

1 MS. AULL: Hereby call this public hearing to
2 order. A public hearing is not typically a forum for
3 debate of the issue. Rather the purposes of this hearing
4 is to provide the Department of Natural Resources and the
5 public an opportunity to present on the proposed changes to
6 Title 10, Chapter 2 Division 26 of the Code of State
7 Regulations.

8 As the request of the Commission, the
9 Department will first present testimony on the proposed
10 amendments and new rules. Following their testimony, the
11 public will be given the opportunity to comment on the
12 proposed rule-making. A sign-up sheet is provided at the
13 back of the room for anyone in attendance at the hearing.
14 In addition, comment forms for those who wish to make any
15 oral comments. Please fill out a comment form if you wish
16 to be heard. This will aid us in recognizing speakers and
17 calling them to testify. Additionally, we ask anyone who
18 approaches the Commission to testify, to please state their
19 name, if affiliation, for the record and provide a business
20 card, if available, to the court reporter and to the
21 Commission secretary. Written comments will be accepted at
22 this hearing. Please provide them to the Hazardous Waste
23 Program Director, Steve Sturgess. Following the conclusion
24 of the hearing, comments may be submitted by mail to the
25 Director of Hazardous Waste Program, PO Box 176, Jefferson

1 City, Missouri, 65102. Comments submitted by mail must be
2 postmarked on or before the end of the public comment
3 period on October 27, 2016; e-mail comments shall be sent
4 to Heather Peters. Her e-mail address is
5 heather.peters@dnr.mo.gov and must be received no later
6 than October 27, 2016.

7 Now the Chair calls Heather Peters.

8 MS. PETERS: Thank you. Well, any name is
9 Heather Peters. I'm with the Department of Natural
10 Resources, Hazardous Waste program. I am here today to
11 talk about the proposed rule changes to the underground
12 storage tank rules that we have. There we go. Okay.

13 I will start briefly with some background. In
14 2005 there an Energy Policy Act, which included a lot of
15 environmental changes, but there was a section that covered
16 the underground storage tanks. In 2015, and just to
17 clarify there is a slight typo in the agenda item; it says
18 July of 2016 and it was July of 2015, EPA promulgated the
19 federal rules to implement some new changes to the
20 underground storage tank regulations. That's one of the
21 primary reasons we are doing this rule.

22 The second part of that is, in Missouri we
23 have what is called State Program Approval. What that
24 means is in Missouri, Missouri's rules trump the federal
25 rules. So as long as we have this approval, our rules are

1 in effect and not EPA. So what that means is we do have to
2 implement state rules and we have to reapply for our state
3 approval. There is actually a timeline on that where if we
4 don't get our approval in, then theoretically EPA could
5 come in, revoke that approval, and then their rules would
6 be effective here. So most of this rule package is to
7 incorporate federal changes.

8 So the rule package before you today for this
9 hearing is 23 rules. Those are 20 rules that are current
10 rules that we have amended and three rules that we are
11 doing today that are new rules. The first one is about
12 field constructed tanks and airport hydrant fuel
13 distribution system, then some new testing requirements as
14 well. Now to clarify for you, in the Missouri Register
15 that is in your packet today, there are actually two
16 additional rules in that packet. Those are not a part of
17 the hearing today because there was a typo on those two
18 rules in the announcement of this meetings. So those were
19 republished on October 3rd, so we have a new hearing for
20 just those two rules on November 3rd. The comment period
21 for those closes on November 10th. Those two rules
22 specifically pertain to how to monitor for leaks at the
23 airport hydrant symptoms and at the field constructed tank
24 systems. So those are not included.

25 So we will go ahead and get started. If you

1 have a Missouri Register available, you will see we page
2 numbers at the top each slide. That will tell you where to
3 find the proposed changes in the Missouri Register. The
4 first rules is the Applicability Rule. The main change
5 you're going to see in the Applicability Rule is that we
6 had some underground storage tanks that in the past were
7 previously deferred. What that meant was if they leaked,
8 we had the authority to require them to clean it up, but we
9 didn't regulate anything up until that point. So that
10 deferral is gone for field constructed tanks is gone for
11 field constructed tanks and airport hydrant systems. They
12 will be fully regulated from insulation all the way through
13 closure and clean up.

14 It does start by outlining briefly the
15 compliance dates for those tanks. Those tanks are going to
16 have to show they are in compliance now. They are either
17 going to have to upgrade to come in compliance or they will
18 have to permanently close by July 1, 2019. If someone is
19 going to install a new one of these systems; after July 1
20 of 2017, that tank at its system, at installation, will
21 have to comply with all the requirements.

22 The next rule is a very brief one. It has a
23 pretty limited application. What it says is that any of
24 the tanks that were deferred, there was an interim
25 prohibition where if you installed a tank that was

1 deferred, you had to meet certain requirements. We are not
2 aware of this specific requirement that we are taking out
3 being in use anywhere in Missouri. But what it is said is
4 if you had a steel tank, you could prove that it's in a
5 corrosive environment instead of installing cathodic
6 protection. We don't know of any tanks that are using this
7 specific language.

8 The next rule change you're going to find is
9 the Definitions Rule. This one is going to look like there
10 is a lot of changes in this rule because there is a lot of
11 added language in this one, but it's not very many changes
12 to how we are doing things. The reason for that is in the
13 past, our definitions were found in three different
14 locations: They were found in the statute; they were found
15 in the federal regulations and incorporated by reference;
16 and then we had our state-specific definition. That turned
17 out to be somewhat confusing for folks because they didn't
18 always know where to find the definitions. So what we have
19 done is we have brought in all of those definitions into
20 this rule. We didn't change most of those; we just brought
21 in exactly as they were previously written. There were
22 some minor clarifications for language, clarity; but then
23 there are a couple that I want to point specifically. For
24 example, the cathodic protection tester and a corrosion
25 expert; these are both federal definitions that we brought

1 in, but in 2011 Missouri put forth some specific
2 requirements for who can be these person. Who can serve
3 this role. To make sure that there was no ambiguity and it
4 was clear if someone looked these up, we included that 2011
5 rule change language in the definitions as well when we
6 brought in that federal definition because ours is not like
7 the federal rules on this one.

8 Also, we added a rule for the definition of
9 double-walled piping. It's a term that we use, but it's
10 not one that EPA had previously defined. So that is a
11 state-specific rule.

12 The next rule that you're going to find is a
13 first new rule that we are going to discuss. This rule
14 specifically pertains, again, to the airport hydrant fuel
15 distribution system and the field constructed tanks; they
16 were previously deferred. This rule goes into a little bit
17 more detail about the compliance date and what they are
18 required to comply with. Basically they are required to
19 comply with almost all the requirements in an underground
20 storage tank systems that we have today would; they are
21 going to have to meet financial responsibility
22 requirements; they are going to have meet the operator
23 training requirements and all the operating rules. They
24 have to do that, like I said, by July 1 of 2019.

25 There is one rule that they are given a little

1 bit more time to comply with. That is monitoring for leaks
2 of these systems. Airport hydrant systems, for example,
3 the one we have in Missouri, has almost 2 million gallons
4 of fuel and it moves thousands of gallons of fuel every
5 day. It's not exactly like an underground storage tank
6 system at a gas station. So they do have a different set
7 of rules to monitor how they can be checked for leaks.
8 They get until July 1 of 2020 to comply with that. Again,
9 they must comply with these dates or they will have to be
10 permanently closed.

11 This rule also discusses, like I said before,
12 if you install a new one of these systems after July 1, it
13 has to be in compliance at installation. Then the last
14 language in there also states that if you have a previously
15 deferred system that was closed before these rights went
16 into effect, that the Department has reason to believe that
17 there is contamination that poses a threat to human health
18 of the environment, but the Department can still ask you
19 for a site assessment, even though they were closed before
20 this date.

21 The next rule is a new installation rule.
22 This is a state-specific regulation. We first promulgated
23 it in 2011. Any new requirement and in any new rule, you
24 are going to find things you wish you had done differently
25 or better. So we have made some changes to this regulation

1 as well.

2 The first one is we used to require that they
3 give 30-days notification; we have shortened down to 14.
4 We don't schedule our inspections out that far, so we
5 figured we could give them a little extra time.

6 The next one is that sites that are going to
7 replace more than 50 percent of their piping, or install
8 new piping, would have to provide notification. There are
9 a couple of reasons for that: The new regulations do
10 require replacement of the entire run of piping if you're
11 going to replace more than 50 percent because it has to
12 meet the new double-walled requirement. Because of the new
13 requirements and because of the complexity of these systems
14 and these replacements, we do want to make sure we are
15 there for the installation. Most sites are already
16 notifying us of this as it is now.

17 In addition to some of our previous
18 discussions, I have shown pictures of tanks popping up out
19 of the ground and floating when the water table rises and
20 we have flooding. We can't do much for the existing sites,
21 so we wanted to make sure we prevented that in the future
22 as best we can. So the new requirement does say for new
23 tanks going into the ground, they do have to be tied down.

24 In addition, the industry created a guidance
25 document for how to install a marina system. It's a great

1 guidance document and we are proposing to incorporate that
2 in this new installation reg. It would only apply to new
3 systems installed in the future; it would not apply to
4 existing marina sites. These sites are rather complex for
5 two main reasons: their configuration is completely
6 different from an underground storage tank. The tank is
7 higher than the dispensers. Of course if it's a marina,
8 it's an environmentally sensitive area. If it leaks, it's
9 going to hit water pretty quickly.

10 Also one of the things you are going to find
11 in that rule that we changed is the tightness testing
12 method. When we first built that rule, we created some
13 tightness testing requirements. As we started actually
14 implementing it in the field, we found that there may be
15 some other options we should include, so this change
16 reflects those options.

17 Last, but by no means least, there are a
18 number of new federal testing requirements. We are going
19 to go over those in greater detail later. What I will tell
20 you is that EPA rules did require that most of those
21 testing begin right after installation, before the system
22 is brought into service. So what we did is we put those
23 requirements also in the installation rule so it would be
24 easy to find.

25 The next rule is the Performance Standard for

1 New Underground Storage Tanks. This is where you're going
2 to see the start of most of the requirements for secondary
3 containment. This is one of the primary reasons we had to
4 implement this new rule. It is to satisfy EPA's
5 requirements that systems be secondarily contained. This
6 is where you will find the bulk of that requirements. It
7 does say you have to have double-walled tanks and
8 double-walled piping systems for any new system installed
9 after July 1, 2017. For clarification, that does not apply
10 to existing sites. So anything that's in the ground today;
11 it's functioning and we don't have any problems, it can say
12 and it's grandfathered in. They do not have to meet a
13 double-walled requirement. It also requires that we have
14 containment sumps. These are large plastic buckets at the
15 end of both the piping or at any single-walled joint. They
16 are under dispensers. They are in areas most likely to
17 have leaks. So these have to be installed and they have to
18 be maintained from this point forward.

19 One of the other pieces of language that is in
20 here is our dispenser replacement clause. EPA required
21 that if you replace a dispenser, you had to install a
22 containment sump underneath it and then it will be subject
23 to the testing requirements we are going to discuss later.
24 We felt the language was a little bit ambiguous and we
25 wanted to clarify that the scenarios in which you would be

1 required to install a containment sump. We also tried to
2 make it apply as rarely as possible. So the language for
3 that dispenser replacement is in this rule as well. You'll
4 also find that we have regulation language change that says
5 you cannot have metal piping installed outside of the
6 containment sump. We know that metal piping is a problem.
7 We know that it sits in the ground and rust and corrode,
8 leading to corrosion holes and problems. We don't have
9 anyone in the past number of years that have installed any
10 metal piping systems outside of these containment pumps.
11 Of course after we drafted the language, there was a
12 suggestion; it was a very good catch. The one piece of
13 metal piping we do occasionally have at our sites is a
14 flexible connector. You find it at the very end of piping
15 run. So they wanted to clarify that if they just replace
16 that flexible connector only and they install a new one so
17 long as it's protected from rusting, that they could go
18 ahead and still do that without having to install a
19 containment sump. So that's what that language means.

20 Also EPA required that we ban all float valve
21 replacements. So the compliance there, the start date for
22 that is July 1 of 2017. Now in Missouri, we already said
23 you could not use a ball float valve at a new site. You
24 can't install it, back in our 2011 rules. But what this
25 also clarifies is that if a ball float valve is failing and

1 has to be replaced, you cannot replace it with another ball
2 float valve. You have to use a different overflow
3 mechanism. And this is what they use to help prevent
4 overflow into the tank while they are delivering fuel into
5 the underground storage tank from a tanker truck. There is
6 some language in there that ties this rule to our spill and
7 overflow rule. We just want to make sure there is no
8 loophole there. Then of course the industry standards have
9 been updated.

10 The next rule is the upgraded underground
11 storage tank system. This rule applies to tanks that
12 didn't meet certain standards and by 1998, they had to
13 upgrade these to continue to use them. So most of these
14 were steel tanks and/or steel piping and they had to up
15 make sure that it would not fail during the operational
16 life of the tank. EPA proposed changes to the interior
17 lining option. What they were doing is, in effect, it
18 would start weeding out interior lined tanks with the
19 language that they had in there. When we talked to
20 Missouri owners, they expressed concern with this because
21 their view was if it's still working and still functioning
22 properly, I should be able to get to keep using. We
23 agreed. We put together a packet request that we thought
24 would satisfy EPA. This went on for months talking to EPA
25 about what would be acceptable where the owners can

1 demonstrate that their interior lined system is function
2 properly. Of course they had to do a little bit more now
3 than they did in the past to satisfy EPA.

4 The first thing we did is there is a new
5 technology out there for interior lining. You can make a
6 single wall interior lining, double walled, or a double
7 walled one that is actually strong enough to stand entirely
8 on its own. We included a reference to that technology in
9 our rules. In addition, if you're going to do an
10 inspection of your interior lining, it now as to be under
11 this proposed language, done by a certified technician.
12 Everything else in a world has to be done by a technician;
13 it seemed appropriate in this one.

14 In addition, the reports of those inspections
15 are going to have to document more in the future. Again,
16 this is part of what we did to satisfy EPA that we were at
17 least as protective of the environment as their rules.
18 Like I said, their rules were trying to eliminate some of
19 these interior lined tanks. The other language you're
20 going to find in here though is with this new technology,
21 there are easier ways to test those linings.

22 So what we need to understand on the interior
23 lining piece is that we have two options: We can do the
24 state option with all of these components; or we can do the
25 federal option. We can cut and paste pieces of this rule.

1 If it's approved by EPA as an alternative to their rule
2 with all of these components in place.

3 Again, the same dispenser replacement language
4 that you will find in the standard for new tanks, also had
5 to be in this rule as well so that it would apply to some
6 of existing facilities.

7 The next rule is the notification requirement.
8 The only main change you're going to see in here is the
9 notification requirement for the previously deferred
10 airport hydrant fuel distribution system and field
11 constructed tanks.

12 This is the spill and overspill rule. This is
13 where we are going to see the start of many of the new
14 testing requirements that EPA promulgated. So the first
15 thing you're going to find in this rule is the new
16 requirement in accordance with EPA to test the spill bucket
17 every three years. There is an option to that if you have
18 a double walled spill bucket, you can choose to monitor the
19 two walled spill bucket, instead of doing that three-year
20 test. Then it gives details of what those testing options
21 are.

22 In Missouri, and this last part is
23 state-specific, in Missouri we have been having issues with
24 some of the spill bucket repairs. These are very difficult
25 to repair depending on how you do to. So what we have seen

1 is we had some field repairs where they tried to replace
2 cracks and rubber with caulk and epoxy and other materials
3 that just don't adhere to that rubber material. We knew it
4 was an issue. Our sites know it's an issue. So what we
5 had proposed in here is to eliminate what we call the
6 "bubble gum repairs.". Things that don't last more than
7 about a week or two, sometimes a month. Sooner or last,
8 these typically don't hold. We not want to throw out the
9 baby with the bath water though, so we did say that we were
10 going to keep premanufactured repair kit. So there are ways
11 to repair these without having to dig up the entire thing.
12 There are manufactured kits that can be installed.

13 In addition, if you have a double-walled
14 spill bucket, a spill bucket within another one; you
15 actually -- the manufacturers sell replacement inserts. So
16 you can take the inside out; put a new inside in. Those
17 are allowed as well.

18 Also in this rule is the overfill prevention
19 equipment testing requirements. You are required to have
20 overfill on any tank that is getting a delivery to try to
21 ensure that you can not overfill it during the delivery
22 process. You have to test that equipment every three
23 years -- test or inspect that equipment every three years.
24 This rule outlines the options for that testing for both
25 the spill and overfill new testing requirements. The first

1 test is due by January 1 of 2020. So in other words, they
2 need to do it in 2019. There is also language that if you
3 take a tank out of service, you don't necessarily have to
4 maintain that testing. But before you bring it back into
5 service, you do have to test it before you start using that
6 tank again. Of course with any new testing requirement, we
7 are going to have the associated recordkeeping as well.

8 The next rule is the Corrosion Protection
9 Rule. This one incorporates some changes to the federal
10 language as they wrote it. What EPA said is you had to
11 maintain your corrosion protection on any tank system all
12 the way through the time it was permanently closed.
13 Missouri has slightly different rules on out of use tanks
14 and permanent closures than EPA does. So we made the
15 argument and they agreed that the way our rule is written,
16 they could just maintain their cathodic protection until
17 the point that they get the sampling done. Once they do
18 that, an owner can choose whether or not he wants to spend
19 his money keeping the system in compliance and upgrade, or
20 whether they want to save that money for the permanent
21 closure.

22 We also had language in the rule -- have
23 language in our current rule -- that says if an underground
24 storage tank system the metal components aren't adequately
25 protected, you have to make sure that corrosion hasn't

1 occurred while that system is not functioning. What we
2 needed to clarify was there is no way to do that adequately
3 for piping short of digging it up. What we did is we
4 clarified that if you have metal piping, you cannot
5 continue to use it. There is no way to check that metal
6 piping. It does have to be replaced if you have not
7 maintained the protection on that metal piping. Then of
8 course we updated the industry standards on this rule.

9 The next rule is our Compatibility Rule. EPA
10 made changes to this rule. What they said is you have to
11 notify the implementing agency at least 30 days prior to
12 converting a tank from storing a standard fuel to storing
13 an alternative fuel. So in the rule that's greater than 10
14 percent Ethanol, 20 percent bio-diesel. What EPA also said
15 is that you had to provide your compatibility documentation
16 at that time. Missouri didn't use that language. What we
17 said is you have to provide the compatibility to the
18 Department, the documentation, if we request it. For some
19 of these systems, we already know whether they are
20 compatible or not; we don't need them to provide that
21 documentation yet again. It also, of course, provides
22 options for how you can do that.

23 The next rule is the rule that governs repairs
24 to the underground storage tank system. Most of these
25 changes are tied to the new requirements in the new rules.

1 Specifically, you're required to maintain a double walled
2 system if you install a new one after July 1 of 2017. So
3 of course we had to include language on how you can repair
4 those.

5 In addition, what EPA's rules say if you test
6 equipment and it fails, clarify that you had to re-test
7 after the repairs to show that it was passing that's what
8 those other regulations are. Then make updates, again,
9 industry standards in that rule.

10 The next rule is the Recordkeeping Rule. As
11 you might imagine with all of these rule changes, all of
12 these new requirements for new systems and all of this
13 testing, there is a recordkeeping component with each one.
14 This rule ties all of those together and incorporates the
15 new changes. It also incorporates the reference to the
16 operator training records. The Petroleum Storage Tank
17 Insurance Fund reviews most of these and they provide that
18 operator training program. But for sites not covered in
19 the fund, we needed to make sure that we close that loop
20 and that we had the authority to ask and make sure that
21 they were keeping those records on file as well.

22 The next rule is the Containment Sump Testing
23 Rule. The is one of the new rules that I mentioned at the
24 beginning; one of the three new rules. The containment
25 sump testing requirement is a federal requirement. It says

1 you have to test that new required containment sump every
2 three years; or if you have a double walled sump and you
3 can put some sort of monitor between the two walls, you can
4 do that annually instead. It does -- to be clear -- only
5 apply to the new required containment sumps. So existing
6 containment sumps are not subject to this requirement and
7 optional containment sumps in the future are not subject to
8 this requirement.

9 The next rule is also one of the new rules.
10 It is the rule that governs walk-through inspections. On
11 the walk-through inspections, there is two different types
12 of inspections that are covered in this rule. The first
13 one is the monthly inspection. For that inspection, owners
14 and operators or their representative have to go out and
15 check the spill bucket once a month. They also have to
16 check their release detection requirements once a month.
17 Under the current regulations, they are already supposed to
18 be checking their release detection every month and the
19 spill buckets before every single delivery. So on a
20 frequency much greater than once a month. The annual
21 requirement is that basically everything on the system has
22 to be opened. Every tank top, every dispenser would have
23 to be opened and checked. As it's currently drafted and as
24 we are proposing, it only applies to the new systems that
25 are installed after 2017. So if you have a new required

1 test and what that entails. I want to elaborate on this
2 one just a little bit because it has come up as a question
3 or an issue of concern. What it does is in that rule, and
4 EPA's rule, it outlines exactly what that minimum
5 operability test must include. For automatic tank gauges,
6 they have to pull the probe out of the tank. Then it
7 covers sensors and other devices. At the insurance funds
8 advisory committee meeting, they had what if we follow
9 manufacture's requirements rather than EPA's guidelines;
10 would that be satisfactory? We agree. If you're following
11 the manufacturer's requirement that seemed like a
12 reasonable request. So we proposed that to EPA and said if
13 they are following the manufacturer's requirement, would
14 that be sufficient to satisfy you and the answer was no.
15 The answer was unless the manufacturer's procedures cover
16 at a minimum the test requirements in the rule, it cannot
17 be used. As you might imagine, most of the manufacturers
18 are looking at their procedures now and comparing it with
19 EPA rules. So hopefully those will be updated in the
20 future. It would make our rule less stringent than EPA and
21 potentially affect our state program approval application
22 if we didn't follow EPA's language on this.

23 The next rule is the start of the release
24 detection requirements for petroleum underground storage
25 tank systems. The first thing that's in here is it some

1 alternatives, again, for those airport hydrant systems and
2 field constructed tanks. They are very unique and have to
3 be monitoring slightly different.

4 One of the other things you're going to see
5 is, as I said, on July 1 on 2017, if you install a new
6 system, it has to be double walled; double walled tanks and
7 double walled piping. What the EPA also said is it has to
8 be monitored between those two walls. Since that's a
9 release detection method, you'll find that change in this
10 rule right here. For any system, they do have to monitor
11 between the two walls as their primary release detection
12 method.

13 The next change is that we have proposed in
14 our rule to sunset groundwater vapor monitoring by July 1,
15 2020. If you'll indulge me here just a little bit, I added
16 some new slides. That's what the presentation is in front
17 of you because we did get some -- we received some formal
18 comments on this. In discussion with folks, it sounds like
19 there is some misinformation and misconceptions about the
20 options here. So we wanted to elaborate on that just a
21 little bit today.

22 So on the groundwater and vapor monitoring;
23 EPA had some language in their rule that changed how you
24 can do groundwater and vapor monitoring. So the state has
25 two options, just like they did on some of these other

1 rules; we can either implement the rule as they wrote it,
2 or we can propose a state alternative. We chose option No.
3 2; we proposed a state alternative. We did that because
4 the effect of both rules ends up in the field in the same
5 place, in our opinion. So -- but the state option by
6 sunseting it, we actually talked EPA in to allowing more
7 time for owners to comply. I'm going to get into this in a
8 little bit more detail. But what EPA said is you must
9 document the system complies with all the federal
10 requirements, or the system will have been upgraded and then
11 certified by a professional engineer or registered
12 geologist. Again, I'm going to go into this in a little
13 bit more detail.

14 So I have an example site for you. This is a
15 real site in Missouri. It actually -- I did not pick some
16 extreme location that is a bad site. This is actually a
17 really great site. They are going to have more
18 documentation on file than almost anyone else. What EPA
19 says to meet their requirements is that you must have
20 installation logs for all of your wells. The sites that
21 are using this, the ground water and vapor monitoring, are
22 typically older, small sites. So the likelihood of them
23 having installation wells from 20, maybe 25 years ago, is
24 probably pretty slim. At this sit, the owner had an
25 installation well log from 1993, which is probably more

1 than most of our owners are going to have. But he only had
2 one at the site and unfortunately it was for the one well
3 that he is no longer using at this site.

4 What it also says is if you have a single
5 tank, in a single tank you need two wells to monitor that
6 for groundwater. If you are having more than two or more
7 tanks in the tank pit, you have to have at least three
8 wells to properly monitor for groundwater contamination or
9 evidence of release. The site, for example, has three
10 tanks but they are in two different tank pits; each tank
11 pit only as well. So this site is short by three wells.
12 The water must always be where the slotted section is. I'm
13 going show you a picture of this in just a moment. At this
14 site, we have records going all the way back to 1993,
15 again, that's going to be unusual for most of our sites.
16 So what we found is that the records repeatedly show is not
17 at the screen level. I will show you what I'm talking
18 about in a moment.

19 One of the other pieces is that before you can
20 do groundwater or vapor monitoring, you had to sample your
21 backfill to see if there was already anything in that
22 backfill that can affect the results. You have to have
23 that on file. For this site we don't have that sampling on
24 file.

25 So what I'm talking about here on the left is

1 their monitoring well installation log, the one they had
2 from 1993. Again, this is in the new packet that she gave
3 you; it wasn't in the original presentation. So what we
4 have is a monitoring well installation log on the left. So
5 they had it; they have great documentation. What it
6 demonstrates is that we have on the right, is that we a
7 monitoring well. Please excuse my rudimentary art; I did
8 this kind of at the last minute. This is definitely not to
9 scale. So we have on the right is a picture of how this
10 would be installed at the site. So we have the well, the
11 well on the left-hand side. We have our tank in the
12 ground. At some level, we have a water level. We have
13 soil and we have water level. We have slots in that well.
14 The top of the well is required to be sealed because
15 obviously you don't want just rain water or anything on the
16 site to be running into your well. So the top of well is
17 sealed. The site actually has a very short top seal which
18 is okay as long as it works. It's only a foot and a half
19 at the top of the seal. And then a foot and a half down,
20 it starts the slotted section. So 18-inches down we have
21 slotted section, all the way down to the 12-foot mark. So
22 the way it works is if my tank leaks, that product is going
23 to float up; it's going to float on top of the water and
24 it's going to go into that slotted section. So when we
25 pull a sample, we are going to see product floating on top

1 of water just like it is in the backfill. The problem we
2 have at this site -- and again, this owner has fantastic
3 records that go all the way back to 1993 or 1994 -- so we
4 what see is at this site, like I said, there is 18-inches
5 of at the top that is sealed. But if you look at where
6 they were checking their water level at their site, the
7 water level is 6-inches down, 7-inches down, 12-inches
8 down, 8.5-inches down. We see this documentation
9 throughout the history of this site. What that
10 unfortunately means is the water level and product level
11 are up above the slotted section. So if there is a leak,
12 we are not going to see it at this site because the water
13 table and the water level is above the slotted section.
14 EPA rules say that your water has to always be in the
15 slotted section every single month; it cannot go high or
16 low. So even at this site where we have some great
17 documentation, more than we are normally going to have on
18 these older sites; even at this site, it doesn't meet the
19 requirement.

20 We knew that was case in Missouri. This is
21 not something that we stringently enforced EPA's
22 regulations on in the past. These were a lot of older
23 sites when the rules started. They didn't have a whole lot
24 to upgrade with, so this was not something that Missouri
25 has been demanding. For a site like this -- and most of

1 the other sites, if not all, that are doing groundwater and
2 vapor monitoring -- they would have to upgrade their system
3 to meet EPA's requirements. So for a site like this, they
4 would have to install new wells. I don't even know if they
5 would get to continue using their wells they have because
6 they would have to be recertified as well and a new
7 engineer coming in or registered geologist might not feel
8 comfortable certifying a well that they didn't install and
9 they really have no idea how it was constructed. So you
10 have to install new wells. You're going to have to conduct
11 a site assessment. That requires sampling, which we know
12 is not a small process. In addition, if you find
13 contamination; you can't use this method until the site is
14 cleaned up and you get new background levels. So if we
15 find contamination, you still can't use this method.

16 Then the next piece was, if you find
17 contamination, of course, now you have a suspected release
18 at the site. So now you have to start the cleanup and
19 begin working on the contamination that you found.

20 Last by no means least when it comes to the
21 cost, you have to have a registered geologist or
22 professional engineer sample and certify the entire well
23 system. What we found when we started comparing these
24 prices is that this is probably in the same ballpark as
25 installing a new fancy electronic monitoring system; if not

1 higher in some areas depending on how much you need.

2 So what we discussed with our owner is this is
3 what would be required for most of you, if not all of you,
4 to meet the EPA requirements. If we just sunset it, we get
5 to give you more time to comply. So this is the option we
6 went with is we gave them more time to comply because we
7 know our sites are not going to be able to meet all of
8 this.

9 The next rule you're going to find is
10 Hazardous Substance Tank Release Detection Methods. What
11 we said here is hazardous substances are already required
12 and have been required to do interstitial monitoring on
13 their system. You're going to see in a moment that we have
14 some changes to how that has to be done at new sites and we
15 proposed that they would have to do it electronically. We
16 waived that requirement for hazardous substance tanks
17 because there is not always a sensor or electronic device
18 that can monitor the substance that's in that tank.

19 It also clarifies the sump testing requirement
20 and ties together some of these new rules, so that it's
21 clear that they do still apply and how they apply at
22 hazardous substance facilities. These are very rare, but
23 they are very unique when we have them.

24 So the next rule actually gets into how you
25 can monitor your underground storage tanks for leaks, the

1 tanks themselves. There was changes in here; most of
2 these -- actually all of these come from EPA. EPA changed
3 statistical inventory reconciliation. It wasn't even in
4 their rule in the past. We added it in our rule for the
5 first time in 2011. They said that if you do it, it has to
6 be an actual assessment, which is usually great because it
7 can't be pass/fail, and the include some other
8 requirements. The biggest change in the Statistical
9 Inventory Reconciliation, or SRI, though was that in
10 Missouri our rule said they had 15 days from the end of the
11 month after they collected all of their data, to get the
12 data shipped off, to have it assessed, and to get it back;
13 EPA said absolutely not. EPA's view was that it had to be
14 done by the 30th day of the month. Well, that's extremely
15 difficult if you're trying to gather 30 days of data, get a
16 report, and get it back to you. Suffice it to say, we
17 weren't overly thrilled with how that had played out and
18 EPA's interpretation of this. So we did work with our
19 regions and they are allowing us to take that language out
20 of the rule, and put in place a policy that would give
21 owners and operators 10 days after the end of the month to
22 do the report. Basically, it's called enforcement
23 discretion. We get to pick that we are not going to do
24 anything to you as long as you do it within the first 10
25 days. That is as much leeway as EPA would give us on this

1 rule change. Then on tank gauging, you'll see some
2 clarification language from EPA.

3 On the automatic tank gauging, it got into a
4 little bit more detail about the test modes that these
5 electronic systems can work on and it does include a
6 required monthly check for water in those tank systems.
7 Most of this isn't a change. It probably won't affect what
8 we are doing in the field.

9 Again, as I already discussed, vapor
10 monitoring and ground water monitoring, you're going to see
11 the reference to the sunset date of July 1, 2020. There is
12 one caveat to that; there is a have a vapor monitoring
13 system where you can add a chemical marker and do it and
14 it's much more precise and much more accurate. We are
15 going to change the language to allow that to continue.

16 As I stated, all the new sites are going to
17 have to have interstitial monitoring. So we did want to
18 take a close look at this rule. There is requirements
19 outlined in this rule for that interstitial monitoring.
20 Then one of the things that we proposed in the state is for
21 new sites, they do have to do it electronically. Verifying
22 that you're manually checking your interstitial space is
23 difficult and can sometimes be less than ideal for the tank
24 system itself. It outlines the requirements and outlines
25 the options for doing this method. Again, at the very end

1 the new requirements -- or the recordkeeping for the new
2 requirements, but what we did is we moved it.

3 The next two rules in the package are going to
4 be the airport hydrant and field constructed tank release
5 detection systems. It made sense to put the recordkeeping
6 after all the new requirements. In the package before you,
7 you will find these two rules. They were published in the
8 September register. As I said earlier, there was a typo
9 and we had to republish those in the October register. So
10 those are not covered in today's hearing. They
11 specifically govern release detection for airport hydrant
12 systems in field constructed tanks. Our one site that has
13 expressed an interest in this rule was specifically
14 notified to make sure they were aware of this. So the
15 hearing for this rule will be on November 3rd at 9:30 in
16 the morning.

17 The second to last rule we have is the
18 suspected release requirements. What we have in here is
19 with this new requirement for double-walled systems, we
20 needed to incorporate when we consider a leak or something
21 you have to respond to with a double-walled system.
22 Ideally, if they are working well and if the primary fails
23 and releases products, that secondary wall should be
24 catching it. So we needed to incorporate that in suspected
25 release regulation. In addition, we have language in this

1 rule from EPA about alarms and when you have to respond.
2 We did clarify at the state level there has to be a leak
3 alarm; electronic monitors go into alarm for all kinds of
4 reasons: paper being out, modem connection not working
5 right. We don't want every single one of those
6 notifications and they don't need to respond to those in
7 the same way. If it's something that indicates a potential
8 leak, that they do need to look into. Then there was some
9 clarification language in there too.

10 The last rule in our package today is the
11 release investigation requirements. This included, again,
12 this rule ties to the previous one. So when we are
13 investigating a potential leak in a double-walled system,
14 we needed to include that language as well. In addition,
15 we have this great new technology that will be coming out
16 with these double-walled systems and allows new ways for
17 you to test whether that system is tight. So we included
18 references to those as well. Then we made sure that when
19 we use the term "leak" that means our primary system leaked
20 product, but it doesn't necessarily mean it hits the
21 environment. A release is when product actually hits the
22 environment. So we made sure we use the proper language in
23 each spot.

24 So the rule-making schedule from this point
25 forward is on the same page is that today, of course, is

1 our public hearing on October 20th. The end of the comment
2 period is a week from today. It is October 27th. Now, for
3 the two rules that were republished and are on a separate
4 schedule; the hearing, again, is November 3rd. The comment
5 period only for those two rules closes November 10th,
6 specifically for the airport hydrant release detection
7 rules. What will happen after that though is we will have
8 time to respond to those comments. All of the rule
9 package, all 25 rules, will be brought back together; and
10 all 25 will be presented back to this Commission on
11 December 15. So while they are on separate tracks right
12 now, they will be brought back together as one package on
13 December 15th. We will present to you what the final rule
14 proposal is. Then of course, as you can see, we have when
15 the orders of rule-making go to JKAR with many
16 administrative rules; and then when they will get filed
17 with the Secretary of State Office. If all goes according
18 to schedule, then those rules will be effective April 30 of
19 2017. With that, if you have anything you feel you need a
20 clarification on or we didn't cover adequately, by all
21 means let me put it on the record and I will be happy to
22 elaborate on it.

23 MR. FORESMAN: Thank you. A lot of work to
24 get thing squared away. Appreciate it.

25 MS. PETERS: Thank you.

1 MS. AULL: Do we have anyone else? Is there
2 anyone else that wishes to speak?

3 MS. EIGHMEY: Thank you, Madam Chairman and
4 Commissioners. My name is Carol Eighmey, Executive
5 Director of Petroleum Storage Tank Insurance Fund. I'm
6 here today representing nearly 1,200 owners of underground
7 storage tank systems that we insure. Those systems include
8 about 6,800 separate tanks with piping and dispensers
9 connected. Many of those -- some of those, I'll say,
10 insured tank owners are large businesses, but far the vast
11 majority of them are very small businesses. I have spent
12 some time last week with one of those small business
13 owners, just to give you a sense of who I'm here
14 representing. This fellow actually immigrated to the
15 United States from India 30 years ago. He was a cab driver
16 in New York City for 17 years. Managed to save up enough
17 money that he moved his family to Kansas City and bought a
18 single convenient store, which he has operated for 13
19 years. I have great admiration for him. He supports his
20 wife and two children out of this one small business. It's
21 located in a part of Kansas City that's not easy to operate
22 a business in. It's a low income neighborhood, very
23 difficult neighborhood in terms of their surroundings. The
24 people who live there face a number of challenges. Yet, he
25 is there at that store about 18 hours a day, 7 days a week

1 inside his bullet proof cage operating this store, which
2 does provide a gasoline and other important products to the
3 folks in the neighborhood. There is another fellow I
4 talked to fairly frequently down in South Missouri, just
5 west of where Commissioners Frakes and Adams live, over in
6 the hill country. In his neighborhood, in his county,
7 there are very few suppliers of gasoline. He has operated
8 this store for a number of years, he is in his 70s. He
9 doesn't read and write well at all, but has been very
10 successful keeping this little store running in hopes of
11 passing it along to his children. He's very diligent about
12 trying to comply with all the governments rules. So he
13 often calls us and asked for help and advice on that.
14 There is another woman I spoke to recently, a widow, whose
15 husband had always operated the convenient store. He died
16 and she is now trying to learn how to operate that
17 business. She always let the husband do it and so now she
18 is having to learn about all the of the requirements for
19 selling fuel and tobacco products and alcohol products and
20 employment rules and so on. So these are the folks we deal
21 with day in and day out. We talk to them. I have enormous
22 admiration for them. By and large, the vast majority of
23 those folks have done an excellent job, as you have heard
24 Ms. Peters say before, and as I have said before; they have
25 done an excellent job maintaining their fuel storage

1 equipment, complying with the rules and regulations,
2 staying insured with us on a regular basis. Consequently,
3 Missouri has an excellent underground storage tank program;
4 one of the best in the country. We see very few leaks
5 occurring.

6 That being said, we are here today to consider
7 a whole bunch of changes to your rules governing the
8 operation of underground tanks. Your job as commissioners
9 is a challenging one because Missouri, like all other 49
10 states, are having to figure out how to implement a whole
11 bunch of new requirements that EPA has produced. Some of
12 which, frankly, probably are not needed in Missouri in
13 terms of enhancing our protection of public health and the
14 environment; but nevertheless, are demanded as you well
15 know by our friends at EPA. I want to acknowledge and
16 express appreciation to Heather Peters for all the work she
17 has done. She is well-known around the country for her
18 expertise in this area. She has been very diligent about
19 communicating with equipment companies, tank owners, and
20 with our staff and has worked long and hard over the last
21 couple of years to try to draft a rules package that will
22 work for Missouri. She has looked for ways to accommodate
23 EPA, while not imposing any additional or extraneous costs
24 on our citizens then absolutely necessary. So I do credit
25 her for that and I want to make it clear that the trust

1 fund, the Tank Insurance Trust Fund, our participants,
2 support much of what's in this rule package. There are
3 many, many things in here that we are fully in support of.
4 I won't spend time today obviously commenting on these
5 areas, but I want to make it clear that many of those areas
6 do exist.

7 I will use my time today to point out to you
8 six items where we are asking you as commissioners to think
9 about whether the approach recommended by your staff makes
10 sense and is the right approach, or whether a different
11 approach may in fact be better for Missourians. You don't
12 have to make a decision on the many, many areas where there
13 is consensus or a unanimous opinion. You are obligated to
14 make decisions on the few areas where there are
15 differences. So that's what I will focus on today in my
16 testimony. There are six items I will bring to your
17 attention. There are a few other comments we will provide
18 in writing that relate to grammar, wording, punctuation,
19 clarification things; but are not as substantive as the six
20 items I want to touch on today.

21 So first item relates to the definitions.
22 Ms. Peters explained to you why the definitions rule looks
23 complicated. We think it's good to actually print the
24 definitions of each term in the rule itself, rather than
25 incorporating them by reference. However, in the process

1 of doing that, we suggest to you that there are at least
2 two definitions which are then -- which are being changed.
3 Those two definitions are incorporated into the definitions
4 of other terms. So the total effect of these changes is
5 fairly significant and I'm not sure has been fully flushed
6 out in our stakeholder meeting. We specifically oppose the
7 proposed change to the definition of the term "connected
8 piping" and the definition of "underground storage tank."
9 Let me explain why: Those two definitions for 25 years
10 have matched EPA identical definition for those terms. In
11 this rules package, your staff is proposing to eliminate
12 the term "underground." Heretofore for 25 years in
13 Missouri and across the country, underground storage tank
14 has been defined to be all the equipment that's buried in
15 the ground, including equipment that's in sumps that is
16 visible when you take the sump lid off; up to the sheer
17 valve, which is at the base of the dispenser. The
18 definition has not included anything above that sheer
19 valve, which is visible as you and I drive our cars up to
20 the gas pumps. We think this is an important detail
21 because the rule themselves apply to the underground
22 storage tank system. If you redefine that system to
23 include the stuff above the ground, it frankly is
24 impossible, from a technical standpoint, to comply with the
25 rules to that portion of the equipment that's above the

1 ground. Furthermore, deleting that word out of your
2 definition creates some other problems with other
3 definitions, such as the definition of dispenser. Right
4 now dispenser is defined as equipment located above ground
5 that dispenses product from the UST system; but. If UST
6 system includes dispenser, then you have essentially a
7 circular definition. So we would ask the Commission to
8 change the proposed rules by reverting to the definitions
9 that have been in place for 25 years, which match EPA. We
10 really have no reason for making this change. I'm not sure
11 whether it was inadvertent or something that wasn't
12 thoroughly thought through or discussed, but we think it
13 creates a serious problem. Along the lines, if it ain't
14 broke; let's not fix it, we know of no problems with the
15 definitions that have been in place for 25 years. So we
16 would urge you to stick with those definitions. I just
17 realized I actually brought a handout to help you follow my
18 remarks, if I may pause a moment.

19 Item 2 that I would bring to your attention
20 relates to two of the Missouri-specific requirements.
21 Again, Ms. Peters mentioned a number of places in the rules
22 where either she has modified the EPA approach or was
23 putting things or suggesting that you put things in the
24 rules that are not required by EPA. We have no problem
25 with most of those, but there are two items that cause us

1 some concern. One relates to the new requirement that
2 owners and operators provide notice to the Department
3 before they install any piping. We understand that this is
4 typically happening today. Nearly all of the owners we
5 spoke to in the equipment companies who do this work
6 indicate they are giving notice to the Department and we
7 appreciate that they are doing that and that the Department
8 uses that information as they have resources to do so.
9 They use that information to go out and inspect the piping
10 installation. All of that is good. The problem comes when
11 you make a standard practice into a regulatory requirement.
12 It creates the potential for penalty if an owner fails to
13 do it. We know there are owners who from time to time make
14 piping replacements on short notice or who may forget that
15 this notice is required. We don't see any reasons for
16 those owners to be penalized or be subject to penalty for
17 failure to do so.

18 Similarly, another one of the
19 Missouri-specific requirements that's not required by EPA
20 that's being proposed by your staff relates to the
21 photographs for the lining. Ms. Peters touches on this in
22 her testimony, so let me try to explain our perspective on
23 this.

24 MS. DOBSON: Can we pause for a moment.
25 Carol, can I interrupt you for a moment. I have provided

1 the commissioners on the phone with an alternative phone
2 number that will be private, if we can take a moment just
3 to switch over.

4 (A recess was taken.)

5 MS. EIGHMEY: I was discussing the second part
6 of my second comment relating to the lining requirements or
7 the requirements that one must comply with when you line an
8 underground tank. In the late 1990s and early 2000s, there
9 were a lot of underground tank owners who paid a vendor to
10 line their tanks; by line we mean inside, go inside the
11 tank. If it's a metal tank, it has to be sandblasted and
12 the lining applied. Fiberglass tanks have also have
13 certain procedures where linings can be added. Far fewer
14 lining projects are happening today than twenty years ago
15 because most of the underground tanks that are in existence
16 today have already been lined to prevent corrosion. The
17 cost of relining versus replacing those tanks is a decision
18 that a lot of tank owners are looking at and many times
19 just decide to replace the tanks instead of relining them.
20 So there are fewer companies out there today doing tank
21 lining work. Ms. Peters has indicated, I think, that
22 nearly all of the companies who are doing that work in
23 Missouri today do provide their customers, the tank owners,
24 with the kind of report that she's requiring -- wants to
25 require in these rules, including the photograph of the

1 lining after it's completed. Now, we recognize that photo
2 documentation is helpful and we have no objection at all to
3 the fact that nearly everybody provides that. Again, the
4 problem comes when you take what is a widespread practice
5 and turn it into a regulatory requirement. I think, again,
6 of the fellow I mentioned to you moments ago who operates
7 this store in a difficult neighborhood in Kansas City and
8 who doesn't have the advantage of the nice office like we
9 have with administrative support staff, desk and chairs,
10 files cabinets, copy machines and such. I don't know where
11 he even keeps his records. But to say to that small
12 business owner if he decides to line a tank, he must now
13 not only be able to produce the records from that lining,
14 but specifically must produce this record, this record, and
15 this record including all of these photographs. He must be
16 able to produce that whenever down the road, a year from
17 now, three years from now, or five years for from now, or
18 whenever. Is a recordkeeping requirement that I guess I
19 would ask you to contemplate, whether it's necessary. The
20 photographs themselves don't prevent leaks. Looking at the
21 photographs a year or two or three after the project was
22 done, doesn't really provide any information that can be
23 used at that point, other than it sometimes helps us in
24 leak investigations. But the purpose of your rules is not
25 leak investigations; the purpose of your rules is to

1 prevent leaks. We just really see no justification for
2 imposing this additional recordkeeping requirement on these
3 small business owners.

4 No. 3 I would like to mention to you as really
5 a question. We believe that the impact of the new
6 equipment testing requirements is going to be substantial.
7 We are not certain whether that impact has been fully
8 analyzed. I will touch on that again here in a moment. We
9 would ask you to consider whether some of those
10 requirements may need to be postponed until we can find out
11 a little more about how this is all going to work across
12 the country. Let me explain: These 6,800 existing
13 underground tank systems that we insure include equipment
14 that's been in the ground sometimes for a long time. None
15 of that equipment that's now going to have to be tested was
16 manufactured or designed or installed in such a way
17 anticipating these tests. These equipment tests are all
18 very brand new. Frankly, they didn't exist until just the
19 last three or four years as the industry has begun
20 preparing for this new draft of EPA rules. Industry
21 experts have started developing procedures and protocols
22 for testing these parts and pieces that have never had to
23 be tested before. That's all fine. That's good. Again, I
24 credit Ms. Peters; she shows far more about the details
25 than anybody else I know. Nonetheless, nobody in the

1 country has had very much experience with these new testing
2 procedures and protocols. The only folks we know of who
3 have are in California. They have had some similar rules
4 in place for a few years. Their experience indicates that
5 as much as half of the equipment that's in the ground now
6 will fail the first test. We expect some of that equipment
7 will be broken as equipment vendors are trying to remove it
8 for testing. We expect some of that equipment will fail
9 the protocol or the test procedure and will have to be
10 replaced. So we think this feature of the rule package is
11 going to have a major impact on existing businesses that
12 needs to be thoroughly understood as you decide when and
13 how to implement these requirements.

14 Ms. Peters mentioned that our advisory
15 committee did specifically ask for one part of all of those
16 testing requirements to be written in such a way that there
17 would be some flexibility. She talked about the probe that
18 goes down in the tank that measures the fuel level and
19 monitors for leaks. Removing those problems we believe --
20 or I will say a lot of folks believe -- will be quite a
21 challenge and will be very expensive because many of them
22 will be broken or have to be replaced. Some folks think
23 there is a better way to verify that the probes are
24 operating properly. I can't stand here today and tell you
25 that I know for sure whether there is or isn't. Again,

1 this is all new. All 50 states in the country are going to
2 be gaining experience with this over the next few years and
3 figuring these things out; as will EPA, as will equipment
4 vendors, as will tank owners. So we would simply suggest
5 to you that you allow some time or some flexibility for
6 some of these requirements, particularly the probe removal
7 requirement, as you do -- as you make your decisions now,
8 so that we don't put something in place in a rule that ends
9 up being more expensive or more difficult, more challenging
10 than it needs to be.

11 I need to digress a moment and just touch on
12 the issue of state program approval because Ms. Peters that
13 in her testimony. We are in agreement that we want
14 Missouri to maintain approval of its state USD program.
15 That approval has been in place for many, many years. We
16 understand that all states who already have approved
17 programs will have to ask EPA again in 2018,'19; sometime
18 in that time frame, hey EPA do you now still approve our
19 program given that there is now EPA rules and here is where
20 we are in our state. Missouri will go through that process
21 we hope. We hope that we have opportunity to participate
22 with the Department in that application process. Until
23 that happens though, in states all across the country, it's
24 really hard to know for sure what EPA's response will be to
25 any particular detail or particular approach being taken by

1 a state. There are states all across the country now
2 struggling with this, just as you have to, how do we
3 implement this in our state? How do we make this work in
4 our state? And states will have unique approaches. Unlike
5 the hazardous waste program under Clean Air Program or
6 Clean Water Program, there is a lot more flexibility in the
7 USD program in achieving EPA outcomes. So we expect 50
8 states to approach this in 50 different ways. In the next
9 three or four five years, EPA will have to evaluate those
10 50 states and make these decisions as to how much
11 flexibility they allow in a particular state on a
12 particular issue. Until that happens, I don't think it's
13 fair to say we really know which of these specific details
14 in your proposed rules will or will not pass muster with
15 EPA. So we think there is time for you to adjust or
16 postpone a few of these things and give the industry and
17 the tank owners in Missouri a little more time to figure
18 these things out.

19 Item 4 relates to fiscal notes. I will be
20 brief on this point. We do believe, as I have mentioned,
21 that this rule package will create new costs for private
22 sector businesses in Missouri and for the public sector,
23 for your staff here at the DNR and for our staff. We
24 believe that state law 536.200 and 205 require you as
25 commissioners to know what those costs are and to take them

1 into account as you make your decisions. So we would urge
2 you to require your staff to present to you an analysis of
3 those cost between now and the time that you will make your
4 final decision in mid-December.

5 No. 5 is related to three and four. This is
6 not so much an issue related to the language of the rules,
7 but it's a very important implementation question. I have
8 talked to you about all of these equipment testing
9 requirements. The general expectations that much of the
10 existing equipment in the ground will fail when it is
11 tested for the first time. I need to back up and make it
12 clear that a failed test does not mean necessarily that
13 there has been a leak to the environment. There may have
14 been, but it doesn't necessarily mean there will have been.
15 Our question for the Department and for the Commission is
16 what will your response be if as anticipated this piece of
17 equipment or that piece of equipment fails this first test.
18 We think this is a real important issue to discuss and for
19 you as commissioners to understand before you vote on these
20 rules because if, for example, the Department will say
21 every failed test is an indication of a suspected release
22 to the environment, then the owner, by rule, the owner will
23 then be required to do things that costs more money. Some
24 of those things will likely generate new claims for us and
25 it could conceivably have a significant financial effect on

1 the trust fund. So the implementation issue has not been
2 really flushed out and we think it's an important one that
3 needs to be discussed and that you all need to understand
4 before you cast your votes on these rules.

5 Finally, I would mention double-walled
6 requirement. This is a not a surprise to anyone that the
7 rule package was proposed with this requirement in it.
8 It's something that Ms. Peters has been talking with us and
9 others about for a long, long time. I simply want you to
10 as commissioners to understand what's happening here and
11 why it's happening. Specifically, there are lots of these
12 tank owners out there who have equipment that's fairly old.
13 One of the reasons Missouri delayed implementing this
14 double-walled requirement as long as it has because we know
15 that it cost more money to put a double-walled system in
16 than a single-walled system. We didn't want to provide --
17 your staff -- didn't want to provide a disincentive for an
18 owner to replace his old equipment. We think that still is
19 a problem; specifically, as it relates to the tanks. So we
20 are suggesting today an idea that frankly just arose in our
21 discussions recently. We haven't even broached this
22 previously with Ms. Peters. We would like to at least
23 consider implementing a requirement that the pipe that when
24 a new system goes in the ground or an old system is
25 replaced, the piping itself needs to be double-walled and

1 there have to be these sumps in containment beneath the
2 dispensers, but leave the option open for the owner to buy
3 a single-walled tank. Here is why: There are no data
4 anywhere in the country to demonstrate that double-walled
5 tanks leak less frequently than good corrosion protected
6 single-walled tanks. There are only two kinds of tanks
7 manufactured; either steel tanks or fiberglass tanks.
8 Frankly, a double-walled steel tank is going to be
9 unaffordable for the vast majority of people. So by
10 requiring all new tanks to be double-walled, you are in
11 effect requiring that people stop using clad steel tanks
12 and use only fiberglass tanks in the future. Maybe that
13 will be fine. Maybe over the next 20 years we'll all
14 discover that fiberglass tanks are better. Right now,
15 there is no data to demonstrate that. In fact, there are
16 some experts who believe fiberglass are more prone to leaks
17 for at least a couple reasons. There are lots of new fuels
18 being manufactured. There is questions about whether those
19 new fuels will be compatible with the material used to
20 manufacture the fiberglass tank. Some people think steel
21 is a better material choice for that reason.

22 In addition, there is a problem that we have
23 been working with the Department and others on for the last
24 two or three years where fiberglass tanks are being
25 deformed in the ground as a result of the air pollution

1 devices that the Department requires on the vent stacks.
2 Essentially, those devices mean that as customers pump fuel
3 out of the fiberglass tank, liquid goes out the tank, the
4 device on the vent stack prevents air from entering the
5 tank in sufficient volume and a vacuum is created inside
6 the tank that's causing these fiberglass tanks to be
7 deformed. We don't know whether that deformation exceeds
8 what was anticipated in the manufacturing process.
9 Obviously the fiberglass tank manufacturers are reticent to
10 say that it does. But, there are some who say it can't be
11 good for those tanks to be sucked in and to have their
12 sides sucked in.

13 MR. FORESMAN: Doesn't that apply also to
14 steel tanks?

15 MS. EIGHMEY: They don't seem to be subject to
16 the same deformation problem. Again, they may be but we
17 don't have any evidence.

18 MR. FORESMAN: But steel tanks have a lining,
19 right?

20 MS. EIGHMEY: The steel tanks that have been
21 installed in recent years do not have an interior lining;
22 they have an exterior fiberglass coating that prevents
23 corrosion.

24 MR. FORESMAN: Okay. But it could be subject
25 to the same stresses?

1 MS. EIGHMEY: Potentially could be, sure. We
2 are hopeful over the long term that this excess stress
3 problem can be resolved through some modifications to the
4 air pollution rules. My only point is as we stand here
5 today, there really is no data demonstrating a corrosion
6 protected single-walled tank is more prone to leak than a
7 double-walled tank made of either steel or fiberglass. So
8 there is no data to justify the requirement. Now, I fully
9 understand the position with EPA. Missouri tried for a
10 number of years to persuade EPA that we didn't have to
11 impose this requirement. We have chosen a different option
12 under the federal law, EPA Region 7 was initially receptive
13 to that and then changed their minds some years later. You
14 have heard a lot about that over the last few years. We
15 understand this a difficult issue and it may be, as
16 commissioners, that you determined you have to proceed with
17 the double-wall requirement. We just simply want to go on
18 the record and make you aware that are some potential
19 problems, including the fact that it will probably result
20 in owners choosing to delay replacement and leave old
21 infrastructure in the ground longer in part because of the
22 cost. It will also mean that for the next 20 or 30 years,
23 all the fuel being stored in newly installed tanks in
24 Missouri will be fiberglass tanks, not in steel tanks. We
25 simply don't know at this point what the long-term impact

1 of it may be.

2 I will end my remarks there. I do appreciate
3 your attention. Again, I must repeat how much we
4 appreciate the work that Ms. Peters has done and the
5 excellent product has produced with you for this
6 rule-making. We will, as I said, submit some written
7 comments. But all in all, it's been an excellent project
8 and process. I would be happy to answer any other
9 questions, Ms. Aull, if you or other commissioners have.

10 MR. FORESMAN: Just one. Double-walled
11 fiberglass tanks gives you the benefit to tell if the
12 internal tank is leaking because you monitor the space
13 between the two tanks. That's my understanding; is that
14 correct?

15 MS. EIGHMEY: There are electronic gadgets
16 that monitor that space, yes.

17 MR. FORESMAN: So as soon as you have a leak,
18 if you have a leak, you detect it?

19 MS. EIGHMEY: As long as the electronic
20 gadgets work and people pay attention to them, yes.

21 MR. FORESMAN: Understand. But with the
22 single-wall tank you don't have that. By the time you
23 detect, it's already leaked out.

24 MS. EIGHMEY: Not always, but generally, yes.

25 MR. FORESMAN: Okay. So that's the big

1 distinction.

2 MS. EIGHMEY: That's the theory, absolutely.

3 MS. AULL: What is the reliability of those
4 electronic detection devices?

5 MS. EIGHMEY: Well, Chairman Aull, it's like
6 everything else in life, my smart phone works really well
7 when it works really well and I know how to use it. Same
8 thing is true here. The technology is fine, but all of our
9 lives are full of more and more technology. As I mentioned
10 to you, these are very small business owners who have a lot
11 to keep track of. The more complex this becomes, I would
12 hypothesize, the more likelihood there is for human error.

13 MS. AULL: So it's a user reliability.

14 MS. EIGHMEY: It is, as well as design. The
15 equipment vendors have a huge challenge too because the
16 companies that service and maintain this equipment, have to
17 be excellent mechanics. They also have to be excellent
18 technicians and computer experts. This is a very complex
19 equipment business now. Very different. There is a couple
20 equipment guys in the room who can speak to this much
21 better than I. I'm sure they would tell you this is not
22 the same business it was 25 or 30 years ago. Very
23 complicated.

24 MS. AULL: Thank you.

25 MS. EIGHMEY: Thank you for your attention.

1 MR. STURGESS: I believe we have one other
2 individual who has requested to speak on this rule, Mr.
3 Hanson.

4 MR. HANSON: I thought that was a sign-in
5 sheet.

6 MR. STURGESS: Okay. That was a speaker list,
7 so we will excuse you.

8 MS. AULL: Do we have any other -- no others
9 then. Okay. I think we will take a break now. I'm sorry
10 we need to close the public hearing.

11 MR. FORESMAN: I will make a motion to close
12 the public hearing.

13 MS. AULL: Do we have a second, please?

14 MR. ADAMS: Second.

15 (Hearing concluded at 11:27 a.m.)
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A	<p>advice 37:13 advisory 22:8 46:14 affect 22:21 25:22 31:7 affiliation 2:19 agency 18:11 agenda 3:17 ago 24:23 36:15 43:14 44:6 55:22 agree 22:10 agreed 13:23 17:15 agreement 47:13 ahead 4:25 12:18 aid 2:16 ain't 41:13 air 48:5 51:25 52:4 53:4 airport 4:12,23 5:11 7:14 8:2 15:10 23:1 32:2,22 33:4 33:11 35:6 alarm 34:3,3 alarms 34:1 alcohol 37:19 allow 31:15 47:5 48:11 allowances 32:21 allowed 16:17 allowing 24:6 30:19 32:20 allows 34:16 alternative 15:1 18:13 24:2,3 32:2 43:1 alternatives 23:1 ambiguity 7:3 ambiguous 11:24 amended 4:10</p>	<p>amendments 2:10 analysis 49:2 analyzed 45:8 and/or 13:14 announcement 4:18 annual 20:20 21:5,16 annually 20:4 21:19 answer 22:14,15 54:8 anticipated 49:16 52:8 anticipating 45:17 anybody 45:25 appears 57:8 Applicability 5:4,5 application 5:23 22:21 47:22 applied 43:12 applies 13:11 20:24 21:1 32:4 apply 10:2,3 11:9 12:2 15:5 20:5 21:19 29:21,21 40:21 52:13 appreciate 35:24 42:7 54:2,4 appreciation 38:16 approach 39:9 39:10,11 41:22 47:25 48:8 approaches 2:18 48:4 appropriate 14:13 32:8 approval 3:23 3:25 4:3,4,5</p>	<p>22:21 47:12 47:14,15 approve 47:18 approved 15:1 47:16 April 35:18 area 10:8 38:18 areas 11:16 29:1 39:5,5,12,14 argument 17:15 arose 50:20 art 26:7 asked 37:13 asking 39:8 assessed 30:12 assessment 8:19 28:11 30:6 Assistant 1:14 associated 17:7 attendance 2:13 attention 39:17 41:19 54:3,20 55:25 attorney 57:14 Aull 1:12 2:1 36:1 54:9 55:3 55:5,13,24 56:8,13 authority 5:8 19:20 automatic 22:5 31:3 available 2:20 5:1 aware 6:2 33:14 53:18 a.m 56:15</p>	<p>3:13 28:14 bad 24:16 ball 12:23,25 13:1 ballpark 28:24 ban 12:20 base 40:17 basically 7:18 20:21 30:22 basis 38:2 bath 16:9 beginning 19:24 begun 45:19 behalf 1:11 believe 8:16 45:5 46:19,20 48:20,24 51:16 56:1 beneath 51:1 benefit 54:11 best 9:22 38:4 57:9 better 8:25 39:11 46:23 51:14,21 55:21 big 54:25 biggest 30:8 bio-diesel 18:14 bit 7:16 8:1 11:24 14:2 22:2 23:15,21 24:8,13 31:4 Bluffs 1:19 bought 36:17 Box 2:25 brand 45:18 break 56:9 brief 5:22 48:20 briefly 3:13 5:14 bring 17:4 39:16 41:19 broached 50:21 Broadway 1:19 broke 41:14 broken 46:7,22</p>
		B		
		<p>baby 16:9 back 2:13 12:24 17:4 25:14 27:3 30:12,16 35:9,10,12 49:11 backfill 25:21 25:22 27:1 background</p>		

<p>brought 6:19,20 6:25 7:6 10:22 35:9,12 41:17 bubble 16:6 bucket 15:16,18 15:19,24 16:14,14 20:15 buckets 11:14 20:19 built 10:12 bulk 11:6 bullet 37:1 bunch 38:7,11 buried 40:14 business 2:19 36:12,20,22 37:17 44:12 45:3 55:10,19 55:22 businesses 36:10,11 46:11 48:22 buy 51:2</p> <hr/> <p style="text-align: center;">C</p> <p>cab 36:15 cabinets 44:10 cage 37:1 California 46:3 call 2:1 16:5 called 3:23 30:22 calling 2:17 calls 3:7 37:13 card 2:20 Carol 36:4 42:25 cars 40:19 case 27:20 cast 50:4 catch 12:12 catching 33:24 cathodic 6:5,24 17:16 caulk 16:2 cause 41:25 causing 52:6</p>	<p>caveat 31:12 censors 22:7 certain 6:1 13:12 43:13 45:7 CERTIFICA... 57:1 certified 14:11 24:11 certify 28:22 57:7 certifying 28:8 Chair 1:12 3:7 Chairman 36:3 55:5 chairs 44:9 challenge 46:21 55:15 challenges 36:24 challenging 38:9 47:9 change 5:4 6:8 6:20 7:5 10:15 12:4 15:8 23:9 23:13 30:8 31:1,7,15 32:23 40:7 41:8,10 changed 10:11 23:23 30:2 40:2 53:13 changes 2:5 3:11,15,19 4:7 5:3 6:10,11 8:25 13:16 17:9 18:10,25 19:11,15 29:14 30:1 32:25 38:7 40:4 Chapter 2:6 Charles 1:12 check 18:5 20:15,16 31:6 checked 8:7 20:23</p>	<p>checking 20:18 27:6 31:22 chemical 31:13 children 36:20 37:11 choice 51:21 choose 15:18 17:18 choosing 53:20 chose 24:2 chosen 53:11 circular 41:7 citizens 38:24 City 1:8 3:1 36:16,17,21 44:7 clad 51:11 claims 49:24 clarification 11:9 31:2 34:9 35:20 39:19 clarifications 6:22 clarified 18:4 clarifies 12:25 29:19 clarify 3:17 4:14 11:25 12:15 18:2 19:6 34:2 clarifying 32:25 clarity 6:22 clause 11:20 clean 5:8,13 48:5,6 cleaned 28:14 cleanup 28:18 clear 7:4 20:4 29:21 38:25 39:5 49:12 close 5:18 19:19 31:18 56:10 56:11 closed 8:10,15 8:19 17:12 closes 4:21 35:5 closure 5:13 17:21</p>	<p>closures 17:14 coating 52:22 Code 2:6 COLE 57:5 collected 30:11 Columbia 1:19 come 4:5 5:17 21:7 22:2 30:2 32:13 comes 28:20 42:10 44:4 comfortable 28:8 coming 28:7 34:15 comment 2:11 2:14,15 3:2 4:20 35:1,4 43:6 commenting 39:4 comments 2:15 2:21,24 3:1,3 23:18 35:8 39:17 54:7 Commission 1:1 1:11 2:8,18,21 35:10 41:7 49:15 Commissioner 1:13 commissioners 36:4 37:5 38:8 39:8 43:1 48:25 49:19 50:10 53:16 54:9 Commissione... 1:12,13 committee 22:8 46:15 communicating 38:19 companies 38:19 42:5 43:20,22 55:16</p>	<p>comparing 22:18 28:23 compatibility 18:9,15,17 compatible 18:20 51:19 completed 44:1 completely 10:5 complex 10:4 55:11,18 complexity 9:13 compliance 5:15,16,17 7:17 8:13 12:21 17:19 complicated 39:23 55:23 complies 24:9 comply 5:21 7:18,19 8:1,8 8:9 24:7 29:5 29:6 37:12 40:24 43:7 complying 38:1 component 19:13 components 14:24 15:2 17:24 computer 55:18 conceivably 49:25 concern 13:20 22:3 42:1 concluded 56:15 conclusion 2:23 conduct 21:25 28:10 conducted 21:4 21:22 Conference 1:7 configuration 10:5 confirm 32:9 confirming 32:15</p>
---	--	--	--	---

confusing 6:17	corrosive 6:5	43:23 52:2	52:7,16	53:16
conjunction 21:5	cost 28:21 43:17	cut 14:25	deformed 51:25	developing 45:21
connected 36:9	49:3 50:15		52:7	device 29:17
40:7	53:22	D	delay 53:20	52:4
connection 34:4	costs 38:23	data 30:11,12	delayed 50:13	devices 22:7
connector 12:14	48:21,25	30:15 51:3,15	deleting 41:1	52:1,2 55:4
12:16	49:23	53:5,8	delivering 13:4	died 37:15
consensus 39:13	counsel 57:11	date 7:17 8:20	delivery 16:20	difference 32:18
Consequently	57:14	12:21 31:11	16:21 20:19	differences
38:2	country 37:6	32:21	demanded	39:15
consider 33:20	38:4,17 40:13	dates 5:15 8:9	38:14	different 6:13
38:6 45:9	45:12 46:1	day 8:5 30:14	demanding	8:6 10:6 13:2
50:23	47:1,23 48:1	36:25 37:21	27:25	17:13 20:11
constructed	51:4	37:21	demonstrate	23:3 25:10
4:12,23 5:10	county 37:6	days 18:11	14:1 51:4,15	39:10 48:8
5:11 7:15	57:5	30:10,15,21,25	demonstrates	53:11 55:19
15:11 23:2	couple 6:23 9:9	36:25	26:6	differently 8:24
28:9 32:3,22	38:21 51:17	deal 37:20	demonstrating	difficult 15:24
33:4,12	55:19	debate 2:3	53:5	30:15 31:23
contained 11:5	course 10:7	Debra 1:14	Department 1:1	36:23 44:7
containment	12:11 13:8	December	2:4,9 3:9 8:16	47:9 53:15
11:3,14,22	14:2 17:6 18:8	35:11,13	8:18 18:18	dig 16:11
12:1,6,10,19	18:21 19:3	decide 43:19	42:2,6,7 47:22	digging 18:3
19:22,24 20:1	21:11 28:17	46:12	49:15,20	digress 47:11
20:5,6,7 21:1	34:25 35:14	decides 44:12	51:23 52:1	diligent 37:11
51:1	court 1:17 2:20	decision 39:12	depending	38:18
contamination	57:20	43:17 49:4	15:25 29:1	direction 57:10
8:17 25:8	cover 22:15	decisions 39:14	deposition 57:8	Director 1:14
28:13,15,17,19	35:20	47:7 48:10	57:12	2:23,25 36:5
contemplate	covered 3:15	49:1	design 55:14	discover 51:14
44:19	19:18 20:12	deferral 5:10	designed 45:16	discretion 30:23
continue 13:13	33:10	deferred 5:7,24	desk 44:9	discuss 7:13
18:5 28:5	covers 22:7	6:1 7:16 8:15	detail 7:17	11:23 49:18
31:15	cracks 16:2	15:9	10:19 24:8,13	discussed 29:2
convenient	create 48:21	defined 7:10	31:4 40:20	31:9 41:12
36:18 37:15	created 9:24	40:14 41:4	47:25	50:3
converting	10:12 52:5	definitely 26:8	details 15:20	discusses 8:11
18:12	creates 41:2,13	definition 6:16	45:24 48:13	discussing 43:5
copy 44:10	42:12	7:6,8 40:7,8	detect 54:18,23	discussion
correct 54:14	credit 38:24	40:10,18 41:2	detection 20:16	23:18
corrode 12:7	45:24	41:3,7	20:18 21:14	discussions 9:18
corrosion 6:24	current 4:9	definitions 6:9	21:15,16,17	50:21
12:8 17:8,11	17:23 20:17	6:13,18,19,25	22:24 23:9,11	disincentive
17:25 43:16	32:10	7:5 39:21,22	29:10 32:4,24	50:17
51:5 52:23	currently 20:23	39:24 40:2,3,3	33:5,11 35:6	dispenser 11:20
53:5	21:18	40:9 41:3,8,15	55:4	11:21 12:3
	customers	41:16	determined	
		deformation		

15:3 20:22 40:17 41:3,4,6 dispensers 10:7 11:16 36:8 51:2 dispenses 41:5 distinction 55:1 distribution 4:13 7:15 15:10 Division 2:6 DNR 48:23 Dobson 1:14 42:24 document 9:25 10:1 14:15 24:9 documentation 18:15,18,21 21:6,9 24:18 26:5 27:8,17 44:2 doing 3:21 4:11 6:12 13:17 15:19 28:1 31:8,25 32:12 32:17 40:1 42:7 43:20,22 double 14:6,6 15:18 19:1 20:2 23:6,6,7 double-wall 53:17 double-walled 7:9 9:12 11:7 11:8,13 16:13 33:19,21 34:13,16 50:5 50:14,15,25 51:4,8,10 53:7 54:10 draft 38:21 45:20 drafted 12:11 20:23 32:12 drive 40:19 driver 36:15	due 17:1 21:2 21:21 <hr/> E <hr/> earlier 33:8 early 43:8 easier 14:21 East 1:7 easy 10:24 36:21 effect 4:1 8:16 13:17 24:4 40:4 49:25 51:11 effective 4:6 35:18 Eighmey 36:3,4 43:5 52:15,20 53:1 54:15,19 54:24 55:2,5 55:14,25 either 5:16 24:1 41:22 51:7 53:7 elaborate 22:1 23:20 35:22 electronic 28:25 29:17 31:5 32:14 34:3 54:15,19 55:4 electronically 29:15 31:21 eliminate 14:18 16:5 40:11 Elizabeth 1:12 Elm 1:7 employed 57:11 57:14 employee 57:13 employment 37:20 ends 24:4 47:8 Energy 3:14 enforced 27:21 enforcement 30:22 engineer 24:11 28:7,22	enhancing 38:13 enormous 37:21 ensure 16:21 entails 22:1 entering 52:4 entire 9:10 16:11 28:22 entirely 14:7 environment 6:5 8:18 14:17 34:21,22 38:14 49:13 49:22 environmental 3:15 environmenta... 10:8 EPA 3:18 4:1,4 7:10 10:20 11:20 12:20 13:16,24,24 14:3,16 15:1 15:14,16 17:10,14 18:9 18:14 22:12 22:19,20 23:7 23:23 24:6,8 24:18 27:14 29:4 30:2,2,13 30:25 31:2 34:1 38:11,15 38:23 40:10 41:9,22,24 42:19 45:20 47:3,17,18,19 48:7,9,15 53:9 53:10,12 EPA's 11:4 19:5 21:8 22:4,9,22 27:21 28:3 30:13,18 47:24 epoxy 16:2 equipment 16:19,22,23 19:6 21:17,17	21:20 32:14 38:1,19 40:14 40:15,25 41:4 42:5 45:6,13 45:15,17 46:5 46:6,7,8 47:3 49:8,10,17,17 50:12,18 55:15,16,19,20 error 55:12 especially 21:10 essentially 41:6 52:2 Ethanol 18:14 evaluate 48:9 everybody 44:3 evidence 25:9 52:17 exactly 6:21 8:5 22:4 example 6:24 8:2 24:14 25:9 49:20 exceeds 52:7 excellent 37:23 37:25 38:3 54:5,7 55:17 55:17 excess 53:2 excuse 26:7 56:7 Executive 36:4 exist 39:6 45:18 existence 43:15 existing 9:20 10:4 11:10 15:6 20:5 45:12 46:11 49:10 expect 46:6,8 48:7 expectations 49:9 expensive 46:21 47:9 experience 46:1 46:4 47:2 expert 6:25	expertise 38:18 experts 45:21 51:16 55:18 explain 40:9 42:22 45:12 explained 39:22 express 38:16 expressed 13:20 33:13 exterior 52:22 extra 9:5 extraneous 38:23 extreme 24:16 extremely 30:14 e-mail 3:3,4 <hr/> F <hr/> face 36:24 facilities 15:6 29:22 fact 39:11 44:3 51:15 53:19 fail 13:15 46:6,8 49:10 failed 49:12,21 failing 12:25 fails 19:6 33:22 42:12 49:17 failure 42:17 fair 48:13 fairly 37:4 40:5 50:12 family 36:17 fancy 28:25 fantastic 27:2 far 9:4 36:10 43:13 45:24 feature 46:10 federal 3:19,24 4:7 6:15,25 7:6,7 10:18 14:25 17:9 19:25 24:9 53:12 feel 28:7 35:19 fellow 36:14 37:3 44:6
--	---	--	---	--

felt 11:24	fiscal 48:19	frankly 38:12	getting 16:20	37:12
fewer 43:13,20	five 44:17 48:9	40:23 45:18	give 9:3,5 29:5	governs 18:23
fiberglass 43:12	fix 41:14	50:20 51:8	30:20,25	20:10
51:7,12,14,16	flexibility 46:17	frequency 20:20	36:13 48:16	grammar 39:18
51:20,24 52:3	47:5 48:6,11	frequently 37:4	given 2:11 7:25	grandfathered
52:6,9,22 53:7	flexible 12:14	51:5	47:19	11:12
53:24 54:11	12:16	friends 38:15	gives 15:20	great 9:25 24:17
field 4:12,23	float 12:20,23	front 23:16	54:11	26:5 27:16
5:10,11 7:15	12:25 13:2	fuel 4:12 7:14	giving 42:6	30:6 34:15
10:14 15:10	26:23,23	8:4,4 13:4	go 3:12 4:25	36:19
16:1 23:2 24:4	floating 9:19	15:10 18:12	10:19 12:17	greater 10:19
31:8 32:3,22	26:25	18:13 37:19	20:14 24:12	18:13 20:20
33:4,12	flooding 9:20	37:25 46:18	26:24 27:3,15	ground 9:19,23
figure 38:10	flushed 40:5	52:2 53:23	34:3 35:15	11:10 12:7
48:17	50:2	fuels 51:17,19	42:9 43:10	24:21 26:12
figured 9:5	focus 39:15	full 55:9	47:20 53:17	31:10 40:15
figuring 47:3	folks 6:17 23:18	fully 5:12 39:3	goes 7:16 35:17	40:23 41:1,4
file 19:21 24:18	37:3,20,23	40:5 45:7 53:8	46:18 50:24	45:14 46:5
25:23,24	46:2,20,22	function 14:1	52:3	49:10 50:24
filed 35:16	follow 22:8,22	functioning	going 5:5,15,17	51:25 53:21
files 44:10	41:17	11:11 13:21	5:19 6:8,9	groundwater
fill 2:15	following 2:10	18:1 32:15,16	7:12,13,21,22	23:14,22,24
final 35:13 49:4	2:23 22:10,13	fund 19:17,19	8:24 9:6,11,23	25:6,8,20 28:1
Finally 50:5	foot 26:18,19	36:5 39:1,1	10:9,10,18	32:19
financial 7:21	force 32:8	50:1	11:1,23 14:9	guess 44:18
49:25	foregoing 57:8	funds 22:7	14:15,20 15:8	guidance 9:24
financially	Foresman 1:13	further 57:13	15:13,15	10:1
57:15	35:23 52:13	Furthermore	16:10 17:7	guidelines 22:9
find 5:3 6:8,18	52:18,24	41:1	21:7,14 23:4	32:11
7:12 8:24	54:10,17,21,25	future 9:21 10:3	24:7,12,17	gum 16:6
10:10,24 11:6	56:11	14:15 20:7	25:1,13,14,15	guys 55:20
12:4,14 14:20	forget 42:14	22:20 51:12	26:22,23,24,25	
15:4,15 21:14	form 2:15		27:12,17	H
23:9 28:12,15	formal 23:17	G	28:10 29:7,9	half 26:18,19
28:16 29:9	forms 2:14	gadgets 54:15	29:13 30:23	46:5
33:7 45:10	forth 7:1	54:20	31:10,15,16	handout 41:17
fine 45:23 51:13	forum 2:2	gaining 47:2	32:1,23 33:3	Hanson 56:3,4
55:8	forward 11:18	gallons 8:3,4	45:6,11,15	happen 35:7
first 2:9 4:11	34:25	gas 8:6 40:20	46:11 47:1	happening 42:4
5:4 7:13 8:22	found 6:13,14	gasoline 37:2,7	51:8	43:14 50:10
9:2 10:12 14:4	6:14 10:14	gather 30:15	good 12:12	50:11
15:14 16:25	25:16 28:19	gauges 22:5	32:17 39:23	happens 47:23
20:12 21:2,3	28:23	gauging 31:1,3	42:10 45:23	48:12
21:14,21	four 45:19 48:9	general 49:9	51:5 52:11	happy 35:21
22:25 30:5,24	49:5	generally 54:24	govern 33:11	54:8
39:21 46:6	Frakes 37:5	generate 49:24	governing 38:7	hard 38:20
49:11,17	frame 47:18	geologist 24:12	governments	47:24
		28:7,21		hazardous 1:1

2:22,25 3:10 29:10,11,16,22 48:5 health 8:17 38:13 heard 2:16 37:23 53:14 hearing 1:5 2:1 2:2,3,13,22,24 4:9,17,19 33:10,15 35:1 35:4 56:10,12 56:15 Heather 3:4,7,9 38:16 heather.peter... 3:5 help 13:3 37:13 41:17 helpful 44:2 helps 44:23 Heretofore 40:12 hey 47:18 high 27:15 higher 10:7 29:1 hill 37:6 history 27:9 hit 10:9 hits 34:20,21 hold 16:8 holes 12:8 hope 47:21,21 hopeful 53:2 hopefully 22:19 hopes 37:10 hours 36:25 huge 32:18 55:15 human 8:17 55:12 husband 37:15 37:17 hydrant 4:12,23 5:11 7:14 8:2 15:10 23:1 32:2,22 33:4	33:11 35:6 hypothesize 55:12 <hr/> I <hr/> idea 28:9 50:20 ideal 31:23 Ideally 33:22 identical 40:10 imagine 19:11 22:17 immigrated 36:14 impact 45:5,7 46:11 53:25 implement 3:19 4:2 11:4 24:1 38:10 46:13 48:3 implementation 49:7 50:1 implementing 10:14 18:11 50:13,23 important 37:2 40:20 49:7,18 50:2 impose 53:11 imposing 38:23 45:2 impossible 40:24 inadvertent 41:11 include 10:15 19:3 21:24 22:5 30:7 31:5 34:14 36:7 40:23 45:13 included 3:14 4:24 7:4 14:8 34:11,17 40:18 includes 41:6 including 40:15 43:25 44:15 53:19 income 36:22	incorporate 4:7 10:1 33:20,24 incorporated 6:15 40:3 incorporates 17:9 19:14,15 incorporating 39:25 India 36:15 indicate 42:6 indicated 43:21 indicates 34:7 46:4 indication 49:21 individual 56:2 indulge 23:15 industry 9:24 13:8 18:8 19:9 21:11 45:19 45:20 48:16 information 42:8,9 44:22 infrastructure 53:21 initially 53:12 inserts 16:15 inside 16:16,16 37:1 43:10,10 52:5 inspect 16:23 42:9 inspection 14:10 20:13 20:13 21:10 inspections 9:4 14:14 20:10 20:11,12 21:2 install 5:19 8:12 9:7,25 11:21 12:1,16,18,24 19:2 23:5 28:4 28:8,10 32:18 42:3 installation 5:20 8:13,21 9:15 10:2,21,23 24:20,23,25	26:1,4 42:10 installed 5:25 10:3 11:8,17 12:5,9 16:12 20:25 26:10 32:16,17 45:16 52:21 53:23 installing 6:5 28:25 insulation 5:12 insurance 19:17 22:7 36:5 39:1 insure 36:7 45:13 insured 36:10 38:2 interest 33:13 interested 57:15 interim 5:24 interior 13:16 13:18 14:1,5,6 14:10,19,22 52:21 internal 54:12 interpretation 30:18 interrupt 42:25 interstitial 29:12 31:17 31:19,22 inventory 30:3 30:9 investigating 34:13 investigation 34:11 investigations 44:24,25 issue 2:3 16:4,4 22:3 47:12 48:12 49:6,18 50:1 53:15 issues 15:23 item 3:17 39:21 41:19 48:19 items 39:8,16,20	41:25 <hr/> J <hr/> January 17:1 21:3,21 Jefferson 1:8 2:25 Jenna 1:18 57:7 JKAR 35:15 job 37:23,25 38:8 joint 11:15 Jordan 1:13 July 3:18,18 5:18,19 7:24 8:8,12 11:9 12:22 19:2 23:5,14 31:11 justification 45:1 justify 53:8 <hr/> K <hr/> Kansas 36:17 36:21 44:7 keep 13:22 16:10 55:11 keeping 17:19 19:21 37:10 keeps 44:11 kind 26:8 43:24 kinds 34:3 51:6 kit 16:10 kits 16:12 knew 16:3 27:20 know 6:6,18 12:6,7 16:4 18:19 28:4,11 29:7 38:15 41:14 42:13 44:10 45:25 46:2,25 47:24 48:13,25 50:14 52:7 53:25 55:7 <hr/> L <hr/> language 6:7,11
--	--	---	---	--

6:22 7:5 8:14 11:19,24 12:2 12:4,11,19 13:6,19 14:11 14:19 15:3 17:2,10,22,23 18:16 19:3 22:22 23:23 30:19 31:2,15 33:25 34:9,14 34:22 49:6 large 11:14 36:10 37:22 late 43:8 law 48:24 53:12 lead 21:19 leading 12:8 leak 27:11 32:4 32:6,8,8 33:20 34:2,8,13,19 44:24,25 49:13 51:5 53:6 54:17,18 leaked 5:7 34:19 54:23 leaking 54:12 leaks 4:22 8:1,7 10:8 11:17 26:22 29:25 38:4 44:20 45:1 46:19 51:16 learn 37:16,18 leave 51:2 53:20 leeway 30:25 left 25:25 26:4 left-hand 26:11 let's 41:14 level 25:17 26:12,12,13 27:6,7,10,10 27:13 34:2 46:18 levels 28:14 lid 40:16 life 13:16 55:6 likelihood 24:22	55:12 limited 5:23 line 21:18 43:7 43:10,10 44:12 lined 13:18 14:1 14:19 32:6 43:16 lines 21:21 41:13 lining 13:17 14:5,6,10,23 42:21 43:6,12 43:14,21 44:1 44:13 52:18 52:21 linings 14:21 43:13 liquid 52:3 list 56:6 lists 21:23 LITIGATION 1:18 little 7:16,25 9:5 11:24 14:2 22:2 23:15,21 24:8,12 31:4 37:10 45:11 48:17 live 36:24 37:5 lives 55:9 located 36:21 41:4 location 24:16 locations 6:14 log 24:25 26:1,4 logs 24:20 long 3:25 12:17 26:18 30:24 38:20 45:14 50:9,9,14 53:2 54:19 longer 25:3 53:21 long-term 53:25 look 6:9 27:5 31:18 34:8	looked 7:4 38:22 looking 22:18 43:18 44:20 looks 39:22 loop 19:19 loophole 13:8 lot 3:14 6:10,10 27:22,23 35:23 43:9,18 46:20 48:6 53:14 55:10 lots 50:11 51:17 low 27:16 36:22 <hr/> M <hr/> machines 44:10 Madam 36:3 mail 2:24 3:1 main 5:4 10:5 15:8 maintain 17:4 17:11,16 19:1 47:14 55:16 maintained 11:18 18:7 maintaining 37:25 major 46:11 majority 36:11 37:22 51:9 making 41:10 Managed 36:16 MANAGEM... 1:1 manually 31:22 manufacture 51:20 manufactured 16:12 45:16 51:7,18 manufacturers 16:15 22:17 32:13 52:9 manufacturer's 22:11,13,15 32:11 manufacture's	22:9 manufacturing 52:8 marina 9:25 10:4,7 mark 1:13 26:21 marker 31:13 match 41:9 matched 40:10 material 16:3 51:19,21 materials 16:2 mean 34:20 43:10 49:12 49:14 52:2 53:22 means 3:24 4:1 10:17 12:19 21:3 27:10 28:20 34:19 35:21 meant 5:7 measures 46:18 mechanics 55:17 mechanism 13:3 meet 6:1 7:21 7:22 9:12 11:12 13:12 21:12 24:19 27:18 28:3 29:4,7 meeting 22:8 40:6 meetings 4:18 mention 45:4 50:5 mentioned 19:23 41:21 44:6 46:14 48:20 55:9 metal 12:5,6,10 12:13 17:24 18:4,5,7 43:11 method 10:12	23:9,12 28:13 28:15 31:25 Methods 29:10 Michael 1:13 MIDWEST 1:18 mid-December 49:4 million 8:3 minds 53:13 minimum 22:4 22:16 minor 6:22 minute 26:8 misconceptions 23:19 misinformation 23:19 Missouri 1:2 3:1 3:22,24 4:14 5:1,3 6:3 7:1 8:3 12:22 13:20 15:22 15:23 17:13 18:16 21:18 24:15 27:20 27:24 30:10 32:7 37:4 38:3 38:9,12,22 40:13 43:23 47:14,20 48:17,22 50:13 53:9,24 57:3 Missourians 39:11 Missouri's 3:24 Missouri-spec... 41:20 42:19 MO 1:8,19 modem 34:4 modes 31:4 modifications 53:3 modified 41:22 moment 25:13 25:18 29:13
---	--	--	---	---

41:18 42:24 42:25 43:2 45:8 47:11 moments 44:6 money 17:19,20 36:17 49:23 50:15 monitor 4:22 8:7 15:18 20:3 21:20 23:10 25:5,8 29:18 29:25 54:12 54:16 monitored 23:8 monitoring 8:1 23:3,14,22,24 24:21 25:20 26:1,4,7 28:2 28:25 29:12 31:10,10,12,17 31:19 32:2,19 32:20 monitors 34:3 46:19 month 16:7 20:15,16,18,20 27:15 30:11 30:14,21 monthly 20:13 21:10 31:6 months 13:24 morning 33:16 motion 56:11 moved 33:2 36:17 moves 8:4 muster 48:14	necessary 38:24 44:19 need 14:22 17:2 18:20 21:22 25:5 29:1 34:6 34:8 35:19 45:10 47:11 49:11 50:3 56:10 needed 18:2 19:19 33:20 33:24 34:14 38:12 needs 21:4 46:12 47:10 50:3,25 neighborhood 36:22,23 37:3 37:6 44:7 neither 57:11 never 45:22 nevertheless 38:14 new 2:10 3:19 4:11,13,19 5:19 7:13 8:12 8:21,23,23 9:8 9:9,12,12,22 9:22 10:2,2,18 11:1,4,8 12:16 12:23 14:4,20 15:4,13,15 16:16,25 17:6 18:25,25 19:2 19:12,12,15,23 19:24 20:1,5,9 20:24,25 21:24 23:5,16 26:2 28:4,6,10 28:14,25 29:14,20 31:16,21 32:6 33:1,1,6,19 34:15,16 36:16 38:11 42:1 45:5,18 45:20 46:1	47:1 48:21 49:24 50:24 51:10,17,19 newly 53:23 nice 44:8 normally 27:17 notes 48:19 notice 42:2,6,14 42:15 notification 9:3 9:8 15:7,9 notifications 34:6 notified 33:14 notify 18:11 notifying 9:16 November 4:20 4:21 33:15 35:4,5 number 10:18 12:9 36:24 37:8 41:21 43:2 53:10 numbers 5:2	open 51:2 opened 20:22,23 operability 21:16,24,25 22:5 32:5 operate 36:21 37:16 operated 36:18 37:7,15 operates 44:6 operating 7:23 32:10 37:1 46:24 operation 38:8 operational 13:15 operator 7:22 19:16,18 operators 20:14 30:21 42:2 opinion 24:5 39:13 opportunity 2:5 2:11 47:21 oppose 40:6 option 13:17 14:24,25 15:17 24:2,5 29:5 51:2 53:11 optional 20:7 options 10:15 10:16 14:23 15:20 16:24 18:22 23:20 23:25 31:25 32:2 oral 2:15 order 2:2 orders 35:15 original 26:3 outcome 57:15 outcomes 48:7 outlined 31:19 outlines 16:24 22:4 31:24,24 outlining 5:14	outside 12:5,10 overflow 13:4,7 16:18,20,21,25 overflow 13:2 overly 30:17 overspill 15:12 owner 17:18 24:24 27:2 29:2 42:12 44:12 49:22 49:22 50:18 51:2 owners 13:20,25 20:13 24:7 25:1 30:21 36:6,10,13 38:19 42:2,4 42:13,16 43:9 43:18,23 45:3 47:4 48:17 50:12 53:20 55:10
<hr/> N <hr/> name 2:19 3:8 36:4 Natural 1:1 2:4 3:9 nearly 36:6 42:4 43:22 44:3 necessarily 17:3 34:20 49:12 49:14		<hr/> O <hr/> objection 44:2 obligated 39:13 obviously 26:15 39:4 52:9 occasionally 12:13 occurred 18:1 occurring 38:5 October 1:6 3:3 3:6 4:19 33:9 35:1,2 office 35:17 44:8 okay 3:12 26:18 52:24 54:25 56:6,9 old 50:12,18,24 53:20 older 24:22 27:18,22 once 17:17 20:15,16,20	opportunity 2:5 2:11 47:21 oppose 40:6 option 13:17 14:24,25 15:17 24:2,5 29:5 51:2 53:11 optional 20:7 options 10:15 10:16 14:23 15:20 16:24 18:22 23:20 23:25 31:25 32:2 oral 2:15 order 2:2 orders 35:15 original 26:3 outcome 57:15 outcomes 48:7 outlined 31:19 outlines 16:24 22:4 31:24,24 outlining 5:14	<hr/> P <hr/> package 4:6,8 33:3,6 34:10 35:9,12 38:21 39:2 40:11 46:10 48:21 50:7 packet 4:15,16 13:23 26:2 page 5:1 34:25 paid 43:9 paper 34:4 part 3:22 4:16 14:16 15:22 36:21 43:5 46:15 53:21 participants 39:1 participate 47:21 particular 47:25,25 48:11,12 particularly 47:6

parties 57:12,14	photograph 43:25	portion 40:25	private 43:2	5:25
parts 45:22	photographs 42:21 44:15	poses 8:17	48:21	project 44:21
pass 48:14	44:20,21	position 53:9	probably 21:4	54:7
passing 19:7	pick 24:15	possible 12:2	24:24,25	projects 43:14
37:11	30:23	postmarked 3:2	28:24 31:7	promulgated
pass/fail 30:7	picture 25:13	postpone 48:16	38:12 53:19	3:18 8:22
paste 14:25	26:9	postponed	probe 22:6	15:14
pause 41:18	pictures 9:18	45:10	46:17 47:6	prone 51:16
42:24	piece 12:12	potential 34:7	probes 46:23	53:6
pay 54:20	14:23 28:16	34:13 42:12	problem 12:6	proof 37:1
penalized 42:16	49:16,17	53:18	27:1 41:13,24	proper 34:22
penalty 42:12	pieces 11:19	potentially	42:10 44:4	properly 13:22
42:16	14:25 25:19	22:21 53:1	50:19 51:22	14:2 25:8
people 36:24	45:22	practice 42:11	52:16 53:3	32:10,16
51:9,11,20	pipe 50:23	44:4	problems 11:11	46:24
54:20	pipng 7:9 9:7,8	precise 31:14	12:8 41:2,14	proposal 35:14
percent 9:7,11	9:10 11:8,15	premanufact...	46:19 53:19	propose 24:2
18:14,14	12:5,6,10,13	16:10	procedure 46:9	proposed 2:5,9
Performance	12:14 13:14	preparing 45:20	procedures	2:12 3:11 5:3
10:25	18:3,4,6,7	present 1:11 2:5	22:15,18	13:16 14:11
period 3:3 4:20	23:7 32:5,20	2:9 35:13 49:2	43:13 45:21	16:5 22:12
35:2,5	36:8 40:8 42:3	presentation	46:2	23:13 24:3
permanent	42:9,14 50:25	23:16 26:3	proceed 53:16	29:15 31:20
17:14,20	pit 25:7,11	presented 35:10	process 16:22	40:7 41:8
permanently	pits 25:10	pretty 5:23 10:9	28:12 39:25	42:20 48:14
5:18 8:10	place 15:2 24:5	24:24	47:20,22 52:8	50:7
17:12	30:20 41:9,15	prevent 13:3	54:8	proposing 10:1
person 7:2	46:4 47:8,15	43:16 44:20	produce 44:13	20:24 40:11
perspective	places 41:21	45:1	44:14,16	protected 12:17
42:22	plastic 11:14	prevented 9:21	produced 38:11	17:25 51:5
persuade 53:10	played 30:17	prevention	54:5	53:6
pertain 4:22	please 2:15,18	16:18	product 26:22	protection 6:6
pertains 7:14	2:22 26:7	prevents 52:4	26:25 27:10	6:24 17:8,11
Peters 3:4,7,8,9	56:13	52:22	34:20,21 41:5	17:16 18:7
35:25 37:24	PO 2:25	previous 9:17	54:5	32:6 38:13
38:16 39:22	point 5:9 6:23	34:12	products 33:23	protective 14:17
41:21 42:21	11:18 17:17	previously 5:7	37:2,19,19	protector 21:19
43:21 45:24	34:24 39:7	6:21 7:10,16	professional	protocol 46:9
46:14 47:12	44:23 48:20	8:14 15:9	24:11 28:22	protocols 45:21
50:8,22 54:4	53:4,25	50:22	program 2:23	46:2
Petree 1:18 57:7	policy 3:14	prices 28:24	2:25 3:10,23	prove 6:4
petroleum	30:20	primary 3:21	19:18 22:21	provide 2:4,19
19:16 22:24	pollution 51:25	11:3 21:17	38:3 47:12,14	2:22 9:8 18:15
36:5	53:4	23:11 33:22	47:19 48:5,5,6	18:17,20
phone 1:12,13	popping 9:18	34:19	48:7	19:17 37:2
43:1,1 55:6		print 39:23	programs 47:17	39:17 42:2
photo 44:1		prior 18:11	prohibition	43:23 44:22

<p>50:16,17 provided 2:12 42:25 provides 18:21 21:11 44:3 public 1:5 2:1,2 2:5,11 3:2 35:1 38:13 48:22 56:10 56:12 published 33:7 pull 22:6 26:25 pump 52:2 pumps 12:10 40:20 punctuation 39:18 purpose 44:24 44:25 purposes 2:3 put 7:1 10:22 13:23 16:16 20:3 30:20 33:5 35:21 41:23 47:8 50:15 putting 41:23</p> <hr/> <p style="text-align: center;">Q</p> <p>question 22:2 45:5 49:7,15 questions 51:18 54:9 quickly 10:9 quite 46:20</p> <hr/> <p style="text-align: center;">R</p> <p>rain 26:15 rare 29:22 rarely 12:2 read 37:9 real 24:15 49:18 realized 41:17 really 24:17 28:9 41:10 44:22 45:1,4 47:24 48:13 50:2 53:5 55:6</p>	<p>55:7 reapply 4:2 reason 6:12 8:16 41:10 51:21 reasonable 22:12 reasons 3:21 9:9 10:5 11:3 34:4 42:15 50:13 51:17 received 3:5 23:17 receptive 53:12 recertified 28:6 recess 43:4 recognize 44:1 recognizing 2:16 recommended 39:9 reconciliation 30:3,9 record 2:19 35:21 44:14 44:14,15 53:18 recordkeeping 17:7 19:10,13 32:24 33:1,5 44:18 45:2 records 19:16 19:21 25:14 25:16 27:3 44:11,13 redefine 40:22 reduced 57:10 reference 6:15 14:8 19:15 31:11 32:21 39:25 references 34:18 reflects 10:16 reg 10:2 Region 53:12 regions 30:19</p>	<p>register 4:14 5:1 5:3 33:8,9 registered 24:11 28:7,21 regular 38:2 regulate 5:9 regulated 5:12 regulation 8:22 8:25 12:4 33:25 regulations 2:7 3:20 6:15 9:9 19:8 20:17 27:22 38:1 regulatory 42:11 44:5 relate 39:18 related 49:5,6 57:11 relates 39:21 41:20 42:1,20 48:19 50:19 relating 43:6 relative 57:13 release 20:16,18 21:13,15,16,17 22:23 23:9,11 25:9 28:17 29:10 32:24 33:4,11,18,25 34:11,21 35:6 49:21 releases 33:23 reliability 55:3 55:13 relining 43:17 43:19 remarks 41:18 54:2 removal 47:6 remove 46:7 Removing 46:19 repair 15:25 16:10,11 19:3 repairs 15:24 16:1,6 18:23</p>	<p>19:7 repeat 32:1 54:3 repeatedly 25:16 replace 9:7,11 11:21 12:15 13:1 16:1 43:19 50:18 replaced 13:1 18:6 46:10,22 50:25 replacement 9:10 11:20 12:3 15:3 16:15 53:20 replacements 9:14 12:21 42:14 replacing 43:17 report 30:16,22 43:24 reporter 1:17 2:20 57:1,20 reporting 21:23 reports 14:14 representative 20:14 representing 36:6,14 republish 33:9 republished 4:19 35:3 request 2:8 13:23 18:18 22:12 requested 56:2 require 5:8 9:2 9:10 10:20 43:25 48:24 49:2 required 7:18 7:18 11:20 12:1,20 16:19 19:1 20:1,5,25 21:18 26:14 29:3,11,12 31:6 41:24</p>	<p>42:15,19 49:23 requirement 6:2 8:23 9:12 9:22 11:13 15:7,9,16 17:6 19:25,25 20:6 20:8,21 21:6,8 21:9,25 22:11 22:13 27:19 29:16,19 33:19 42:1,11 44:5,18 45:2 47:7 50:6,7,14 50:23 53:8,11 53:17 requirements 4:13 5:21 6:1 7:2,19,22,23 9:13 10:13,18 10:23 11:2,5,6 11:23 15:14 16:19,25 18:25 19:12 20:16 21:12 21:23 22:9,16 22:24 24:10 24:19 28:3 29:4 30:8 31:18,24 33:1 33:2,6,18 34:11 37:18 38:11 41:20 42:19 43:6,7 45:6,10 46:13 46:16 47:6 49:9 requires 11:13 28:11 52:1 requiring 43:24 51:10,11 resolved 53:3 resources 1:1 2:4 3:10 42:8 respond 33:21 34:1,6 35:8 response 47:24</p>
--	---	--	---	---

<p>49:16 responsibility 7:21 result 51:25 53:19 results 25:22 reticent 52:9 reverting 41:8 reviews 19:17 revoke 4:5 re-test 19:6 right 10:21 23:10 26:6,9 32:10 34:5 35:11 39:10 41:3 51:14 52:19 rights 8:15 rises 9:19 River 1:7 road 44:16 Roaring 1:7 role 7:3 room 1:7 2:13 55:20 rubber 16:2,3 rudimentary 26:7 rule 3:11,21 4:6 4:8 5:4,5,22 6:8,9,10,20 7:5,8,11,12,13 7:13,16,25 8:11,21,21,23 10:11,12,23,25 11:4 12:3 13:6 13:7,10,11 14:25 15:1,5,7 15:12,15 16:18,24 17:8 17:9,15,22,23 18:8,9,9,10,13 18:23,23 19:9 19:10,10,11,14 19:22,23 20:9 20:10,12 21:13 22:3,4</p>	<p>22:16,20,23 23:10,14,23 24:1 29:9,24 30:4,4,10,20 31:1,18,19 32:1,4,24,25 33:13,15,17 34:1,10,12 35:8,13 39:2 39:22,24 40:21 46:10 47:8 48:21 49:22 50:7 56:2 rules 2:10 3:12 3:19,24,25,25 4:2,5,9,9,10,10 4:11,16,18,20 4:21 5:4 7:7 7:23 8:7 10:20 12:24 14:9,17 14:18 17:13 18:25 19:5,23 19:24 20:9 21:14,15 22:19 24:1,4 27:14,23 29:20 33:3,7 35:3,5,7,9,16 35:18 37:12 37:20 38:1,7 38:21 40:11 40:25 41:8,21 41:24 43:25 44:24,25 45:20 46:3 47:19 48:14 49:6,20 50:4 53:4 rule-making 2:12 34:24 35:15 54:6 run 9:10 12:15 running 26:16 37:10 rust 12:7 rusting 12:17</p>	<p style="text-align: center;">S</p> <p>sample 25:20 26:25 28:22 sampling 17:17 25:23 28:11 sandblasted 43:11 satisfactory 22:10 satisfy 11:4 13:24 14:3,16 21:8,8 22:14 save 17:20 36:16 says 3:17 5:23 12:4 17:23 19:25 24:19 25:4 scale 26:9 scenarios 11:25 schedule 9:4 34:24 35:4,18 screen 25:17 seal 26:17,19 sealed 26:14,17 27:5 second 3:22 33:17 43:5,6 56:13,14 secondarily 11:5 secondary 11:2 33:23 secretary 2:21 35:17 section 3:15 25:12 26:20 26:21,24 27:11,13,15 sector 48:22,22 see 5:1,5 11:2 15:8,13 23:4 25:21 26:25 27:4,8,12 29:13 31:1,10 32:1,20,23 35:14 38:4</p>	<p>42:15 45:1 seen 15:25 sell 16:15 selling 37:19 sense 33:5 36:13 39:10 sensitive 10:8 sensor 29:17 sent 3:3 separate 35:3 35:11 36:8 September 33:8 serious 41:13 serve 7:2 service 10:22 17:3,5 55:16 SERVICES 1:18 set 8:6 sheer 40:16,18 sheet 2:12 56:5 shipped 30:12 short 18:3 25:11 26:17 42:14 shortened 9:3 show 5:16 19:7 25:13,16,17 shown 9:18 shows 45:24 side 26:11 sides 52:12 significant 40:5 49:25 sign-in 56:4 sign-up 2:12 similar 46:3 Similarly 42:18 simple 21:7,9 simply 47:4 50:9 53:17,25 simulate 32:8 single 14:6 20:19 25:4,5 27:15 34:5 36:18 single-wall 54:22</p>	<p>single-walled 11:15 50:16 51:3,6 53:6 sit 24:24 site 8:19 12:23 24:14,15,16,17 25:2,3,9,11,14 25:23 26:10 26:16,17 27:2 27:4,6,9,12,16 27:18,25 28:3 28:11,13,18 33:12 sites 9:6,15,20 10:4,4 11:10 12:13 16:4 19:18 24:20 24:22 25:15 27:18,23 28:1 29:7,14 31:16 31:21 sits 12:7 six 39:8,16,19 slide 5:2 slides 23:16 slight 3:17 slightly 17:13 23:3 slim 24:24 slots 26:13 slotted 25:12 26:20,21,24 27:11,13,15 small 24:22 28:12 36:11 36:12,20 44:11 45:3 55:10 smart 55:6 soil 26:13 somewhat 6:17 soon 54:17 Sooner 16:7 sorry 56:9 sort 20:3 sounds 23:18 South 37:4</p>
---	---	---	---	---

PUBLIC HEARING 10/20/2016

<p>space 31:22 54:12,16 speak 36:2 55:20 56:2 speaker 56:6 speakers 2:16 specific 6:2,7 7:1 48:13 specifically 4:22 6:23 7:14 19:1 32:7 33:11,13 35:6 40:6 44:14 46:15 50:11,19 spend 17:18 39:4 spent 36:11 spill 13:6 15:12 15:16,18,19,24 16:14,14,25 20:15,19 spoke 37:14 42:5 spot 34:23 squared 35:24 SRI 30:9 ss 57:4 stack 52:4 stacks 52:1 staff 38:20 39:9 40:11 42:20 44:9 48:23,23 49:2 50:17 stakeholder 40:6 stand 14:7 46:24 53:4 standard 10:25 15:4 18:12 42:11 standards 13:8 13:12 18:8 19:9 21:11 standpoint 40:24 start 3:13 5:14 11:2 12:21</p>	<p>13:18 15:13 17:5 21:13 22:23 28:18 started 4:25 10:13 27:23 28:23 45:21 starts 26:20 state 1:2 2:6,18 3:23 4:2,2 14:24 22:21 23:24 24:2,3,5 31:20 34:2 35:17 47:12 47:14,20 48:1 48:3,4,11,24 57:3 stated 31:16 states 8:14 36:15 38:10 47:1,16,23 48:1,4,8,10 state-specific 6:16 7:11 8:22 15:23 station 8:6 statistical 30:3 30:8 statute 6:14 staying 38:2 steal 13:14 steel 6:4 13:14 51:7,8,11,20 52:14,18,20 53:7,24 Steve 1:14 2:23 stick 41:16 stop 51:11 storage 3:12,16 3:20 5:6 7:20 8:5 10:6 11:1 13:5,11 17:24 18:24 19:16 22:24 29:25 36:5,7 37:25 38:3 40:8,13 40:22 store 36:18,25</p>	<p>37:1,8,10,15 44:7 stored 53:23 storing 18:12,12 Street 1:7 stress 53:2 stresses 52:25 stringent 22:20 stringently 27:21 strong 14:7 struggling 48:2 stuff 40:23 Sturgess 1:14 2:23 56:1,6 subject 11:22 20:6,7 42:16 52:15,24 submit 54:6 submitted 2:24 3:1 substance 29:10 29:16,18,22 substances 29:11 substantial 45:6 substantive 39:19 successful 37:10 sucked 52:11,12 Suffice 30:16 sufficient 22:14 52:5 suggest 40:1 47:4 suggesting 41:23 50:20 suggestion 12:12 sump 11:22 12:1,6,19 19:22,25 20:1 20:2 21:1 29:19 40:16 sumps 11:14 20:5,6,7 40:15 51:1</p>	<p>sunset 23:14 29:4 31:11 32:21 sunsetting 24:6 suppliers 37:7 support 39:2,3 44:9 supports 36:19 supposed 20:17 32:12 sure 7:3 9:14,21 13:7,15 17:25 19:19,20 33:14 34:18 34:22 40:5 41:10 46:25 47:24 53:1 55:21 surprise 50:6 surroundings 36:23 suspected 28:17 33:18,24 49:21 switch 43:3 symptoms 4:23 system 4:13 5:20 7:15 8:6 8:15 9:25 10:21 11:8 13:11 14:1 15:10 17:11 17:19,24 18:1 18:24 19:2 20:21 23:6,10 24:9,10 28:2 28:23,25 29:13 31:13 31:24 32:5,9,9 32:16,17,22 33:21 34:13 34:17,19 40:22,22 41:5 41:6 50:15,16 50:24,24 systems 4:24 5:11,19 7:20</p>	<p>8:2,2,12 9:13 10:3 11:5,8 12:10 18:19 19:12 20:24 22:25 23:1 31:5,6 32:2 33:5,12,19 34:16 36:7,7 45:13</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 9:19 27:13 take 16:16 17:3 30:19 31:18 40:16 43:2 44:4 48:25 56:9 taken 43:4 47:25 57:9,12 talk 3:11 37:21 talked 13:19 24:6 37:4 46:17 49:8 talking 13:24 25:17,25 50:8 tank 3:12,20 4:23 5:20,25 6:4 7:20 8:5 10:6,6 13:4,5 13:11,16 16:20 17:3,6 17:11,24 18:12,24 19:16 20:22 22:5,6,25 25:5 25:5,7,10,10 26:11,22 29:10,18 31:1 31:3,6,23 33:4 36:5,7,10 38:3 38:19 39:1 40:8,13,22 43:8,9,11,11 43:18,20,23 44:12 45:13 46:18 47:4 48:17 50:12 51:3,8,20 52:3</p>
---	---	--	---	---

52:3,5,6,9 53:6,7 54:12 54:22 tanker 13:5 tanks 3:16 4:12 5:6,10,11,15 5:15,24 6:6 7:15 9:18,23 11:1,7 13:11 13:14,18 14:19 15:4,11 17:13 21:20 23:2,6 25:7,10 29:16,25 30:1 32:3,22 33:12 36:8 38:8 43:10,12,15,17 43:19 50:19 51:5,6,6,7,7,10 51:11,12,14,24 52:6,11,14,18 52:20 53:23 53:24,24 54:11,13 technical 40:24 technician 14:11,12 technicians 55:18 technology 14:5 14:8,20 34:15 55:8,9 tell 5:2 10:19 46:24 54:11 55:21 term 7:9 34:19 39:24 40:7,12 53:2 terms 36:23 38:13 40:4,10 test 14:21 15:16 15:20 16:22 16:23 17:1,5 19:5 20:1 21:16,18,24 22:1,5,16 31:4 32:9,14 34:17	46:6,9 49:12 49:17,21 tested 45:15,23 49:11 tester 6:24 testify 2:17,18 testimony 2:9 2:10 39:16 42:22 47:13 57:8 testing 4:13 10:11,13,18,21 11:23 15:14 15:20 16:19 16:24,25 17:4 17:6 19:13,22 19:25 21:5 29:19 32:6 45:6,22 46:1,8 46:16 49:8 tests 45:17,17 Thank 3:8 35:23,25 36:3 55:24,25 theoretically 4:4 theory 55:2 thereto 57:14 thing 14:4 15:15 16:11 22:25 35:24 55:8 things 6:12 8:24 10:10 16:6 23:4 31:20 39:3,19 41:23 41:23 47:3 48:16,18 49:23,24 think 39:8,23 40:20 41:12 43:21 44:5 46:10,22 48:12,15 49:18 50:2,18 51:20 56:9 thoroughly 41:12 46:12	thought 13:23 41:12 56:4 thousands 8:4 threat 8:17 three 4:10 6:13 15:17 16:22 16:23 19:24 20:2 25:7,9,11 44:17,21 45:19 48:9 49:5 51:24 three-year 15:19 thrilled 30:17 throw 16:8 tied 9:23 18:25 ties 13:6 19:14 29:20 34:12 tight 34:17 tightness 10:11 10:13 time 8:1 9:5 17:12 18:16 24:7 29:5,6 30:5 35:8 36:12 39:4,7 42:13,13 45:14 47:5,18 48:15,17 49:3 49:11 50:9 54:22 timeline 4:3 times 43:18 Title 2:6 tobacco 37:19 today 3:10 4:8 4:11,15,17 7:20 11:10 23:21 34:10 34:25 35:2 36:6 38:6 39:4 39:7,15,20 42:4 43:14,16 43:20,23 46:24 50:20 53:5 today's 33:10	top 5:2 20:22 26:14,16,17,19 26:23,25 27:5 total 40:4 touch 39:20 45:8 47:11 touches 42:21 track 55:11 tracks 35:11 training 7:23 19:16,18 tried 12:1 16:1 53:9 truck 13:5 true 55:8 trump 3:24 trust 38:25 39:1 50:1 try 16:20 21:7 38:21 42:22 trying 14:18 30:15 32:13 37:12,16 46:7 turn 44:5 turned 6:16 twenty 43:14 two 4:15,17,20 4:21 10:5 14:23 15:19 16:7 20:3,11 23:8,11,25 25:5,6,10 33:3 33:7 35:3,5 36:20 40:2,3,9 41:20,25 44:21 51:6,24 54:13 types 20:11 typewriting 57:10 typically 2:2 16:8 24:22 42:4 typo 3:17 4:17 33:8	51:9 unanimous 39:13 underground 3:11,16,20 5:6 7:19 8:5 10:6 11:1 13:5,10 17:23 18:24 22:24 29:25 36:6 38:3,8 40:8,12,13,21 43:8,9,15 45:13 underneath 11:22 understand 14:22 42:3 47:16 49:19 50:3,10 53:9 53:15 54:21 understanding 54:13 understood 32:13 46:12 unfortunately 25:2 27:10 unique 23:2 29:23 48:4 United 36:15 unusual 25:15 updated 13:9 18:8 22:19 updates 19:8 upgrade 5:17 13:13 17:19 27:24 28:2 upgraded 13:10 24:10 urge 41:16 49:1 USD 47:14 48:7 use 6:3 7:9 12:23 13:2,3 13:13 17:13 18:5,16 21:11 28:13,15 34:19,22 39:7 42:9 51:12
---	--	--	--	---

U

unaffordable

PUBLIC HEARING 10/20/2016

55:7	50:9,16,17	8:24	12:22 17:1	17:2 21:4,22
user 55:13	53:17	wishes 36:2	19:2 21:3,21	2020 8:8 17:1
uses 42:8	wanted 9:21	witness 57:8	23:5,14 31:11	21:3,21 23:15
UST 41:5,5	11:25 12:15	woman 37:14	1,200 36:6	31:11
usually 30:6	23:20	word 41:1	10 2:6 18:13	205 48:24
<hr/>	wants 17:18	wording 39:18	30:21,24	23 4:9
V	43:24	words 17:1	10th 4:21 35:5	25 24:23 35:9,10
vacuum 52:5	wasn't 26:3 30:3	work 30:18 31:5	11:27 56:15	40:9,12 41:9
valve 12:20,23	41:11	35:23 38:16	12-foot 26:21	41:15 55:22
12:25 13:2	waste 1:1 2:22	38:22 42:5	12-inches 27:7	2511 1:19
40:17,19	2:25 3:10 48:5	43:21,22	13 36:18	26 2:6
vapor 23:14,22	water 9:19 10:9	45:11 48:3	14 9:3	27 3:3,6
23:24 24:21	16:9 24:21	54:4,20	15 30:10 35:11	27th 35:2
25:20 28:2	25:12 26:12	worked 38:20	15th 35:13	<hr/>
31:9,12 32:19	26:13,15,23	working 13:21	17 36:16	3
vast 36:10 37:22	27:1,6,7,10,12	28:19 33:22	1730 1:7	3 45:4
51:9	27:13,14 31:6	34:4 51:23	176 2:25	3rd 4:19,20
vendor 43:9	31:10 48:6	works 26:18,22	18 36:25	33:15 35:4
vendors 46:7	way 5:12 17:12	55:6,7	18-inches 26:20	30 18:11 30:15
47:4 55:15	17:15 18:2,5	world 14:12	27:4	35:18 36:15
vent 52:1,4	25:14 26:21	write 37:9	19 47:17	53:22 55:22
verify 46:23	26:22 27:3	writing 39:18	1990s 43:8	30th 30:14
Verifying 31:21	32:14 34:7	written 2:21	1993 24:25	30-days 9:3
versus 43:17	45:16 46:16	6:21 17:15	25:14 26:2	<hr/>
view 13:21	46:23	46:16 54:6	27:3	4
30:13	ways 14:21	wrote 17:10	1994 27:3	4 48:19
visible 40:16,19	16:10 21:7	24:1	1998 13:12	49 38:9
volume 52:5	34:16 38:22	<hr/>	<hr/>	<hr/>
vote 49:19	48:8	Y	2	5
votes 50:4	weeding 13:18	year 44:16,21	2 2:6 8:3 24:3	5 49:5
<hr/>	week 16:7 35:2	years 12:9 15:17	41:19	50 9:7,11 47:1
W	36:12,25	16:23,23 20:2	20 1:6 4:9 18:14	48:7,8,10
waived 29:16	wells 24:20,23	24:23 36:15	24:23 51:13	536.200 48:24
walk-through	25:5,8,11 28:4	36:16,19 37:8	53:22	573-449-0561
20:10,11 21:2	28:5,10	38:21 40:9,12	20th 35:1	1:20
21:10	well-known	41:9,15 43:14	2000s 43:8	<hr/>
wall 14:6 33:23	38:17	44:17,17	2005 3:14	6
walled 14:6,7	went 8:15 13:24	45:19 46:4	2011 7:1,4 8:23	6,800 36:8 45:12
15:18,19 19:1	29:6	47:2,15 48:9	12:24 30:5	6-inches 27:7
20:2 23:6,6,7	weren't 30:17	51:13,24	2015 3:16,18	65102 1:8 3:1
walls 20:3 23:8	west 37:5	52:21 53:10	2016 1:6 3:3,6	65201 1:19
23:11	we'll 51:13	53:13,14,22	3:18	<hr/>
want 6:23 9:14	widespread	55:22	2017 5:20 11:9	7
13:7 16:8	44:4	York 36:16	12:22 19:2	7 36:25 53:12
17:20 22:1	widow 37:14	<hr/>	20:25 23:5	7-inches 27:7
26:15 31:17	wife 36:20	1	35:19	70s 37:8
34:5 38:15,25	wish 2:14,15	1 5:18,19 7:24	2018 47:17	<hr/>
39:5,20 47:13		8:8,12 11:9	2019 5:18 7:24	8

PUBLIC HEARING 10/20/2016

8.5-inches 27:8

9

9:30 33:15