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DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE DIVISION

Jim Ruby, Executive Secretary
Environmental Quality Council

MUNICIPAL SOLID WASTE LANDFILL REMEDIATION PROGRAM

CHAPTER 17

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.

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.

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:

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

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 its estimated 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.

(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).

(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.

(d) If the Department and operator are unable to reach an agreement on the contents of the written agreement, or the operator is unable to meet the requirements of Section 3(b) and (c) of this Chapter, entry into the program will be denied. Denial of entry into the program is a final decision by the Administrator which can be contested to the Environmental Quality Council for a hearing pursuant to W.S. 35-11-112(a) (iii).

(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.

(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.

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.

(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.

(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.

(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.

(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.

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.