

Wyoming Department of Environmental Quality
Solid and Hazardous Waste Division
Response to Comments

February 21, 2014

The Wyoming Department of Environmental Quality (Department) is pleased to present the following response to comments document for comments received for the proposed changes to Chapter 1 and the development of Chapter 17 of the Wyoming Solid Waste Rules and Regulations (Rules). The Department has made significant efforts to provide ample opportunity for the regulated community and members of the public to comment on the development of these rules. It is the Department's position that these efforts have resulted in a better rule package that will help to facilitate the implementation of the Cease and Transfer and Landfill Remediation programs.

Below please find comments received on the Department's proposed changes to Chapters 1 and 17 of the Rules and the Department's responses to each comment. These comments were received prior to and during the Environmental Quality Council's public hearing held on February 25, 2014.

General Comments

Comment 1 – The Wyoming Game and Fish Department sent a letter stating that they have no terrestrial wildlife or aquatic concerns with this rule revision.

Response 1: The Department appreciates this comment.

Chapter 17 Municipal Solid Waste Landfill Remediation

Section 3 Eligibility – Section 3(a)(iii)(A)

Comment 2 - *Mark Christenson, Board of Campbell County Commissioners:* In the actual administration of this section, it will be impractical and unrealistic for an operator to identify a definitive presumptive remedy at this initial stage in the process. Campbell County has discussed this with our consultant and understands that the general process of remediation will likely include the following or similar:

- **Installation of monitoring wells.** Presumably, this is a step which has already been initiated across the state.
- **Assessment monitoring stage.** The frequency of measurements in the monitoring wells increases due to the detection of constituents at levels that cause possible concern. Again, it is presumed this activity is currently ongoing throughout the state.
- **Remedial Investigation.** Due to the past assumption that groundwater issues would not exist in Wyoming due to the arid climate, reliable baseline information is not available. As a result, there

is currently information being gathered to establish such background parameters. It is likely that this process will take 1.5 to 2.5 years to complete.

- **Assessment of Corrective Measures/Feasibility Study.** Engineering reports evaluating remedial actions from economical and technical feasibility perspectives are required. It is common for cleanup standards to be defined in this step which is likely to take 1 to 2 years to complete.
- **Remedial Design.** Plans, specifications, engineering reports and a permit submittal follow which is likely to take 1 to 2 years to complete.
- **Remedy Implementation.** The remedial project is constructed. (It is likely for this to take 1 to 1.5 years considering Wyoming construction season and the construction quality assurance reporting process.)
- **Operation and Compliance Monitoring.** Continued monitoring is required under the program in order to confirm the remedy is working and the environment is improving. Should this not be the case, the process is likely to start over at the Assessment of Corrective Measures and thus, future engineering and construction costs can occur.

Although the above process may be shortened in some cases, it may be lengthened in others. Requiring an operator to define a presumptive remedy at this early stage will likely result in the remedy being inaccurate. This incorrectly identified remedy will require multiple agreement amendments and time line adjustments which will add both time and cost to the project.

The process will need to be flexible such that the resulting agreements can be made in segmented steps to best serve the public needs both economically and environmentally. It would be prudent to have flexibility to shorten or lengthen the process described above to best suit the particular landfill. Doing so will provide a more realistic project development for all parties.

Response 2: The Department appreciates this comment. The main purpose of the preliminary presumptive remedy is to use available site specific information and data to develop an initial remedy for the facility and generate a cost estimate for the application the facility will submit to enter the municipal solid waste landfill remediation program. A preliminary remedy and cost estimate are needed to help communities prepare their budgets. It is the Department's intent that the written agreement and Assessment of Corrective Measures will allow adequate flexibility for the facility and the Department to develop a corrective action plan, which may include several remedial activities, suited to the landfill. Furthermore, in order for the Department to best manage the funds in the Program Account, it needs to have an idea of what the final remedy will be at eligible facilities in order to allocate available funds to various facilities. While the presumptive remedy may change, it does provide the Department with an idea of the total costs of the remedy, and provide operators with an idea of the costs associated with the remedy.

Sections 3 Eligibility – Section 3(a)(iii)(C) and Section 6 Project Costs

Comment 3 – Mark Christenson, Board of Campbell County Commissioners: The enabling legislation for the proposed rules allows for the crediting of costs incurred between July 1, 2006 through December 31, 2012 toward the 25% funding requirement and the rules establish the

procedure with a maximum of 4 million dollars for all chosen/approved costs statewide and project costs that are eligible for reimbursement from the Municipal Solid Waste Landfill Remediation Account. To be eligible for reimbursement from this account, the rules provide that it must be a project/facility "pursuant to Section 3". Section 3 requires and envisions new projects for which an agreement has been entered into under the rules. Until the rules are finalized, this process has not yet been initiated, therefore, resulting in a time period from December 31, 2012 to present for which no funding is available under the program seriously penalizing operators who have been proactive and have already begun remediation activity.

In addition, the rules provide no guidance as to how the determination will be made on processing requests for the 4 million dollars for costs incurred by operators dating July 1, 2006 through December 31, 2012. Presumably, the legislature's intention was to have these rules address this issue. The law simply provides for the reimbursement of such costs up to an amount of 4 million. The reason to implement rules is to determine the specifics of how this will be accomplished. The proposed rules do not speak to this issue.

Response 3: The Department appreciates this comment. It is the Department's position that eligible costs will be considered on a case-by-case basis.

With regard to the lack of regulations on how requests for costs incurred between July 1, 2006 and December 31, 2012, will be credited toward the total four million dollars, the Department believes that there is insufficient information on this subject on which to develop regulations. The Department wanted input and cost information from operators before determining which activities should be eligible for reimbursement. The Department will review requests for credit toward the four million dollars on a case-by-case basis.

Section 4 Program Process - Section 4(f)

Comment 4 - Mark Christenson, Board of Campbell County Commissioners: This section provides for funding eligibility for "(10) years after the implementation of the final selected remedy". Starting the 10 year period for eligibility when the final selected remedy is implemented will cause undue risk to the operator. Following implementation of a selected remedy, compliance monitoring will be used to ensure the remedy is working and the environment is improving. It is also prudent to monitor this into the future to make sure the initial statistical results hold true for the long term. We recommend that the 10 year period not start until initial statistical analysis indicates the remedy is working and the environment is improving. The rules should also allow the extension of the 10 year period of eligibility if historical results indicate the initial statistical analysis was in error for up to 5 years following initial and subsequent statistical analyses.

Response 4: The Department appreciates this comment. The 10-year period of eligibility is not necessarily a reflection that at the end of 10 years, remediation will be near completion. The 10-year period of eligibility was actually a specific provision in the statute where the legislature looked to limit the state's liability. It is a statutory funding provision for the legislature. Commencing this 10-year period upon implementation of

the final selected remedy at the facility allows a facility 10 years to determine if the selected remedy is successful or if a different remedy should be considered. State funding would end in 10 years unless 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.