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



Mark Gordon, Governor

Todd Parfitt, Director

MEMORANDUM

TO: David DeWald, Wyoming Deputy Attorney General

FROM: Nancy E. Vehr, Administrator, Air Quality Division *Nancy V*

DATE: September 11, 2023

PRIORITY: HIGH – Deadline for response is September 20, 2023

SUBJECT: Request for Review of Proposed Rules for Statutory Authority (R-35)

The Department of Environmental Quality, Air Quality Division (Division) is proposing to revise the following chapters of the Wyoming Air Quality Standards and Regulations (WAQSR):

- Chapter 2 Ambient Standards
- Chapter 3 General Emissions Standards
- Chapter 4 State Performance Standards for Specific Existing Sources
- Chapter 5 National Emission Standards
- Chapter 8 Nonattainment Area Regulations
- Chapter 11 National Acid Rain Program
- Chapter 14 Emission Trading Program Regulations

In this proposed rulemaking, the Division is updating the date of incorporation of the Code of Federal Regulations to July 1, 2023. If the State does not adopt the most recent versions of these sections by reference, the rules still apply at the federal level. Adopting these national standards into the State rules allows for State implementation of the rules. Additionally, the Division is proposing revisions to Chapter 4 that remove language pertaining to an outdated State Plan for Municipal Solid Waste Landfills that has been superseded by a Federal Plan. The Division is also proposing revisions to Chapter 5, Section 2, New Source Performance Standards, and Chapter 5, Section 3, National Emission Standards for Hazardous Air Pollutants, from 40 CFR Part 60 and 40 CFR Part 63, that apply to sources located in the State of Wyoming. Additionally, the Division is proposing to remove 40 CFR Part 60, subpart TTTT, which pertained to the Clean Power Plan that was overruled by a 2022 U.S. Supreme Court decision, *West Virginia v. EPA*. Finally, the Division is also proposing various non-substantive typographical and formatting edits throughout the chapters.

The proposed revisions to Chapter 2, Section 12, Chapter 3, Section 9, and Chapter 8, Section 10 involve changes to the Wyoming State Implementation Plan (SIP). The Division will submit these SIP revisions to the Environmental Protection Agency after the rules are State effective.

This rulemaking was reviewed by the Air Quality Advisory Board (AQAB) on July 11, 2023, and the Board recommended that the rules proceed to formal rulemaking before the Environmental Quality Council (EQC).

The Division did not receive written comments during the public comment period prior to the AQAB meeting, which ran from June 9, 2023 to July 11, 2023.

The Division has reviewed the requirements of section 35-11-202(a) and (b) of the Wyoming Environmental Quality Act and determined this rulemaking to be in procedural compliance with the statute. Finally, the Division has reviewed and responded to the Takings Guidelines and Checklist provided by the Attorney General's Office. The Division is now seeking a review of the proposed rules for statutory authority prior to submitting the rules to the Governor's Office for permission to proceed to formal rulemaking.

Attached, you will find a copy of the draft Statement of Principal Reasons for Adoption, copies of Chapters 2, 3, 4, 5, 8, 11, and 14 in strike and underline format, and responses to the Attorney General's Takings Checklist. If you have any questions, or need additional information regarding the proposed rules, please do not hesitate to contact me at 307-777-7391 or Amber Potts at 307-777-2489.

Attorney General's Response Options:

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

Proposed rules exceed statutory authority, delay proceeding with rulemaking

 9/18/23
Signature: Wyoming Assistant Attorney General

David DeWald