

**Response to Comments Related to the Water and Waste Advisory Board Meeting  
Held on June 25, 2019**

**Introduction**

On May 17, 2019, the Wyoming Department of Environmental Quality (DEQ) gave public notice of proposed revisions to Solid Waste Rules and Regulations (SWRR) Chapter 3, Industrial Landfill Regulations and Chapter 18, Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments and announced a June 25, 2019 Water and Waste Advisory Board (Board) Meeting. This public notice included an electronic link to the proposed revisions and invited the public to submit comments to DEQ. The written comment period for inclusion in the analysis of comments presentation closed at 5:00 p.m. (MST) on June 17, 2019.

DEQ received one written comment letter during the comment period. DEQ presented the proposed SWRR Chapter 3 and Chapter 18 at the June 25, 2019 Board Meeting and received additional comments on the proposed revisions. After the meeting, the DEQ evaluated the Board's comments and prepared this Response to Comments document to address the comments received. DEQ appreciates the commenter's and Board's time and input on the proposed SWRR Chapter 3 and Chapter 18 and the DEQ's responses are as follows:

**Response to comment on Chapter 3**

**Chapter 3**

**PacifiCorp Comment I:** PacifiCorp submitted a comment in support of the proposed Chapter 3 rule changes as prepared for the Water and Waste Advisory Board on May 17, 2019.

**DEQ Response:** DEQ appreciates PacifiCorp's support of the proposed revisions to SWRR Chapter 3 and looks forward to working with PacifiCorp on future solid waste management topics.

**Response to comments on Chapter 18**

**Section 3**

**3(d)(ii)(C), PacifiCorp Comment II:** PacifiCorp recommended that DEQ modify the proposed rule to clearly state that the operators' compliance with the regulations is deemed complete when the Professional Engineer (PE) Certification is submitted to the Administrator for approval.

**DEQ Response:** DEQ appreciates this comment, but does not recommend making any changes at this time. 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.

#### Section 4

**4(b)(i) PacifiCorp Comment III:** PacifiCorp recommended that DEQ clarify that an existing Chapter 3 CCR Landfill Permit can be renewed under proposed Chapter 18.

**DEQ Response:** DEQ clarified this section to read:

“Existing CCR Landfills permits that are permitted under Chapter 3 that do not have a lifetime permit and intend to continue disposal of CCR after the effective date of this chapter, shall submit a permit renewal application under this chapter no later than twelve (12) months prior to the expiration date of the facility’s existing permit or twelve (12) months after the effective date of this chapter, whichever comes later, unless an alternate schedule is approved by the Administrator for good cause.”

**4(b)(ii), PacifiCorp Comment IV:** PacifiCorp has a total of nine CCR surface impoundments and are concerned that the requirement to obtain a permit for all nine surface impoundments within 18 months will not be adequate. PacifiCorp recommended that DEQ require permit submittals within 18 months of rule adoption.

**DEQ Response:** DEQ agrees that the requirement to obtain a permit for surface impoundments within 18-months of the enactment date of SWRR Chapter 18 may not provide adequate time for operators to prepare, submit, and obtain a permit. DEQ believes that 12-months will provide operators adequate time to prepare and submit a permit application under Chapter 18 to DEQ. In addition, DEQ added flexibility for operators to request an alternate schedule as approved by the Administrator. DEQ revised Section 4(b)(ii) to:

“Existing CCR Surface Impoundments that currently have a permit with Water Quality Division shall ~~submit obtain~~ a new permit application under this chapter within ~~eighteen-twelve (12)~~ eighteen-twelve (12) months of the enactment date of this rule, unless an alternate schedule is approved by the Administrator for good cause.”

**4(c), PacifiCorp Comment V:** PacifiCorp recommended that all CCR Unit Permits should be issued for the operating life of the facility, through post-closure.

**DEQ Response:** DEQ agrees with PacifiCorp and revised the language of Section 4(c)(i) to:

“Permits for new CCR units, or existing CCR surface impoundments seeking a permit under this chapter, will be issued for the operating life of the facility, through post-closure.”

Additionally, DEQ revised the language of Section 4(c)(ii) to:

“Renewal permits for CCR landfills units will be issued for the operating life of the facility, through post-closure.”

**4(f)(iii)(C), Water and Waste Advisory Board:** The Board requested that the Department change the use of “environmental quality council” to “Environmental Quality Council” in this paragraph and throughout the Chapter.

**Department Response:** The Department agrees and changed the language as requested in this paragraph. Further, this phrase was not found anywhere else in the Chapter.

## Section 5

**5, PacifiCorp Comment VI:** PacifiCorp recommended to change the title of Section 5 from “General Facility Information” to “General Facility Information to be Included in a Permit Application”.

**DEQ Response:** DEQ appreciates this comment but does not recommend making any changes at this time. Chapter 18 Section 4(d)(i) states, “The permit application shall contain a completed application form, and a written report containing the applicable information in Sections 5 through 14 of this chapter. Records and supporting documents such as well logs, maps, cross-section, and monitoring report, should generally be included in the written report as appendices.” Therefore making the recommended revised section title repetitive. Additionally, the title of Section 5 “General Facility Information” is consistent with SWRR Chapter 2, Chapter 4, and Chapter 6.

**5(a), PacifiCorp Comment VI:** PacifiCorp considers the information requirements of Section 5(a) as overly broad for purposes of CCR compliance, particularly as it relates to reporting resolved issues.

**DEQ Response:** DEQ appreciates this comment but does not recommend making any changes at this time. The language presented in Section 5(a) is consistent with SWRR Chapter 2, Chapter 4, and Chapter 6.

**5(h), PacifiCorp Comment VII:** PacifiCorp requested to include a condition to the access agreement that DEQ Representatives will comply with Occupational Safety and Health Administration safety and the North American Electric Reliability Corporation Critical Infrastructure Protection standards.

**DEQ Response:** DEQ appreciates this comment but does not recommend making any changes at this time. The proposed language found in SWRR Chapter 18 was provided to DEQ by the Attorney General’s Office and recommended it be included in DEQ permits to clarify DEQ’s authority to access permitted facilities. As written in the access agreement, DEQ personnel will present credentials, and at this time, the facility personnel are able to escort DEQ representatives to ensure safety and security requirements are followed. Additionally, the access agreement found in Chapter 18 is the same as Chapter 2, Chapter 4, and Chapter 6.

## Section 6

**6(f)(ii), PacifiCorp Comment VIII:** PacifiCorp recommended that the rule clearly state: “that notwithstanding the limitations in Section 6(f)(ii), the authority of a county commission,

municipality or other political subdivision to regulate CCR waste disposal is expressly preempted, except that a municipality may enact amend, or enforce an ordinance or other measure that does not effectively prohibit CCR disposal; and is not otherwise preempted by state or federal law.”

**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.

## Section 8

**8(f)(vii)-(x), PacifiCorp Comment IX:** PacifiCorp recommended DEQ revise this section since the operating criteria listed in this section are already in the EPA CCR Rule and are incorporated by reference in SWRR Chapter 18.

**DEQ Response:** DEQ agrees with PacifiCorp’s comment and will remove the criteria of Section 8(f)(vii)-(x) as the criteria are included in the EPA CCR Rule and have been incorporated by reference.

## Section 9

**9(d)(i), PacifiCorp Comment X:** PacifiCorp recommended that Wyoming develop new tables in Chapter 18 Section 9 that clearly identify the appropriate Appendix III and Appendix IV constituents, as they currently exist in EPA’s CCR Rule.

**DEQ Response:** The 2015 CCR Rule Preamble evaluated chemical constituents in CCRs on leaching potential through the toxicity characteristic leaching procedure (TCLP). Constituents identified in Appendix III and IV do not account for Wyoming Water Quality Rules and Regulations (WWQRR), Chapter 8 suitability standards. Therefore, incorporation of WWQRR Chapter 8, Table 1 constituents are valid and their incorporation into the Assessment Monitoring Program is applicable. Including these constituents will assist in the appropriate evaluations of restoring the aquifer to its class of use, as required in WWQRR Chapter 8. However, in review and consideration of PacifiCorp’s comment, DEQ clarified the use of WWQRR Chapter 8, Table 1 in the Assessment Monitoring Program in Section 9(f)(ii)(C) that states:

“For Chapter 8, Table 1 of Water Quality Rules and Regulations, constituents as established by the Administrator and for which there is a class of use standard based upon a groundwater classification. Until such time as a groundwater classification has been established by the Administrator, all constituents for Chapter 8, Table 1 of Water Quality Rules and Regulations shall be analyzed. A reduced list may be requested provided that water quality samples are collected from wells constructed in the unaffected portion of the aquifer. A plan for monitoring well placement and sample frequency to provide a groundwater classification shall be submitted to the Administrator for approval.”

Additionally, DEQ will revise Appendix IV to include the footnote:

“2. The full list identified in Table 1 of Chapter 8 shall be analyzed until a groundwater classification has been made identifying specific constituents associated with the particular class of use of the aquifer as prescribed in Section 9(f)(ii)(3).”

**9(f)(ii)(D), PacifiCorp Comment XI:** PacifiCorp recommended DEQ correct the errant references to the EPA CCR Rule in Section 9(f)(ii)(D).

**DEQ Response:** DEQ agrees with PacifiCorp’s comment and revised Section 9(f)(ii)(D) to read:

“For constituents for which the background level is higher than the levels identified under paragraphs (ii)(A), (ii)(B), and (ii)(C) ~~(h)(1) and (h)(2) and (h)(3)~~ of this section, the background concentration.”

**9(h)(i)(F)-(G), PacifiCorp Comment XII:** PacifiCorp submitted a letter in support of the proposed inclusion of cost considerations during the selection of remedy.

**DEQ Response:** DEQ appreciates PacifiCorp’s support of the proposed inclusion of cost considerations during the selection of remedy.

**9(f)(i), Water and Waste Advisory Board:** The Board requested that the Department change the use of “MCL’s” to “MCLs” in this paragraph.

**Department Response:** The Department agrees and changed the language as requested.

## Section 11

**11(c), PacifiCorp Comment XIII:** PacifiCorp recommended the removal of the requirement for a publicly accessible internet site as it is unnecessary.

**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.

**11(d), PacifiCorp Comment XIV:** PacifiCorp recommended that the information required by the annual reports should instead be included in the annual groundwater monitoring and corrective action report that is submitted each year no later than January 31.

**DEQ Response:** DEQ agrees with PacifiCorp and has removed the requirements from Section 11(d) and added the requirements to Section 9(a). Section 9(a) states:

“(a) Applicability: The criteria of 40 CFR part 257, Subpart D § 257.90 are incorporated by reference.

(i) Additional information to be included in the annual groundwater monitoring and corrective action report

(A) A summary description of facility operations and activities carried out during the last year including a revised schedule or timetable of facility operations and activities.

(B) The remaining usable CCR landfill and CCR surface impoundment capacity (in total cubic yards) excluding final cover.

(C) Electronic copies of all required monitoring data not already submitted following a sampling event in a format specified by the Administrator. The Administrator may require paper copies of monitoring data. Operators may also be required to submit supporting charts and/or maps that represent the data.

(D) Additional information: The Administrator may require reporting of additional information needed to demonstrate compliance with these rules and regulations.”

## **Section 12**

**10(a)(i), Water and Waste Advisory Board:** The Board requested that the Department consider including a reference to Chapter 3: Industrial Landfill Regulations for facilities disposing of non-Coal Combustion Residuals (CCR) waste in a CCR landfill.

**Department Response:** The Department agrees and added Section 12: Industrial Waste Standards.

## **Section 13**

**13, PacifiCorp Comment XV:** PacifiCorp recommended clarifying the language of Section 13: Special Waste Standards.

**DEQ Response:** DEQ appreciates this comment but does not recommend making any changes at this time. The proposed Section 13 language is consistent with SWRR Chapters 2, 4 and 6. The language of Chapter 2 prior to the 2013 revision was similar to that of the current Chapter 3 and was revised to the current language now proposed in Chapter 18, Section 13.

### **Response to comments on the Draft Statement of Principal Reasons**

#### **Paragraph 2**

**Water and Waste Advisory Board:** The Board requested the Department remove “shall”.

**Department Response:** The Department clarified the language in this paragraph.

**Response to comments on Public Notice**

**Water and Waste Advisory Board:** The Board requested that the Department complete an additional 30-day Public Notice Period on the proposed Chapter 18 and close the public notice 30-days prior to the third quarter Board meeting.

**Department Response:** The Department agrees and will conduct the Public Notice for Chapter 18 as requested by the Board.