

DRAFT 9/29/14 Clean Copy

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

IN THE MATTER OF HAZARDOUS WASTE)
RULES AND REGULATIONS, CHAPTER 1)
WYOMING HAZARDOUS WASTE)
MANAGEMENT STANDARDS)

STATEMENT OF PRINCIPAL REASONS

Background

The State of Wyoming (State) Department of Environmental Quality, Solid and Hazardous Waste Division (WDEQ/SHWD), pursuant to the authority vested in it by Wyoming Statutes (W.S.) 35-11-503(a)(v) and 35-11-503(d), proposes that the Environmental Quality Council (Council) revise the Wyoming Hazardous Waste Rules and Regulations (HWRR) to a single amended chapter (Chapter 1). The revised HWRR represent a reduction from 14 chapters to a single chapter utilizing Incorporation By Reference (IBR) of specific parts of Title 40 of the Code of Federal Regulations (CFR) per W.S. 16-3-103(h)(i) – (v). Over 30 states have utilized either total or partial IBR for their hazardous waste rules, including the states of Idaho, Montana, and South Dakota. The existing HWRR were adopted by the State in 2008, however these rules have not been authorized by EPA. The last HWRR authorized by EPA date back to 2002.

Purpose and Intent of Proposed Revisions

The proposed revisions to the Wyoming HWRR are intended to provide for a concise, up-to-date, simple set of HWRR which specify where Wyoming is more stringent than, or broader in scope than, the federal hazardous waste rules and regulations at 40 CFR. Sections adopted by reference within the amended Chapter 1 generally correspond with equivalent relevant parts of 40 CFR (e.g. Section 266 corresponds with 40 CFR Part 266). The proposed revisions include reductions in the number of rules chapters and the number of pages of rules, which meets the request by Governor Mead (memo dated April 9, 2013) to streamline rules and regulations in the State. Obsolete HWRR have been removed to provide for consistency with federal rules. Other rules have been removed to eliminate duplication within WDEQ, such as Maximum Available Control Technology (MACT) standards, which belong in the Air Quality Division (AQD).

41 **Compliance with Federal Regulations (W.S. 35-11-503(a)(v))**

42
43 The proposed rule revisions are designed to be equivalent to federal regulations except where the
44 State is more stringent, or broader in scope. The federal regulations incorporated by reference
45 include 40 CFR Parts 124, 260 -268, 270, 273 and 279. These rule changes meet or exceed the
46 minimum requirements of federal laws and regulations, while maintaining State primacy per
47 W.S. 35-11-503(d)(i). The WDEQ/SHWD received 54 pages of comments from EPA and their
48 contractor, DPRA on April 29, 2014 regarding the draft IBR rules dated January 29, 2014. The
49 WDEQ/SHWD provided a written Response to Comments to the EPA dated May 19, 2014. The
50 HWRR presented today incorporate a majority of the EPA/DPRA suggestions for the IBR rules.
51 The WDEQ/SHWD chose to retain important statutory or State-specific language in some
52 provisions instead of implementing all of the EPA/DPRA recommendations.

53
54 **Public Outreach**

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56 WDEQ/SHWD conducted public outreach concerning the possibility of adopting IBR for the
57 Wyoming HWRR. The outreach included visits and conference calls with the states of Idaho and
58 Montana (states that adopted IBR), several industry members, and an environmental group.
59 Outreach was conducted from June to September 2013. Based on the outreach, the
60 WDEQ/SHWD found that the different organizations overwhelmingly supported the adoption of
61 IBR for the Wyoming HWRR.

62
63 **References:**

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65 EPA checklists may be found at the following link:
66 <http://www.epa.gov/osw/laws-regs/state/revision/program.htm>

67
68 The EPA Code of Federal Regulations (40 CFR) may be found at the following link:
69 http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl

70
71 **Exclusions: Summary of EPA Checklists and Major 40 CFR Portions Previously Not Adopted
72 by Wyoming**

73 *(The list below includes EPA rules not previously adopted by Wyoming for various reasons. The
74 WDEQ does not wish to adopt them now, as they are optional rules and we agree with the
75 previous reasons for not adopting the rules).*

- 76
77 1. Checklist 186: National Pollutant Discharge Elimination System (NPDES) Program
78 Regulations Streamlining; Round Two.
79 2. Checklist 204: National Environmental Performance Track Program (Program was
80 terminated by EPA on May 14, 2009).

- 81 3. Checklist 204.1: National Environmental Performance Track Program; Corrections
82 (Terminated by EPA on May 14, 2009).
83 4. Checklist 219: Revisions to the Definition of Solid Waste.
84 5. Checklist 221: Expansion of RCRA Comparable Fuel Exclusion.
85 6. For 40 CFR Parts 124, 260 - 268, 270, 273, 278, and 279 as pertains to permits for
86 Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or
87 Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge
88 Elimination System (NPDES) under the Clean Water Act and Prevention of Significant
89 Deterioration Program (PSD) under the Clean Air Act, none of these subparts are adopted or
90 included by reference in the HWRR.
91 7. 40 CFR 278: Applies to the Tri-State Mining District, not Wyoming.
92 8. Definition of "remediation waste management site" per 40 CFR 260.10. Also, Wyoming did
93 not adopt the third subpart of the definition for "facility", which relates back to the definition
94 for "remediation waste management site."
95 9. Individual sections within the IBR HWRR detail which subparts of 40 CFR are not
96 incorporated by reference in Wyoming.
97

98 **Previously-Adopted, Obsolete State-Specific Language Omitted from IBR HWRR**

99 *(The rules listed below were previously adopted by Wyoming. We have chosen to remove them*
100 *from the IBR rules, as they are obsolete, or duplicate rules for the WDEQ or the State. Those*
101 *rules associated with air emissions standards are now covered under WDEQ Air Quality*
102 *Division (AQD) rules. Both previous rules references and 40 CFR references are provided so*
103 *that the reader may identify State-specific language).*
104

- 105 1. Removed obsolete boiler and industrial furnace language (Now covered under AQD MACT
106 standards. There are currently no boilers or industrial furnaces burning hazardous waste in
107 Wyoming.):
108 a. Definition of "boiler", in old Chapter 1, Section 1(f), 40 CFR 260.10.
109 b. Prohibition of transfer of hazardous waste directly from a transport vehicle to a boiler
110 or industrial furnace, old HWRR Chapter 12, Section 8(c)(v)(I) and 8(l)(iii), 40 CFR
111 266.102(e)(9) and 266.111(c) under 266.111, "Standards for Direct Transfer". Also
112 removed reserved citations under old Chapter 12, Section 8(l)(i), (ii)(A), (iv), and (v)
113 corresponding to 40 CFR 266.111(a), (b)(2), (d), and (e), respectively.
114 c. Previous reserved citation for Permit Standards for Burners, old Chapter 12, Section
115 8(c)(iv)(C), 40 CFR 266.102(d)(3).
116 d. Prohibition of interim status for boilers and industrial furnaces in Wyoming, old
117 Chapter 12, Section 8(d) and old Chapter 7, Section 1(g)(vii), 40 CFR 266.103 and
118 270.66(g).
119 e. "Standards to Control Organic Emissions", old Chapter 12, Section 8(e), 40 CFR
120 266.104. Includes:

- 121 i. "Waiver of DRE Trial Burn for Boilers", old Chapter 12, Section 8(e)(i)(D)
122 and Section 8(k) and (k)(iv), 40 CFR 266.104(a)(4), 266.110, and 266.110(d).
123 ii. "Low Risk Waste", old Chapter 12, Section 8(e)(i)(E), 40 CFR 266.104(a)(5).
124 iii. "Special Requirements for Furnaces", old Chapter 12, Section 8(e)(iv), 40
125 CFR 266.104(d).
126 iv. "Controls for Dioxins and Furans", old Chapter 12, Section 8(e)(v), 40 CFR
127 266.104(e).
128 v. "Waiver of DRE Standard", old Chapter 12, Section 8(j)(i), 40 CFR
129 266.109(a).
130 vi. "Waiver of Particulate Matter Standard", old Chapter 12, Section 8(j)(ii), 40
131 CFR 266.109(b).
132 f. "Standards to Control Metals Emissions", old Chapter 12, Section 8(g), 40 CFR
133 266.106.
134 g. "Standards to Control Hydrogen Chloride (HCL) and Chlorine Gas (CL₂) Emissions",
135 old Chapter 12, Section 8(h)(i), 40 CFR 266.107(a).
136 h. "Regulation of Residues", Old Chapter 12, Section 8(m)(ii) and (iii), 40 CFR
137 266.112(b).
138 i. "Additional Criteria for Waivers", Old Chapter 12, Section 8(n).
139 j. Old Chapter 12, Reserved Appendix G, "Health-Based Limits for Exclusion of Waste-
140 Derived Residues", 40 CFR 266 Appendix VII.
141 k. Old Chapter 12, Appendix I, Reserved Section 10, "ALTERNATIVE
142 METHODOLOGY FOR IMPLEMENTING METALS CONTROLS", 40 CFR 266,
143 Appendix IX, Section 10.
144 l. Language related to exemptions from waste analysis, old Chapter 10, Section
145 14(a)(iii), 40 CFR 264.340(c).
146 m. Language related to Director determination for incinerator wastes, old Chapter 10,
147 Section 14(a)(iv) and (iv)(A-C), under 40 CFR 264.340(d).
148 n. Obsolete language in old Chapter 10, Section 26(d)(xiv)(C)(II) [40 CFR
149 264.1033(n)(3)(ii)], old Chapter 10, Section 28(c)(iii)(B)(VIII)(2.) [40 CFR
150 264.1082(c)(2)(viii)(B)], old Chapter 10, Section 28(h)(iii)(E)(I)(5.) [40 CFR
151 264.1087(c)(5)(i)(E)], old Chapter 11, Section 28(d)(xiii)(C)(II)[40 CFR
152 265.1033(m)(3)(ii)], old Chapter 11, Section 30(d)(iii)(B)(VIII)(2.)[40 CFR
153 265.1083(c)(2)(viii)(B)], and old Chapter 11, Section 30(i)(iii)(E)(I)(5.)[40 CFR
154 265.1088(c)(5)(i)(E)] directing the reader to old Chapter 12, Section 8(d) and old
155 Chapter 7, Section 1(g)(vii).
156 o. "Exposure Information for Landfills, Incinerators, Burners, and Surface
157 Impoundments", old Chapter 3, Section 2(a)(x), 40 CFR 270.10(j).
158 p. Omission of federal language at 40 CFR 270.22(a)(6) making Wyoming more
159 stringent than federal rules, old Chapter 3, Section 2(m)(i)(F), "Data in lieu of trial
160 burn."

- 161 2. Replaced obsolete language relating to the WDEQ Water Quality Division Rules and
162 Regulations in old Chapter 4, Section 1(a)(xii)(F)(IV), under 40 CFR 270.30(l)(6), "Twenty-
163 four (24) hour reporting."
164 3. Removed obsolete language regarding State authorization and primacy:
165 a. Facilities with pre-existing federal hazardous waste management permits, old Chapter
166 1, Section 2(a)(i) and (ii).
167 b. Dated language related to original authorization of State Hazardous Waste
168 Management Program, in old Chapter 4, Section 2(c)(iv), "State Continuation", 40
169 CFR 270.51(d).
170 c. Language relating 40 CFR Part 265 to the status of a facility at the time of original
171 authorization of the Wyoming Hazardous Waste Management Program, old Chapter
172 11, Section 1(a)(vi)(B) and (C), under 40 CFR 265.1(c)(4).
173 d. Dated language related to State assumption of RCRA primacy, old Chapter 11, Section
174 3, "Effect of Federal Permits and Consent Agreements, Stipulations, and Decrees
175 Upon State Assumption of RCRA Primacy."
176 4. Removed obsolete landfill and land treatment facility language (Previous rules language was
177 specific to one facility in Wyoming that no longer exists. Any new landfarms would be
178 required to meet HWRR):
179 a. Descriptive final cover requirements under "Specific Part B Information
180 Requirements for Land Treatment Facilities" (40 CFR 270.20), Old Chapter 3,
181 Section 2(k)(vi)
182 b. Required details of the leachate collection and removal system under "Specific Part B
183 Information Requirements for Landfills" (40 CFR 270.21) in old Chapter 3, Section
184 2(l)(ii)(A)(I), 40 CFR 270.21(b)(l)(i).
185 c. Landfarm loading limits and final cover requirements, language in old Chapter 10,
186 Section 12(k)(vi) and (vii), under 40 CFR 264.280.
187 5. Modified obsolete language requiring three copies for submitted permit applications from old
188 Chapter 3, Section 1(a)(i), under 40 CFR 124.3(a)(1). Permit applications are very large
189 documents, and this rule did not account for electronic submittals of applications. By
190 modifying the provision, we are preventing waste of paper resources while ensuring that the
191 State has an adequate submittal of one copy for the permit application.

192
193 **Checklists Which Modify 2008 HWRR**

194 (Unbolded items below are checklists that modify 2008 State-adopted regulations. Bolded items
195 below are checklists that represent new rules for Wyoming.)
196

197 **1. Mandatory Rules**

- 198
199 a. Checklists 182 and 182.1: *National Emissions Standards for Hazardous Air*
200 *Pollutants (NESHAPS), Final Standards for Hazardous Air Pollutants for*
201 *Hazardous Waste Combustors (MACT Rule).*
202 b. Checklists 188, 188.1, and 188.2: *Express Authorization -- NESHAPS: Final*

- 203 *Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.*
204 c. Checklists 195 and 195.1: *Inorganic Chemical Manufacturing.*
205 d. Checklist 198: *Hazardous Air Pollutant Standards for Combustors: Corrections.*
206 e. Checklist 200 (Mandatory Portions): *Zinc Fertilizers Made from Recycled*
207 *Hazardous Secondary Materials.*
208 f. Checklists 206 and 206.1: *Nonwastewaters from Productions of Dyes, Pigments,*
209 *and Food, Drug, and Cosmetic Colorants.*
210 g. Checklists 207 and 207.1: *Modification of the Hazardous Waste Manifest System.*
211 h. Checklist 222: *OECD Requirements; Export Shipments of Spent Lead-Acid Batteries.*
212 i. Checklist 223: *Hazardous Waste Technical Corrections and Clarifications (40 CFR*
213 *262.23).*
214 j. Checklist 224: *Withdrawal of the Emission Comparable Fuel Exclusion under*
215 *RCRA.*
216 k. No checklist: Adoption of rules previously omitted in previous rulemaking
217 associated with the Organization for Economic Cooperation and Development
218 (OECD) management of the exportation of hazardous waste between countries.
219

220 2. Optional rules

- 221
222 a. Checklist 164: *Kraft Mill Steam Stripper Condensate Exclusion.*
223 b. Checklists 197, 202, 212, 217: Revisions to the National Emission Standards for
224 Hazardous Air Pollutants emitted from the burning of hazardous waste. These
225 changes affected some of the same rules adopted as part of the revision described
226 in 1.b. above.
227 c. Checklist 200: *Zinc Fertilizers Made from Recycled Hazardous Secondary*
228 *Materials.*
229 d. Checklist 201: *Land Disposal Restrictions: National Treatment Variance To*
230 *Designate New Treatment Subcategories for Radioactively Contaminated*
231 *Cadmium-, Mercury-, and Silver-Containing Batteries.*
232 e. Checklist 203: *Hazardous Waste Management System; Identification and Listing of*
233 *Hazardous Waste; Recycled Used Oil Management Standards.*
234 f. Checklist 205: *NESHAP: Surface Coating of Automobiles and Light-Duty Trucks.*
235 g. Checklist 208 and 208.1: *Methods Innovation Rule and SW-846 Update.*
236 h. Checklist 209: *Universal Waste Rule: Specific Provisions for Mercury*
237 *Containing Equipment.*
238 i. Checklist 210: ***Standardized Permit for RCRA Hazardous Waste Management***
239 ***Facilities.***
240 j. Checklist 211: *Revision of Wastewater Treatment Exemptions for Hazardous*
241 *Waste Mixtures ("Headworks exemptions").*
242 k. Checklist 213: ***Burden Reduction Initiative (excluding Performance Track rules,***
243 ***which have been rescinded).***
244 l. Checklists 214, 223, and 223.1: Changes were made to rules to correct printing
245 errors, printing omissions, incorrect or outdated citations that have occurred over
246 several years of federal rule revisions. These corrections did not create any new
247 regulatory requirements. Wyoming has chosen to adopt these changes to ensure
248 the rules provide correctly spelled, worded, and cross-referenced requirements.

- 249 m. Checklist 215: ***Cathode Ray Tube (CRT) Exclusion.***
- 250 n. Checklist 216: *Exclusion of Oil-Bearing Secondary Materials Processed in*
- 251 *a Gasification System to Produce Synthesis Gas.*
- 252 o. Checklist 218: *F019 Exemption for Wastewater Treatment Sludges from Auto*
- 253 *Manufacturing Zinc Phosphating Processes.*
- 254 p. Checklists 220 and 226: ***Academic Laboratories Generator Standards***, 40 CFR
- 255 262, Subpart K (Supported by University of Wyoming).
- 256 q. Checklist 225: *Removal of Saccharin and its Salts from the Lists of Hazardous*
- 257 *Wastes.*
- 258 r. Checklist 227: *Revisions of the Treatment Standards for Carbamate Wastes.*
- 259 s. Checklist 228: *Hazardous Waste Technical Corrections and Clarifications.*
- 260 t. Checklist 229: ***Conditional Exclusions for Solvent-contaminated Wipes.***

261
262 **Modifications Recommended by the Wyoming Water and Waste Advisory Board (WWAB) on**

263 **7/25/14**

264
265 On July 25, 2014, the WWAB recommended the following changes to the draft IBR rules to

266 make them easier to use and to eliminate dated provisions from the rules:

- 267 1. The more stringent provision regarding daily versus weekly inspections of tanks (40 CFR
- 268 264.195(d), 265.195(c), and 265.201(d); old Chapter 10, Section 9(f)(iv), old Chapter 11,
- 269 Section 11(f)(iii) and (l)(vii)) has been removed at the request of the WWAB, as most
- 270 facilities now use automated leak detection systems for tanks.
- 271 2. The more stringent provision regarding the requirement for permittees to use monitoring
- 272 technologies meeting the accuracy requirements of the Director has been removed. The
- 273 former State provision (40 CFR 270.30(j); old Chapter 4, Section 1(a)(x)(D)) also required the
- 274 permittee to adopt the proper technology when renewing or modifying a permit if the Director
- 275 required more accurate monitoring. The federal code does not contain accuracy requirements
- 276 for the purposes of monitoring. As EPA guidance already requires sampling and analysis
- 277 plans (SAPs) and quality assurance project plans (QAPPs) which cover monitoring, this
- 278 obsolete provision has been removed from the IBR rules.
- 279 3. The use of carots ("^") to denote deletion of Federal language has been removed from the
- 280 rules. The carots have been eliminated, as the IBR rules already represent the Wyoming
- 281 differences between the State rules language and the 40 CFR.
- 282 4. Confusing language related to the placement of liquids in landfills has been removed from the
- 283 second column in Appendix A, Table 1-1, under the RCRA topic "Landfills" in two places.
- 284 5. Under Section 4(a)(v), the definition for "Chronic" has been modified from the original State
- 285 language to be "That ~~point in time~~ time period from seven years to a lifetime."
- 286 6. After the WWAB meeting, an additional provision was added by DEQ under Section 264 as
- 287 Section 264(a)(xi) which references 40 CFR 264.552(a)(3)(iii). This more stringent provision
- 288 applies to landfills, and is consistent with the more stringent provision under "LANDFILLS"
- 289 in Table 1-1 of Appendix A. The State HWRR reference was also updated from HWRR
- 290 264(e)(i) to HWRR 264(a)(xi) in the table, which is a more accurate State reference.

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295 **Effect of the Rule Revisions**

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297 The Council anticipates that the proposed IBR rule revisions will benefit the regulated
298 community in the following ways:

- 299 1. The HWRR will provide for simplified compliance with federal regulations, and will be easier
300 to understand. The IBR HWRR will facilitate comparison of State HWRR with those from
301 other States and the 40 CFR.
- 302 2. The IBR HWRR will eliminate onerous and confusing internal State cross-references in the
303 current HWRR.
- 304 3. HWRR will be up-to-date with current 40 CFR as of January 31, 2014.
- 305 4. More stringent and broader in scope provisions in the HWRR will be clearly outlined and
306 described relative to 40 CFR.
- 307 5. Numbered sections of the Chapter 1 HWRR generally match equivalent parts of 40 CFR.
- 308 6. The revised HWRR will be consistent with those previously adopted by the State, with out-of-
309 date or duplicated rules removed accordingly.
- 310 7. The IBR HWRR (one chapter of ca. 60 pages) will be much more concise than the present
311 HWRR (14 chapters of ca. 1385 pages).

312

313 The Council anticipates that adoption by IBR, including revisions to update the current HWRR
314 to 40 CFR as of January 31, 2014, will benefit the State in the following ways:

- 315 1. Maintains State primacy.
- 316 2. The State of Wyoming will be up-to-date with the current 40 CFR as of January 31, 2014.
- 317 3. Less expense and time commitment for State adoption of future rule revisions. Less
318 paperwork and less regulatory time will be required to maintain the HWRR package for the
319 State.
- 320 4. Shorter review times for proposed HWRR during the State adoption process and shorter
321 review times for the U.S. Environmental Protection Agency (EPA) during State authorization
322 of proposed HWRR.
- 323 5. Eliminates automatic adoption of 40 CFR new rules based on language in the Chapter which
324 contains a "date certain" provision in the HWRR.

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326

327 **Conclusion**

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329 The Council has determined that the adoption of these HWRR is necessary to update the
330 Wyoming hazardous waste management standards to comply with federal regulations and carry
331 out the responsibilities of the Department of Environmental Quality.

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334 EXECUTED THIS 14th DAY OF January, 2015.

335

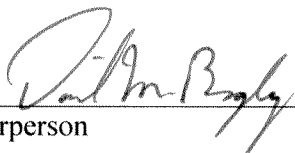
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FOR THE ENVIRONMENTAL QUALITY COUNCIL

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Chairperson

