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<p>1 BEFORE THE DEPARTMENT OF NATURAL RESOURCES 2 HAZARDOUS WASTE MANAGEMENT COMMISSION 3 STATE OF MISSOURI 4 5 6 PUBLIC HEARING 7 October 20, 2016 8 Roaring River Conference Room 9 1730 East Elm Street 10 Jefferson City, MO 65102 11 12 Present on behalf of the Commission: 13 Elizabeth Aull - Chair 14 Charles Adams - Commissioner(via phone) 15 Mark Jordan - Commissioner(via phone) 16 Michael Foresman - Commissioner 17 Steve Sturgess - Director 18 Debra Dobson - Assistant 19 20 THE COURT REPORTER: 21 Jenna Petree 22 MIDWEST LITIGATION SERVICES 23 2511 Broadway Bluffs 24 Columbia, MO 65201 25 573-449-0561</p>	<p>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</p>
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<p>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</p>	<p>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</p>

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<p style="text-align: right;">Page 5</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 7</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>25 There is one rule that they are given a little</p>
<p style="text-align: right;">Page 6</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 8</p> <p>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.</p> <p>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.</p> <p>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</p>

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<p style="text-align: right;">Page 9</p> <p>1 as well.</p> <p>2 The first one is we used to require that they</p> <p>3 give 30-days notification; we have shortened down to 14.</p> <p>4 We don't schedule our inspections out that far, so we</p> <p>5 figured we could give them a little extra time.</p> <p>6 The next one is that sites that are going to</p> <p>7 replace more than 50 percent of their piping, or install</p> <p>8 new piping, would have to provide notification. There are</p> <p>9 a couple of reasons for that: The new regulations do</p> <p>10 require replacement of the entire run of piping if you're</p> <p>11 going to replace more than 50 percent because it has to</p> <p>12 meet the new double-walled requirement. Because of the new</p> <p>13 requirements and because of the complexity of these systems</p> <p>14 and these replacements, we do want to make sure we are</p> <p>15 there for the installation. Most sites are already</p> <p>16 notifying us of this as it is now.</p> <p>17 In addition to some of our previous</p> <p>18 discussions, I have shown pictures of tanks popping up out</p> <p>19 of the ground and floating when the water table rises and</p> <p>20 we have flooding. We can't do much for the existing sites,</p> <p>21 so we wanted to make sure we prevented that in the future</p> <p>22 as best we can. So the new requirement does say for new</p> <p>23 tanks going into the ground, they do have to be tied down.</p> <p>24 In addition, the industry created a guidance</p> <p>25 document for how to install a marina system. It's a great</p>	<p style="text-align: right;">Page 11</p> <p>1 New Underground Storage Tanks. This is where you're going</p> <p>2 to see the start of most of the requirements for secondary</p> <p>3 containment. This is one of the primary reasons we had to</p> <p>4 implement this new rule. It is to satisfy EPA's</p> <p>5 requirements that systems be secondarily contained. This</p> <p>6 is where you will find the bulk of that requirements. It</p> <p>7 does say you have to have double-walled tanks and</p> <p>8 double-walled piping systems for any new system installed</p> <p>9 after July 1, 2017. For clarification, that does not apply</p> <p>10 to existing sites. So anything that's in the ground today;</p> <p>11 it's functioning and we don't have any problems, it can say</p> <p>12 and it's grandfathered in. They do not have to meet a</p> <p>13 double-walled requirement. It also requires that we have</p> <p>14 containment sumps. These are large plastic buckets at the</p> <p>15 end of both the piping or at any single-walled joint. They</p> <p>16 are under dispensers. They are in areas most likely to</p> <p>17 have leaks. So these have to be installed and they have to</p> <p>18 be maintained from this point forward.</p> <p>19 One of the other pieces of language that is in</p> <p>20 here is our dispenser replacement clause. EPA required</p> <p>21 that if you replace a dispenser, you had to install a</p> <p>22 containment sump underneath it and then it will be subject</p> <p>23 to the testing requirements we are going to discuss later.</p> <p>24 We felt the language was a little bit ambiguous and we</p> <p>25 wanted to clarify that the scenarios in which you would be</p>
<p style="text-align: right;">Page 10</p> <p>1 guidance document and we are proposing to incorporate that</p> <p>2 in this new installation reg. It would only apply to new</p> <p>3 systems installed in the future; it would not apply to</p> <p>4 existing marina sites. These sites are rather complex for</p> <p>5 two main reasons: their configuration is completely</p> <p>6 different from an underground storage tank. The tank is</p> <p>7 higher than the dispensers. Of course if it's a marina,</p> <p>8 it's an environmentally sensitive area. If it leaks, it's</p> <p>9 going to hit water pretty quickly.</p> <p>10 Also one of the things you are going to find</p> <p>11 in that rule that we changed is the tightness testing</p> <p>12 method. When we first built that rule, we created some</p> <p>13 tightness testing requirements. As we started actually</p> <p>14 implementing it in the field, we found that there may be</p> <p>15 some other options we should include, so this change</p> <p>16 reflects those options.</p> <p>17 Last, but by no means least, there are a</p> <p>18 number of new federal testing requirements. We are going</p> <p>19 to go over those in greater detail later. What I will tell</p> <p>20 you is that EPA rules did require that most of those</p> <p>21 testing begin right after installation, before the system</p> <p>22 is brought into service. So what we did is we put those</p> <p>23 requirements also in the installation rule so it would be</p> <p>24 easy to find.</p> <p>25 The next rule is the Performance Standard for</p>	<p style="text-align: right;">Page 12</p> <p>1 required to install a containment sump. We also tried to</p> <p>2 make it apply as rarely as possible. So the language for</p> <p>3 that dispenser replacement is in this rule as well. You'll</p> <p>4 also find that we have regulation language change that says</p> <p>5 you cannot have metal piping installed outside of the</p> <p>6 containment sump. We know that metal piping is a problem.</p> <p>7 We know that it sits in the ground and rust and corrode,</p> <p>8 leading to corrosion holes and problems. We don't have</p> <p>9 anyone in the past number of years that have installed any</p> <p>10 metal piping systems outside of these containment pumps.</p> <p>11 Of course after we drafted the language, there was a</p> <p>12 suggestion; it was a very good catch. The one piece of</p> <p>13 metal piping we do occasionally have at our sites is a</p> <p>14 flexible connector. You find it at the very end of piping</p> <p>15 run. So they wanted to clarify that if they just replace</p> <p>16 that flexible connector only and they install a new one so</p> <p>17 long as it's protected from rusting, that they could go</p> <p>18 ahead and still do that without having to install a</p> <p>19 containment sump. So that's what that language means.</p> <p>20 Also EPA required that we ban all float valve</p> <p>21 replacements. So the compliance there, the start date for</p> <p>22 that is July 1 of 2017. Now in Missouri, we already said</p> <p>23 you could not use a ball float valve at a new site. You</p> <p>24 can't install it, back in our 2011 rules. But what this</p> <p>25 also clarifies is that if a ball float valve is failing and</p>

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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

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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.

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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

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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 overflow prevention
 19 equipment testing requirements. You are required to have
 20 overflow on any tank that is getting a delivery to try to
 21 ensure that you can not overflow 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 overflow new testing requirements. The first

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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

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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.

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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

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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

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1 containment sump, it only applies to those.
 2 The walk-through inspections are first due,
 3 again, by January 1 of 2020, which means the first one for
 4 some of these needs to be conducted in 2019; probably in
 5 conjunction with their annual testing.
 6 There is a documentation requirement. We are
 7 going to try to come up with the most simple ways that we
 8 can to satisfy this requirement and satisfy EPA's
 9 requirement, but this may be very simple documentation,
 10 especially for that monthly walk-through inspection. Of
 11 course it provides the industry standards that you can use
 12 to meet these requirements.
 13 The next rule is the start of the Release
 14 Detection Rules. What you're going to find in the first of
 15 the release detection rules is that you now have to do an
 16 annual operability test of all of your release detection
 17 equipment -- your primary release detection equipment.
 18 Currently in Missouri, you're required to test your line
 19 lead protector annually. This will apply to the other
 20 equipment that you're using to monitor your tanks and your
 21 lines. It is, again, first due by January 1, 2020. So it
 22 too will need to be conducted in 2019.
 23 It also lists the reporting requirements for
 24 what that operability test will include. It also has a new
 25 requirement on how you have to conduct that operability

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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 manufacturer'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

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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

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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 sunsetting 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

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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

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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

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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

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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

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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

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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

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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

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1 of the rule, you're going to see a repeat of the
 2 alternative monitoring options for airport hydrant systems
 3 and field constructed tanks.
 4 The next rule applies to leak detection on the
 5 piping system. You still have to have the operability
 6 testing for lined leak protection; that's not new in
 7 Missouri. We do say in here you specifically you have to
 8 simulate an appropriate leak. So they have to force a leak
 9 in their system when they test it to confirm the system is
 10 operating properly. Right now under the current
 11 manufacturer's guidelines, this is what they are all
 12 supposed to be doing. We drafted this because we
 13 understood that one of the manufacturers was trying to come
 14 up with a way to do an electronic test of the equipment
 15 without actually confirming that it's functioning in the
 16 system that's installed. If it's not functioning properly
 17 in the system it's installed, it's not doing us any good.
 18 How you install it, makes a huge difference.
 19 Again, groundwater vapor monitoring we are
 20 allowing for piping monitoring as well. So you'll see the
 21 reference to the sunset date here. Again, allowances for
 22 airport hydrant system and field constructed tanks.
 23 The next change you're going to see is the
 24 release detection recordkeeping rule. There is not many
 25 changes in this rule, other than we are clarifying some of

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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

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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

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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.

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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

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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

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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

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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 be reference. However, in the process

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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

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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

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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

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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

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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

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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

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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,

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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

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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

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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

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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

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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

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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?

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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

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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

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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.

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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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