

**Proposed Revisions to Water Quality Rules and Regulations, Commercial Oilfield  
Waste Disposal Facilities**

**Analysis of Written Comments Received by December 3, 2019**



December 9, 2019

Prepared by:  
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Water Quality Division  
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**Commenter:**

Powder River Basin Resource Council

**Comments and Responses**

***Section 6***

**Powder River Basin Resource Council:** “In Section 6 Site Suitability, we encourage strengthening the floodplain requirements by completely restricting facilities from being located within likely flooding areas of the Waters of the State. We suggest that as another requirement, no proposed sites shall be located within the FEMA 500-year floodplain that demonstrates more than a 1% probability of flooding based on the most recent 25-year period. The 100-year floodplain may be outdated due to recent, pronounced shifts in precipitation patterns, and using the FEMA-designated floodplain will better protect the facilities from possible flooding events.”

**Department Response:** WDEQ/WQD considered the request. There are no FEMA 500-year floodplain maps for the remote locations in which commercial waste disposal facilities are located. The 500-year floodplain maps are associated with urban areas. Changing the requirement from the 100-year floodplain to the 500-year floodplain would be technically impractical, a factor that WDEQ/WQD must consider when recommending rules, per W.S. § 35-11- 302 (a)(vi). The passage will remain as written.

***Section 9***

**9(a)(iii)(D)**

**Powder River Basin Resource Council:** “In the revised analysis of comments, Paragon Consulting asks the department to clarify setback requirements. In response, the department referenced W.S. § 35-11- 306(a) as a one (1) mile as the minimum statutory requirement from buildings and other dwellings. This setback is not discussed in the Chapter 28 rules and regulations and including this distance plainly in the document would help to alleviate concerns regarding nearby construction of facilities.”

**Department Response:** WDEQ/WQD considered the request. Facilities are required to adhere to the statutes in addition to the rule. The proposed regulation

includes references to W.S. § 35-11- 306. This reference will direct applicants to review the setback requirements and financial assurance requirements. In addition to avoiding supplementing or altering statutes, state agencies are advised to “make all rules consistent with the statutes, but do not simply restate the statute.” We have provided the reference to the statute, but will not restate the statute in Chapter 28.

### ***Section 11***

**Powder River Basin Resource Council:** “In Section 11, the rules require only one sample and analysis of unconfined aquifers prior to waste disposal into ponds. We do not believe this minimal data sampling can establish a sufficient sample and suggest at least three preoperational sampling events at least two weeks apart from one another to establish a class of use for the aquifers.”

**Department Response:** WDEQ/WQD considered the request. The sampling and analysis noted in the comment refers to paragraph (c), which requires sampling to establish the class of use for the aquifer. As stated in Section 11(b), additional sampling is already required by Chapter 3, Section 17(b)(ii) through (viii), as part of the pre-operational monitoring plan. Paragraph (c) will remain as written.

### ***Section 12***

**Powder River Basin Resource Council:** “In Section 12, the Operation and Management Plan requires copies of the sampling and analysis plan for the groundwater monitoring program and the leak detection system to be submitted prior to 50% completion of construction. However, there is no compelling reason to delay a document that must be prepared in any event. At the least, the sampling and analysis plan for groundwater monitoring should be submitted before the permit is granted, especially since it would include pre-operational monitoring.”

**Department Response:** WDEQ/WQD considered the request. The sampling and analysis plan is a required component of the engineering design report that is required for each permit application, per Section 9. During the permit application process, the Division reviews the sampling and analysis plan and approves the plan when the permit is issued. Once the permit is issued, construction may begin. In addition to requiring the sampling and analysis plan at the time of the permit application, a copy of the sampling and analysis plan is required to be included as part of the facility’s operation and maintenance (O & M) plan. The O & M is required to be submitted at 50% of completion of construction, but at the point in which it is

submitted, the copy of the sampling and analysis plan will have already been reviewed and approved as part of the permit. The passage will remain as written.