

**Response to Comments: Comment Period Ending January 22, 2019  
Solid Waste Rules and Regulations Chapter 4 and Chapter 6**

**Introduction**

The following document details the actions that were taken by the Wyoming Department of Environmental Quality (DEQ) to gather public comments and input regarding the proposed revisions to Solid Waste Rules and Regulations (SWRR) Chapter 4, Construction and Demolition (CD) Landfill Regulations and Chapter 6, Transfer, Treatment, and Storage Facility Regulations. DEQ is taking this opportunity to summarize and respond to comments officially submitted in advance of the public notice period deadline.

DEQ requested publication of a 50-day public notice of the intent to adopt rulemaking revisions to Chapter 4 and Chapter 6 of the SWRR in the Casper Star Tribune. In its notice, DEQ informed readers that DEQ is proposing changes to the SWRR Chapter 4 and Chapter 6. The public notice stated that the proposed revisions were being recommended in order to consolidate and streamline permitting for CD landfills and solid waste transfer, treatment, and storage facilities. Additionally, the revisions update the rules to be consistent with current statutes and previously revised chapters of the SWRR. The public notice included an electronic link to the proposed revisions and invited the public to submit comments to DEQ. The written comment period closed at 5:00 p.m. (MST) on January 22, 2019.

The SWRR Chapter 4 and Chapter 6 rules went through multiple public comment periods. Outreach meetings were held in Sundance, Rawlins, and Casper in July 2017. There were public comment periods prior to each Water and Waste Advisory Board meeting held on March 29, 2018 and October 18, 2018. During the second WWAB meeting, the WWAB recommended the proposed rules for adoption to the EQC.

DEQ received three written comment letters. DEQ appreciates the effort that the commenters made in reviewing the proposed rules. This document summarizes the comments and includes DEQ's response to each comment.

**Response to comments on Chapter 4**

**Chapter 4**

**Wyoming Solid Waste & Recycling Association:** The Wyoming Solid Waste and Recycling Association (WSWRA) membership consists of individuals, solid waste facility operators, engineers, mayors, county commissioners, and sales representatives from around Wyoming. WSWRA submitted a letter in support of the proposed Chapter 4 and Chapter 6 rule changes filed with the Wyoming Environmental Quality Council on November 28, 2018.

**DEQ Response:** DEQ appreciates WSWRA's support of the proposed revisions to SWRR Chapter 4 and looks forward to working with WSWRA on future solid waste management topics.

**Lincoln County:** Lincoln County wants SWRR Chapter 4 to include authorization for the Administrator to invoke inspections at CD landfills. Lincoln County also wants financial assurance to be required for CD landfills.

**DEQ Response:** DEQ appreciates this comment regarding inspections and financial assurance but does not recommend making any changes at this time. These two items, inspections and financial assurance, are addressed in the SWRR. The proposed SWRR Chapter 4, Section 3(i) requires the applicant to include an access agreement in the permit application. This access agreement authorizes DEQ representatives to access and enter the operator's premises to inspect equipment, practices, or operations regulated or required under the Wyoming Environmental Quality Act for the purposes of ensuring compliance or as otherwise authorized by the appropriate rules and regulations of the DEQ.

In addition, SWRR Chapter 1, Section 1(f) outlines the different types of inspections that the DEQ may conduct at the discretion of the Administrator including but not limited to annual operational compliance inspections and routine or complaint-related inspections. While the existing language in the rule does not require these inspections, DEQ does conduct these types of inspections at CD landfills. Further, based on the existing SWRR, DEQ has the regulatory authority to conduct inspections at CD landfills. DEQ is not currently proposing changes to SWRR Chapter 1 as part of this rulemaking package. However, DEQ is willing to continue this discussion with Lincoln County.

Regarding financial assurance, the proposed SWRR Chapter 4, Section 13 states "The permit application shall demonstrate compliance with the requirements of Chapter 7." SWRR Chapter 7 outlines the requirements of and acceptable forms of financial assurance. Currently, SWRR Chapter 7, Section 1(b)(i)(F) exempts solid waste management facilities other than those regulated under SWRR Chapter 2, which are owned or operated by a municipality. Therefore, a CD landfill that is owned or operated by a municipality is exempt from financial assurance requirements. DEQ is not currently proposing changes to SWRR Chapter 7 as part of this rulemaking process. However, DEQ is willing to continue this discussion with Lincoln County for future consideration.

**Lincoln County:** Lincoln County's final comment is regarding chronic wasting disease (CWD) and dead animal management. Lincoln County is aware that composting dead animal waste and disposing of the wood chips/sawdust, bones & hides in a CD landfill is a potential option to manage this waste type. However, Lincoln County does not like this idea because it weakens their argument to customers that partially eaten take-out meals do not belong in a CD landfill. In addition, their concern is when CWD prions are potentially in the dead animal waste because prions survive proper composting.

**DEQ Response:** DEQ agrees with Lincoln County that partially eaten take-out meals are considered municipal solid waste and do not belong in a CD landfill. It is also important to note that the definition of CD waste and CD landfill are found in SWRR Chapter 1, Section 1(b). The proposed SWRR Chapter 4, Section 7(v), requires facilities to have an on-site attendant during operation of the facility and to have waste screening procedures that ensure disposal of authorized wastes only. The proposed rule does not outline specific screening requirements so that operators can identify and implement effective procedures for their facility.

DEQ understands that dead animal management is a concern throughout the state and believes there are various management options available to landfill operators. In Wyoming, dead animals are regulated as a municipal solid waste as defined by SWRR Chapter 1, Section 1 (b)(lvii). Items that meet the definition of "solid waste" must be disposed of at a regulated facility. Pursuant to W.S. § 35-11-527, municipal solid waste landfill units must be constructed with a performance based design or an engineered containment system that utilizes a composite liner and a leachate collection system. Based on these provisions, DEQ has worked with operators to develop options for dead animal management that allow them to select an option that best fits their particular situation.

These options include burial, transferring dead animal waste, composting, incineration, and rendering. The SWRR allows the burial of dead animals, whole or otherwise, including livestock and game animals at permitted municipal solid waste landfill regulated under SWRR Chapter 2. Some transfer station operators allow dead animals to be disposed of and hauled to a regional landfill along with other municipal solid waste. Whether the local operator will allow this is a local decision and not regulated by DEQ. Some CD landfill operators compost whole animals to bone and hide and dispose of this waste in their CD landfill. Again, the decision to compost dead animals is a local decision. DEQ recommends the operator implement best management practices when composting like controlling storm water run-on and runoff, covering animal waste the same day received, not composting in contact with surface water in a wetland or in a flood plain, and not distributing the compost from game animals and/or diseased animals. DEQ also provides exemptions from the above disposal options for activities relating to farm and ranch management as well as emergency situations.

## Section 6

**6(k)(i)(A), Burns & McDonnell:** Burns & McDonnell recommended the rule to reference the DEQ guidance document mentioned on line 770 or include the pertinent sections of the guidance document in the revised rule. Their concern is that the guidance could be changed without legislative approval.

**DEQ Response:** DEQ appreciates this comment but does not recommend making any changes at this time. The proposed language refers to the guidance that DEQ provides to applicants throughout the permitting process and not a specific guidance document. At the March 29, 2018 Board Meeting, the Board questioned the original language of this section which referenced DEQ standards and suggested modification of the language in the rule. The proposed language is similar to language found in SWRR Chapter 2, Section 9(a) that also references DEQ guidance or equivalent methods approved by the Administrator. DEQ proposed this similar language for consistency throughout the SWRR. The Board approved this language at the October 19, 2018 meeting. Additionally, SWRR Chapter 4, Section 6(k) when read in its entirety gives an applicant options of an engineered containment system. This specific subsection, SWRR Chapter 4, Section 6(k)(i)(A), is not required. Applicants could instead pursue the option available in SWRR Chapter 4, Section 6(k)(i)(B).

Regarding Burns & McDonnell's concern for legislative approval, it is also important to explain the role of the Legislative Services Office (LSO) in the rulemaking process. After the EQC adopts a rule, the LSO reviews the rule and makes a recommendation to the Governor. The Governor approves the rules when the certification page is signed. The LSO provides an additional check on rulemaking by establishing a procedure for ongoing legislative oversight. The LSO reviews agency rules and focuses on three primary questions:

1. Does the rule fall within the scope and intent of the authority delegated by the legislature?
2. Was the rule adopted in accordance with applicable procedural requirements?
3. Does the rule meet all constitutional and statutory requirements, restrictions, and standards?

LSO review is performed only after final adoption of a rule. LSO does not review rules earlier in the process due to possible conflict of interest and separation of powers issues. Further, the Wyoming

Attorney General's Office reviewed the proposed rules and determined that the rules are within the DEQ's statutory authority.

**Response to comments on Chapter 6**

**Wyoming Solid Waste & Recycling Association:** WSWRA submitted a letter in support of the proposed SWRR Chapter 4 and Chapter 6 rule changes filed with the Wyoming Environmental Quality Council on November 28, 2018.

**DEQ Response:** DEQ appreciates WSWRA's support of the proposed revisions to SWRR Chapter 6 and looks forward to working with WSWRA on future solid waste management topics.