

Wyoming Solid Waste Rules and Regulations, Revisions to Chapters 4 and 6

TAKINGS CHECKLIST

	CRITERIA	YES	NO
1.	Does the action affect private property? (if no, no further inquiry is necessary)	X	
2.	Is the action mandated by State or federal law? (If yes, go to question 3. If no, go to question 4.)	X	
3.	Does the proposed action advance a statutory purpose?	X	
4.	Does the action result in permanent occupation of private property?		X
5.	Does the action require the property owner to dedicate property or grant an easement?		X
6.	Does the regulatory action interfere with the owner's investment-backed expectations?		X
7.	Does the character of the government action balance the public interest and private burdens?	X	
8.	Does the action deprive the owner of all economically viable uses of the property?		X
9.	Does the action have a significant impact on the landowner's economic interest?		X
10.	Does the action deny the owner a fundamental attribute of ownership?		X
11.	Does the action serve the same purpose that would be served by directly prohibiting use of the land?		X
12.	Could the problem which has necessitated the action be addressed in a less restrictive manner?		X

If these questions are answered yes, legal counsel should be consulted, for it is possible the proposed action will be a taking.*

*The attorney general's office was consulted for legal counsel. The regulations being adopted protect human health and safety, and therefore are not a taking.

Solid Waste Rules and Regulations (SWRR), Revisions to Chapters 4 and 6 Takings Checklist Analysis for Proposed Revisions

1. Does the action affect private property? – Yes
The proposed rules may affect private property because the rules apply to solid waste facilities that may be operated on private property. However, a waste management permit, with associated regulatory restrictions, cannot be issued without first obtaining landowner consent. State acquisition of private property is not required in order to institute the rules.
2. Is the action mandated by State or federal law? – Yes
Under 40 Code of Federal Regulations (CFR) Part 256 states were required to develop a plan that address “all solid waste in the state that poses potential adverse effects on health or the environment or provides opportunity for resource conservation or resource recovery.” Under 40 CFR parts 257 and 258 states were required to develop permitting programs to ensure compliance with Federal criteria. Wyoming Statute (W.S.) § 35-11-502(a) states that no person, except when authorized under the permit system established by the Wyoming Environmental Quality Act, shall locate, construct, operate or close a solid waste management facility or modify the design, construction or operation of a solid waste management facility.
3. Does the proposed action advance a statutory purpose? – Yes
The proposed rules are intended to meet the requirements of W.S. § 35-11-502 through 508, and 514 through 515.
4. Does the action result in permanent occupation of private property? – No
Facilities may or may not be located on private property. The State of Wyoming does not occupy property. Solid waste facilities are operated and occupied by public or private entities. Obtaining a permit to operate a solid waste management facility is conditioned on landowner consent. In the case of waste transfer, treatment, and storage facilities, regulatory restrictions cease after all waste has been removed and the facility has been closed. In the case of disposal facilities, waste is expected to remain in place indefinitely. However, following a post-closure care period, regulatory restrictions cease after the Wyoming Department of Environmental Quality (Department) determines that the landfill has been stabilized in a manner protective of human health and the environment.
5. Does the action require the property owner to dedicate property or grant an easement? – No
As proposed, the rules do not require the property owner to grant any dedications of property or grant an easement to the property, although, operators must allow Department access to determine compliance with regulatory requirements.
6. Does the regulatory action interfere with the owner's investment-backed expectations? – No
The proposed rules do not impose greater interference with the owner’s investment-backed expectations.

7. Does the character of the government action balance the public interest and private burdens? – Yes
The proposed rules deal with waste management and corrective action requirements for construction and demolition landfills and the transfer, treatment, and storage of solid waste facilities operated by private or government entities on lands that may or may not be privately owned to ensure protection of human health and the environment.
8. Does the action deprive the owner of all economically viable uses of the property? – No
The rules regulate the transfer, treatment, storage of solid waste and the disposal of construction/demolition waste on lands only with the consent of the landowner. Any future limits on the use of property, such as restrictions that limit uses which may damage final cover on a landfill, are therefore accepted by the landowner.
9. Does the action have a significant impact on the landowner's economic interest? – No
The proposed rules do not significantly impact the landowner's economic interest because landowner consent is required.
10. Does the action deny the owner a fundamental attribute of ownership? – No
The proposed rules do not deny the owner a fundamental attribute of ownership.
11. Does the action serve the same purpose that would be served by directly prohibiting use of the land? – No
The proposed rules are intended to allow for the use of the permitted facility while protecting the environment. Prohibition would not allow the continued use of the permitted facility.
12. Could the problem which has necessitated the action be addressed in less restrictive manner? – No
Wyoming's solid waste rules must be at least as stringent as Federal rules and Wyoming Statutes and may not be less restrictive. The proposed rules also meet the request by Governor Mead (April 9, 2013) for a reduction in the number of rules and the number of pages of rules in the State.