



August 30, 2019

Submitted electronically via <http://shw.wyomingdeq.commentinput.com>

Mr. Luke Esch, Administrator
Wyoming Department of Environmental Quality
Division of Solid and Hazardous Waste
200 West 17th Street
Cheyenne, Wyoming 82002

RE: Proposed Revisions to the Wyoming Solid Waste Rules and Regulations

Supplementary Comments of PacifiCorp on the Revision of Wyoming Solid Waste Rules and Regulations Chapter 18, Disposal of Coal Combustion Residuals in Landfill and Surface Impoundments

Dear Mr. Esch:

Wyoming is proposing revisions to Wyoming's CCR permit program (referred to herein as "Wyoming's Proposed CCR Rule"). On July 29, 2019, the Wyoming Department of Environmental Quality ("WDEQ") posted a Public Notice of Public Comment on revisions to Wyoming Solid Waste Rules and Regulations Chapter 18, Disposal of Coal Combustion Residuals in Landfill and Surface Impoundments. The July 29 public comment period follows a previous public comment period for Wyoming's Proposed CCR Rule that was posted on May 17, 2019. PacifiCorp submitted comments in response to the May 17 notice on Wyoming's Proposed CCR Rule on June 17, 2019.

PacifiCorp respectfully submits these comments as a supplement to PacifiCorp's June 17, 2019, comments. Please reference PacifiCorp's June 17, 2019, comments for background on PacifiCorp, its operations, and its commitment to the environment and regulatory compliance. In the responses below, we first list PacifiCorp's initial comment (when applicable), followed by the WDEQ response in italics, and then the new supplemental response PacifiCorp wishes to submit through this letter.

I. **PacifiCorp's initial comment: The Compliance Deadlines that require both Certification from a Professional Engineer and Approval by the Administrator Should be Deemed Complete when the Professional Engineer's Certification is submitted to the Administrator for Approval.**

*DEQ Response: DEQ identified 32 instances where the EPA CCR Rule requires PE certification or approval from the Participating State Director or Administrator for operator submissions. The majority of these instances requiring PE certification or approval from the Participating State Director or Administrator approval **would be included in the lifetime permit application and permit amendment submittals.** The remaining 11 instances include **construction certification, alternative source delineation, assessment of corrective measure, selection of remedy, notification of closure, and post closure completion.** In these instances, DEQ believes it is appropriate that DEQ have the opportunity to review, provide comment, and ultimate approval before determining the operator is in compliance with the SWRR.*

Supplemental response: PacifiCorp agrees that in many cases it will be possible to obtain both the PE certification and WDEQ's approval within the required timeframes. However, PacifiCorp remains concerned that requiring Administrator approval **in addition** to PE certification before an operator is deemed to have met individual documentation deadlines will create untimely delays in certain instances. For example, only 90 days are allowed to demonstrate that an alternative source other than the monitored CCR unit caused a statistically significant increase over background or groundwater protection standards during Detection or Assessment monitoring under 40 C.F.R. § 257.94(e)(2) and 257.95(g)(3)(ii). However, in order to make the alternative source delineation, an operator must first conduct a study to demonstrate the increase is caused by an alternate source, prepare a written report and then obtain PE certification of the demonstration. After that, WDEQ must review, provide comment, and approve the demonstration. This timeline is simply unrealistic and would leave WDEQ with little or no time to thoroughly review and approve the alternate source determination before PacifiCorp would be required to move to assessment monitoring or to initiate corrective measures.

Situations such as the alternative source delineation demonstrate the risk of requiring both the PE certification and WDEQ approval before an operator is found to be in compliance. Any delay obtaining WDEQ's approval may expose operators to unwarranted compliance requirements or claims of non-compliance even after they have submitted the required documentation. Due to the sheer number of submissions required by Wyoming's Proposed CCR Rule and the amount of time WDEQ will need to properly review each PE certification, requiring Administrator approval in addition to the PE certification before compliance is complete would create a high administrative burden for WDEQ that would likely lead to delays. On the other hand, allowing applicants to comply with the deadline requirements by submitting the PE certification would **not** remove or diminish WDEQ's authority and opportunity to review, provide comment, and ultimately approve or disapprove the application. Instead, it would incentivize operators to provide timely and well-prepared applications while avoiding delays and uncertainty about compliance pending Administrator review and approval.



For these reasons, PacifiCorp again requests that Wyoming modify its proposed rule to clearly state that operators' compliance with the rule is deemed complete when the PE Certification is submitted to the Administrator for approval.

II. PacifiCorp's initial comment: Wyoming Should Take into Consideration Issues of Legal Durability and Regulatory Certainty as It Relates to Federal and State Primacy.

DEQ Response: DEQ appreciates this comment but does not recommend making any changes at this time. The existing language is consistent with the recently revised Chapter 2, Chapter 4, and Chapter 6 and the language in the current Chapter 3 rule. Additionally, DEQ views this as a local matter and not a state matter.

Supplemental response: PacifiCorp again respectfully requests that WDEQ consider adding some clarifying language to avoid potential future conflicts between local and state requirements for CCR landfills. While we agree that zoning and land use approval for municipal landfills are primarily local matters, only the State should have authority and jurisdiction to determine whether a CCR unit may be constructed and how the CCR unit may operate. The required permits for CCR unit construction and operation are state-approved and not subject to local jurisdiction. PacifiCorp suggests the following clarifying language:

“Local zoning ordinances: CCR landfill and surface impoundment locations shall not be in conflict with local zoning ordinances or land use plans that have been adopted by a county commission or municipality. Local, county, or municipal zoning ordinances or land use plans that prohibit or effectively prohibit CCR disposal or operation by a CCR unit that has been permitted by the state are preempted by state and federal law.”

III. PacifiCorp's initial comment: Wyoming's Requirement for Publication of Information on a Publicly Accessible Internet Site is Unnecessary and Should Be Removed

DEQ Response: DEQ appreciates this comment but does not recommend making any changes at this time. Removing standards that are included in the EPA CCR would jeopardize DEQ's application for primacy from EPA.

Supplemental response: While PacifiCorp acknowledges that the EPA has stated that Wyoming's application for primacy could be jeopardized for removing the EPA CCR Rule's internet publication requirements, PacifiCorp nevertheless respectfully requests that WDEQ ask



EPA to reconsider allowing Wyoming to remove the public access website requirement in Section 11(a)(iii) for Wyoming.

EPA's public access requirement exists because the EPA CCR Rule is self-implementing. Under federal rules, the public would not have access to the information required to be posted on the public access website. However, under the state-permitting program established by Wyoming's Proposed CCR Rule, the public may access the required information through permit applications and the state-issued permit. Because the state permitting program would replace the self-implementing nature of CCR permitting under the federal rules, the federally required public website requirements are redundant and unnecessary. The access to the required information provided by the state's permitting program should be sufficient to allow removal of the federal website requirement without interfering with the state's primacy application to EPA. Should the EPA refuse to reconsider this issue, PacifiCorp will, of course, maintain compliance with the internet publication requirements as adopted.

IV. PacifiCorp requests that Wyoming clarify that under Wyoming law the federal beneficial use time-extension for CCR unit closure is available to CCR units associated with the alternative closure option for permanent cessation of a coal-fired boiler.

As stated in Wyoming's Environmental Quality Act, WDEQ's mission is to enable the reduction of pollutants while ensuring the responsible use and enhancement of state resources and land. Wyo. Stat. Ann. 35-11-102. Beneficial use of CCR contributes to this mission by decreasing the amount of CCR disposed in landfills and surface ponds, which reduces the need for additional landfill space and other risks associated with CCR disposal. Beneficial use also enhances existing state resources through the replacement of raw materials used in industrial processes and reducing energy consumption and greenhouse gas production. *See* 80 Fed. Reg. 21301, 21329 (April 17, 2015).

EPA wishes to encourage beneficial use of CCR and did so by providing time extensions for closure of CCR units actively engaged in CCR removal for beneficial use. *See* 40 C.F.R. 257.102(e)(1)(ii) (allowing CCR units otherwise required to initiate closure to delay until the final volume of CCR for beneficial use is removed) ("Beneficial Use Extension").

While the benefits and desirability of beneficial use are widely known and encouraged, the federal regulations governing the Beneficial Use Extension and closure of CCR units associated with a coal-fired boiler ceasing operation ("Plant Closure Alternative") are unclear. *See* 40 C.F.R. 257.103(b)(3). The Beneficial Use Extension is clearly available for all other closure options, but it is unclear whether it is available if the Plant Closure Alternative is chosen, since this sub-section does not reference 257.102(e).

Clarifying that the Beneficial Use Extension is available for CCR units associated with the Plant Closure Alternative aligns with both WDEQ's mission under the Environmental Quality Act and EPA's conclusion that beneficial uses "provide benefits and raise minimal health or



environmental concerns.” 80 Fed. Reg. at 21327. WDEQ should thus clarify that the Beneficial Use Extension is available for CCR units associated with the Plant Closure Alternative in section 257.103(b).

We propose adding the Beneficial Use Extension language from 40 C.F.R. 257.102(e)(ii) to Section 10(a)(iv) to clarify that beneficial use will also extend the closure time under the Plant Closure Alternative:

Section 10(a)(iv) Alternative closure requirements: The criteria of 40 CFR part 257, Subpart D § 257.103 are incorporated by reference with the following modification to 257.103(b)(2) and (3):

257.103(b)(2) For a CCR surface impoundment that is 40 acres or smaller, the coal-fired boiler must cease operation and the CCR surface impoundment must have completed closure no later than October 17, 2023. If CCR will be removed from the CCR surface impoundment for the purpose of beneficial use in accordance with section 257.102(e)(2), and if the CCR unit has complied with the closure requirement in section 257.102(d)(2) by draining and stabilizing the CCR surface impoundment, the unit must initiate closure within 30 days after the date on which the CCR surface impoundment removes the known final volume of CCR from the surface impoundment for the purpose of beneficial use of CCR.

257.103(b)(3) For a CCR surface impoundment that is larger than 40 acres, the coal-fired boiler must cease operation, and the CCR surface impoundment must complete closure no later than October 17, 2028. If CCR will be removed from the CCR surface impoundment for the purpose of beneficial use in accordance with section 257.102(e)(2), and if the CCR unit has complied with the closure requirement in section 257.102(d)(2) by draining and stabilizing the CCR surface impoundment, the unit must initiate closure within 30 days after the date on which the CCR surface impoundment removes the known final volume of CCR from the surface impoundment for the purpose of beneficial use of CCR..

- V. **A statement confirming that Wyoming will recognize the alternative composite liners allowed in section 257.70(c) that have been certified through state permitting procedures as adequate to qualify CCR surface ponds as meeting federal lining requirements would benefit many existing CCR surface ponds in Wyoming.**

Wyoming has permitted several liners for surface ponds as meeting the 1×10^{-7} cm/sec hydraulic conductivity requirement in Solid Waste Management Chapter 3 Section 4(k)(i). These standards are equivalent to the federal hydraulic conductivity standards in section 257.71(a)(1)(i), meaning surface ponds that meet these standards and were permitted by WDEQ qualify as lined ponds under the federal CCR Rule.



Because these liners have been certified by WDEQ, a statement recognizing that the equivalency demonstration has been satisfied would benefit both WDEQ and existing permitted ponds. PacifiCorp can provide documentation of the permeability demonstration upon request.

Thank you for the opportunity to comment on the proposed changes to Wyoming Solid Waste Rules and Regulations Chapter 18, Disposal of Coal Combustion Residuals in Landfill and Surface Impoundments. As it has consistently done in past comments, PacifiCorp urges Wyoming to develop its rules in ways that are legally durable and provide regulatory certainty. PacifiCorp respects and recognizes Wyoming's authority and appreciates the hard work WDEQ put in to modifying its rules.

Respectfully,

A handwritten signature in blue ink, appearing to read "James Owen".

James Owen
Director, Environmental
PacifiCorp
1407 West North Temple Rm 210
Salt Lake City, Utah 84116
801-220-4581 (office)
james.owen@pacificorp.com