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Chapter 14, Changes Made Since 6/19/20

Section 4

- At paragraph (b), added language in response to Wexpro's comment to clarify at what volume or specific site characteristics operators would need to submit a subsurface investigation plan. Further renumbered the passages under paragraph (b) to clarify the Section after the addition of the reference to Water Quality Rules and Regulations Chapter 4.

10
11 **CHAPTER 14**

12
13 **FINANCIAL ASSURANCE REQUIREMENTS**

14 **Section 1. In General.**

15
16 (a) This Chapter is promulgated pursuant to the Wyoming Environmental Quality
17 Act, Wyoming Statutes (W.S.) § 35-11-101 through § 35-11-2005, specifically § 306 and § 307.

18
19 (b) This Chapter governs all commercial oil field waste disposal facilities that are
20 required to demonstrate financial assurance under W.S. § 35-11-306(c) and all commercial waste
21 treatment, storage and disposal facilities used for the management of more than ten (10) tons of
22 dried wastewater treatment sludges or the equivalent per operating day that are required to
23 demonstrate financial assurance under W.S. § 35-11-307(a). This chapter does not apply to
24 publicly owned facilities or facilities that receive non-domestic sludges.

25
26 (c) The following definitions supplement those contained in W. S. § 35-11-103 of the
27 Wyoming Environmental Quality Act:

28
29 (i) “Closure” means the process of securing and stabilizing a regulated
30 facility pursuant to the requirements of this Chapter and a closure plan approved by the
31 Department.

32
33 (ii) “Corrective action” means all actions necessary to remedy, abate, and
34 eliminate the public health threat, environmental threat, and damages from a release to the
35 environment of pollutants from a regulated facility or from any violation of a permit, standard,
36 rule, or other requirement established under the Wyoming Environmental Quality Act

37
38 (iii) “Monitoring” means all procedures and techniques used to systematically
39 collect, analyze and inspect data on operational parameters of the facility or on the quality of the
40 air, groundwater, surface water, and soil.

41
42 (iv) “Operator” means a person who owns or operates a regulated facility or a
43 person who holds a permit to construct, install, modify, or operate a regulated facility.

44
45 (v) “Regulated facility” means a commercial sludge facility or a commercial
46 oil field waste disposal facility as specified in Section 1(b) of this chapter.

47
48 (vi) “Release” includes, but is not limited to, any spilling, leaking, pumping,
49 pouring, emptying, emitting, discharging, dumping, addition, escaping, leaching, or unauthorized
50 disposal of any pollutant that enters, or threatens to enter, the air, land or waters of the State.

52 **Section 2. Requirements to Demonstrate Financial Assurance.**
53

54 (a) All regulated facilities shall provide financial assurance for closure, post-closure,
55 and corrective action in compliance with this Chapter.

56
57 (b) No new permit shall be issued for any regulated facility unless the applicant
58 provides financial assurance that ensures there are adequate sources of funds to provide for
59 closure, post-closure, and corrective action.

60
61 (i) The Department may deny a permit application if the documentation or
62 proposed forms of financial assurance do not ensure that adequate funds will be available to
63 provide for closure, post-closure, and corrective action.

64
65 (ii) A permit may be transferred to a new permittee only if the new permittee
66 demonstrates compliance with the financial assurance requirements of this Chapter. Construction
67 permit ownership will be transferred in accordance with Water Quality Rules and Regulations,
68 Chapter 3, Section 12.

69
70 (c) Any operator of a regulated facility that violates a permit, standard, rule, or
71 requirement established under the Wyoming Environmental Quality Act that results in a release
72 of pollution or waste to the air, land, or water resources of the state shall provide financial
73 assurance for the costs of completing corrective action to remedy or abate the violation or
74 damages caused by the violation.

75
76 (d) An operator shall submit documentation of the financial assurance to the
77 Department as part of any permit application for a regulated facility and shall update
78 documentation of financial assurance as required by Sections 3(d)(iv), 3(e)(iv), 4(d)(iv), 5(c)(ii),
79 and 5(d)(ii) of this Chapter. The Department shall determine whether the documentation and
80 proposed forms of financial assurance are adequate and shall notify the applicant in writing of its
81 determination.
82

83 **Section 3. Closure and Post-Closure Requirements.**
84

85 (a) At least one hundred eighty (180) days prior to the anticipated date for initiation
86 of closure of a regulated facility, the operator shall:

87
88 (i) Notify the Department in writing of the operator's intention to close a
89 regulated facility;

90
91 (ii) Notify the governing body of each locality and adjacent property owners
92 by certified or registered mail of the operator's intention to close a regulated facility;
93

94 (iii) Post at least one (1) sign at the regulated facility notifying all persons of
95 the anticipated closing and prohibition against further receipt of waste materials; and

96
97 (iv) Install barriers at all access points to prevent new waste from being
98 deposited.

99
100 (b) An operator or permit applicant shall submit a closure plan and a post-closure
101 plan with each permit application for a regulated facility. Additionally, a permittee shall submit a
102 revised closure plan and revised post-closure plan to the Department whenever changes to
103 facility operations, conditions, or anticipated closure necessitate changes to the plans.

104
105 (c) The closure plan shall:

106
107 (i) Describe the work necessary to minimize or eliminate, to the extent
108 necessary to protect human health and the environment, the post-closure escape of leachate,
109 surface runoff, or waste decomposition products to the groundwater, surface water, or the
110 atmosphere;

111
112 (ii) Minimize the need for post-closure maintenance and controls; and

113
114 (iii) Include a cost estimate.

115
116 (d) The closure plan cost estimate shall:

117
118 (i) Include an itemized written estimate of the cost of completing all work
119 described in the closure plan;

120
121 (ii) Be based on the cost required for a third-party contractor to complete the
122 work described in the closure at the most expensive point in the life of the facility;

123
124 (iii) Account for the following factors:

125
126 (A) The size and topography of the site;

127
128 (B) The total waste material storage capacity at the site;

129
130 (C) Availability of cover and fill material needed for site grading;

131
132 (D) The type of waste to be received at the site;

133
134 (E) Disposal method and sequential disposal plan;

135
136 (F) The location of the site and the character of the surrounding area;

- 137
138 (G) Requirements for surface drainage;
139
140 (H) Operation and maintenance of the leachate collection and treatment
141 system, and, the off-site disposal of leachate;
142
143 (I) Environmental monitoring system;
144
145 (J) Structures and other improvements to be dismantled and removed.
146 Salvage values cannot be used to offset demolition costs;
147
148 (K) Site storage capacity for solid waste, incinerator residue, and
149 compost material;
150
151 (L) Off-site disposal requirements;
152
153 (M) Vector control requirements;
154
155 (N) A minimum of fifteen percent (15%) variable contingency fee to
156 cover other closure costs as determined appropriate by the Department; and
157
158 (O) Any other relevant site-specific factors.
159
160 (iv) Be updated, revised, and submitted to the Department by April 1 of each
161 year.
162
163 (e) The post-closure plan shall:
164
165 (i) Describe the monitoring, maintenance, and controls necessary to confirm
166 that:
167
168 (A) Post-closure escape of leachate, surface runoff, or waste
169 decomposition products to the groundwater, surface water, or the atmosphere has been
170 minimized or eliminated to the extent necessary to protect human health and the environment;
171 and
172
173 (B) The facility has been stabilized and closed in accordance with the
174 most recent approved closure plan.
175
176 (ii) Establish the monitoring period necessary to ensure that the regulated
177 facility has been stabilized and closed in accordance with the most recent approved closure plan.
178 The monitoring period shall continue for a minimum of five (5) years after the date of
179 completing closure of the regulated facility, but the Department may require a longer monitoring

180 period or extend the post-closure monitoring period if the Department determines a longer
181 monitoring period is necessary to protect human health and the environment; and

182

183 (iii) Include a cost estimate. However, an incinerator, resource recovery
184 facility, compost facility, or storage surface impoundment may omit the post-closure plan cost
185 estimate from its post-closure plan if onsite disposal of wastes or residues is not planned or
186 required.

187

188 (f) The post-closure plan cost estimate shall:

189

190 (i) Include a written estimate of the cost of completing all work described in
191 the post-closure plan;

192

193 (ii) Be based on the cost required for a third-party contractor to complete the
194 work described in the post-closure plan;

195

196 (iii) Account for the following factors :

197

198 (A) The size and topography of the site;

199

200 (B) The type and quantity of waste that can be received;

201

202 (C) Disposal method and sequential disposal plan;

203

204 (D) The potential for significant leachate production and the possibility
205 of contaminating water supplies;

206

207 (E) Environmental monitoring systems;

208

209 (F) Soil conditions;:

210

211 (G) The location of the site and the character of the surrounding area;

212

213 (H) A minimum of fifteen percent (15%) contingency fee to cover
214 other post-closure costs as determined appropriate by the Department; and

215

216 (I) Other site-specific factors.

217

218 (iv) Be updated, revised, and submitted to the Department by April 1 of each
219 year.

220

221 (h) Inspection:

221

222 (i) The Department shall inspect all closed regulated facilities to determine if
223 the closure is complete and adequate in accordance with the approved plan after being notified
224 by the operator that closure has been completed. The Department shall provide written inspection
225 results to the operator of a closed facility after the inspection. If the closure is not satisfactory,
226 the Department shall specify necessary construction or such other steps that may be appropriate
227 to bring unsatisfactory sites into compliance with closure requirements.

228
229 (ii) Notification by the Department that the closure is satisfactory does not
230 relieve the operator of responsibility for corrective action in accordance with regulations of the
231 Department to prevent or abate problems caused by the regulated facility that are subsequently
232 discovered.

233
234 (i) Within sixty (60) days after receiving certification from the owner or operator that
235 closure has been accomplished in accordance with the closure plan and the provisions of this
236 Chapter, the Director shall verify that proper closure has occurred. Unless the Director has
237 reason to believe that closure has not been in accordance with the closure plan, the Director shall
238 notify the owner or operator in writing that the Director is no longer required to maintain
239 financial assurance for closure of the particular facility. Such notice shall release the owner or
240 operator only from the requirements for financial assurance for closure of the facility; it does not
241 release the Director from legal responsibility for meeting the closure or post-closure standards. If
242 no written notice or termination of financial assurance requirements or failure to properly
243 perform closure is received by the owner or operator within sixty (60) days after certifying
244 proper closure, the owner or operator may petition the Director for an immediate decision, in
245 which case the Director shall respond within ten (10) days after receipt of such petition.

246 **Section 4. Corrective Action Requirements.**

247
248 (a) The Department shall notify the operator of the need to take corrective action to
249 remedy a violation of a permit condition, standard, rule or requirement relating to a regulated
250 facility. The notification shall describe the nature of the violation.

251
252 (i) If deemed necessary by the Department, the operator will be required to
253 close the facility and cease further receipt of waste materials.

254
255 (ii) If the facility is closed, the operator shall post one (1) sign notifying all
256 persons of the closing and prohibition against further receipt of waste materials. Further, suitable
257 barriers shall be installed at former accesses to prevent new waste from being deposited.

258
259 (b) Remediation Activities: In the event of a release, the operator shall:

260
261 (i) Initiate immediate measures to:

262
263 (A) Prevent further release to the environment.;

- 265 (B) Prevent further migration of the released substance into
266 surrounding soils and Waters of the State-; and
267
- 268 (C) Identify, monitor and mitigate any safety hazards or health risks
269 associated with the violation.
270
- 271 (ii) Comply with all applicable requirements of Wyoming Water Quality
272 Rules and Regulations, Chapter 4; and
273
- 274 (iii) If more than 10 barrels (420 gallons) of crude oil, petroleum condensate,
275 produced water, or a combination thereof, or more than 25 gallons of refined crude oil products
276 (including but not limited to gasoline; diesel motor fuel; aviation fuel; asphalt; road oil;
277 kerosene; fuel oil; and derivatives of mineral, animal, or vegetable oils) are released:
278
- 279 ~~(ii)(A)~~ Prepare a plan to conduct an investigation of the release, the
280 release site, and any surrounding area that may be affected by the release. The plan shall include:
281
- 282 ~~(A)(I)~~ A comprehensive subsurface investigation to define the
283 extent and degree of contamination.
284
- 285 ~~(B)(II)~~ A schedule for conducting the investigation.
286
- 287 ~~(C)(III)~~ A cost estimate for a third-party to perform the tasks
288 identified by the plan.
289
- 290 ~~(iii)(B)~~ Submit the investigation plan to the Department within thirty (30)
291 days. The extent of contamination study should begin as soon as the plan has been approved and
292 all necessary permits obtained.
293
- 294 ~~(iv)(C)~~ Conduct the extent of contamination study in accordance with the
295 approved plan and submit a written report of the findings to the Department.
296
- 297 ~~(v)(D)~~ If required by the Department, develop a comprehensive plan for
298 mitigation and clean-up. The remediation plan shall be submitted to the Department for approval.
299 The remediation plan shall be implemented as soon as the Department has approved the plan and
300 all necessary permits have been obtained. The remediation plan shall contain an estimate of the
301 costs for a third-party to perform the tasks identified by the plan.
302
- 303 (c) Cost Estimate for Corrective Action:
304
- 305 (i) The operator of a commercial oil field disposal system regulated under
306 W.S. § 35-11-306 or a commercial sludge facility regulated under W.S. § 35-11-307 in
307 submitting an application for a construction permit as required by Chapter 3, Wyoming Water

308 Quality Rules and Regulations shall include a written estimate of the cost of corrective actions to
309 remediate a release from the facility. The estimated cost of corrective action and clean-up of a
310 release shall be determined by the Department on a case-by-case basis considering information
311 submitted by the operator. Such costs shall be based on the work required for a third-party
312 contractor.

313 (ii) The factors to be considered in estimating the cost of corrective actions
314 and clean-up of a release shall include the following:

- 315 (A) Soils, geologic and hydrogeologic conditions at the site.
- 316 (B) The type and quantity of waste received.
- 317 (C) Disposal method and sequential disposal plan.
- 318 (D) The potential for significant leachate production and the possibility
319 of contaminating groundwater.
- 320 (E) Environmental monitoring systems.
- 321 (F) The location of the site and the character of the surrounding area.
- 322 (G) A minimum of fifteen percent (15%) contingency fee to cover
323 other corrective action and clean-up costs as determined appropriate by the Department.
- 324 (H) The ability of the facility to prevent and detect a release and to
325 facilitate clean-up activities. The criteria used to evaluate this ability shall include design,
326 construction, operation, monitoring, and contingency plans submitted as part of the application
327 package.
- 328 (I) The class, use, value and environmental vulnerability of surface
329 and groundwater resources that may be impacted by a release.
- 330 (J) Other site-specific factors.

342 **Section 5. Establishment of Financial Assurance Requirements.**

343 (a) The Department shall establish the amount of financial assurance required for
344 regulated facilities based on the plans and cost estimates for closure, post-closure, and corrective
345 action. Upon receipt of a cost estimate, the Department shall determine whether the cost estimate
346 meets the requirements of this Chapter and notify the operator in writing of its determination.
347

348 (b) If the Department determines that a cost estimate meets the requirements of this
349 Chapter:
350

351
352 (i) The Department shall establish the amount of financial assurance required
353 and notify the operator in writing of the amount established; and

354
355 (ii) The operator shall submit documentation of financial assurance in an
356 amount at least equal to the Department's established financial assurance amount within thirty
357 (30) days of the Department's establishment of the financial assurance amount.

358
359 (c) If the Department determines that a cost estimate does not meet the requirements
360 of this Chapter:

361
362 (i) The Department shall notify the operator of the deficiencies in the cost
363 estimate, and the operator shall revise and resubmit the cost estimate to the Department within
364 thirty (30) days of the Department's determination; or

365
366 (ii) The Department shall establish the amount of financial assurance required
367 and notify the operator in writing of the amount established, and the operator shall submit
368 documentation of financial assurance in an amount at least equal to the Department's established
369 financial assurance amount within thirty (30) days of the Department's establishment of the
370 financial assurance amount.

371 **Section 6. Forms of Financial Assurance.**

372
373 (a) An operator of a regulated facility shall provide financial assurance in an amount
374 at least equal to the established financial assurance amount for closure, post-closure, and
375 corrective action in one (1) or a combination of the following:

- 376
377 (i) Surety bond;
378
379 (ii) Federally insured certificates of deposit;
380
381 (iii) Government-backed securities;
382
383 (iv) Cash.

384
385 (b) Surety Bonds:

386
387 (i) A corporate surety shall not be considered good and sufficient for
388 purposes of W.S. § 35-11-307 or W.S. § 35-11-306 unless:

389
390 (A) It is licensed to do business in the State;

391

392 (B) The estimated bond amount does not exceed the limit of risk as
393 provided for in W.S. § 26-5-110, nor raise the total of all bonds held by the applicant under that
394 surety above three (3) times the limit of risk; and

395
396 (C) The surety agrees:

397
398 (I) Not to cancel bond, except as provided for in W.S. § 35-11-
399 307 or W.S. § 35-11-306 or where the Department gives prior written approval of a good and
400 sufficient replacement surety with transfer of the liability that has accrued against the operator on
401 the permit area;

402
403 (II) To be jointly and severally liable with the permittee.

404
405 (III) To provide immediate written notice to the Department and
406 operator once it becomes unable or may become unable due to any action filed against it to fulfill
407 its obligations under the bond.

408
409 (ii) The provisions applicable to cancellation of the surety's license in W.S. §
410 35-11- 307 or W.S. § 35-11-306 shall also apply if for any other reason the surety becomes
411 unable to fulfill its obligations under the bond. Upon such occurrence, the operator shall provide
412 the required notice. Failure to comply with this provision shall result in suspension of the permit.

413
414 (c) In lieu of a bond, the facility operator shall deposit federally insured certificates of
415 deposit payable to the Wyoming Department of Environmental Quality, cash, or government
416 securities, or all three (3).

417
418 (i) Securities that are unencumbered shall only include those that are United
419 States Government securities or State Government securities that are acceptable to the Director.
420 Government securities must be endorsed to the order of the Department and placed in possession
421 of the Department. Possession shall be in the form of the cash value of the irrevocable trust for
422 the full amount of the reclamation obligation and payable to the Department and federally
423 insured.

424
425 (ii) An operator shall satisfy the requirements of this subsection by
426 establishing an irrevocable trust that conforms to the requirements below and submitting an
427 originally signed duplicate of the trust agreement to the Administrator for consideration.

428
429 (A) The irrevocable trust must be submitted to the Director on the
430 Wyoming Department of Environmental Quality Irrevocable Trust Form and be signed by the
431 operator or guarantor as principal and the financial institution as Trustee, and made payable to
432 the Department;

433 (B) The Trustee must be a bank organized to do business in the United
434 States that has the authority to act as a trustee and whose trust operations is regulated and
435 examined by a Federal Agency;

436
437 (C) The irrevocable trust must be cash funded for the full amount of
438 the financial assurance obligation to be provided in the irrevocable trust before it may be
439 approved to satisfy the requirements of financial assurance in lieu of a bond. For purposes of
440 this subsection, “the full amount of the financial assurance obligation to be provided” means the
441 amount of coverage for Closure, Post-Closure and Corrective Action required to be provided for
442 the permit/facility, less the amount of financial assurance obligation that is being provided by
443 other financial assurance mechanisms being used to demonstrate financial assurance by the
444 operator or guarantor;

445
446 (D) Cancellation of an irrevocable trust shall follow the same
447 procedures detailed in W.S. §35-11-306(j) for performance bonds; and

448
449 (E) Forfeiture proceeding for an irrevocable trust shall follow the same
450 procedures detailed in W.S. §35-11-306(m) for performance bonds.

451