

BEFORE THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE PROPOSED)	STATEMENT OF PRINCIPAL
REVISIONS TO CHAPTER 1 & THE)	REASONS OF ADOPTION
PROMULGATION OF CHAPTER 17 OF THE)	
RULES AND REGULATIONS OF THE)	
SOLID AND HAZARDOUS WASTE DIVISION)	DOCKET NO.

Table of Contents

Introduction to Rule Package 2

Summary of the Principal Reasons for Revision of Rules 2

Proposed Revisions and Principal Reason for Revision by Rule Chapter and Section 2

 Chapter 1 2

 Chapter 17 3

Chapter 1, Proposed Rules and Statement of Reason 4

 Section 1, Definitions 4

 Section 2, Permit Application Procedure 5

Chapter 17, Proposed Rules and Statement of Reason 8

 Section 1, Authority 8

 Section 2, Definitions 8

 Section 3, Eligibility 8

 Section 4, Program Process 11

 Section 5, Program Requirements 13

 Section 6, Project Costs 14

Introduction to Rule Package

The Department of Environmental Quality, Solid and Hazardous Waste Division, pursuant to the authority vested in it by the Environmental Quality Act (Act), Wyo. Stat. Ann. §§ 35-11-101 through 35-11-1904 proposes to amend Chapter 1 of the Wyoming Solid Waste Rules and Regulations (Rules) to incorporate provisions for the administration of the Cease and Transfer Program established pursuant to Wyo. Stat. Ann. §§ 35-11-528 through 532 and create Chapter 17 to implement the Wyoming Leaking Landfill Remediation Program (Remediation Program) established pursuant to Wyo. Stat. Ann. §§ 35-11-533 through 537. Chapter 1 provides the definitions and general requirements for solid waste permits in Wyoming. Chapter 17 establishes the eligibility and program requirements for the Remediation Program. Revisions are necessary to incorporate changes the legislature made to the Act and to establish regulations for the Cease and Transfer and Remediation Programs.

Summary of the Principal Reasons for Revision of Rules

The principal reasons for the revisions to the Rules are to:

- update existing rules to incorporate changes made to the Act, and
- promulgate regulations for the implementation of the Cease and Transfer and Remediation Programs.

Proposed Revisions and Principal Reason for Revision by Rule Chapter and Section

A. Chapter 1 - Several changes were made throughout Chapter One. The items below identify the substantive revisions and the reason for such revisions.

1. **Section 1(e), Definitions:** Several definitions are proposed for modification. The primary modifications include proposals to clarify that construction and demolition wastes are not included within the definition of municipal solid waste and defining the term “cease disposal” for the purpose of the Cease and Transfer Program. Additionally, the definitions of construction and demolition waste and construction and demolition landfill are proposed to change to allow more discretion for the Administrator to define what constitutes construction and demolition wastes.

2. **Section 2(a), Permit Application Procedures:** In this section, text was added to clarify that the permit procedures for processing general permits for the closure of municipal solid waste landfills with less than thirty (30) acres of municipal solid waste disposal area are addressed in Section 2(k).
3. **Section 2(k), General Closure Permit for Municipal Solid Waste Landfills:** This section sets forth the requirements for general permits for the closure of municipal solid waste landfills with less than thirty (30) acres of municipal solid waste disposal area.

B. Chapter 17 – As mentioned above, Chapter 17 promulgates rules and regulations for the implementation of the Remediation Program pursuant to Wyo. Stat. Ann. §§ 35-11-533 through 537. The items below identify the substantive provisions of the chapter and the reason for such regulations.

1. **Section 1, Authority and Purpose:** This section establishes the authority and purpose for the regulations based on Wyo. Stat. Ann. §§ 35-11-533 through 537.
2. **Section 2, Definitions:** This section provides two definitions for terms used in the regulations and incorporates by reference the definitions contained in Chapter 1 of the Rules.
3. **Section 3, Eligibility:** This section incorporates the eligibility requirements from the statute.
4. **Section 4, Program Process:** This section sets forth the requirements and process for operators to participate in the program.
5. **Section 5, Program Requirements:** This section establishes the minimum requirements for remediation activities conducted pursuant to the Remediation Program.
6. **Section 6, Project Costs:** This section sets forth the eligible and ineligible project costs for reimbursement under the Remediation Program.

Proposed Rules and Statement of Reasons

Chapter 1

GENERAL PROVISIONS

Section 1. In General

(a) Authority: The authority for the rules and regulations promulgated in this chapter is the Wyoming Environmental Quality Act, W.S. 35-11-101 et seq. Specific sections of the act that provide authority for this regulation include W.S. 35-11-102, 35-11-109, and Article 5, Solid Waste Management, 35-11-501 et seq.

...

(e) Definitions:

(i) For the purpose of these rules and regulations, unless the context otherwise requires:

...

"Cell" means compacted solid wastes that are enclosed by natural soil or other cover material within a trench, unit, or area-fill in a land disposal facility.

"Cease Disposal" for the purposes of the Cease and Transfer Program created pursuant to W.S. §§ 35-11-528 through 532, shall mean ceasing disposal of municipal solid waste.

This definition was added to clarify that the regulatory requirement that operators must cease disposal at the facility where eligibility is being sought under the Cease and Transfer Program refers only to municipal solid waste and not construction and demolition waste. Facilities may continue to dispose of construction and demolition waste at facilities eligible under the Cease and Transfer Program in order to reach final closure grades at the facility.

"Classification" means ...

...

"Construction/demolition landfill" means a solid waste management facility that accepts only inert construction waste, demolition waste, street sweepings, ~~and/or~~ brush or other material approved by the Administrator. This ~~does not include~~ excludes garbage, liquids, sludges, ~~paints, solvents, putrescibles, dead animals,~~ friable asbestos, and hazardous or toxic wastes.

It is difficult to promulgate a regulation that lists every type of material that could be disposed of in a construction and demolition landfill. This modification authorizes the Administrator to approve other materials that may be disposed of in construction and demolition landfills as they are proposed.

...

"Construction/demolition waste" includes but is not limited to stone, wood, concrete, asphaltic concrete, cinder blocks, brick, plaster and metal or other material approved by the Administrator.

As mentioned above, it is difficult to promulgate a regulation that lists every type of material that could be disposed of in a construction and demolition landfill. This modification authorizes the Administrator to approve other materials that could be considered as construction and demolition waste.

"Container" means ...

...

"Major Change" means a change to any solid waste management facility location, design or construction, or to any operating, monitoring, closure or post-closure activities, involving one or more of the following items:

The total permitted volumetric capacity of the facility is to be increased by more than five percent (5%);

The facility classification will change;

~~The facility service area or source of waste will change and cause the original daily tonnage of waste received to increase by more than five percent (5%);~~

This change was made in order to reduce the impediments for facilities wishing to increase its service areas to accommodate other facilities wishing to cease receipt of municipal solid waste under the Cease and Transfer and Remediation Programs.

The facility may begin to accept for treatment, storage, or disposal one or more of the special wastes regulated under Chapter 8 of these rules and regulations;

...

"Municipal solid waste" means solid waste resulting from or incidental to residential, community, trade or business activities, including garbage, rubbish, ~~ashes, street sweepings,~~ dead animals, ~~tires,~~ abandoned automobiles and all other solid waste other than construction and demolition, industrial or hazardous waste.

The definition of "municipal solid waste" was modified to remove those items that could be determined by the Administrator to be construction and demolition waste and to specify that construction and demolition waste is not the same as municipal solid waste.

...

Section 2. ~~General~~ Permit Application Procedure.

- (a) ~~General~~ a Application requirements: Each application for a solid waste management

facility permit described in this section shall contain information adequate to demonstrate compliance with the minimum standards for location, design and construction, operating, monitoring, closure and post-closure as specified in the applicable chapter of these rules and regulations. ~~Permit application procedures are set out in W.S. 35-11-502.~~ Permit application procedures are set out in W.S. 35-11-502, except general permit application procedures for closure of municipal solid waste landfills with less than thirty (30) acres of municipal solid waste disposal area, which are set forth in Section 2(k) of this chapter.

This section was modified in order to differentiate between the procedures for solid waste permit applications and the general permit procedures for solid waste facilities with less than thirty (30) acres of municipal solid waste disposal area.

(b) Public notice and comment: Prior to the issuance of a permit by the director, ...

...

(k) General Closure Permit for Municipal Solid Waste Landfills

(i) A general closure permit shall apply to the closure and post closure activities for municipal solid waste landfills with less than thirty (30) acres of municipal solid waste disposal area.

This subsection specifies that the general closure permit applies to municipal solid waste landfills with less than thirty (30) acres of municipal solid waste disposal area.

(ii) Application for coverage under a general permit must be accompanied by two copies of the application form, plans, specifications, design data or other pertinent information concerning the project.

(A) Application for coverage under a general permit shall be made on forms provided by the Department which require a signature of agreement by the applicant to abide by all conditions of the permit.

(B) All activities shall meet the standards of Chapter 2 of these regulations.

(C) All general closure permit applications shall be prepared under the supervision of a professional engineer licensed in the State of Wyoming. All general closure permit application forms shall be stamped, signed and dated by a professional engineer. In addition, all portions of the general permit application which require geological services or work shall be stamped, signed and dated by a professional geologist licensed in the State of Wyoming.

This subsection sets forth the requirements for applications of coverage for the general permit. This subsection seeks to minimize the duplication of requirements set forth in Chapter 2 of the Rules by cross referencing them. This subsection also specifies the requirement that applications for coverage must be prepared by individuals with proper qualifications.

(iii) All applications for coverage under a general permit shall be processed as follows:

(A) The Administrator shall review each application or resubmittal within sixty (60) days from the date the application or resubmittal is received.

(B) The Administrator may request additional information if it is determined that the information is inadequate to satisfy the requirements of these regulations.

(C) The Department shall issue a general closure permit within thirty (30) days of finding that the application or resubmittal is complete.

(D) No closure or post closure activities shall commence until a written notification of coverage under the general closure permit has been received from the Department.

This subsection sets forth the process by which applications for coverage under the general permit will be reviewed.

(iv) General closure permits for municipal solid waste landfills shall be issued through the end of the post-closure period specified in Chapter 2, Section 7(q) of the these regulations and shall be extended until such time when the Administrator determines, upon petition by the operator accompanied by submission of relevant information, that the facility has been adequately stabilized in a manner protective of human health and the environment. Petitions to terminate the post-closure period shall include certification from a Wyoming licensed professional engineer that post-closure care has been completed in compliance with the approved post-closure plan and in a manner protective of human health and the environment. No renewals of general closure permits shall be required.

This subsection sets forth the time period for the general permit and authorizes operators to petition to terminate post-closure when the facility is adequately stabilized in accordance with its post-closure plan.

(v) Interested persons may appeal the decision regarding the coverage under a general permit pursuant to the provisions of W.S. 35-11-502(k).

This subsection authorizes interested persons to appeal the decision regarding coverage under the general permit.

CHAPTER 17

MUNICIPAL SOLID WASTE LANDFILL REMEDIATION PROGRAM

Section 1. Authority and purpose.

(a) This Chapter is promulgated pursuant to the Wyoming Environmental Quality Act, W.S. 35-11-101 et seq., specifically W.S. 35-11-533, to establish the municipal solid waste landfill remediation program and to provide funding to take remediation actions at eligible leaking municipal solid waste landfills.

This section recites the authority and purpose of the Municipal Solid Waste Landfill Remediation Program.

...

Section 2. Definitions.

(a) The definitions used in this Chapter are identical to those set forth in Chapter 1 of the Wyoming Department of Environmental Quality, Solid Waste Rules and Regulations.

(b) “Municipal Solid Waste Landfill Remediation Program Account” means the account created by W.S. 35-11-535.

(c) “Leaking Municipal Solid Waste Landfill” means a unit at an existing facility that is statistically exceeding groundwater protection standards in a point of compliance monitoring well.

This section cross references the definitions set forth in Chapter 1 and creates definitions for the “Municipal Solid Waste Landfill Remediation Program Account” and a “Leaking Municipal Solid Waste Landfill.”

Section 3. Eligibility.

(a) To be eligible for enrollment in the program, the operators of a leaking municipal solid waste landfill shall enter into a written agreement with the Department to meet all regulatory obligations under the program. The written agreement entered into between the operator and Department shall contain, but is not limited to, provisions for the satisfaction of the following elements prior to receiving funds from the Municipal Solid Waste Landfill Remediation Account:

This section incorporates into regulation the eligibility requirements set forth by the Legislature in Wyo. Stat. Ann. § 35-11-534(c). One of the primary requirements mandates that the operator enter into a written agreement with the Department to meet all regulatory requirements of the program. The Department proposes that this agreement will contain the substantive requirements of eligibility and provide flexibility for the Department to take into account site specific information about each facility.

(i) The operator shall implement and revise the community’s integrated solid waste management plan, pursuant to W.S. § 35-11-521, as necessary to comply with all regulatory obligations.

This subsection incorporates into regulation the eligibility requirements set forth by the Legislature in Wyo. Stat. Ann. § 35-11-534(c)(ii).

(ii) Except as provided in subsections (A) and (B) below, the operator must cease disposal of all waste streams at a leaking closed facility or the leaking portion of an operating facility that is undergoing remediation activities pursuant to Department rules and regulations and the written agreement between the Department and the local operator.

(A) The operator may continue to dispose municipal solid waste into units of facilities which have an approved engineered containment system and those units that conform to performance based design standards.

(B) The operator may continue to dispose of construction and demolition waste in portions of an operating facility if the operator shows, to the satisfaction of the Administrator, that disposal of construction and demolition waste in the leaking portion of the operating facility is necessary for the purpose of achieving the permitted or approved final grade and is protective of the environment.

This subsection incorporates into regulation the eligibility requirements set forth by the Legislature in Wyo. Stat. Ann. § 35-11-534(c)(iii) and (iv). This subsection also incorporates into regulation the ability of operators to continue disposal of construction and demolition waste into portions of an operating facility in order to achieve approved final grade. This provides a cost-effective way for operators to reach final grades and decrease the time in which a leaking municipal solid waste facility can be closed without adding additional municipal solid waste to the facility. Allowing construction and demolition waste to be used for void fill avoids requiring the operators to haul in soil to fill the voids to reach final grade.

(iii) The operator shall agree to provide funding from any available funding source for at least twenty-five percent (25%) of the total costs of monitoring and remediation under the program. The Department shall require this to be made at two stages in the process as described below:

(A) At the time of submitting notice of intent to participate, the operator must agree to provide funding for at least twenty-five percent (25%) of the preliminary presumptive remedy. The preliminary presumptive remedy is the remedy presumed by the operator prior to assessing corrective action. The preliminary presumptive remedy shall be one or more of the following:

(I) Construction of a final cap;

(II) Control of landfill leachate, if present;

(III) Control of migration to groundwater;

(IV) Collection and treatment of landfill gas; or

(V) Other remedy as proposed by operator.

(B) Upon completion of the assessment of corrective measure, the Administrator shall require additional information from the operator demonstrating that it will provide at least twenty-five percent (25%) of the final remediation cost.

This subsection incorporates into regulation the eligibility requirements set forth by the Legislature in Wyo. Stat. Ann. § 35-11-534(c)(v). The Department anticipates that several facilities

will seek participation in the Remediation Program around the State. In order to allow the Department to plan for and make the best use of the limited funds that are available, the Department needs to have information about the final remedial costs that are anticipated for each facility. While the presumptive remedy may change through the process, the Department believes that the requirement of a presumptive remedy will provide the Department, as well as the operator, with the best possible idea of the costs that will be required.

(C) In the event a local operator has performed remediation and monitoring activities at its facility between July 1, 2006 and December 31, 2012 and pursuant to a work plan approved by the Department, such costs may be credited toward the twenty-five percent (25%) funding requirement for the total cost of remediation and monitoring activities. The Department shall allow such costs to be credited toward the twenty five percent (25%) at eligible facilities until the time that the cumulative amount of such costs amongst all eligible facilities reaches four million dollars (\$4,000,000.00). The Department may request to review accounting details of such expenditures prior to authorizing such costs to be credited toward the total cost of remediation and monitoring activities.

This subsection incorporates into regulation the eligibility requirements set forth by the Legislature in Wyo. Stat. Ann. § 35-11-535(c) and (d). This incorporates into regulation the provision that authorizes operators to take credit for costs incurred for remediation and monitoring between July 2006 and December 2012. Operators are allowed to use the costs incurred as a credit toward the twenty five percent (25%) funding requirement for operators. This credit is allowed for eligible facilities across the State until the cumulative amount reaches four million dollars (\$4,000,000.00). The Department is authorized to review the accounting details of the proposed credit costs in order prior to authorizing these costs to be used toward the funding requirement.

(iv) The operator must control the source of releases of pollution so as to reduce or eliminate further releases from the leaking municipal solid waste landfill through the implementation of intermediate cover activities as approved by the Administrator.

This subsection incorporates into regulation the eligibility requirements set forth by the Legislature in Wyo. Stat. Ann. § 35-11-534(c)(vi).

(v) In instances where the operator has requested authorization from the Department to oversee or conduct monitoring and remediation, the written agreement must contain a commitment that the operator shall adhere to applicable regulatory requirements of the program in conducting monitoring and remediation activities.

(A) The Department shall approve the operator's monitoring and remediation plan prior to authorizing the local operator to conduct or oversee the monitoring and remediation program.

(B) The Department shall take all actions necessary to ensure that a local operator granted authority to conduct or oversee monitoring and remediation activities under this subsection complies with all regulatory requirements of the program.

This subsection incorporates into regulation the eligibility requirements set forth by the Legislature in Wyo. Stat. Ann. § 35-11-534(f).

(b) In addition to the written agreement, the operator must provide documentation that the operator can ensure continued revenue or funding streams sufficient to provide for all foreseeable costs of

solid waste facilities under the control of the local operator or political subdivision, including but not limited to the full costs of:

- (i) Operations;
- (ii) Monitoring;
- (iii) Recycling, composting, and other diversion activities, if applicable;
- (iv) Closure; and
- (v) Post-closure activities.

This section incorporates into regulation the eligibility requirements set forth by the Legislature in Wyo. Stat. Ann. § 35-11-534(c)(vii).

(c) Operators must also demonstrate, to the satisfaction of the Administrator, that generally accepted accounting principles are utilized in managing all solid waste facilities under the control of the local operator or political subdivision, including the recognition of liabilities identified in Section 3(b) above associated with the closure and post-closure costs and all long-term costs associated with waste disposal compared to recycling, composting, or other diversion activities.

This section incorporates into regulation the eligibility requirements set forth by the Legislature in Wyo. Stat. Ann. § 35-11-534(c)(viii).

Section 4. Program Process.

(a) In order to participate in the Municipal Solid Waste Landfill Remediation Program, operators must submit a Notice of Intent to Participate (Notice) to the Department. The Notice shall contain the following information:

- (i) Name, location, and mailing address of facility;
- (ii) Detailed information regarding existing units at the facility, including but not limited to unit dimensions, locations, acreages, contents, liners and cover material;
- (iii) Estimated depth to groundwater and status of current groundwater monitoring program;
- (iv) Discussion of any exceedences of groundwater protection standards at the facility;
- (v) A preliminary presumptive remedy for the landfill and estimated its cost;
- (vi) A request by the operator for delegation of authority to oversee monitoring and implementation of remediation, if desired; and
- (vii) Acknowledgment of intent to comply with requirements of Section 3 of this Chapter.

This subsection incorporates into regulation the information that the Department will require for facilities to submit with the Notice of Intent to Participate. This information provides the Department with background information on the facility, any exceedence of groundwater protection standards, and details about the presumptive remedy for the facility.

(b) Within ninety (90) days of receiving the operator's Notice, the Department will notify the facility of the receipt of the Notice and will provide a date upon which the Department will commence discussions with the operator on the drafting of a written agreement pursuant to the requirements of Section 3(a).

This subsection provides the timeline by which the Department will review the Notice and begin discussions with the operator on the development of the written agreement required in Section 3(a).

(c) Upon execution of the written agreement, and approval by the Administrator of the information required by Section 3(b) and (c), the facility will be entered into the program and eligible to receive funds from the Municipal Solid Waste Landfill Remediation Program Account.

This subsection clarifies the point where operators will become eligible to receive funds under the Remediation Program.

(d) If the Department and operator are unable to reach an agreement on the contents of the written agreement, either party may petition the Environmental Quality Council for a hearing pursuant to W.S. 35-11-112(a)(iii) to resolve the matter.

This subsection provides resolution in the instances where the Department and operator are not able to reach an agreement on the contents of the written agreement.

(e) In addition to the priority list established by W.S. 35-11-524, the Department may determine that a facility with a lower priority will receive funding if the Department determines that it is the best use of program funds. This determination will be made based on the consideration of the following factors:

- (i) Funding availability;
- (ii) Cost efficiencies achieved by allocation of resources;
- (iii) Opportunities for increased cost sharing between monitoring and remediation actions at multiple leaking municipal solid waste landfills;
- (iv) Timeliness of remediation in reducing risk to public health, safety and welfare or the environment;
- (v) The likelihood that the remedy will reduce or eliminate the threat posed to public health, safety and welfare or the environment by continuing releases;
- (vi) Whether the facility has completed closure and transfer actions at the facility. Priority shall be given to those facilities which have completed closure and transfer actions; and
- (vii) Other factors that the Department determines to be relevant.

This subsection incorporates into regulation the discretion delegated to the Department under Wyo. Stat. Ann. § 35-11-536(a)(iv). Under this provision, the Department has discretion to move a facility up the priority list based on the consideration of several factors.

(f) Except as provided in (ii) below, all facilities will be returned to local control and will no longer be eligible to receive funds from the Municipal Solid Waste Landfill Remediation Program Account ten (10) years after the implementation of the final selected remedy at the facility.

(i) Facilities which have long term monitoring associated with its final remedy will be eligible for funds for ten (10) years following the initiation of the monitoring program.

(ii) The Department may authorize funding to continue for operation and maintenance of a remedial system at the end of ten (10) years only in the event that the operator shows that unforeseen circumstances have prevented it from being able to continue the operation of the remedy and the failure of the remedy will result in a significant threat to public safety, health, or the environment.

This subsection incorporates into regulation the requirements of Wyo. Stat. Ann. § 35-11-534(a).

Section 5. Program Requirements.

(a) Investigation of contamination, design and installation of monitoring and remediation systems, and the operation and maintenance of monitoring and maintenance systems shall be conducted pursuant to the requirements of Chapter 2, Section 8.

This subsection incorporates into regulation requirements of Wyo. Stat. Ann. § 35-11-536(a)(i). Requirements for landfill monitoring and remediation system design, construction installation and monitoring standards are located within Chapter 2, Section 8 of the Rules. The Department believes that a cross reference to those existing regulations is more appropriate than duplicating them here.

(b) All corrective actions shall restore the environment to a condition and quality consistent with the requirements of Chapter 2.

(i) In carrying out monitoring and remediation activities under the program the Department has the right to construct and maintain any structure, monitor well, recovery system, or any other reasonable and necessary item associated with taking remediation and monitoring actions.

This subsection incorporates into regulation requirements of Wyo. Stat. Ann. §§ 35-11-536(a)(vii) and 35-11-537. Requirements for restoration of the environment are located within Chapter 2 of the Rules. The Department believes that a cross reference to those existing regulations is more appropriate than duplicating them here. Additionally, this provision incorporates into regulation the authority delegated to the Department under Wyo. Stat. Ann. § 35-11-534(d).

(c) Any person conducting groundwater monitoring at a facility must report to the Department in accordance with Chapter 2, Section 6 (b).

(i) The Department shall notify the affected public of all confirmed releases requiring a plan for remediation, and, upon request, provide or make available to the interested public information concerning the nature of the release and the remediation actions planned or taken.

(d) All records created during the development of the remedial activities are required to be maintained by the operator and submitted to the Department in accordance with the requirements of Chapter 2, Section 8.

Subsection (c) and (d) incorporate into regulation the requirements of Wyo. Stat. Ann. §§ 35-11-536(a)(iii) and 35-11-534(e). Requirements for reporting are located within Chapter 2, Sections 6(b) and 8 of the Rules. The Department believes that a cross reference to those existing regulations is more appropriate than duplicating them here.

(e) Construction contractors employed to conduct construction activities at an eligible facility must adhere to the requirements of this Chapter and the Solid Waste Rules and Regulations. All such construction contractors must be registered and bonded with the State.

This subsection incorporates into regulation requirements of Wyo. Stat. Ann. §§ 35-11-536(a)(ii).

(f) Right of Inspection. Any authorized agent of the Department has the right of entry for the purposes of inspection, assessment or implementation of corrective actions at eligible facilities.

This subsection incorporates into regulation the requirement that participating facilities allow Department inspectors the right of entry to inspect, assess and implement corrective actions.

Section 6. Project Costs.

(a) Eligible project costs: The following costs incurred by operators or contractors performing work at eligible facilities pursuant to Section 3 can be reimbursed by funds from the Municipal Solid Waste Landfill Remediation Account:

(i) Capping or approved phased reclamation;

(ii) Groundwater remediation and monitoring;

(iii) Methane mitigation and monitoring; and

(iv) Other closure related expenses, including engineering, geological, and other professional services;

(b) Ineligible project costs: The following project costs shall be ineligible for reimbursement from funds from the Municipal Solid Waste Landfill Remediation Account and shall be ineligible to be counted toward the applicant's match:

(i) Salaries or benefits for employees of the municipal solid waste facility;

(ii) Operational costs of municipal solid waste facilities;

- (iii) Costs for any asset that is owned by a private property owner;
- (iv) Costs for tap fees, sewer and water fees, and plant investment fees;
- (v) Engineering fees, including design, inspection, and contract administration costs, over ten percent (10%) of projects costs, unless otherwise approved by the Department;
- (vi) All non-cash costs except:
 - (A) Land, labor, materials, equipment, and services provided by the applicant, and used for project purposes, valued at reasonable, actual cost;
 - (B) Land, labor, materials, equipment, and services provided to the applicant by others, at no cost to the applicant, used for project purposes and valued at reasonable, actual cost; and
 - (C) Land which is integral to the Municipal Solid Waste Facilities Remediation Program process but not costs for land in excess of current fair market value and/or costs for an amount of land in excess of that needed for project purposes. Land costs not defined in the application will be ineligible for reimbursement.
- (vii) Costs for preparation or presentation of applications for any source of funding;
- (viii) Costs for transportation, meals, and lodging incurred anywhere away from the site of the project;
- (ix) Costs of tools, supplies, and furnishings for capital projects not included in DEQ-approved construction contract documents, including, but not limited to, capital equipment, hammers, tanks, tools, furniture, drapes, blinds, file cabinets, file folders, and survey stakes;
- (x) Legal fees;
- (xi) Costs related to issuance of bonds;
- (xii) Costs for real property in excess of current fair market value and/or costs for an amount of real property in excess of that needed for project purposes;
- (xiii) Costs to establish and form special districts or joint powers boards;
- (xiv) Costs incurred prior to facility being eligible pursuant to Section 3, except costs for architectural and engineering design and those costs incurred pursuant to Section 3(a)(iii)(C) of this Chapter;
- (xv) Costs for a contingency or additional work allowance in excess of ten percent (10%) of estimated construction costs;
- (xvi) Costs for change orders not approved by the Department;
- (xvii) Lump sum contracts unless approved by the Department; and

(xviii) Costs for meals, mileage and incidental expenses in excess of federal per diem rates.

This section incorporates into regulation the types of costs that are eligible and ineligible for funding under the Remediation Program. The Department has incorporated the eligible and ineligible project costs used by the Office of State Lands and Investments in its recent rulemaking for the Cease and Transfer Program.