

**Response to Comments Received during the Water and Waste Advisory Board Meeting
Held on March 29, 2018**

Introduction

On June 17, 2017 the Wyoming Department of Environmental Quality, Solid and Hazardous Waste Division (Department) gave public notice of proposed changes to Chapters 4 and 6 of the Solid Waste Rules and Regulations (Rules) and announced a series of three informal outreach meetings throughout the state. The Department held outreach meetings in Sundance July 12th, Rawlins July 13th, and Casper July 14th. Sixteen people attended the outreach meetings. The initial outreach period ended July 14, 2017, but it was extended until July 31, 2017 to give the public an opportunity to comment using the Department's online comment process.

The Department presented the Rules at the March 29, 2018 Water and Waste Advisory Board (Board) Meeting and received several comments on the proposed Rules. After the meeting, the Department evaluated the Board's comments and prepared this Response to Comments document to address the comments received. We appreciate the Board's time and input on the proposed Rules and the Department's responses are as follows:

Response to comments on Chapter 4

Section 6

6(k)(i)(A), Water and Waste Advisory Board: The Board questioned whether the Department had established "standards" to require an engineered containment system. The Board suggested that it might be better to change "standards" to "criteria."

Department Response: The Department agrees and modified the language to include additional flexibility for the Administrator to approve an alternative method. The language now reads: "If the facility design does not meet Department guidance or equivalent methods approved by the Administrator; or". This language is similar to Chapter 2, Section 9(a).

6(k)(i)(B), Water and Waste Advisory Board: The Board requested that the Department evaluate the language in this paragraph for flexibility and to clarify that a performance based design is an option.

Department Response: The Department agrees and clarified this section so that a performance based design is an option instead of an engineered containment system. The section now reads: "If the operator does not provide a performance based design demonstration showing that concentrations of pollutants will not exceed groundwater protection standards at the relevant point of compliance established by the Administrator that is no more than 150 meters (492 feet) from the waste management unit boundary on land owned by the owner of the landfill."

Section 7

7(d), Water and Waste Advisory Board: The Board requested that the Department change the use of “assure” to either “ensure” or “insure” in this paragraph and throughout the Chapter.

Department Response: The Department agrees and changed the language as requested in this section and Section 7(d) to “ensure”. The Department also changed “insure” in Section 6(e) to “ensure” for consistency.

7(s), Water and Waste Advisory Board: The Board requested that the Department clarify “exceeds Department standards” as “exceeds groundwater protection standards” in the proposed language.

Department Response: The Department removed this language in response to other comments received on this section.

7(s)(ii), Water and Waste Advisory Board: The Board also believes the proposed language in this paragraph is restrictive and does not provide the Department enough flexibility in determining when a facility must close when Appendix C constituents are exceeding a groundwater protection standard.

Department Response: After review and consideration of the comment, the Department agrees and removed the proposed language from rule that requires a unit or area to promptly close. In addition, the Department also removed the requirement for future cells to be designed using a performance based design or a composite liner with leachate collection. The language now found in Section 7(s) is consistent with Chapter 2 and allows the Department to determine when a solid waste disposal facility has impacted groundwater and what steps are needed. The language now reads: “Groundwater quality: Solid waste disposal facilities shall not be allowed to alter groundwater quality, as determined by groundwater monitoring.”

7(t), Water and Waste Advisory Board: The Board requested that the Department consider rewording “is not allowed to” in this paragraph.

Department Response: The Department agrees and changed the language to “shall not.”

Section 8

8(b)(i)(B), Water and Waste Advisory Board: The Board requested that the Department change the use of “groundwater monitor system” to “groundwater monitoring system” in this paragraph and throughout the Chapter.

Department Response: The Department agrees and changed the language as requested in this paragraph. Further, this phrase was not found anywhere else in the Chapter.

8(b)(i)(C), Water and Waste Advisory Board: The Board requested that the Department include “hydrogeologic conditions” in this paragraph.

Department Response: The Department agrees and included the language as suggested, to read: “site-specific hydrogeologic conditions including...”

8(b)(v)(A), Water and Waste Advisory Board: The Board requested the Department to clarify the phrase “If the concentration of one or more constituents exceeds background, the Administrator...”.

Department Response: The Department appreciates this comment and clarified the language to read “If there is a statistically significant increase over background for one or more Appendix C constituent in any well, the Administrator...”.

8(b)(v)(B), Water and Waste Advisory Board: The Board requested that the Department clarify that there is a statistically significant increase of a constituent in this paragraph.

Department Response: The Department clarified the language to read: “statistically significant increase over a groundwater protection standard for each applicable constituent.” This revised language is consistent with SWRR Chapter 2, Section 9(b)(i)(F)(II).

8(b)(v)(C), Water and Waste Advisory Board: The Board requested that the Department change the language from “the owner or operator shall, within fourteen (14) days, notify the Administrator” to “the owner or operator shall notify the Administrator within fourteen (14) days”

Department Response: The Department agrees and changed the language as requested.

Section 9

9(b)(v), Water and Waste Advisory Board: The Board requested that the Department change the language from “Dates when reclamation activities take place” to “Dates when reclamation activities occur or occurred.”

Department Response: The Department agrees and changed the language as requested.

Section 10

10(a)(i), Water and Waste Advisory Board: The Board requested that the Department consider including a definition of “air space” in SWRR Chapter 1.

Department Response: The Department appreciates this comment but did not make any changes at this time. The term “air space” is a common industry term and not currently defined in SWRR Chapter 1. The Department will consider including a definition of air space in SWRR Chapter 1 the next time Chapter 1 is revised.

Section 11

11(d), Water and Waste Advisory Board: The Board requested the Department to evaluate redundant language in this paragraph.

Department Response: The Department evaluated this language and revised this paragraph to read: “The post-closure period shall extend for a minimum five (5) years after completion of closure activities. The post-closure period shall be automatically extended until such time when the Administrator determines, upon petition by the operator accompanied by submission of relevant information, that the facility has been adequately stabilized in a manner protective of human health and the environment.”

Response to comments on changes to Chapter 6

Section 2

2(b)(ii), Water and Waste Advisory Board: The Board requested that the Department clarify whether the professional geologist is required to be licensed in the State of Wyoming similar to the engineer requirement of this paragraph.

Department Response: The Department appreciates this comment and clarified this requirement as requested to read: “signed and dated by a professional geologist licensed by the State of Wyoming.” The Department also clarified this language in Chapter 4, Section 2.

2(c)(v), Water and Waste Advisory Board: The Board requested that the Department change “3rd-party” to “third-party” in this paragraph.

Department Response: The Department agrees and changed this language as requested.

Section 3

3(c), Water and Waste Advisory Board: The Board requested that the Department clarify “any permit” to “any Department permit” since “any permit” could mean a county road permit.

Department Response: The Department appreciates this comment but does not recommend making any changes at this time. The proposed language found in SWRR Chapter 6 was provided to the Department by the Attorney General’s Office and recommended it be included in Department permits to clarify the Department’s authority to access permitted facilities for the purposes of conducting compliance inspections. It is also the same language currently found in SWRR Chapter 2, Section 3(k), access agreement. The Department is hesitant to incorporate the suggested revision due to the possibility that it may need to review a non-Department permit to ensure compliance with a Department permit. For example, the Department requires facilities to be in compliance with all applicable zoning requirements and may need to review such non-

Departmental documentation when conducting an inspection to ensure compliance. Therefore, the Department does not recommend making a change at this time.

Section 4

Water and Waste Advisory Board: The Board requested the Department to evaluate the construction of the rule and formatting of sections to contain only a title throughout the chapter. There are some sections within the chapter that only contain a heading or a title while other sections contain the heading and additional text.

Department Response: The Department reformatted the rules in accordance with the Secretary of State Rules on Rules for State Agencies. This included ensuring that sections only contained a section title.

Water and Waste Advisory Board: The Board requested the Department to bold section headings to make sections within the chapter easier to find.

Department Response: The Wyoming Secretary of State Rules on Rules for State Agencies, Chapter 2: Formatting allows State Agencies to bold section headings. Therefore, the Department bolded the section headings in both Chapter 4 and Chapter 6.

4(f), Water and Waste Advisory Board: The Board requested that the Department add “water quality” after the word “scenic” in Section 4(f) of Chapter 6.

Department Response: The Department evaluated the National Wild and Scenic Rivers Act of 1968 that states “certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.” After considering this language, the Department decided to leave the existing language in the rule to remain consistent with the National Wild and Scenic Rivers Act.

Section 5

Water and Waste Advisory Board: The Board suggested moving Section 5(a)(i) under Section 3(a)(iii) and moving Section 5(b)(i) under Section 3(b)(ii). Subparagraphs (a) and (b) in this section are the precursors and outlines the requirements for mobile and full-size fixed facilities and the requirements for full-size fixed facilities and these requirements seem better suited in Section 3 rather than creating another section in rule. Further, if Section 5 remains as proposed, the Board requested to include Hydrogeology in the section title.

Department Response: The Department appreciates this comment but does not recommend making any changes at this time. When considering this comment, the Department evaluated Sections 3 and 5. Section 3 outlines the general facility information while Section 5

outlines the geology, hydrology, and hydrogeology requirements. The Department intended for Section 3 to address general, high level aspects of a facility such as the applicant information, location of the facility, and a brief summary of the facility while Section 5 would contain more detailed information regarding the site's geology and hydrogeology and the facility's potential to impact surface and ground water. Having this information in a section dedicated to geology, hydrology, and hydrogeology focuses a portion of a permit application explicitly to this subject material. Further, the proposed rule structure is consistent with the format found in SWRR Chapter 2. Therefore, the Department does not recommend making a change to the proposed rule structure.

Section 6

6(f), Water and Waste Advisory Board: The Board requested the Department to evaluate whether an all-weather access road applies to a mobile facility.

Department Response: The Department clarified this section to read: "Facility access roads shall be constructed to enable use under inclement weather conditions, as applicable."

Section 8

8(b), Water and Waste Advisory Board: The Board stated finding Section 8(b) is hard to find as there is a whole paragraph attached to the section title of Section 8.

Department Response: The Department reformatted the rules in accordance with the Secretary of State Rules on Rules for State Agencies. This included ensuring that sections only contained a section title.

8(c)(i), Water and Waste Advisory Board: The Board requested the Department to evaluate the language in Section 8(c)(i) and to combine the first and last sentences of this paragraph. The first sentence states, "All facilities required to install monitoring wells shall place them in accordance with the Department requirements." While the last sentence states, "Well locations must be approved by the Administrator."

Department Response: The Department revised the language in this section to read: "All facilities required to install monitoring wells shall locate and construct them in accordance with the Department's requirements."

8(d), 8(e), and 8(f), Water and Waste Advisory Board: The Board requested the Department to evaluate the use of "in accord" in this paragraph and throughout the chapter and whether "in accord" should be changed to "in accordance."

Department Response: The Department evaluated the definitions of “in accord” and “in accordance” as requested. Based on the definitions, the Department changed Section 8(d), Section 8(e), and Section 8(f) from “in accord” to “in accordance” as requested.

Section 9

Water and Waste Advisory Board: The Board stated finding Section 9 is hard to find as there is a whole paragraph attached to the section title.

Department Response: The Department reformatted the rules in accordance with the Secretary of State Rules on Rules for State Agencies. This included ensuring that sections only contained a section title.

Section 10

10(b)(ii), Water and Waste Advisory Board: The Board suggested to clarify the use of the word “may be” in the sentence: “Operators may be required to submit monitoring reports with supporting charts and/or maps that represent the data.” The use of the word of “may be” is unclear whether it applies to supporting charts or the monitoring report. The Board further stated that if someone is providing a table of data, that it seems like a simple step to provide a chart.

Department Response: The Department appreciates this comment and evaluated the language in this paragraph. The sentence now reads: “Operators may be required to submit supporting charts and maps representing the data in the monitoring reports.”

10(b)(iii), Water and Waste Advisory Board: The Board requested the Department to clarify whether a permit amendment application only needs to be submitted if financial assurance is required or if approval must be given before action is taken. In addition, the Board requested the Department to modify the last sentence of this subsection.

Department Response: The Department appreciates this comment and clarified the language to read: “A permit amendment application shall be submitted for approval prior to implementing any change that would result in non-compliance with the facility permit or the approved permit application. Permit amendments shall comply with the requirements of Chapter 1 of the Solid Waste Rules and Regulations.”

10(b)(iv), Water and Waste Advisory Board: The Board requested the Department to compare the language in this section to SWRR Chapter 4, Section 10(b) for consistency because both of the sections appear to have the same intent but the wording is different.

Department Response: The Department compared the language in the Reporting Standards section of Chapters 2, 4, and 6. The language is the same in Chapters 2 and 4. Therefore, the Department changed the language in Chapter 6, Section 10(b)(iv) to: “Additional information: The

Administrator may require reporting of additional information needed to demonstrate compliance with these rules and regulations.”

Overall Comment on Chapters 4 and 6:

Water and Waste Advisory Board: The Board requested that the Department consider including a reference when a term that has a definition is used. For example, wetland, low hazard/low volume, waste management, unit boundary, etc.

Department Response: The Department appreciates this comment and added a subsection in Section 1 of both chapters that references the reader to both the Wyoming State Statutes and Chapter 1 of the Solid Waste Rules and Regulations. This new subsection can be found in Chapter 4, Section 1 (e) Definitions and Chapter 6, Section 1 (d) Definitions.