

**Response to Comments Related to the Water and Waste Advisory Board Meeting
Held on October 17, 2019**

Introduction

On July 29, 2019, the Wyoming Department of Environmental Quality (DEQ) gave public notice of proposed revisions to Solid Waste Rules Chapter 18, Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments. 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 August 30, 2019.

DEQ received a written comment from one commenter during the comment period. DEQ presented the proposed Solid Waste Rule Chapter 18 at the October 17, 2019 Board Meeting and received additional comments on the proposed rule. 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 Solid Waste Rule Chapter 18 and the DEQ's responses are as follows:

Response to comments on Chapter 18

Section 3

3(d)(ii)(C), PacifiCorp Comment I: 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 a monitored CCR unit caused a statistically significant increase over background or groundwater protection standards during Detection or Assessment monitoring. 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 agrees with PacifiCorp and revised the language of Section 3(d)(ii)(C) to:

“Certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority. ~~When used in the context of 40 CFR, the substitution shall be, Shall mean~~ the certification from a qualified professional engineer and submit to the Administrator for approval approval by the Administrator.”

3(d)(ii)(C), Water and Waste Advisory Board: The Board commented on the use of “qualified” in reference to professional engineers.

DEQ Response: DEQ considered the comment and after discussion with the Attorney General's Office, revised “qualified” to “licensed” when referencing professional engineers.

Section 6

6(f)(ii), PacifiCorp Comment II: PacifiCorp recommends adding some clarifying language to avoid potential future conflicts between local and state requirements for CCR landfills. PacifiCorp recommends the rule clearly state:

“Local Zoning ordinances: CCR landfills 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.”

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

6(f)(i) Water and Waste Advisory Board: The Board requested that DEQ revise the language in this paragraph to read:

“Distance to other surface waters: CCR landfills and surface impoundments shall not be located within the ordinary high water mark of perennial rivers, streams, or creeks. Except that surface impoundments-not containing hazardous or toxic wastes may be located within the ordinary high water mark of intermittent rivers, streams, creeks, draws, coulees, or other natural drainages provided a by-pass ditch is installed capable of passing the 24-hour 100-year precipitation event. All other surface impoundments shall be protected from structural damage during the 100-year flood event;”

DEQ Response: DEQ agrees and revised the paragraph accordingly.

Section 7

7(a), PacifiCorp Comment V: PacifiCorp recommends a statement confirming that Wyoming will recognize the alternative composite liners allowed in Section 257.70(c) that have been certified through the state permitting procedures as adequate to qualify CCR surface ponds as meeting federal lining requirements would benefit many existing CCR surface ponds in Wyoming.

DEQ Response: DEQ appreciates this comment but does not recommend making any changes at this time. The design criteria for new CCR landfills and any lateral expansion of a CCR landfill are outlined in 40 CFR part 257, Subpart D § 257.70, while the liner design criteria for existing CCR surface impoundments are outlined in 40 CFR part 257, Subpart D § 257.71. These subparts are incorporated by reference in their entirety into the proposed Chapter 18, Section 7(a) and (b), respectively. Since these subparts are incorporated by reference, DEQ will consider an alternative composite liner using the design criteria outlined in 40 CFR part 257, Subpart D § 257.70(c).

Prior to the Disposal of Coal Combustion Residuals from Electric Utilities final rule, CCR surface impoundments were permitted under the Water Quality Rules and may not meet the liner criteria found in the federal regulations. DEQ anticipates that the required demonstration will be submitted in a permit application for DEQ review and approval.

Section 9

9(c)(i) and (ii), Water and Waste Advisory Board: The Board requested DEQ clarify when a facility would be required to monitor for additional constituents from Solid Waste Rule Chapter 3 Appendices A and B.

DEQ Response: DEQ agrees and clarified the paragraphs to specify that CCR units receiving non-CCR industrial waste may be required to monitor for additional constituents from Solid Waste Rule Chapter 3 Appendices A and B.

9(c)(iii): The Board commented on the inclusion of Water Quality Rules, Chapter 8, Table 1 in 40 CFR part 257, Appendix IV. The Board recommended that the Water Quality Rules Chapter 8, Table 1 be removed from 40 CFR part 257, Appendix IV and be used for groundwater classification.

DEQ Response: DEQ agrees and revised the paragraph accordingly.

Section 10

10(d), PacifiCorp Comment IV: PacifiCorp recommends that Wyoming clarify that under Wyoming law that the federal beneficial use time-extension for a CCR unit closure is available to CCR units associated with the alternative closure option for permanent cessation of a coal-fired boiler.

DEQ Response: DEQ appreciates this comment but does not recommend making any changes at this time. Solid Waste Rule Chapter 18 includes the full adoption by reference of 40 CFR part 257 subpart D as they appear in the CFR dated December 14, 2020, unless otherwise noted. The federal regulations governing the beneficial use extension and closure of CCR units is clear. The criteria for conducting the closure or retrofit of CCR units is outlined in 40 CFR part 257, Subpart D § 257.102. The initiation of closure activities is described in 40 CFR part 257, Subpart D § 257.102(e). This subpart requires the commencement of closure of the CCR unit no later than 30 days after the date on which the CCR unit either receives the known final receipt of waste or removes the known final volume of CCR from the CCR unit for the purpose of beneficial use of CCR. This federal regulation excludes CCR units that pursue alternative closure requirements under 40 CFR part 257, Subpart D § 257.103.

The alternative closure requirements found in 40 CFR part 257, Subpart D § 257.103 allows a CCR unit to continue to receive CCR if the owner or operator certifies that the facility will cease operation of the coal-fired boilers within the timeframe specified in 40 CFR part 257, Subpart D § 257.103, but in the interim period, the facility must continue to use the CCR unit due to the absence of alternative disposal capacity both on-site and off-site of the facility.

The alternative closure requirements outlined in 40 CFR part 257, Subpart D § 257.103 does not list beneficial use of CCR from a CCR unit as justification to extend the initiation of closure activities. Therefore, the federal regulations exclude an alternative schedule to initiate closure activities for beneficial use under alternative closure requirements. Beneficial use of CCR does not extend the closure timeline of a CCR unit that must close or retrofit.

DEQ is in support of and encourages the beneficial use of CCR. DEQ agrees that beneficial use of CCR is in line with DEQ's mission and decreases the amount of CCR disposed in landfills and surface ponds. Beneficial use of CCR must be conducted in accordance with the federal regulations.

Section 11

11(c), PacifiCorp Comment III: PacifiCorp recommended the removal of the requirement for a publicly accessible internet site.

DEQ Response: DEQ appreciates this comment but does not recommend making any changes at this time. Removing explicit standards that are included in the federal regulations would jeopardize DEQ's application for primacy from EPA. Further, on August 14, 2019, EPA proposed changes to the federal regulations to enhance public access to information. Public involvement is an important aspect of the federal regulations.

Section 12

12, Water and Waste Advisory Board: The Board requested DEQ clarify when a facility would be required to show compliance with Solid Waste Rule Chapter 3.

DEQ Response: DEQ agrees and revised the paragraph accordingly.