

DRAFT 6/27/18

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

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IN THE MATTER OF HAZARDOUS WASTE)
RULES AND REGULATIONS, CHAPTER 1 Update)
WYOMING HAZARDOUS WASTE)
MANAGEMENT STANDARDS)

STATEMENT OF PRINCIPAL REASONS

Background

The State of Wyoming (State) Department of Environmental Quality, Solid and Hazardous Waste Division (WDEQ/SHWD), pursuant to the authority vested in it by Wyoming Statutes (W.S.) 35-11-503(a)(v) and 35-11-503(d), proposes that the Environmental Quality Council (Council) revise the Wyoming Hazardous Waste Rules and Regulations (HWRR) to incorporate changes since the last HWRR adopted by the State on March 18, 2015. The existing HWRR use Incorporation By Reference (IBR) of the Federal 40 CFR rules. The following is a statement of WDEQ/SHWD’s principal reasons for adopting these rules, as required by *Tri-State Generation & Transmission Ass’n v. Env’tl. Quality Council*, 590 P.2d 1324, 1330-32 (Wyo. 1979).

Purpose and Intent of Proposed Revisions

The proposed revisions to the Wyoming HWRR include 8 rules as defined in Checklists 231 through 239, excluding Checklist 233, from the U.S. Environmental Protection Agency (EPA) which have been promulgated and finalized by EPA since the last date certain (January 31, 2014) of the Revision 6 HWRR. The WDEQ/SHWD intends to adopt the new rules to ensure that the HWRR are up-to-date with the federal rules as of June 30, 2018. This revision will be the first update of the HWRR since the State began to use IBR to ensure that its rules are consistent with EPA’s.

Compliance with Federal Regulations (W.S. 35-11-503(a)(v))

The proposed rule revisions are designed to be equivalent to federal regulations except where state statute is more stringent or broader in scope. The federal regulations incorporated by reference include 40 CFR Parts 124, 260 through 268, 270, 273 and 279. These rule changes meet or exceed the minimum requirements of federal laws and regulations, while maintaining state primacy as required by W.S. 35-11-503(d)(i).

44 **Public Outreach**

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 46 WDEQ/SHWD conducted public outreach, including visits and conference calls with RCRA
 47 permitted facilities, environmental consultants, and an environmental group. Outreach was
 48 conducted from September 2017 to March 31, 2018. Based on the outreach, the WDEQ/SHWD
 49 found that the public and the regulated community support the adoption of the new rules for the
 50 Wyoming HWRR.

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52 **References:**

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54 EPA compiles lists of related regulatory changes into various checklists that States may use to
 55 incorporate the changes by reference. EPA checklists may be found at the following link:

56 <http://www.epa.gov/osw/laws-regs/state/revision/program.htm>

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58 EPA’s federal regulations, found in Title 40 of the Code of Federal Regulations, may be found at
 59 the following link:

60 http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl

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62 Individual sections within the Wyoming HWRR detail which subparts of 40 CFR are not
 63 incorporated by reference in Wyoming.

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65 **Checklists Which Modify the Revision 6 2015 HWRR**

66 Bolded items below are checklists this rulemaking will adopt. Checklists marked “Category O”
 67 are optional for States to adopt; checklists marked “Category M” are mandatory for states to
 68 adopt.

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| Checklist | Category | Published | Promulgation Date | Title |
|------------------|--------------------|------------------------------------|--|---|
| 231 | M | 79 FR 7518-7563 | Promulgated 2/7/14, effective 8/6/14, state modification due 7/1/15 unless state statute change needed, then due 7/1/16 | Hazardous Waste Electronic Manifest Rule |
| 232 | M | 79 FR 36220-36231 | Promulgated 6/26/14, effective 12/26/14, state modification due 7/1/15 unless statute change needed, then due 7/1/16 | Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule |
| 233 ¹ | M, some sections O | 83 FR 26484-24671, 80 FR 1694-1814 | Promulgated 5/30/18, 1/13/15, effective 5/30/18, 7/13/15, state modification due 7/1/16, WY must adopt Checklists A, B, and C, Checklist D2 and E are optional | Revisions to the Definition of Solid Waste |

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| 72 | Checklist | Category | Published | Promulgation Date | Title |
|----|------------|----------|-------------------|---|--|
| | 234 | M | 80 FR 18777-18780 | Promulgated 4/8/15, effective 4/8/15, state modification due 7/1/16, unless state statutory change necessary, then due 7/1/17 | Vacatur of Comparable Fuels Rule and Gasification Rule |
| | 235 | O | 80 FR 21302-2/501 | Promulgated 4/17/15, effective 10/19/15, no state modification date since optional, Wyoming rule would be more stringent than EPA rule if not adopted | Disposal of Coal Combustion Residuals from Electric Utilities |
| | 236 | M | 80 FR 8596-85729 | Promulgated 11/28/2016, effective 12/31/16, state modification due 7/1/18 | Imports and Exports of Hazardous Waste |
| | 237 | M | 81 FR 85732-85829 | Promulgated 11/28/2016, effective 5/30/17, state modification due 7/1/18 | Hazardous Waste Generator Rule Improvements |
| | 238 | M | 82 FR 60894-60901 | Promulgated 1/3/18, effective 6/30/18, state modification due 7/1/19, unless state statutory change necessary, then due 7/1/20 | Confidentiality Determination for Hazardous Waste Export and Import Documents |
| | 239 | M | 83 FR 420-462 | Promulgated 12/26/17, effective 6/26/18, state modification due 7/1/19, unless state statutory change necessary, then due 7/1/20 | Hazardous Waste Management System; User Fees for the Electronic Manifest System and Amendments to Manifest Regulations |

73 ¹ The State of Wyoming is not adopting the Revisions to the Definition of Solid Waste (DSW) rule at this time until
 74 there is certainty for no further litigation given the contentious nature of the rule and its history of litigation that has
 75 surrounded the rule since 2008. The DSW rule is associated with 73 FR 62668; October 30, 2008, January 13, 2015
 76 (80 FR 1694), and May 30, 2018 (83 FR 26484). Wyoming intends to adopt the DSW rule in the next rule update
 77 process.

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 79 **Wyoming Water and Waste Advisory Board (WWAB) Recommendation**

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 81 On June 21, 2018, the DEQ SHWD presented the draft proposed rule changes to the WWAB,
 82 which recommended that the draft IBR Update 1 of the HWRR rules be moved to the EQC.

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88 **Effect of the Rule Revisions**

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90 The Council anticipates that the proposed Wyoming HWRR revisions will benefit the regulated
91 community in the following ways:

- 92 1. HWRR will be up-to-date with current 40 CFR as of June 30, 2018.
93 2. The revised HWRR will be consistent with those previously adopted by the State.

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95 The Council anticipates that adoption by IBR of rule revisions to update the current HWRR to 40
96 CFR as of June 30, 2018 will benefit the State in the following ways:

- 97 1. Maintains state primacy.
98 2. The State of Wyoming will be up-to-date with the current 40 CFR as of June 30, 2018.

99
100 **Conclusion**

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102 The Council has determined that the adoption of these Wyoming HWRR is necessary to update
103 the State of Wyoming hazardous waste management standards to comply with federal
104 regulations and carry out the responsibilities of the Department of Environmental Quality.

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107 EXECUTED THIS _____ DAY OF _____, 2018
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109 FOR THE ENVIRONMENTAL QUALITY COUNCIL

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Chairperson