Proposed Revisions to Solid Waste Rules and Regulations, Chapter 1: General Provisions and Chapter 7: Financial Assurance Requirements, Solid Waste Permitting and Corrective Action Program

Response to Comments Received before March 8, 2021

March 19, 2021

Prepared by:
Wyoming Department of Environmental Quality
Solid and Hazardous Waste Division
Solid Waste Permitting and Corrective Action Program

Analysis to comments on Chapter 1: General Provisions
No written comments were received specific to Chapter 1.

Response to comments on Chapter 7: Financial Assurance Requirements

Commenter: Powder River Basin Resource Council (PRBRC), Shannon Anderson

General Comment

PRBRC: "On behalf of the members of the Powder River Basin Resource Council, thank you for updating the financial assurance requirements for solid and hazardous waste facilities. We appreciate the consistency with the newly enacted land quality financial assurance rules, which made important improvements in several key ways to self-bonding, including reliance on credit ratings, which is a much better way to judge the financial fitness of a company. Nevertheless, we continue to oppose self-bonds for all private sector facilities in Wyoming. Self-bonding is not bonding at all and is too risky for any facility. No amount of safeguards will protect the state and our taxpayers from the cleanup costs when we need it most - when the company has failed. This risk is especially prevalent given the number of bankruptcies in our various industries. We ask the Board to remove the self-bond portions of the rules and require facilities to use the other forms of financial assurance. Thank you. Shannon Anderson, Powder River Basin Resource Council"

Department Response: DEQ appreciates the PRBRC's comments but does not recommend making any changes at this time. DEQ's intent is to provide consistency with other Agency divisions on how financial assurance is managed. DEQ agrees that the consistency and reliance on credit ratings for self-bonds reduces the financial risk to the State. However, Wyoming does believe that self-bonding can be a part of the equation provided that they are adequately supported and justified.

Commenter: Sinclair Oil Corporation, Jon Lindsey

Comment: Section 7. Self-bonds.

Jon Lindsey: **"**What is the rationale for limiting the self-bond maximum to seventy-five percent of the required bond amount? This places additional costs and an unnecessary burden on Operators to obtain other forms of Financial Assurance. Operators that have the financial means to self-bond for the whole bond amount should be able to.

Furthermore, regarding Self-bonding, what is the rationale for deleting the criteria shown on lines 641-645 and 647-651 on the Chapter 7 redline document? Removing that criteria as an option would require Operators to obtain a credit rating from Moody's Investor Service, Standard and Poor's Corporation, or Fitch Ratings in order to Self-bond. This places an unnecessary burden and added cost for companies that wouldn't otherwise obtain those credit ratings."

Department Response: DEQ appreciates this comment but does not recommend making any changes at this time. The cap on self-bonds serves two primary functions. First, the alternative to self-bond provides immediate cash to the State of Wyoming in the event of forfeiture to protect the physical assets such as building and infrastructure and provides capital to start reclamation work. Completing these tasks prior to receiving the self-bond forfeiture funds, which takes 28-32 months on average, allows the state to immediately start reclamation work and reduce the erosion of capital resulting from inflation and time value of money, continue necessary maintenance, and reduce environmental impacts. Secondly, the 75% cap of the required bond amount also adds diversification to the financial assurance portfolio, which effectively reduces the overall risk to the state.

The credit ratings provide for a real time current assessment of a company's financial condition at the time the self-bond application is reviewed. Second, the credit rating is an assessment of the company's condition that is made by an independent third party.