



Mark Gordon, Governor

# Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.*



Todd Parfitt, Director

## MEMORANDUM

**TO:** Nicole Budine, Wyoming Assistant Attorney General

**FROM:** Jennifer Zygmunt, Water Quality Division Administrator

**DATE:** March 9, 2022

**PRIORITY:** HIGH – Deadline for response is **March 23, 2022**

**SUBJECT:** Request for review of proposed rules for statutory authority

The Department of Environmental Quality (DEQ), Water Quality Division (WQD) is seeking a statutory authority review of proposed revisions to Water Quality Rules Chapter 3, Regulations for Permit to Construct, Install or Modify Public Water Supplies, Wastewater Facilities, Disposal Systems, Biosolids Management Facilities, Treated Wastewater Reuse Systems and Other Facilities Capable of Causing or Contributing to Pollution. WQD is proposing to (1) add an exclusion for coal combustion residual (CCR) surface impoundments that will be permitted by the Solid Waste Program once the new Solid Waste Rules CCR chapter is adopted and signed by the Governor, (2) add a definition of CCR, (3) update the number of copies required for permit applications to reflect current Division practices, (4) update cross-references, and (5) reorganize passages and sections within the chapter for clarity.

WQD took public comment on the proposed rules between May 17, 2019 and June 17, 2019, and received advice on June 17, 2019 from the Water and Waste Advisory Board (Board) to proceed with the rules to the Environmental Quality Council, with the recommendation that WQD and Solid and Hazardous Waste Division proceed with their CCR-related rules to the EQC at the same time. In September 2020, WQD received preliminary review comments from Assistant Attorney General Kelly Shaw that indicated WQD needed to propose additional revisions and present them to the Board. WQD provided public comment period on the proposed draft that included the recommended edits from AG Kelly Shaw beginning February 3, 2021 and ending March 23, 2021. On March 23, 2021, the Board advised WQD to proceed with the proposed revisions to the Environmental Quality Council.

On December 21, 2022, the Solid Waste Program received advice from the Board to proceed to the Environmental Quality Council with the proposed Solid Waste CCR rules. As the CCR exclusion in Water Quality Rules Chapter 3 is related to the Solid Waste Rules CCR chapter, and per the 2019 board recommendation, WQD wishes to proceed with formal rulemaking procedures at this time.

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WQD has reviewed the requirements of W.S. 35-11-302(a)(iii) and (vi) of the Wyoming Environmental Quality Act and has determined this rulemaking to be in procedural compliance with the statute. WQD has reviewed and responded to the Takings Checklist provided by the Attorney General's Office. WQD requests a response as noted below regarding the review of the proposed rules for statutory authority. Once WQD receives your response, we will proceed as appropriate.

Per the Attorney General's Rules Handbook, you will find enclosed:

- A copy of the draft memo to Governor Gordon
- A copy of the draft Statement of Principal Reasons for Adoption
- A copy of Chapter 3 in strike and underline format
- A copy of Chapter 3 in clean format
- A response to the Attorney General's Takings Checklist.

If you have any questions or need additional information regarding the proposed rules please contact me or Keenan Hendon of my staff.

**Attorney General's Response Options:**

X

Proposed Rules are within the Division's statutory authority, may seek permission to proceed from the Governor's Office.

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Proposed rules exceed statutory authority, delay proceeding with rulemaking

Nicole Budine

Signature: Nicole Budine

3/11/2022

Date

JZ/gjt