response 16:** The department will delete the language about Level 3 Operators. This

language was originally proposed before the EPA guidance document was published. At the time, we felt that the third level was one designed to apply to maintenance personnel. As it has developed, the third level is actually the level for Class C Operators. When the guidance document was published, the department considered removing this requirement, but kept it as a means to insure that the licensed operator knows who to call when routine tests are required.

**Comment 17:** The Colorado Wyoming Petroleum Marketer's Association sent another comment on April 11, 2008, arguing that the limit on the number of facilities under the control of one Class B Operator should be set at 12. This comment was received after an intense letter writing campaign in which every member of the Board of Directors if CWPMA argued for a limit of 6. The comment also stated that the Class B Operator should be required to conduct only a monthly inspection. The comment also proposed that we add three items to the Class C Operator training requirements:

- A thorough understanding of delivery procedures and hazards.
- The ability to recognize and differentiate between alarm systems and understand the significance each alarm represents.
- The location and function of leak detection and cathodic protection devices and systems.

**Response 17:** It appears from this comment that there is really no basis in fact for CWPMA's position on this issue. The crux of the matter is whether or not the person who is actually in charge at each location is required to pass the ICC test for a Class B Operator. The department believes that the appropriate number is three. A Class A Operator is a mid-level manager over all of the stores in a certain area. A Class B Operator is not a mid-level manager, but rather the person on the site at least 5 or 6 days a week. The Class C Operator is a convenience store clerk who has very little responsibility for the operation of the facility.

***Additional comments by the Department:***

In re-naming these licenses, we are left with a chapter that appears to be out of order. For this reason, I have moved Section 46(d) to Section 46(a). This was done purely to put A before B, and B before C.

As we have trained people to take the ICC tests, we have found that the chapter could be improved if the exact test title (and test number as used by ICC) were incorporated into the wording. For this reason, I also included the ICC Test number for each of the ICC tests required in this section. This was not done earlier in the rulemaking process because the ICC had not yet assigned the test numbers to these tests.

The following is the text of Part L after all of these changes have been made:

PART L

LICENSING OF STORAGE TANK OPERATORS  
INSTALLERS AND TESTERS

Section 45. Licensing of Installers

(a) License Required. During the installation or modification of any UST or AST regulated by this chapter at least one person, present on the job site, shall be licensed by the department to install or modify fuel tanks. To obtain these licenses, each person shall submit documentary evidence that he or she has passed the following tests within the three years preceding the application date:

(i) All Licensed installers:

(A) The International Code Council test on "Wyoming State Specific Storage Tank Laws - ICC Test W-6."

(B) All UST or AST installers in Wyoming shall have a current certificate for Hazardous Waste Operations and Emergency Response as required by the Wyoming Department of Employment, Occupational Health and Safety, Chapter 7, section 1910.120.

(ii) Licensed UST Installers. UST Installers shall pass the International Code Council test entitled "UST Installation and Retrofitting - ICC Test U1;"

(iii) Licensed AST Installers. AST Installers shall pass the International Code Council test entitled "AST Installation and Retrofitting - ICC Test U-5;"

(b) License Renewal. Persons who are licensed as UST or AST Installers shall renew their license every three years.

(c) Reciprocity with other states and cities. After evaluation of the other state or city's licensing requirements, the State of Wyoming Storage Tank Program, may accept a license from any adjacent state, or any city in Wyoming, in lieu of the International Code Council tests required in Section 45(a)(ii) and (iii).

Section 46.      **Licensing of Operators of Storage Tanks**

(a) Class A Operator. Each facility shall be under the supervision of a person who has obtained a Class A Storage Tank Operator's License. To obtain a Class A Storage Tank Operator's License, each person shall submit documentary proof that they have passed The International Code Council test on "Wyoming State Specific Storage Tank Laws ICC Test W-6." A Class A Operator is generally the area manager for a company with multiple locations. A Class A Storage Tank Operator shall not be responsible for more than fifteen (15) facilities that are used to fuel vehicles.

(b) Class B Operator. All owners and/or operators of storage tanks in Wyoming shall insure that the person who is in responsible charge of the day-to-day operation of the storage tanks obtains a license from the department. For facilities used to fuel vehicles, the person in responsible charge cannot also be in responsible charge of more than three (3) facilities at the same time. This is normally the general manager of the facility.

(c) Timing. The person in responsible charge shall, within six months of their first date of employment with the company in a capacity of being in responsible charge of any facility, obtain a Class B Storage Tank Operator's license from the department. To obtain this license, each person shall submit documentary evidence that he or she has passed the following tests within the two years preceding the application date:

(i) UST Operators. The International Code Council test for "UST System Operators - ICC Test U-6;" and/or

(ii) AST Operators. The International Code Council test for "Wyoming AST System Operators - ICC Test W-5;" or

(iii) In lieu of both of the above tests, the International Code Council test on "Wyoming State Specific Storage Tank Laws - ICC Test W-6."

(d) Inspection by the Class B Operator. A Class B Operator must visit all of the locations under his or her

control on a daily basis if they are unattended stations and twice in each working week for attended stations. For unattended stations, this is already required by the International Fire Code, Section 2204.3.1.

(e) *Class C Operators (Service Station Clerks.)*

Persons who work at a service station or convenience store, but who are not in responsible charge of the location must be trained by the Class A or B Operator for that location in the following areas:

(i) Proper procedures to follow in the event of an accident involving the fuel system. Accidents include any incident that damages the dispensers or any part of the fuel system;

(ii) The location and operation of all emergency shutoff switches, breakers, and other controls necessary to completely control all pumps installed on the system;

(iii) The limits of maintenance items that can be performed by the clerk, and what items must be referred to more qualified individuals;

(iv) Procedures to be followed in the event of a fuel release, regardless of the reason for that release; and

(v) The records that must be kept (if any) on each shift to insure that release detection is properly done.

(f) *Reporting of spills.* The Class C Operator shall notify the Class A or Class B operator for his facility and appropriate emergency responders, including the Department of Environmental Quality, whenever there has been a release of regulated substances.

(g) *License Renewal.* Persons who are licensed as UST or AST Operators shall renew their license every two years.

(h) *Reciprocity with other states and cities.* After evaluation of the other state or city's licensing requirements, the State of Wyoming Storage Tank Program, may accept a license from any adjacent state, or any city in Wyoming, in lieu of the International Code Council test required in Section 46(c)(i).

Section 47. Licensing of Cathodic Protection Testers and Corrosion Experts.

(a) Cathodic Protection Testers. Persons who perform any cathodic protection testing shall obtain a license from the department. To obtain this license, each person shall submit documentary evidence that he or she is:

(i) certified by NACE as a cathodic protection tester within the three years preceding the application date; or

(ii) certified by the Steel Tank Institute as a cathodic protection tester within two years preceding the application date.

(b) Corrosion Experts. Persons who design any impressed current system or any sacrificial anode system or design any repair to these systems shall first be licensed by the department. To obtain a license, each person shall submit documentary evidence that he or she:

(i) is certified as a corrosion expert by NACE, or

(ii) possesses a current Professional Engineer's license issued by the Wyoming Board of Registration for Professional Engineers and three years experience in the field of cathodic protection.

(c) License Renewal. Licenses issued for Cathodic Protection Testers and Corrosion Experts shall expire on the date when the underlying certification by NACE or STI expires, or on the same date when an underlying license issued by another state or city expires. Persons holding those licenses shall renew their license within 90 days prior to the date when the license expires.

(d) Reciprocity with other states and cities. After evaluation of the other state or city's licensing requirements, the State of Wyoming Storage Tank Program, may accept a license from any adjacent state, or any city in Wyoming, in lieu of the NACE certification or STI certification required in Section 47(a) and (b).

Section 48.      **Licensing of Tank and Line Testers.**

(a) *License Required.* Before performing tests in Wyoming, all tank and line testers shall obtain a license from the department. To obtain a license, each person shall submit documentary evidence that he or she has passed:

(i) the International Code Council test entitled "Tank Tightness Testing - ICC Test U-3" within the preceding two years before the date of the application; and

(ii) The manufacturers training certification for the type of tank and line tests performed.

(b) *License Renewal.* Persons who are licensed as Tank and Line Testers shall renew their license every two years.

(c) *Reciprocity with other states and cities.* After evaluation of the other state or city's licensing requirements, the State of Wyoming Storage Tank Program, may accept a license from any adjacent state, or any city in Wyoming, in lieu of the International Code Council test on Tank Tightness Testing required by Section 48(a)(i).

Section 49.      **Revocation of Licenses.** The department may revoke or refuse to issue any of the licenses required under Sections 45 through 47 of this chapter for the following reasons:

(a) *Submission of Falsified Data.* Whenever the department has documentary proof that any of the information submitted to the department for the purpose of obtaining a license was falsified or misrepresented;

(b) *False Reporting.* Submission of any report to the department which is shown by the tester as passing when the test actually shows a failing result; or

(c) *License Revoked.* Whenever any of the issuing agencies (ICC, NACE, the Board of Registration for Professional Engineers, or the manufacturer of test equipment) revokes the certifications necessary that are required for a license.

(d) *Continuation of Expiring Licenses.* When a licensee has made timely and sufficient application for the renewal

of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(e) Notification. Whenever the department intends to revoke any license issued under this section the department shall notify the licensee by certified mail (return receipt requested) or by process server, stating the facts or conduct which warrants the intended action. The licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. The licensee shall have (15) days from the date of his receipt of the notice to provide additional evidence or information with respect the revocation of the license. Revocation of licenses is a final agency action subject to appeal to the Environmental Quality Council under Chapter 1, Section 6, Wyoming Environmental Quality Council, Rules of Practice and Procedure.

Section 50. **Implementation of Part L.** All persons required to have licenses under Part L shall obtain those licenses within one year of the effective date of this chapter or the date when they would otherwise be required to obtain those licenses, whichever is the later date.