

Wyoming Department of Environmental Quality
Solid and Hazardous Waste Division
Hazardous Waste Management

Chapter 12 – Interim Status Standards for Owners and Operators of Hazardous
Waste Treatment, Storage and Disposal Facilities

2007 Rule Revision Explanation

Introduction:

The proposed revisions in this Chapter are being initiated by changes to federal rules that have been promulgated by the Environmental Protection Agency (EPA) through the Federal Register Notices that follow. Revisions being proposed in this package are comparable, in almost all cases, to the federal Resource Conservation and Recovery Act (RCRA) regulations. Other revisions are proposed to correct editorial errors.

The authority to revise the rules contained within Chapter 12 is provided by W.S. 35-11-503(d)(i). Specific authority to adopt rules more stringent than the federal rules as described for Sections 19(c)(iv), (d)(ii), (f)(i)(A)(VIII) and (IX) and (f)(iii) is provided by W.S. 35-11-503(a)(v)(A).

Applicable Federal Register Notices:

These proposed rules incorporate the final adopted EPA rule changes addressed in the following Federal Register (FR) notices:

- 1) April 12, 1996, in 61 FR 16290, *Imports and Exports of hazardous Waste: Implementation of OECD Council Decision*;
- 2) February 12, 1997, in 62 FR 6622, *Military Munitions Rule: Hazardous Waste Identification and Management, Explosives Emergencies, Manifest Exemption for Transport of Hazardous Waste on Right-of-ways on Contiguous Properties* (hereafter referred to as Military munitions rule);
- 3) May 6, 1998, in 63 FR 24963, *Hazardous Waste Management System, Identification and Listing of Hazardous Waste, Recycled Used Oil Standards* (hereafter referred to as Recycled used oil technical correction and clarification);
- 4) August 6, 1998, in 63 FR 42110, *Hazardous Waste Management System, Identification and Listing of Hazardous Waste* (hereafter referred to as Petroleum refining hazardous waste listings);

5) December 24, 1998, in 63 FR 71225, *Universal Waste Rule - Hazardous Waste Management System, Modification of the Hazardous Waste Recycling Regulatory Program* (hereafter known as Universal waste technical correction); and

6) May 16, 2001, in 66 FR 27218, *Storage, Treatment, Transportation and Disposal of Mixed Wastes*;

EXPLANATION FOR PROPOSED REVISIONS

Editing guides pertaining to proposed changes:

Underline means language proposed to be added.

~~Strikethrough~~ means language proposed for removal

Universal editing guides pertaining to the attached rules:

Text in the margins indicates the federal citation for the rule.

Boldface type indicates that the state has added language for which there is no federal equivalent language.

A caret symbol (^) indicates that federal language has not been adopted.

The numbers in the left margin (which follow) coincide with the page numbers on the attached pages from Chapter 12.

Changes proposed to Section 3. **RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL**

12-1

Section 3(a)(iii) is proposed for revision to insert “this” and remove “the” which was inadvertently inserted in the rule during a previous rulemaking.

Changes proposed to Section 6. **RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY**

12-3

Section 6(a)(ii)(C) is proposed for revision to remove the reference to Chapter 8, Section 8 (which is proposed for deletion during this rulemaking) and insert a reference to the appropriate federal rules and counterpart state rule dealing with the international import/export of hazardous waste. This revision is necessary with the adoption of the federal policy that States cannot regulate international trade. The EPA adopted this policy on April 12, 1996 in 61 FR 16290 as part of the implementation of the Organization for Economic Cooperation and Development (OECD) decision. The OECD governs import and export of waste between participating countries. Control of the import and export of hazardous waste to the United States will continue to be regulated by the EPA.

Changes proposed to Section 7. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

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Section 7 is proposed for revision in its entirety to incorporate counterpart changes made to the federal rules as part 63 FR 71225 (December 24, 1998 - Universal waste technical correction).

Changes proposed to Section 8. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

12-8

Section 8(a)(ii)(C) is proposed for revision to change the cross-references to appropriate subparagraphs within Chapter 1, Section 1(f). These cross-references were revised in the counterpart federal rules as part of 63 FR 42110 (August 6, 1998 - Petroleum refining hazardous waste listings).

12-27

Section 8(e)(v)(A) is proposed for revision to add the parenthetical phrase “for new facilities applying for a permit” and the ^ symbol to indicate that counterpart federal language is not proposed for adoption. This language was inadvertently excluded from the previous (1998) rulemaking.

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Section 8(e)(vi), (vii) and (viii) were modified to correct the Federal citations which appear in the left hand margin.

12-35

Section 8(g)(ix) is proposed for revision to delete the parenthetical phrase “this section.” This phrase was inadvertently left in this rule during the previous (1998) rulemaking.

Changes proposed to Section 10. APPLICABILITY

12-43
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Section 10(a), (a)(ii)(A)(I), (a)(ii)(B)(I), (a)(iii)(A)(II), (a)(v)(A)(II), and (a)(v)(C)(II) are proposed for revision to add a cross-reference to Chapter 12, Sections 19 and 20. These are two new sections (Military Munitions and Conditional Exemptions for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal Terms, respectively) being proposed for inclusion within Chapter 12 in accordance with new federal rules adopted as part of 62 FR 6622 (February 12, 1997 - Military munitions rule); and 66 FR 27218 (May 16, 2001- Storage, treatment, transportation and disposal of mixed wastes).

12-46

Section 10(a)(v)(D) is proposed for revision to remove the parenthetical phrase “this part.” This phrase was inadvertently left in this rule during the previous (1998) rulemaking.

Changes proposed to Section 11. STANDARDS FOR USED OIL GENERATORS

12-49

Section 11(a)(i)(B) is proposed for revision to remove the parenthetical phrase “this part.” This phrase was inadvertently left in this rule during the previous (1998) rulemaking.

12-51

Section 11(c)(iv) is proposed for revision to modify language which was changed as part of 63 FR 24963 (May 6, 1998 - Recycled used oil technical correction and clarification rule).

Changes proposed to Section 12. STANDARDS FOR USED OIL COLLECTION CENTERS AND AGGREGATION POINTS

12-53

Section 12(a)(i) and (ii) are proposed for revision to remove unnecessary phrases which were inadvertently left in both rules during the previous rulemaking.

Changes proposed to Section 13. STANDARDS FOR USED OIL TRANSPORTER AND TRANSFER FACILITIES

12-59

Section 13(f)(viii) is proposed for revision to modify language which was changed as part of 63 FR 24963 (May 6, 1998 - Recycled used oil technical correction and clarification rule).

Changes proposed to Section 14. STANDARDS FOR USED OIL PROCESSORS AND RE-REFINERS

12-61

Section 14(a)(ii)(A) and (B) are proposed for revision to remove phrases which were inadvertently adopted during the previous rulemaking.

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Section 14(e)(vii) is proposed for revision to modify language which was changed as part of 63 FR 24963 (May 6, 1998 - Recycled used oil technical correction and clarification rule).

Changes proposed to Section 15. STANDARDS FOR USED OIL BURNERS WHO BURN OFF-SPECIFICATION USED OIL FOR ENERGY RECOVERY

12-79

Section 15(e)(vii) is proposed for revision to modify language which was changed as part of 63 FR 24963 (May 6, 1998 - Recycled used oil technical correction and clarification rule).

Changes proposed to Section 17. STANDARDS FOR USE AS A DUST SUPPRESSANT AND DISPOSAL OF USED OIL

12-83

Section 17(b)(i) is proposed for revision to add a cross-reference to Chapter 12, Sections 19 and 20. These are two new sections (Military Munitions and Conditional Exemptions for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal Terms, respectively) being proposed for inclusion within Chapter 12 in accordance with new federal rules adopted as part of 62 FR 6622 (February 12, 1997 - Military munitions rule); and 66 FR 27218 (May 16, 2001- Storage, treatment, transportation and disposal of mixed wastes).

Adoption of new Section 19. MILITARY MUNITIONS

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Section 19 is proposed for adoption because this new section was adopted as part of 62 FR 6622 (February 12, 1997 - the Military munitions rule).

The following rule provisions differ from the counterpart federal Military munitions rules:

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Section 19(c)(iv): An additional provision is proposed with Section 19(c)(iv) requiring that the WDEQ Director be notified in writing whenever a munition lands outside a firing range that was not promptly rendered safe or retrieved. The counterpart federal rule does not contain this requirement. Therefore, this provision is considered more stringent than the federal rule and is considered necessary in order for the WDEQ to be made aware of the potential threat to human health and the environment.

Proposed State Rule: Sec. 19(c)(iv)	Counterpart Federal Rule: 266.202(d)
<p><u>(iv) For purposes of Chapter 1, Section 1(f)(i) "Waste Material" of these rules and regulations, a used or fired military munition is a waste material, and, therefore, is potentially subject to RCRA corrective action authorities under W.S. 35-11-503(d), Chapter 10, Section 6(l)(iii), Chapter 11, Section 8(f), or RCRA Sections 3004(u) and (v), and 3008(h), or imminent and substantial endangerment authorities under W.S. 35-11-115; W.S. 35-11-503(d); Articles 7 and 9 of the Wyoming Environmental Quality Act or Chapter 1, Section 1(k) of these rules and regulations or RCRA Section 7003, if the munition lands off-range and is not promptly rendered safe and/or retrieved. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must notify the Director in writing and maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).</u></p>	<p>For purposes of RCRA section 1004(27), a used or fired military munition is a waste material, and, therefore, is potentially subject to RCRA corrective action authorities under or Sections 3004(u) and (v), and 3008(h), or imminent and substantial endangerment authorities under Section 7003, if the munition lands off-range and is not promptly rendered safe and/or retrieved. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).</p>

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Section 19(d)(ii): An additional provision is proposed with Section 19(d)(ii) to require the facility to work with the WDEQ to resolve compliance issues, and allow the WDEQ Director to restore the exemption as appropriate. The federal Military munitions rule allows an automatic reinstatement of an exemption for storage and transportation of waste military munitions if the EPA Regional Administrator does not take action on the application for reinstatement within sixty (60) days. However, Wyoming does not want to allow for this reinstatement of an exemption in the absence of correspondence by the WDEQ. See side-by-side comparison below. This provision is considered more stringent than the federal rule

and is considered necessary in order for the WDEQ to be made aware of the potential threat to human health and the environment.

Proposed State Rule: Sec. 19(d)(ii)	Counterpart Federal Rule: 266.203(b)
<p><u>Reinstatement of exemption. If any waste military munition loses its exemption under Section 19(d)(i)(A) of this Chapter, an application may be filed with the Director for reinstatement of the exemption from hazardous waste transportation regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of Section 19(d)(i)(A) of this Chapter. If the Director finds that reinstatement of the exemption is appropriate based on factors such as the transporter's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the Director may reinstate the exemption under Section 19(d)(i)(A) of this Chapter. If the Director does not take action on the reinstatement application within 60 days after receipt of the application ^ and if the military continues to seek reinstatement of the exemption, it is the responsibility of the military to contact the Director to establish a mutually-agreeable time line for the Director to address the application. In reinstating the exemption under Section 19(d)(i)(A) of this Chapter, the Director may specify additional conditions as are necessary to ensure and document proper transportation to protect human health and the environment.</u></p>	<p>Reinstatement of exemption. If any waste military munition loses its exemption under paragraph (a)(1) of this section, an application may be filed with the Director for reinstatement of the exemption from hazardous waste transportation regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of paragraph (a)(1) of this section. If the Director finds that reinstatement of the exemption is appropriate based on factors such as the transporter's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the Director may reinstate the exemption under paragraph (a)(1) of this section. If the Director does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the Director may terminate a conditional exemption reinstated by default in the preceding sentence if the Director finds that reinstatement is inappropriate based on factors such as the transporter's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the exemption under paragraph (a)(1) of this section, the Director may specify additional conditions as are necessary to ensure and document proper transportation to protect human health and the environment.</p>

Section 19(d)(iii): Two additional provisions are proposed within Section 19(d)(iii).

a. The first revises the references to the Department of Defense shipping controls. Incorrect references were adopted by the EPA as part of 62 FR 6622, (February 12, 1997 - the Military munitions rule). These include incorrectly citing GSA Standard Form 1109 and requisition tracking form DD Form 1348. During public comment associated with the Advisory Board meetings held regarding these draft rules, the Department of Defense provided the correct references. This proposed

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rule contains the suggested, correct references. These references are considered equivalent to the federal rule.

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b. The federal Military Munition rule allows a conditional exemption for transportation of waste military munitions provided the waste munitions are transported using Department of Defense shipping controls. The federal Military munitions rule relied on the Department of Defense shipping controls for shipping waste munitions rather than requiring a hazardous waste manifest. While the current Department of Defense shipping controls were considered to provide equivalent protection, the Department of Defense modifies these controls from time to time. The DEQ cannot incorporate an unspecified and undated federal rule within its rules because to do so would violate W.S. §16-3-103 of the Wyoming Administrative Procedures Act. Therefore, any changes to the Department of Defense shipping controls must be proposed and adopted using proper State of Wyoming rule making procedures in order to be enforced by DEQ. In addition, DEQ believes it is reasonable to allow the Director to determine whether new or amended Department of Defense shipping controls protect human health and the environment before proceeding with rulemaking.

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b.

Proposed State Rule: Sec. 19(d)(iii)	Counterpart Federal Rule: 266.203(c)
<p>(iii) <u>Amendments to DOD shipping controls. The Department of Defense shipping controls applicable to the transport of military munitions referenced in Section 19(d)(i)(A)(II) of this Chapter,^ and in effect on November 8, 1995, are the Signature and Tally Record (DD Form 1907) and the Motor Vehicle Inspection (Transporting Hazardous Materials) (DD Form 626). For shipment by commercial transport the U.S. Government Bill of Lading (GBL) (GSA Standard Form 1103) is also required. For shipment by military transport, the following additional controls are applicable: DoD Single Line Item Release/Receipt Document (DD Form 1348-1A) and the Shipping Paper and Emergency Response Information for Hazardous Materials Transported by Government Vehicles (DD Form 836). Any amendments to the above Department of Defense shipping controls shall not become effective for purposes of Section 19(d)(i)(A) of this Chapter until the amended Department of Defense shipping control has been adopted as rule by the Department of Environmental Quality. Adoption of an amended Department of Defense shipping control will be contingent on the Director's affirmative finding that the amended shipping</u></p>	<p>Amendments to DOD shipping controls. The Department of Defense shipping controls applicable to the transport of military munitions referenced in paragraph (a)(1)(ii) of this Section are Government Bill of Lading (GBL) (GSA Standard Form 1109), requisition tracking form DD Form 1348, the Signature and Talley Record (DD Form 1907), Special Instructions for Motor Vehicle Drivers (DD Form 836), and the Motor Vehicle Inspection Report (DD Form 626) in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the Department of Defense shipping controls shall become effective for purposes of paragraph (a)(1) of this Section on the date the Department of Defense publishes notice in the Federal Register that the shipping controls referenced in paragraph (a)(1)(ii) of this Section have been amended.</p>

Proposed State Rule: Sec. 19(d)(iii)	Counterpart Federal Rule: 266.203(c)
<u>control(s) is/are protective of human health and the environment. Copies of Department of Defense shipping controls can be obtained upon request from the Wyoming Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming, 82009.</u>	

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Section (f)(i)(A)(VIII) and (IX): Two additional rules are proposed for adoption which are not part of the counterpart federal rules. These have been proposed to first prohibit an owner or operator from storing waste military munitions on their facility which are generated by an off-site facility and secondly provide a mechanism for temporary storage of off-site generated waste in cases where inclement weather, etc. may temporarily prevent the waste from being transported. These rules are being proposed to eliminate the possibility of the Department of Defense designating a Wyoming military facility as a national storage facility for waste munitions without a WDEQ hazardous waste permit.

These provisions are considered more stringent than the federal rules and are considered necessary in order for the WDEQ to protect human health and the environment.

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Section 19(f)(iii): An additional provision is proposed within Section 19(f)(iii) [which is identical to the additional provision to Section 19(d)(ii) discussed above] to require the facility to work with the WDEQ to resolve compliance issues, and allow the WDEQ Director to restore the conditional exemption as appropriate. The federal Military munitions rule allows an automatic reinstatement of a conditional exemption for storage and transportation of waste military munitions if the EPA Regional Administrator does not take action on the application for reinstatement within sixty (60) days. However, Wyoming does not want to allow for this reinstatement of an exemption in the absence of correspondence by the WDEQ. See side-by-side comparison below. This provision is considered more stringent than the federal rule and is considered necessary in order for the WDEQ to be made aware of the potential threat to human health and the environment.

Proposed State Rule: Sec. 19(f)(iii)	Counterpart Federal Rule: 266.205(c)
<u>Reinstatement of conditional exemption. If any waste military munition loses its exemption under Section 19(d)(i)(A) of this Chapter, an application may be filed with the Director for reinstatement of the conditional exemption from hazardous waste storage regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of Section 19(f)(i)(A) of this Chapter. If the Director finds that</u>	Reinstatement of conditional exemption. If any waste military munition loses its conditional exemption under paragraph (a)(1) of this section, an application may be filed with the Director for reinstatement of the conditional exemption from hazardous waste storage regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of paragraph (a)(1) of this Section. If the Director finds that reinstatement of the

<p>Proposed State Rule: Sec. 19(f)(iii)</p> <p><u>reinstatement of the conditional exemption is appropriate based on factors such as the owner's or operator's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the Director may reinstate the conditional exemption under Section 19(f)(i)(A) of this Chapter. If the Director does not take action on the reinstatement application within 60 days after receipt of the application ^ and if the military continues to seek reinstatement of the exemption, it is the responsibility of the military to contact the Director to establish a mutually-agreeable time line for the Director to address the application. In reinstating the conditional exemption under Section 19(f)(i)(A) of this Chapter, the Director may specify additional conditions as are necessary to ensure and document proper storage to protect human health and the environment.</u></p>	<p>Counterpart Federal Rule: 266.205(c)</p> <p>conditional exemption is appropriate based on factors such as the owner's or operator's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the Director may reinstate the conditional exemption under paragraph (a)(1) of this Section. If the Director does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the Director may terminate a conditional exemption reinstated by default in the preceding sentence if he/she finds that reinstatement is inappropriate based on factors such as the owner's or operator's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the conditional exemption under paragraph (a)(1) of this Section, the Director may specify additional conditions as are necessary to ensure and document proper storage to protect human health and the environment.</p>
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Section 19(f)(iv). Is revised to add language incorporating the appropriate reference to state requirements.

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Section 19(f)(v). The federal Military Munitions rule allows a conditional exemption for storage of waste munitions if the waste munitions are stored as required by the DDESB standards. While the current DDESB standards are considered to provide equivalent protection, the Department of Defense modifies those standards from time to time. The DEQ cannot incorporate an unspecified and undated federal rule within its rules because to do so would violate W.S. §16-3-103 of the Wyoming Administrative Procedures Act. Therefore, any changes to the Department of Defense DDESB storage standards must be proposed and adopted using proper State of Wyoming rule making procedures in order to be enforced by DEQ. In addition, DEQ believes it is reasonable to allow the Director to determine whether new or amended Department of Defense DDESB storage standards protect human health and the environment before proceeding with rulemaking.

<p>Proposed State Rule: Sec. 19(f)(v)</p> <p><u>(v) Amendments to DDESB storage standards. The DDESB storage standards applicable to waste military munitions, referenced in Section 19(f)(i)(A)(III) of</u></p>	<p>Counterpart Federal Rule: 266.205(e)</p> <p>(e) Amendments to DDESB storage standards. The DDESB storage standards applicable to waste military munitions, referenced in paragraph (a)(1)(iii) of this</p>
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<p><u>this Chapter, are DOD 6055.9-STD ("DOD Ammunition and Explosive Safety Standards"), in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the DDESB storage standards shall not become effective for purposes of Section 19(f)(i)(A) of this Chapter until the amended Department of Defense DDESB storage standards have been adopted as rule by the Department of Environmental Quality. Adoption of amended Department of Defense DDESB storage standards will be contingent on the Director's affirmative finding that the DDESB storage standards are protective of human health and the environment.</u></p>	<p>section, are DOD 6055.9-STD ("DOD Ammunition and Explosive Safety Standards"), in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the DDESB storage standards shall become effective for purposes of paragraph (a)(1) of this section on the date the Department of Defense publishes notice in the Federal Register that the DDESB standards referenced in Section 19(f)(i)(A) of this Chapter have been amended.</p>
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Adoption of new Section 20. CONDITIONAL EXEMPTION FOR LOW-LEVEL MIXED WASTE STORAGE, TREATMENT, TRANSPORTATION AND DISPOSAL TERMS

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Section 20 is proposed for adoption in accordance with a new section being added to the counterpart federal rules as part of 66 FR 27218 (May 16, 2001- Storage, treatment, transportation and disposal of mixed wastes rule). Section 20(d)(i) (page 12-91) adds 'Wyoming' to replace a reference to 'your State' in the counterpart federal rule.