

1 STATE OF MINNESOTA  
2 OFFICE OF ADMINISTRATIVE HEARINGS  
3 FOR THE MINNESOTA POLLUTION CONTROL AGENCY

4  
5 -----  
6 In the Matter of the Proposed Amendment to Rules  
7 Governing Underground Storage Tanks, Minnesota Rules,  
8 Chapter 7150 Underground Storage Tanks,  
9 Revisor's ID Number 4360.

10 PUBLIC HEARING  
11 OAH DOCKET NO. 80-9003-35384

12  
13 The above-entitled matter came on for  
14 Public Hearing before Administrative Law Judge  
15 LAURASUE SCHLATTER, taken by Kassie Lahti Beebe, a  
16 Notary Public in and for the County of Wright, State  
17 of Minnesota, taken on the 25th day of October, 2018,  
18 at the Minnesota Pollution Control Agency,  
19 520 Lafayette Road North, Room 100, St. Paul,  
20 Minnesota, commencing at approximately 3:30 p.m.

21  
22  
23  
24  
25

## 1 A P P E A R A N C E S

## 2 HEARING OFFICER:

3 LAURASUE SCHLATTER  
4 ADMINISTRATIVE LAW JUDGE  
5 OFFICE OF ADMINISTRATIVE HEARINGS  
6 600 North Robert Street  
7 PO Box 64620  
8 St. Paul, Minnesota 55164-0620

9 laurasue.schlatter@state.mn.us

## 10 8 ON BEHALF OF THE MINNESOTA POLLUTION CONTROL AGENCY:

9 MIKE SCHMIDT, ESQUIRE  
10 Staff Attorney MPCA11 NATE BLASING  
12 Supervisor, Tanks Compliance Unit13 CAREY MATTISON  
14 Inspector, Tanks Compliance Unit15 JAKE NUELTER  
16 Inspector, Tanks Compliance Unit17 ZACHARY KLAUS  
18 Rule Development Team19 \*The Original is in the possession of  
20 Administrative Law Judge LauraSue Schlatter.\*

21 \* \* \*

1	I N D E X	
2	PUBLIC COMMENTS:	Page
3	Chris Heinze .....	31
4	Bob Krogman .....	40
5	Frank Orton .....	45

6		
7		
8	* * *	
9		
10		
11	E X H I B I T S	
12		RECEIVED
13	Exhibits A-M .....	21
14	Exhibit N .....	40
15	Public Exhibit O-1 .....	40

16  
17  
18 \* \* \*  
19  
20  
21  
22  
23  
24  
25

## PROCEDINGS

THE JUDGE: Good afternoon

everybody. This is a rule hearing. Can you all hear me?

(No response.)

THE JUDGE: Okay. My name is LauraSue Schlatter, and I am an Administrative Law Judge with the State Office of Administrative Hearings. I want to thank all of you for taking the time to be here today to participate in the rulemaking process in this important matter of public concern.

And I know there was some confusion about where the hearing was today. Are those of you who may have accidentally gone to OAH here now? I want to make sure that I got most of the people who want to be here, here. Are any of you who are here people who accidentally went to OAH first?

(No response.)

THE JUDGE: No? Okay. Well, it may be that we have some more people coming in and that's fine, but I'm going to go ahead and get started. There was a rumor that some people might have been misdirected to OAH. So, yeah, additional people may be showing up.

1                   Today is October 25, 2018. It is  
2 approximately 3:30 p.m., and we are here for a public  
3 hearing in the matter of Minnesota Pollution Control  
4 Agency's proposed amendments to rules governing  
5 underground storage tanks. It's Minnesota Rules,  
6 parts 7150.0010; .0030; .0090; .0100; .0205; .0215;  
7 .0216; .0250; .0300; .0330; .0340; .0345; .0400;  
8 .0410; .0430; .0445; .0450; .0451; and .0500. I  
9 think I got them all.

10                  And also repeal of Minnesota Rules, parts  
11 7150.0010, subpart 4; .0030, subparts 8, 23, 25a,  
12 44a, and 49; .0100, subparts 10 and 12; .0211; .0300,  
13 subparts 2 and 7; .0330, subpart 2; .0410, subparts 2  
14 and 6; and .0420.

15                  This matter is known by its Office of  
16 Administrative Hearings docket number 80-9003-35384.  
17 And if you've seen earlier filings in this matter  
18 that have a 68 at the beginning instead of an 80,  
19 please make note that 80 is the correct -- it's now  
20 80 rather than 68, and that is because I have  
21 replaced Judge Cochran as the Administrative Law  
22 Judge in this matter. So the first two digits are  
23 the judge designation number. So it's 80-9003-35384.  
24 Please put this docket number in the subject line of  
25 any correspondence or comments you are submitting to

1 our office so that that can be properly routed to me.  
2 And one more time, it's 80-9003-35384. Also, for  
3 your information, the Revisor of Statutes number for  
4 this rule is 4360.

5 Just as a practical bit of information, if  
6 you need a restroom during the time that you're here,  
7 go out this door, make a left and a right down the  
8 long highway, and at the end of the hallway make a  
9 left, and you'll find restrooms as well as water  
10 fountains down that hallway.

11 The Office of Administrative Hearings is  
12 independent of the Minnesota Pollution Control  
13 Agency, which is the agency that is proposing to  
14 adopt the rules that are the subject of today's  
15 hearing, as well as any groups or individuals that  
16 are participating in this hearing. The role of our  
17 office is to provide hearings like this that are fair  
18 to all of the participants. The legislature directs  
19 in Chapter 14 of the Minnesota Statutes that  
20 rulemaking hearings be conducted so that members of  
21 the public can be heard as part of the rulemaking  
22 process.

23 I'm here to make sure that there is  
24 procedural fairness, to ensure that we are courteous  
25 to each other, so that all interested parties can be

1 heard, and to draw voices -- information from as many  
2 voices as possible. An underlying assumption of this  
3 process is that we rely on the wisdom of the group.  
4 Thus, we are grateful. I'm grateful, and I know the  
5 Agency staff is also appreciative that you are  
6 contributing your thoughts, your experience, and your  
7 expertise to the formation of the substantive rules.

8 There is a handout on the table -- there  
9 are a number of handouts, but the one that came from  
10 my office is entitled the OAH Rule Hearing  
11 Procedures. If you don't have a copy, please take a  
12 moment to pick one up today. It describes the  
13 procedures that are set up by the legislature for  
14 hearings like this, and I'm going to cover some of  
15 those highlights right now.

16 This hearing is part of a process by which  
17 rules are adopted under the Minnesota Administrative  
18 Procedure Act. During the rulemaking proceeding, the  
19 Minnesota Pollution Control Agency is required to do  
20 three primary things. First, it has to document its  
21 statutory authority to proceed with the rules. It  
22 has to demonstrate that it has fulfilled all the  
23 relevant legal and procedural requirements of the  
24 law. And it has to demonstrate the need for and the  
25 reasonableness of each portion of the proposed rules

1 with an affirmative presentation of facts. Those are  
2 the three big issues I'm required to review as part  
3 of this proceeding.

4 I know that some of you are here to  
5 express your thoughts or views on various parts of  
6 the rules, which is helpful to the MPCA and to the  
7 process and to me. You should understand that my job  
8 is not to rewrite the rules based on the views of any  
9 of you, on my own personal views, or to select one  
10 set of rules over another set of rules. My job is to  
11 ensure that the statutory requirements are met for  
12 rulemaking.

13 So in the hearing today, after I complete  
14 my introductory remarks about the hearing procedures,  
15 I am going to introduce you to the attorney for the  
16 MPCA who will introduce the panel members that are  
17 here with him today. And then the MPCA will submit  
18 its exhibits that are going to be included in the  
19 hearing record and summarize those exhibits so that  
20 everybody knows what's going into the hearing record.  
21 Those exhibits are in a binder on the table. You're  
22 free to look at them. They are also online on our  
23 rulemaking page, and I believe probably on the MPCA's  
24 rulemaking page as well. And I know there are copies  
25 of the Statement of Need and Reasonableness and of

1 the rules themselves on that table.

2                   After that, the MPCA is going to make an  
3 oral presentation of the proposed rule amendments and  
4 the reasons for them and the need for them. But most  
5 of the hearing time has been allotted for statements  
6 and questions from members of the public. That  
7 really is the reason we are here today.

8                   In order to make sure that we have an  
9 accurate record of the number of people attending the  
10 hearing, I do ask that everyone please sign the  
11 hearing record that's located on the registration  
12 table. If you want to speak or submit a statement  
13 today, you must sign the register. And if you wish  
14 to speak, please place a checkmark on the column on  
15 the hearing register that says that you want to  
16 speak. If anyone who wishes to speak or who wants to  
17 ask questions is under time constraints, please let  
18 Yolanda Letnes, who is sitting here on the end, know  
19 about your time constraints, and I will work you in  
20 and try to respect your time constraints. Otherwise  
21 I'll go in the order of which people have signed in.

22                   When your name is called, please come up  
23 to the table in front so that everyone -- well,  
24 especially I and the court reporter -- can hear you.  
25 And for people who are at remote locations, the staff

1 person who is at that remote location will direct you  
2 to a seat where you can participate using the  
3 computer to appear and be heard both here and the  
4 other rooms at remote locations.

5                   When you begin, please state and spell  
6 your name, give your address or at least the town  
7 where you live, and identify the group or interest  
8 you represent if there is some larger group or  
9 interest that you are representing today. I'm sure  
10 that we will have time for everyone to be heard.  
11 Right now I only have three people signed up to  
12 speak. So at this point, and as far as I know, there  
13 are no other people at the remote locations at this  
14 time.

15                   So I have dashes. Does that mean you do  
16 want to speak or you don't want to speak? No? Okay.  
17 So I'm comfortable saying at this time that we can  
18 easily allow ten minutes for each person who wants to  
19 speak. And if there are no additional people who  
20 want to speak, then we can circle around again if you  
21 have more things that you want to say, but we'll  
22 start out with ten minutes. Okay?

23                   I also invite you to enter any written  
24 comments as exhibits into the record if you find that  
25 helpful. You can also submit written comments after

1 the hearing, and I'm going to explain that in a  
2 minute.

3 This is a fairly informal process. I'm  
4 here to ensure that we are courteous to each other,  
5 as I said, and the process runs smoothly. So as you  
6 make your comments, please keep these things in mind.  
7 This is similar to a legislative hearing or meeting  
8 of a local board or city council. Any speaker may  
9 ask questions of the Agency panel and may also be  
10 questioned either by me, by people on the Agency  
11 panel, or by someone else who is here.

12 The Agency is permitted, but not required,  
13 to answer your questions during the hearing. The  
14 Agency will address your questions at some point, but  
15 it may be during the written comment period rather  
16 than during the hearing. It's up to the Agency panel  
17 to decide whether to answer your questions today or  
18 whether to do it later in writing.

19 Because this really isn't like a court  
20 hearing, you don't need to make your points by asking  
21 questions. And I really encourage you not to do it  
22 that way, but to make your point by just getting to  
23 the point and saying what it is you came here to say.  
24 It's most helpful to me, if you can, to be specific  
25 in your comments, and to tell me which rules or rule

1 parts you support or you object to and why. My  
2 report is most often going to be organized as a  
3 rule-by-rule analysis, so it's a huge help to me if  
4 your comments are made in reference to specific rule  
5 parts. Sometimes people can't do that, and I  
6 understand that, if your comments are broader than a  
7 specific rule part. Say what you have to say, but if  
8 you can specify a rule part, that's very helpful to  
9 me.

10 The record we make today may be reviewed  
11 by others later. And we also want to be sure that  
12 what you're addressing is going to be clear to them.  
13 So I'm going to remind you that this hearing is being  
14 transcribed today by a court reporter, and it's  
15 important then that you remember a couple of things.  
16 One is to speak clearly, slowly, and loud enough to  
17 be heard, to make all of your statements and  
18 responses audible. So don't just nod your head. The  
19 court reporter has a hard time typing a nod. Don't  
20 just gesture, verbalize all of your responses.

21 And please spell out proper names and  
22 technical terms the first time you use them, and also  
23 please state what acronyms stand for. I am not an  
24 underground storage tank specialist and there are a  
25 lot of terms that you are going to be using that I am

1 not familiar with. So please, again, spell out  
2 technical terms, tell me what you're talking about,  
3 and tell me what the acronyms stand for, at least the  
4 first time you use them.

5                   Only one person speak at a time. Having  
6 said that, I may interrupt you from time to time to  
7 ask for a spelling or to ask some other question if  
8 something is unclear to me. I apologize in advance  
9 for interrupting you, and I ask you not to take  
10 offense. I'm not doing it to distract you or to be  
11 disrespectful, but I just want to make sure we have  
12 an accurate and clear record of what each person is  
13 saying, and to make sure as best as I can that I  
14 understand what you're saying.

15                   If you have a written copy of your remarks  
16 that you want to leave here as an exhibit, please  
17 feel free to do so. When you're done testifying, you  
18 can just bring them to me. I will mark them as an  
19 exhibit, and I will have them to look at later in  
20 written form.

21                   Now I want to talk about the written  
22 comment period. Minnesota Statute section 14.15,  
23 subdivision 1, provides that the Administrative Law  
24 Judge may, by order, keep the hearing record open  
25 for up to 20 days after the end of the public

1 hearing. So I'm issuing that order now. The public  
2 comment period shall be extended for 20 days from the  
3 close of today's public hearing. So there will be 20  
4 calendar days after today for initial submission  
5 post-hearing of written comments. That lasts then  
6 until November 14, 2018, at 4:30 p.m. to submit your  
7 initial comments. I refer you to the handout, the  
8 OAH handout, for the address to send your comments to  
9 make sure that I receive them. You can send them by  
10 mail, you can fax them, or you can e-file them on our  
11 rule comment website, but they must be received one  
12 of those three ways by 4:30 p.m. on November 14,  
13 2018.

14 Our office does post all comments we  
15 receive on our rule making website for everybody to  
16 review. And the MPCA also has a rulemaking website  
17 which is linked to our website. So in both places  
18 any comments that you make, that you file, written  
19 comments, either today or in post-hearing comments,  
20 will be available for the public to view. I want you  
21 to know they are publicly available, so don't say  
22 anything you don't want the public to see.

23 Again, please include the OAH docket  
24 number, which is 80-9003-35384, in the subject line  
25 of any comments you make so that your comment gets

1 directed to me. Otherwise it may go to some other  
2 judge or other rule file and I might not get it in  
3 time.

4 After November 14, 2018, there is a five  
5 working day rebuttal period to respond to comments  
6 that are filed during the initial comment period.  
7 That five-day period is meant only for rebuttal  
8 comments; no new matters will be considered. So no  
9 new evidence, except if it is something that is being  
10 introduced directly in rebuttal to comments that have  
11 already been made. No new matters are being  
12 considered at that point. And rebuttal comments are  
13 going to be accepted beginning on Thursday,  
14 November 15, 2018, and they will be accepted through  
15 Wednesday, November 21, 2018, at 4:30 p.m. So that's  
16 the Wednesday right before Thanksgiving. And at that  
17 point the rebuttal period will close and that's the  
18 end of all comments that will be accepted in this  
19 rulemaking.

20 After November 21, 2018, I will prepare a  
21 report that contains my conclusions about whether the  
22 MPCA has met its statutory burden in this matter.  
23 First and foremost, I will focus on whether the  
24 Agency has documented its authority to enact the  
25 rules, and whether the Agency has fulfilled all of

1 the required procedures. And, finally, whether the  
2 Agency has demonstrated the need for and  
3 reasonableness of each portion of the proposed rules.

4 You can expect my report about 30 days  
5 after the last comment deadline, unless for some  
6 reason an extension is necessary. If you want to  
7 receive a copy of my report, please indicate that on  
8 the sign-in sheet. If you provide an email address,  
9 we will email it to you. We will see that you  
10 receive notice when the report is available and how  
11 to obtain a copy. We will ensure that it gets to  
12 you, and we are eager for you to have a copy of it.  
13 The handout that I mentioned goes into more detail  
14 about the process that contains the important address  
15 information that you'll need to submit written  
16 comments. Please keep a copy of that for your  
17 records. And one more time, I'm going to tell you  
18 the docket number. Seems kind of silly, but I always  
19 have people ask. 80-9003-35384.

20 Are there any questions about the  
21 procedures or what we're doing here today?

22 (No response.)

23 THE JUDGE: Anything at the remote  
24 locations?

25 (No response.)

1 THE JUDGE: Okay. And I'll  
2 introduce Mike Schmidt, who is with the Minnesota  
3 Pollution Control Agency. And Mr. Schmidt, would you  
4 like to introduce the rest of the staff and also the  
5 exhibits?

6 MR. SCHMIDT: Thank you, Your Honor.  
7  
8 My name is Michael Schmidt. M-I-C-H-A-E-L,  
9 S-C-H-M-I-D-T. I'm the staff attorney with the  
10 Minnesota Pollution Control Agency, often referred to  
11 as MPCA, which is at the address 520 Lafayette Road  
12 North, St. Paul, Minnesota 55155. I am appearing in  
13 this rule proceeding on behalf of the Minnesota  
14 Pollution Control Agency.

14 As you stated, Your Honor, the MPCA is  
15 proposing amendments to the Minnesota rules governing  
16 underground storage tanks in Chapter 7150. These  
17 amendments revise the existing rules and ensure  
18 alignment with federal regulations.

19 First I'd like to introduce the other  
20 Agency staff here who are here to make brief  
21 presentation and respond to questions as needed.  
22 First, Nate Blasing is the supervisor of the tanks  
23 compliance unit in the industrial division of MPCA.  
24 He has worked in the underground storage tank program  
25 for 16 years. After introduction of the hearing

1 exhibits, Mr. Blasing will make a presentation on the  
2 proposed rule amendments.

3 Next to Mr. Blasing is Carey Mattison,  
4 C-A-R-E-Y, M-A-T-T-I-S-O-N. He is an inspector in  
5 the tanks compliance unit and has been in that role  
6 for 11 years. He served on a rule development team.  
7 Next to him is Jake Nueller. His last name is  
8 N-U-E-L-L-E-R. He has served as an inspector in the  
9 tanks compliance unit for 12 years and was on the  
10 rule development team. At the end of the table is  
11 Zachary Klaus. Last name is K-L-A-U-S. He was the  
12 lead author of the SONAR and was on the rule  
13 development team. He has worked in the tanks  
14 compliance unit for the last 20 years.

15 Before the presentation from Mr. Blasing,  
16 I would like to submit into the hearing record the  
17 exhibits outlined in the hearing exhibits index  
18 contained in the three-ring binder up at the Judge's  
19 table and at the back of the room. The exhibits are  
20 also posted on the Agency's website, as mentioned  
21 earlier. The purpose of these documents is to  
22 document the legal authority of the MPCA to adopt the  
23 proposed rule, demonstrate that the Agency has  
24 fulfilled all relevant legal and procedural  
25 requirements for promulgating the rule, and

1 demonstrate that each portion of the proposed rule is  
2 needed and reasonable.

3 I will briefly review the exhibits and  
4 relate each exhibit to the purposes I just  
5 identified. There is an index at the front of the  
6 hearing exhibit binders. Without reading every  
7 exhibit, I will highlight several of them.

8 Exhibit C contains the text of the  
9 proposed rule amendments. Exhibit D contains the  
10 Statement of Need and Reasonableness, or SONAR, which  
11 documents the statutory authority of the Agency to  
12 adopt the proposed rule. And the MPCA has authority  
13 to promulgate these rules under Minnesota Statute  
14 section 116.49, subdivision 1. The SONAR in  
15 Exhibit D also demonstrates the need and  
16 reasonableness of the rule. That includes a general  
17 description of why the rule is needed and reasonable,  
18 and detailed descriptions of why each proposed rule  
19 part is needed and reasonable.

20 Many of the other exhibits demonstrate  
21 that the Agency has fulfilled relevant legal and  
22 procedural requirements. These include Exhibit A,  
23 request for comments. Exhibit C, the revisor's  
24 approval of the proposed rule. Exhibit E, the  
25 transmittal letter and certificate verifying my

1 submission of the SONAR to the Legislative Reference  
2 Library. Exhibit F, the dual notice as mailed and  
3 posted electronically and as published in the state  
4 register. Exhibit G, the certificate of mailing, the  
5 notice of hearing and the certificate of accuracy of  
6 that mailing list. Exhibit H, the certificate of  
7 additional notice and evidence of implementation of  
8 the additional notice claim. Exhibit I, written  
9 comments received by the Agency during the public  
10 comment period. And Exhibit K, evidence of  
11 compliance with other requirements including to  
12 notify legislators, the Department of Agriculture and  
13 Municipalities. And also in Exhibit K, the approval  
14 by the Office of Management and Budget of the  
15 Agency's fiscal analysis of the impact of the rules.

16 At this time, the MPCA also wishes to  
17 introduce Exhibits L and M. Exhibit L identifies a  
18 change to the proposed rules the MPCA wishes to make  
19 in response to the public comments we received. And  
20 Exhibit M identifies proposed changes to the SONAR to  
21 correct minor errors.

22 Your Honor, you have a set of all of these  
23 exhibits that I am offering for introduction and  
24 there's a set located at the table, as well as on the  
25 Agency website.

1 THE JUDGE: And these exhibits are  
2 all received. Thank you.

3 MR. SCHMIDT: Now Mr. Blasing will  
4 make a presentation giving an overview of the rule  
5 development process outlining the amendments and  
6 summarizing the process that the Agency has gone  
7 through.

8 After that, Mr. Blasing and the team will  
9 be happy to answer clarifying questions on the  
10 material presented and for any questions raising  
11 legal or regulatory implementation beyond what's in  
12 the SONAR. The Agency team panel may prefer to have  
13 time to prepare a considered response. There is a  
14 copy of Mr. Blasing's presentations in Exhibit N, and  
15 additional copies are available at the back of the  
16 hearing room.

17 I have nothing further at this time.

18 THE JUDGE: Thank you. Mr. Blasing,  
19 you may proceed.

20 MR. BLASING: Thank you, Your Honor.

21 All right. My name is Nate Blasing. I  
22 supervise the underground storage tank program. And  
23 today -- how is the volume? Can everyone hear?

24 (No response.)

25 MR. BLASING: Okay. Today I'll be

1 giving a brief presentation on the amendments to  
2 Minnesota Rule 7150, which applies to underground  
3 storage tanks. In this presentation, I will be  
4 covering the following topics: Some background,  
5 rulemaking objectives, rule development, controversial  
6 topics, and changes in response to comments.

7 Some background. On July 15, 2015, the  
8 EPA revised our underground storage tank regulations.  
9 In doing that, EPA gave states two options. First  
10 was to adopt federal regulations in entirety, or the  
11 second is to develop state-specific UST rules, both  
12 which were due October 13, 2018. Minnesota chose to  
13 do the second, which develops specific state  
14 regulations for underground storage tanks, due to the  
15 fact that the underground storage tank program in  
16 Minnesota has state program approval, which is an  
17 approval process from EPA. One stipulation that goes  
18 with states developing their own rules is they must  
19 be as stringent as or more stringent than the federal  
20 regulations.

21 Rulemaking objectives. The majority of  
22 the revisions that are being proposed are federal and  
23 relate to functionality testing of tank system  
24 safeguards to ensure proper functionality. Also,  
25 requiring secondary containment for new and

1 replacement tank systems being installed, which  
2 Minnesota had already incorporated into the rules.  
3 Minnesota also reorganized portions of the existing  
4 rule for clarity purposes and to update certain  
5 industry standards.

6 The development stage. A quick timeline  
7 depicts the MPCA's actions. In a published request  
8 for public comment on November 9, 2015, created a  
9 rule specific mailing list which was used through  
10 GovDelivery, established a rulemaking webpage, and  
11 sent several messages to notify subscribers of rule  
12 announcements and activities. We also published dual  
13 notice on August 27, 2018.

14 The MPCA then established an external  
15 advisory committee, which the intent was to have a  
16 wide range of tank owners at the table to discuss the  
17 rules. The committee consists of the two major  
18 petroleum associations in Minnesota, which are the  
19 Minnesota Petroleum Marketers Association and the  
20 Minnesota Service Station Association. We also have  
21 large and small tank owners, government entities that  
22 own tanks, and three reputable tank contractors as  
23 part of the group.

24 The MPCA released its first draft rule to  
25 the group for review and comment on February 2, 2016,

1 prior to our first advisory group meeting. The  
2 committee met six times from February through  
3 April 2016. At the meeting we discussed the draft  
4 ruling line-by-line for the entire rule. The members  
5 were given homework to read a portion of the rules  
6 for discussion and questions prior to the next  
7 meeting.

8 I believe this committee involvement  
9 benefited both Minnesota tank owners and the MPCA.  
10 We had very good discussions. We didn't always agree  
11 on the subject matter, but usually came to a common  
12 understanding after debate. We heard several  
13 different perspectives that led to rule word changes  
14 from the group, and the MPCA also identified rules  
15 federally mandated versus state changes. This group  
16 did a lot of hard work, and we're very appreciative  
17 of the members' involvement. It gave the rule much  
18 more transparency.

19 The MPCA then took the group's feedback  
20 and comments and headed to the draft rule. On  
21 June 9, 2016, the Agency released the edits to the  
22 group. On June 22, 2016, Agency staff met with the  
23 advisory committee again to discuss the edits and get  
24 any additional feedback. The MPCA also took  
25 opportunities to present the new draft regulations

when available at trade and convention shows, which a  
couple are listed above.

3 Starting in January of 2018 through March,  
4 the MPCA held several public meetings across the  
5 state, which include Marshall, Detroit Lakes,  
6 Brainerd, Duluth, Shakopee, Rochester, and Roseville.  
7 At these meetings we presented a PowerPoint of the  
8 changes, proposed changes, and held  
9 question-and-answer sessions. The meetings were  
10 approximately three to four hours long. These  
11 meetings were very well attended, anywhere from 20 to  
12 over 100 participants per meeting. We did receive  
13 positive feedback from members that joined about  
14 being proactive and outreach approach to the public.

15 So now the controversial topics. The  
16 Agency is considering all comments received. And to  
17 touch on the first one, which is unusual operating  
18 conditions, I will touch on that shortly because we  
19 do have a slide pertaining to that. The second one  
20 is low level sump testing. Commenter requested an  
21 alternative EPA method be allowed. The Agency is  
22 open to allowing an alternative method, but does not  
23 believe a rule change is needed in order for this to  
24 occur. Similar to federal language, this method  
25 would fall under 7150.0216, subpart 1, which is other

1 methods.

The next one is ambiguous and subjective language. Commenter stated the USDA rule contains ambiguous and subjective language throughout, using words like may, potential, and reasonable. The MPCA's response is current state and federal regulations contain similar languages currently. The Agency identified several examples in Minnesota and other state and federal language that is currently similar. Being a preventative program requires using this type of wording, otherwise it would be reactionary.

22 Next is agency-approved testers.

23 Commenter stated that the requirement to use  
24 agency-approved testers for certain testing  
25 requirements limits owners' options and incre

1 costs for owners. The Agency disagrees with this.  
2 The requirement to use agency-approved testers for  
3 certain testing ensures that a proper person  
4 conducting the test is qualified. Anyone meeting the  
5 qualifications can be an agency-approved tester if  
6 they are trained properly and apply. The Agency does  
7 not believe this requirement will result in  
8 substantial increase in costs for owners since  
9 agency-approved testers will likely be on-site  
10 testing other equipment on an annual basis.

11 The next is ball float removal. Commenter  
12 was questioning why ball float overfill devices must  
13 be removed if installing overfill auto shut-off  
14 devices. This requirement is found in national  
15 recommended practice, which is PEI, and is an  
16 industry standard and is in manufacturer specs. If  
17 the ball float is left in, it could cause the other  
18 overfill device to not function properly in certain  
19 instances, and could lead to a tank overfill or  
20 personal bodily injury.

21 The next is other potentially harmful  
22 substances. Commenter was concerned that there was  
23 not a list of these substances and how would we  
24 identify them in the future, and what would be  
25 required of them. If the Agency deemed a particular

1 product as a potentially harmful substance, the  
2 Agency would be required to give notice prior to that  
3 change to the public. The only requirement to this  
4 category product is that the tank system must be  
5 compatible with the product stored to ensure the  
6 material does not damage the tank system. An example  
7 of this is magnesium chloride, which is used for dust  
8 suppression.

9 Next is upward shifting. Over the years  
10 the Agency has seen a handful of these instances  
11 where the underground storage tank begins to move  
12 upwards, in attempts to pull out of the ground,  
13 usually due to high water table or improper  
14 anchoring. This is a major potential environmental  
15 threat and also a public safety issue.

16 The next is the dispenser sump  
17 containment. The commenter was concerned when  
18 installing that dispenser sump containers would be  
19 required. The Agency's intent is to require sumps  
20 when concrete demolition work is involved on islands  
21 or near dispensers. Based on comments received, the  
22 Agency will consider a rule change to require  
23 containment when only concrete or material under the  
24 dispenser is replaced. This will allow minor  
25 modifications for switching dispensers, and will also

1 allow using concrete filler to make repairs to  
2 existing concrete.

3                   The last one is allowing time for  
4 implementation. A commenter requested reasonable  
5 time to implement required rule changes due to the  
6 cost to the owners. The Agency feels it is being  
7 very reasonable and is giving two years past the  
8 implementation date of the federal regulation for the  
9 functionality testing, and that date would be  
10 October 13, 2020.

11                   Back to the first one, which was the  
12 unusual operating conditions. At this time the  
13 Agency is proposing a rule change in response to the  
14 comment. The commenter believes that the proposed  
15 definition is ambiguous and vague. The MPCA suggests  
16 that the wording will make it difficult for owners  
17 and operators to comply. And the MPMA suggests that  
18 the language should be more consistent with  
19 40 CFR 280.50. The MPCA agrees that this language  
20 should be revised as deleting proposed items 3 and 4.  
21 The MPCA believes it is reasonable to make this  
22 change to provide clarity to owners and operators to  
23 ensure that they understand the requirements they  
24 must comply with. The changes increase clarity,  
25 eliminates the need to assess the probability of

1                   future leak in two ways, whether a future leak is  
2                   probable and what may cause an undetected leak.

3                   The MPCA is also proposing to add items D  
4                   and E for consistency with 40 CFR 280.50. The MPCA  
5                   believes the changes are reasonable to provide  
6                   clarity and consistency with federal requirements.

7                   And that is all I have, Your Honor. Thank  
8                   you.

9                   THE JUDGE: Thank you. I actually  
10                  do have one question. I think you used an acronym,  
11                  which was PEI. Can you just tell me what that means?

12                  MR. BLASING: Petroleum Equipment  
13                  Institute.

14                  THE JUDGE: Thank you. I'm really  
15                  not good with these acronyms.

16                  MR. BLASING: I'm sorry.

17                  THE JUDGE: That's okay.

18                  Okay. Are there any additional people who  
19                  have signed in to testify, do you know?

20                  (No response.)

21                  THE JUDGE: I've got them all?

22                  Okay. Well, at this point, then, we do only have  
23                  three people who requested to speak. So let's start  
24                  with -- is it Krogman?

25                  MR. HEINZE: Your Honor, if it's

1 possible --

2 THE JUDGE: Yes.

3 MR. HEINZE: -- since we only have  
4 three of us, is it possible if the three of us decide  
5 that I should go first, that I can go first?

6 THE JUDGE: That's fine with me.

7 MR. HEINZE: Okay.

8 THE JUDGE: Yep.

9 MR. HEINZE: And I'm Chris Heinze,  
10 Your Honor.

11 THE JUDGE: I assume then -- well,  
12 you would have been second, so that's fine.

13 And let me just quickly here --  
14 Mr. Blasing, are we still -- we still don't have  
15 people at other locations; is that correct?

16 MR. BLASING: Correct, yep.

17 THE JUDGE: Okay. So, Mr. Heinze, I  
18 know you've been wanting more time, and I'm fine with  
19 you taking 15, 20 minutes.

20 MR. HEINZE: I think it will be  
21 slightly less than that, Your Honor. I appreciate it.

22 THE JUDGE: Okay. And please do  
23 introduce yourself and who you are speaking on behalf  
24 of.

25 MR. HEINZE: Your Honor, my name is

1 Chris Heinze. Last name is spelled H-E-I-N-Z-E, here  
2 on behalf of the Minnesota Petroleum Marketers  
3 Association.

4 THE JUDGE: I think people are not  
5 hearing you well. Can you make sure that that's on?

6 MR. HEINZE: That should do it.

7 THE JUDGE: That's good.

8 MR. HEINZE: I'll start again.

9 Your Honor, my name is Chris Heinze, H-E-I-N-Z-E, here  
10 on behalf of the Minnesota Petroleum Marketers  
11 Association. The Minnesota Petroleum Marketers  
12 Association represents over 600 members. Those 600  
13 members operate approximately 2,200 service stations  
14 and convenience stores in the state of Minnesota.  
15 That number is approximately 75 percent of all service  
16 stations in the state. Among those service stations,  
17 there are approximately 6,000 underground storage tank  
18 systems that will be affected by these rules.

19 Some of the MPCA's proposed rules in this  
20 matter are problematic for a few reasons. The MPCA  
21 is tasked with establishing reasonable rules. And  
22 proposed rules that are unreasonable should not  
23 become law. Some of these proposed rules grant the  
24 MPCA discretion beyond what is allowed. The record  
25 before you does not demonstrate the need for some of

1 these rules. The record before you also does not  
2 demonstrate the reasonableness of some of these  
3 rules. Some of the proposed rules are not rationally  
4 related to the MPCA's objectives.

5 Procedurally, some of the proposed rules  
6 are problematic in that the MPCA has not responded to  
7 comments made by interested parties in a manner that  
8 is consistent with its obligations under law. The  
9 MPCA is required to fully explain the need for the  
10 proposed rule when responding to comments from  
11 interested parties. The MPCA has not met its burden  
12 under Minnesota Statute 14.131 or 14.127.

13 To better understand some of these legal  
14 deficiencies, I think it's helpful to look at some of  
15 the specifics. Proposed Rule 7150.0205, design and  
16 construction, contains subpart 7, titled dispenser  
17 pumps. Now, we just heard for the first time of the  
18 MPCA's proposal changing that a little bit, but at  
19 least for the -- as the proposed rules are written  
20 today, I'll go through that rule and highlight some  
21 of the issues.

22 Sub item 4, under this proposed section  
23 states that both owners and operators must install  
24 secondary containment if the concrete or base  
25 material under the dispenser is replaced, repaired,

1 or modified, end quote. That language is problematic  
2 for a number of reasons. First, the language is  
3 unclear and confusing. A dispenser, under Minnesota  
4 Rule, is well defined. It is, quote, equipment that  
5 is used to transfer a regulated substance from  
6 underground piping through a rigid or flexible hose  
7 or piping located above ground to a point of use  
8 outside of the UST system, such as a motor vehicle,  
9 unquote. That language is clear, but language such  
10 as replaced, repaired, or modified is unclear and  
11 vague.

12 Dispensers are commonly located on islands  
13 sometimes called pedestals. These concrete islands  
14 often also support other structures, including  
15 support beams for canopies, bollards that protect the  
16 dispensers from car crashes and other hazards, waste  
17 disposal receptacles, auto maintenance tools,  
18 lighting, and other similar structures, given that  
19 it's nearly impossible to determine what the concrete  
20 or base material under the dispenser needs. Now, if  
21 the MPCA is going to modify the language and indicate  
22 that it means only the immediate concrete underneath  
23 the dispenser, then I think that goes a long way  
24 towards narrowing and better defining what is  
25 obligated of owners and operators in this state.

1                   Now, regarding the language replacement.  
2       If the concrete under a canopy supporting a beam is  
3       replaced on a different part the island, does that  
4       mean that the dispensers -- and there is often more  
5       than one island -- needs to be fully removed such the  
6       sump dispenser be installed? If we're talking about  
7       repair, if the concrete simply needs concrete filler  
8       or some other simple repair, or cosmetic repairs,  
9       does that require an owner or operator to rip up the  
10      dispenser and install dispenser sumps? What if there  
11      is no island at all? Sometimes dispensers are  
12      located right on the same concrete slab as the rest  
13      of the service station. If part of that concrete  
14      slab needs to be disturbed, does that mean that the  
15      dispenser needs to be removed so that dispenser sumps  
16      can be installed?

17                  The language modified. If an  
18       operator/owner adds a bollard, does this trigger this  
19       requirement because it modifies the concrete under  
20       which the dispenser was located? The MPCA goes to  
21       great lengths to frame their Minnesota additions to  
22       the federal requirement to reduce confusion, to  
23       clarify and the like. This proposed rule and many  
24       others does the opposite and it muddies things up.

25                  Additionally, the MPCA did not conduct an

1 adequate analysis of the cost of this rule under  
2 Minnesota Statute 14.131, subpart 5. In the SONAR on  
3 page 65, the MPCA estimates that it will cost \$2,000  
4 to install a dispenser pump when the concrete island  
5 is being entirely replaced. They further opine that  
6 these installations will be rare because entire  
7 islands aren't usually replaced in their entirety.

8 However, while the MPCA attempted to  
9 satisfy this statute, the attempt is not adequate.  
10 There is no evidence as to why they estimate the cost  
11 to be \$2,000 or what or whom they consulted to reach  
12 that number. Moreover, there is no analysis as to  
13 the replacement of concrete or base material that  
14 does not involve the replacement of the entire  
15 island. Nor is there anything regarding repairs or  
16 modifications in the analysis of those costs, the  
17 frequency of those costs, and the like.

18 Further, there is no analysis as to how  
19 many businesses or underground storage tanks this or  
20 any of the proposed rules will affect. The MPCA  
21 estimates that there are less than 50 underground  
22 storage tanks owned by state agencies, but that's it.  
23 And even then, there's nothing in the record that  
24 supports that analysis, apart from their own  
25 estimation. Because of the vagueness of the ruling,

1 which the rule grants significant discretion to the  
2 MPCA as to what constitutes a replacement, a repair,  
3 or a modification. Not only does this degree of  
4 discretion not comport with Minnesota Rule 1400.2100,  
5 but it will lead to inconsistent aberrations of this  
6 rule due to the vagueness of the terms.

7 Further, this proposed rule also  
8 significantly deviates from the SONAR. The SONAR  
9 only contemplates complete replacement of the island.  
10 SONAR states, quote, only for removal and/or  
11 replacement. That's on page 34, paragraph 3. The  
12 MPCA argues when an owner/operator plans to replace  
13 an island, then in such circumstances it is  
14 reasonable to use that opportunity to add a dispenser  
15 sump. There's nothing in the SONAR concerning  
16 replacement that is partial, much less anything on  
17 the repair of a concrete island or modification  
18 thereof. Further, there is no alternative discussed  
19 in this rule. Minnesota Statute 14.131, subpart 4,  
20 requires the MPCA to describe alternative methods for  
21 achieving the purpose of the proposed rule. The MPCA  
22 failed to discuss any alternative here.

23 The proposed rule concerning the term  
24 unusual operating conditions is also problematic.  
25 The term is defined in 7150.0030. The MPMA has

1 received comments from the MPCA proposing to remove  
2 lines 3 and 4 from subpart A that was just on the  
3 screen moments ago. The MPMA generally agrees with  
4 this change. However, there are still issues that  
5 remain. Line 2 of that definition is still  
6 ambiguous. The implication is that after an owner or  
7 operator investigates and a leak isn't indicated, it  
8 is not an unusual operating condition. In order to  
9 better describe that implication, this line should be  
10 modified so that it reads -- indicates to the owner  
11 or operator the possibility of a leak from a UST  
12 system.

13 Also, the actual rule recording unusual  
14 operating conditions needs to be modified in  
15 conjunction with the modifications of its definition,  
16 as that rule contains some of the language that has  
17 already been removed from the definition. Subpart B  
18 of 7150.0250 of subpart 1 includes the language,  
19 quote, may have resulted in a leak, unquote. That is  
20 no longer part of the definition under the MPCA's  
21 proposal. Removing the quote that may have resulted  
22 in a leak will resolve this issue and will add  
23 clarity to this rule.

24 Further, there is some more incidence of  
25 not matching up with the SONAR. The SONAR, when

1 discussing the closure of underground storage tank  
2 systems in this rule, the closure is discussed as  
3 temporary closures. And the proposed rule should  
4 match that and state in subpart 1A that the owner or  
5 operator must take the UST system temporarily out of  
6 service, as opposed to the implication that it's  
7 permanent.

8 As it concerns 7150.0216, subpart 1A, the  
9 MPCA has agreed and was reiterated today in replying  
10 to the MPMA's comments that the PMAA test, which is  
11 an alternative low liquid level test, is allowed  
12 under this rule. For clarity, we believe that the  
13 test needs to be identified with particularity in the  
14 rule so that all people in the community understand  
15 that this is an allowable test under the rule.

16 The other speakers today will discuss some  
17 of the other rules that have these same issues. We  
18 and others will be submitting briefs that set forth  
19 in more detail the statutory deficiencies of these  
20 proposed rules.

21 In sum, many of these proposed rules do  
22 not meet the requirements of Minnesota Statute  
23 14.131. Costs were not properly analyzed by the  
24 department. The proposed rules grant the MPCA far  
25 too much discretion. The record doesn't support the

1 need or the reasonableness of some of these rules,  
2 and this Court should disapprove those rules that are  
3 mentioned. Thank you.

14 So -- is it Mr. Krogman? Welcome.

15 MR. KROGMAN: Thank you.  
16 Your Honor, my name is Bob Krogman, K-R-O-G-M-A-N. I  
17 was the executive director of the Minnesota  
18 Petroleum --

19 THE JUDGE: If you could, again,  
20 pull the microphone right up close to your face.

21 MR. KROGMAN: Okay. I was the  
22 executive director of the Minnesota Petroleum  
23 Marketers for 35 years, and I've been involved in the  
24 underground tank rulemaking procedures since its  
25 inception. I'm old.

1                   One of the comments I have has to do with  
2 the agency-approved testers. Concerned that in  
3 Attachment 6 of the SONAR there was no cost  
4 attributed to hiring an agency-approved tester.  
5 Where, in essence, a tank owner -- most tank owners,  
6 maybe except for one or two, are going to have to  
7 hire an agency-approved tester. An owner/operator  
8 cannot because of the requirement that he must be an  
9 employee of an agency-certified tank contractor under  
10 Chapter 7105.

11                   Under 7105, a certified contractor shall  
12 have someone in his employ or be a supervisor of  
13 underground tank removal certified contractor. To be  
14 a supervisor, to obtain certification from the  
15 commissioner, an applicant for a supervisor shall  
16 certify that in the four-year period before making  
17 initial or renewal application, have successfully  
18 completed an approved training course, and have at  
19 least two years of tank experience, and have actively  
20 participated in the field on a minimum of five  
21 underground storage tank projects. So how could  
22 someone who owns a convenience store meet those  
23 requirements? And he has to meet those requirements  
24 to be an agency-approved tester.

25                   So the statement within Attachment 6, that

1 it will only be incurred as an agency-approved test  
2 is optional for owner/operator is, in fact, not  
3 accurate. The cost we suspect -- we don't know. We  
4 suggest a cost will be substantial because some of  
5 the testing involves hydrostatic testing of sumps and  
6 underground -- and spill buckets. And that has a  
7 potential for generating hazardous waste.

8 So these agency-approved testers are going  
9 to have to come on site with the materials, a truck,  
10 whatever, to handle that water. You're going to have  
11 to mobilize that equipment. You're going to have to  
12 pay mileage on that equipment. They're not in every  
13 town. In fact, there are very few of them. The cost  
14 to hire an agency-approved tester could be  
15 substantial. Also, it requires that the  
16 owner/operator's document that shows the testing  
17 while waste generated during sump and spill bucket  
18 testing be disposed of properly in accordance with  
19 state and federal regulations as well as hazardous  
20 materials regulations. They require, I think, a  
21 cradle-to-grave accounting. Well, when this  
22 agency-approved tester shows up at your site with his  
23 vac truck, he's going to use the water from more than  
24 one place. He's going to transport it.

25 We think the rules should reflect that the

1 agency-approved tester is the generator of that  
2 hazardous waste. Otherwise there's the potential  
3 that every site owner, underground site owner, has to  
4 become a small quantity hazardous waste materials  
5 generator for 15 gallons of water, if he's only  
6 testing his three spill buckets. We think that is  
7 doable.

8                   Another thing I want to mention  
9 was -- what the heck part is this? It's dealing with  
10 emergency stops, 7150.0205, subpart 8. It says  
11 emergency stops. Owners and operators must have  
12 their emergency disconnect switch that is readily  
13 available to persons dispensing a regulated substance  
14 to disconnect the electric power. And then it  
15 references the Minnesota State Fire Code. Well, the  
16 Minnesota State Fire Code specifies that the  
17 emergency shutoff -- and the name is even different.  
18 It's not an emergency stop. In the fire code it's an  
19 emergency shutoff. And it specifies that the  
20 emergency shutoff can be no closer than 20 feet to  
21 the dispenser. In here, it says available to persons  
22 dispensing a regulated substance.

23                   Well, there's another state law that says  
24 you must be in close attendance to the nozzle when  
25 dispensing the product. Does this mean we have to

1 put an emergency shutoff on the island, which would  
2 be in violation of the fire code? Why not just adopt  
3 the fire code language? Most people have shutoffs  
4 already.

5 The last part I'd like to address is the  
6 part that Nate said was controversial, is a tank that  
7 has shifted upward, and to the extent that the bust  
8 has bulges, the concrete or cover material, and that  
9 it may lead to a leak. That is, in our opinion, far  
10 too subjective. It's ambiguous. Who determines that  
11 bulge in the concrete? Who determines if the tank  
12 caused it? You can have bulging concrete without the  
13 tanks moving. But I'll tell you that tanks move.  
14 They move all the time. They usually don't pop out  
15 of the ground.

16 We understand what it's looking at. We  
17 have an alternative suggestion. We think there have  
18 to be some standards established on bulging tank,  
19 cracked concrete, or whatever, so we would suggest  
20 that a tank that has shifted upward to the extent  
21 that a certified tank installer, agency-certified  
22 tank installer, in writing opinions or -- from the  
23 opinions that a release from the tank is imminent.  
24 Let's have an expert look at it and say, you bet, we  
25 got a problem. Let's not let -- we don't know whose

1       opinion would be overriding, the inspector's or the  
2       owner/operator's. Let's define it further.

3 Thank you, Your Honor, that's all I have.

4 THE JUDGE: Thank you. Okay. And  
5 you are Mr. --

6 MR. ORTON: Orton, O-R-T-O-N.

7 THE JUDGE: Okay, thank you.

8 MR. ORTON: My name is Frank Orton  
9 with Orton Oil Company. It's O-R-T-O-N. I'd like to  
10 say, first and foremost, we're operators of  
11 convenience stores in Minnesota. We have 13 stores  
12 here and one in North Dakota, all of which have  
13 underground storage tanks. And I can certainly  
14 appreciate the work that's gone into these rules on  
15 the part of the MPCA and associated parties. There's  
16 a lot of good changes that have been made here, so I  
17 don't want to lose sight of that.

1                   And I guess the first thing I'd say, I was  
2 certainly pleased to hear that the MPCA is talking  
3 about changing the part about modification or repairs  
4 of the repairs to bollard, that was our biggest  
5 concern. As far as when you replace entire pump  
6 pedestals, we felt that that was the most reasonable  
7 time to add a sump. You know, so that wasn't  
8 necessarily a concern or complaint of ours. Ours was  
9 mainly with the, you know, where does repair or  
10 modification trigger that pump? So I guess if that  
11 language comes through, I think we're going to be  
12 fine with that.

13                   I know that Chris went through a lot of  
14 the illustrations as to why that might not have been  
15 a good idea. And I guess we can leave that up to the  
16 written stuff afterwards and see how that shakes out  
17 with you guys. I'm not going to belabor that point.

18                   7150.0450, recordkeeping. In the proposed  
19 rules the MPCA outlined this one. MPCA is proposing  
20 retention records must be kept for five years instead  
21 of the shorter one-to-three year retention period as  
22 required by the EPA. It would be our suggestion that  
23 that period be reduced to either the same as EPA or  
24 lesser amount of three years.

25                   And there's SONAR, statement of need

1 written down here on page -- it's on page 67 of the  
2 SONAR. So in order to, you know, establish need as  
3 well as reasonableness, they stated recordkeeping  
4 requirements. Owners and operators are now required  
5 to retain leak detection and system maintenance  
6 records for five years rather than the previous  
7 requirement of ten years. Owners and operators will  
8 incur less expense to store and maintain records by  
9 50 percent. What they failed to establish is a need  
10 to be more onerous than the federal rules. They  
11 would need to explain in that SONAR report why five  
12 years is required beyond what the federal rules are  
13 requiring. There's absolutely no statement  
14 whatsoever as to why they need those additional  
15 records. And if it's reasonable to lower it and let  
16 the marketers save 50 percent of the records, why  
17 don't we save 70 percent or 90 percent of it? That  
18 would be a good thing too. So I think from a  
19 procedural standpoint, they have not met the need  
20 requirement whatsoever in the SONAR that I can tell.

21 Replacement of underground storage tank  
22 system components due to corrosion. So this is  
23 Rule 250, subdivision 3. It's on page 52 of their  
24 proposed rules. They delineate from the underground  
25 storage tank system components and the underground

1 storage tank piping. So I'm going to get there so we  
2 can be on the same page, I guess.

3 The proposed rule states, components of a  
4 UST system that do not meet the performance standards  
5 in part 7150 must be repaired and replaced. Owners  
6 and operators must replace any component that has  
7 corrosion that may cause the component to not  
8 function as intended by the manufacturer or that may  
9 cause a release of a regulated substance. They go on  
10 to subpart 2. Any component not functioning properly  
11 according to this chapter. So there's two things  
12 that they're talking about here. In subdivision 1,  
13 they're talking about corrosion. In subdivision 2,  
14 they're talking about UST components that just flat  
15 out aren't functioning properly.

16 It would be our opinion that it doesn't  
17 follow their SONAR, first and foremost. In their  
18 SONAR they talk about excessive corrosion. In their  
19 SONAR they talk about -- let me look for the terms I  
20 wrote down here -- superficial corrosion. None of  
21 those actually made it into the rule themselves.

22 And the issue here is, we're putting  
23 underground storage tanks underground. It's a  
24 corrosive environment. It's handling petroleum,  
25 diesel, gasoline. Essentially from the day they put

1       it in service, it is starting to corrode. I can tell  
2       you we're putting in a car wash today in Moorhead,  
3       Minnesota, and it starts corroding tomorrow once we  
4       start spraying chemical all over that bay. So  
5       corrosion occurs from day one. We have to understand  
6       that.

7                   So there's some issues that we have there  
8       in the sense that it doesn't follow their own SONAR  
9       where they talk specifically about excessive  
10      corrosion. And hearing Nate's statement of needs for  
11      the controversial items he alluded to, that they  
12      wanted that portion in the rule, but we can't get it  
13      in there for whatever reason. It's almost  
14      contradictory to what they're actually asking for  
15      that's not in there itself.

16                   Some things that I kind of noted here, may  
17      cause not to function, may cause release, those are  
18      subjective. In the future. Is that today? Is that  
19      tomorrow? Is that ten years from now? I mean,  
20      imagine a situation where you're up to a relatively  
21      new submersible pump that's a component of the UST  
22      system that has any corrosion, rust on it, it's not  
23      an imminent leak and they can come and say you need  
24      to replace that. That level of subjectivity is just  
25      not acceptable here.

1                   What I would suggest, and I know I'm not  
2 the rulemaker here, but if you go on to where they  
3 have their underground storage tank piping, which is  
4 sub B of that same rule, they talk about metal or  
5 noncorrodible piping segments, and in that instance  
6 they talk about that have released a regulated  
7 substance. This would be simply solved by mimicking  
8 their rules for their piping on the UST system  
9 components by substituting that similar language.  
10 You know, if they said something to the effect the  
11 UST system component that has or has caused the  
12 release of the regulated substance, that would align  
13 with the next sub B of the rule.

14                   Lastly, 7150.0345, subdivision 1,  
15 timeliness of reporting. Again, if you go through  
16 kind of the summary that was provided of the proposed  
17 rules, the federal EPA rules essentially have a week  
18 to report and investigate and do that kind of stuff.  
19 Minnesota is looking for a more -- shorter period, I  
20 guess, 24 hours is what they're stating.

21                   Again, if you read through the statement  
22 of need, I don't know that it's specifically been  
23 developed in any form or fashion as to why they need  
24 that. They say it's in the spirit of their -- you  
25 know, reporting as soon as you know about it. So

1 that's an issue with that, I think, statutorily.

2 I think the practical reality that  
3 everybody needs to understand about investigation of  
4 releases and suspected releases, that all underground  
5 storage tank operators -- you know, work with them  
6 is, you know, you go in to work one day and you'll  
7 see on your SIR, you're 180 gallons short --

8 THE JUDGE: SIR?

9 MR. ORTON: I'm sorry. Statistical  
10 Inventory Reconciliation. It's a process for a leak  
11 detection, where every day you record your stick  
12 readings. It shows your daily over/short, as well as  
13 your monthly over/short for that specific underground  
14 storage tank. And then in general, a month, send off  
15 for third-party authentication to verify you don't  
16 have a leak in your lines or your tanks.

17 So common instance in this type of  
18 scenario would be, you know, you look at your reports  
19 from the day before, the tank is 180 gallons short.  
20 Okay, you know, maybe call the store, say would you  
21 re-stick the tank to see if that's an accurate  
22 reading? That might be three, four hours later, you  
23 know, than when they did the original stick reading.  
24 You'd likely come in the next day to work, which is  
25 now 24 hours later, past that time period, and look

1 at the report again. Likely it's not. They might be  
2 long the next day, you know, 190 gallons, 170  
3 gallons, you are off by 10 gallons, probably, under  
4 your investigation.

5                   In the event that it didn't come back, now  
6 the next thing you're going to do is -- you know,  
7 Orton Oil has their own maintenance people. I'm not  
8 a single store operator so it's a little different  
9 scenario. But likely what we would do is ask our  
10 maintenance person or somebody on site to go do an  
11 investigation. You know, look underneath the  
12 dispenser, look underneath the sumps if you have  
13 them, make sure there's nothing leaking. You know?  
14 If you don't see that, then you'd likely say, okay,  
15 we've investigated, what does it look like now?  
16 Well, if it still doesn't come back, we might be  
17 going out there with a -- again, our guys are  
18 certified waste measurers. They have their own cans  
19 to prove out that your meters are accurate. You  
20 know, if you had a meter that, you know, you sold a  
21 gallon and gave out 1.1 gallons, that would cause a  
22 shortage in your tank because your meters are off.  
23 So we might go out and prove that out, make sure that  
24 our meters are on.  
25                   And then if that's still not, you know,

1 the result, just shut the tank down, monitor the tank  
2 for a day, make sure there's no change in inventory  
3 levels when you're not putting any product in or  
4 taking any product out.

5                   What I described to you is not a 24-hour  
6 process, which is why I suspect that the federal  
7 rules are at seven days. And that's where we just  
8 look at it and say, I think at the very least  
9 72 hours would be a lot more reasonable. You know,  
10 you interject into this whole equation I just  
11 explained to you, a weekend, you know, for a single  
12 store operator that doesn't have their own  
13 maintenance people.

14                  In this rule they talk about performing  
15 line tightness testing. They can't perform that  
16 themselves. That means they've got to get a, you  
17 know, an O'Day or R & R Petroleum on site to do that  
18 test. You don't just snap your fingers and have  
19 these guys show up in 24 hours.

20                  Which, again, I think goes to the  
21 reasonableness, you know. I think the first  
22 component is, I don't know if they necessarily state  
23 the need as to why they need more stringent than the  
24 federal on this rule, but I think the bigger  
25 component is reasonableness. This is a real world,

1 practical world. Is 24 hours actually reasonable to  
2 get all this stuff done from an owner/operator  
3 standpoint? I know it's hard when you're a single  
4 store operator and you don't have the resources that  
5 a small chain like us or a big chain like Holiday or  
6 Kwik Trip might have.

7 So those are the issues I have,  
8 Your Honor.

9 THE JUDGE: Thank you very much.  
10 I want to check in again with the remote  
11 locations. Are there any people at the remote  
12 locations who would like to testify?

13 MR. BLASING: Nothing here and  
14 nothing there. So doesn't look like it.

15 THE JUDGE: Okay. Is there anybody  
16 who is in the room who did not sign up to speak who  
17 has decided in the interim that you want to speak?

18 (No response.)

19 THE JUDGE: And is there anyone who  
20 wants to say more?

21 (No response.)

22 THE JUDGE: Okay. I have one  
23 question of my own, and you may be able to answer this  
24 question now -- this is for Agency staff -- or you may  
25 deal with this in writing. I don't know. And

1       this -- excuse me -- I want to say that I've read a  
2       lot of the materials but not all of them. I got this  
3       record kind of late in the game because this rule was  
4       assigned to me just, I don't know, a week or a week  
5       and a half ago. So it may be that this is explained  
6       somewhere in these materials and I just haven't seen  
7       it. But I am aware that in a number of the rule parts  
8       the date December 22, 2007, is referred to as a date  
9       which -- as an important compliance date. And I'm  
10       wondering what is the genesis of that? What's the  
11       significant of that date?

12                    MR. BLASING: Sure. I can take a  
13       stab at that one, Your Honor.

14                    THE JUDGE: And just for the record,  
15       could you identify?

16                    MR. BLASING: Sure. Nate Blasing.  
17       Last name, B-L-A-S-I-N-G. Supervisor of the tanks  
18       program.

19                    THE JUDGE: Thank you.

20                    MR. BLASING: That date relates to  
21       the 2005 energy bill act that required certain  
22       underground storage tank safeguards, and that's what I  
23       referred to in my presentation in terms of the  
24       secondary containment. That was ruled out in the  
25       federal regulations, but since we were state program

1 approved, we had to involve some of that in our  
2 language. So that was language ruled in at the  
3 revision previously.

4 Does that answer your question,  
5 Your Honor?

6 THE JUDGE: I think so. It will  
7 probably become more clear to me as I read more of the  
8 background materials that I --

9 MR. BLASING: Yeah. I think we do  
10 talk about it in the SONAR some, too.

11 THE COURT: Okay, thank you.

12 Any comments or questions from any of the  
13 attendees?

14 (No response.)

15 THE JUDGE: Okay. Let's go off the  
16 record here for a minute.

17 (A brief discussion was held off the  
18 record.)

19 THE JUDGE: So we are back on the  
20 record, and I have consulted with Agency staff and  
21 also with the stakeholders who are here in the room  
22 with us. We have nobody at the remote locations who  
23 want to speak and neither the stakeholders nor Agency  
24 staff think that it's likely that additional people  
25 will be coming to be heard at this point later in the

1 day or evening. And having heard everyone who wants  
2 to speak, the hearing is adjourned. Thank you all  
3 very much.

4 (Proceedings concluded at 4:51 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF MINNESOTA)  
2 )  
3 COUNTY OF WRIGHT )

4 REPORTER'S CERTIFICATE

5  
6 I, Kassie Lahti Beebe, do hereby certify that  
7 the above foregoing transcript, consisting of the  
8 preceding 57 pages, is a correct transcript of my  
9 stenographic notes and is a full, true, and complete  
10 transcript of the proceedings to the best of my  
11 ability.

12

13

14

15 Dated and signed this 31st day of October,  
16 2018.

17

18

19

20

21

22

23

24

25

---

Kassie Lahti Beebe  
Court Reporter