

Chapter 14, Changes Made Since 6/19/20

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Section 4

- At paragraph (b), added language in response to Wexpro's comment to clarify at what volume or specific site characteristics operators would need to submit a subsurface investigation plan.

10
11 **CHAPTER 14**

12
13 **FINANCIAL ASSURANCE REQUIREMENTS**

14 **Section 1. In General.**

15
16 (a) This Chapter is promulgated pursuant to the Wyoming Environmental Quality
17 Act, Wyoming Statutes (W.S.) § 35-11-101 through § 35-11-2005, specifically § 306 and § 307.

18
19 (b) This Chapter governs all commercial oil field waste disposal facilities that are
20 required to demonstrate financial assurance under W.S. § 35-11-306(c) and all commercial waste
21 treatment, storage and disposal facilities used for the management of more than ten (10) tons of
22 dried wastewater treatment sludges or the equivalent per operating day that are required to
23 demonstrate financial assurance under W.S. § 35-11-307(a). This chapter does not apply to
24 publicly owned facilities or facilities that receive non-domestic sludges.

25
26 (c) The following definitions supplement those contained in W. S. § 35-11-103 of the
27 Wyoming Environmental Quality Act:

28
29 (i) “Closure” means the process of securing and stabilizing a regulated
30 facility pursuant to the requirements of this Chapter and a closure plan approved by the
31 Department.

32
33 (ii) “Corrective action” means all actions necessary to remedy, abate, and
34 eliminate the public health threat, environmental threat, and damages from a release to the
35 environment of pollutants from a regulated facility or from any violation of a permit, standard,
36 rule, or other requirement established under the Wyoming Environmental Quality Act

37
38 (iii) “Monitoring” means all procedures and techniques used to systematically
39 collect, analyze and inspect data on operational parameters of the facility or on the quality of the
40 air, groundwater, surface water, and soil.

41
42 (iv) “Operator” means a person who owns or operates a regulated facility or a
43 person who holds a permit to construct, install, modify, or operate a regulated facility.

44
45 (v) “Regulated facility” means a commercial sludge facility or a commercial
46 oil field waste disposal facility as specified in Section 1(b) of this chapter.

47
48 (vi) “Release” includes, but is not limited to, any spilling, leaking, pumping,
49 pouring, emptying, emitting, discharging, dumping, addition, escaping, leaching, or unauthorized
50 disposal of any pollutant that enters, or threatens to enter, the air, land or waters of the State.

52 **Section 2. Requirements to Demonstrate Financial Assurance.**
53

54 (a) All regulated facilities shall provide financial assurance for closure, post-closure,
55 and corrective action in compliance with this Chapter.

56
57 (b) No new permit shall be issued for any regulated facility unless the applicant
58 provides financial assurance that ensures there are adequate sources of funds to provide for
59 closure, post-closure, and corrective action.

60
61 (i) The Department may deny a permit application if the documentation or
62 proposed forms of financial assurance do not ensure that adequate funds will be available to
63 provide for closure, post-closure, and corrective action.

64
65 (ii) A permit may be transferred to a new permittee only if the new permittee
66 demonstrates compliance with the financial assurance requirements of this Chapter. Construction
67 permit ownership will be transferred in accordance with Water Quality Rules and Regulations,
68 Chapter 3, Section 12.

69
70 (c) Any operator of a regulated facility that violates a permit, standard, rule, or
71 requirement established under the Wyoming Environmental Quality Act that results in a release
72 of pollution or waste to the air, land, or water resources of the state shall provide financial
73 assurance for the costs of completing corrective action to remedy or abate the violation or
74 damages caused by the violation.

75
76 (d) An operator shall submit documentation of the financial assurance to the
77 Department as part of any permit application for a regulated facility and shall update
78 documentation of financial assurance as required by Sections 3(d)(iv), 3(e)(iv), 4(d)(iv), 5(c)(ii),
79 and 5(d)(ii) of this Chapter. The Department shall determine whether the documentation and
80 proposed forms of financial assurance are adequate and shall notify the applicant in writing of its
81 determination.
82

83 **Section 3. Closure and Post-Closure Requirements.**
84

85 (a) At least one hundred eighty (180) days prior to the anticipated date for initiation
86 of closure of a regulated facility, the operator shall:

87
88 (i) Notify the Department in writing of the operator's intention to close a
89 regulated facility;

90
91 (ii) Notify the governing body of each locality and adjacent property owners
92 by certified or registered mail of the operator's intention to close a regulated facility;
93

94 (iii) Post at least one (1) sign at the regulated facility notifying all persons of
95 the anticipated closing and prohibition against further receipt of waste materials; and

96
97 (iv) Install barriers at all access points to prevent new waste from being
98 deposited.

99
100 (b) An operator or permit applicant shall submit a closure plan and a post-closure
101 plan with each permit application for a regulated facility. Additionally, a permittee shall submit a
102 revised closure plan and revised post-closure plan to the Department whenever changes to
103 facility operations, conditions, or anticipated closure necessitate changes to the plans.

104
105 (c) The closure plan shall:

106
107 (i) Describe the work necessary to minimize or eliminate, to the extent
108 necessary to protect human health and the environment, the post-closure escape of leachate,
109 surface runoff, or waste decomposition products to the groundwater, surface water, or the
110 atmosphere;

111
112 (ii) Minimize the need for post-closure maintenance and controls; and

113
114 (iii) Include a cost estimate.

115
116 (d) The closure plan cost estimate shall:

117
118 (i) Include an itemized written estimate of the cost of completing all work
119 described in the closure plan;

120
121 (ii) Be based on the cost required for a third-party contractor to complete the
122 work described in the closure at the most expensive point in the life of the facility;

123
124 (iii) Account for the following factors:

125
126 (A) The size and topography of the site;

127
128 (B) The total waste material storage capacity at the site;

129
130 (C) Availability of cover and fill material needed for site grading;

131
132 (D) The type of waste to be received at the site;

133
134 (E) Disposal method and sequential disposal plan;

135
136 (F) The location of the site and the character of the surrounding area;

- 137
138 (G) Requirements for surface drainage;
139
140 (H) Operation and maintenance of the leachate collection and treatment
141 system, and, the off-site disposal of leachate;
142
143 (I) Environmental monitoring system;
144
145 (J) Structures and other improvements to be dismantled and removed.
146 Salvage values cannot be used to offset demolition costs;
147
148 (K) Site storage capacity for solid waste, incinerator residue, and
149 compost material;
150
151 (L) Off-site disposal requirements;
152
153 (M) Vector control requirements;
154
155 (N) A minimum of fifteen percent (15%) variable contingency fee to
156 cover other closure costs as determined appropriate by the Department; and
157
158 (O) Any other relevant site-specific factors.
159
160 (iv) Be updated, revised, and submitted to the Department by April 1 of each
161 year.
162
163 (e) The post-closure plan shall:
164
165 (i) Describe the monitoring, maintenance, and controls necessary to confirm
166 that:
167
168 (A) Post-closure escape of leachate, surface runoff, or waste
169 decomposition products to the groundwater, surface water, or the atmosphere has been
170 minimized or eliminated to the extent necessary to protect human health and the environment;
171 and
172
173 (B) The facility has been stabilized and closed in accordance with the
174 most recent approved closure plan.
175
176 (ii) Establish the monitoring period necessary to ensure that the regulated
177 facility has been stabilized and closed in accordance with the most recent approved closure plan.
178 The monitoring period shall continue for a minimum of five (5) years after the date of
179 completing closure of the regulated facility, but the Department may require a longer monitoring

180 period or extend the post-closure monitoring period if the Department determines a longer
181 monitoring period is necessary to protect human health and the environment; and

182
183 (iii) Include a cost estimate. However, an incinerator, resource recovery
184 facility, compost facility, or storage surface impoundment may omit the post-closure plan cost
185 estimate from its post-closure plan if onsite disposal of wastes or residues is not planned or
186 required.

187
188 (f) The post-closure plan cost estimate shall:

189
190 (i) Include a written estimate of the cost of completing all work described in
191 the post-closure plan;

192
193 (ii) Be based on the cost required for a third-party contractor to complete the
194 work described in the post-closure plan;

195
196 (iii) Account for the following factors :

197
198 (A) The size and topography of the site;

199
200 (B) The type and quantity of waste that can be received;

201
202 (C) Disposal method and sequential disposal plan;

203
204 (D) The potential for significant leachate production and the possibility
205 of contaminating water supplies;

206
207 (E) Environmental monitoring systems;

208
209 (F) Soil conditions;:

210
211 (G) The location of the site and the character of the surrounding area;

212
213 (H) A minimum of fifteen percent (15%) contingency fee to cover
214 other post-closure costs as determined appropriate by the Department; and

215
216 (I) Other site-specific factors.

217
218 (iv) Be updated, revised, and submitted to the Department by April 1 of each
219 year.

220 (h) Inspection:

221

222 (i) The Department shall inspect all closed regulated facilities to determine if
223 the closure is complete and adequate in accordance with the approved plan after being notified
224 by the operator that closure has been completed. The Department shall provide written inspection
225 results to the operator of a closed facility after the inspection. If the closure is not satisfactory,
226 the Department shall specify necessary construction or such other steps that may be appropriate
227 to bring unsatisfactory sites into compliance with closure requirements.

228
229 (ii) Notification by the Department that the closure is satisfactory does not
230 relieve the operator of responsibility for corrective action in accordance with regulations of the
231 Department to prevent or abate problems caused by the regulated facility that are subsequently
232 discovered.

233
234 (i) Within sixty (60) days after receiving certification from the owner or operator that
235 closure has been accomplished in accordance with the closure plan and the provisions of this
236 Chapter, the Director shall verify that proper closure has occurred. Unless the Director has
237 reason to believe that closure has not been in accordance with the closure plan, the Director shall
238 notify the owner or operator in writing that the Director is no longer required to maintain
239 financial assurance for closure of the particular facility. Such notice shall release the owner or
240 operator only from the requirements for financial assurance for closure of the facility; it does not
241 release the Director from legal responsibility for meeting the closure or post-closure standards. If
242 no written notice or termination of financial assurance requirements or failure to properly
243 perform closure is received by the owner or operator within sixty (60) days after certifying
244 proper closure, the owner or operator may petition the Director for an immediate decision, in
245 which case the Director shall respond within ten (10) days after receipt of such petition.

246 **Section 4. Corrective Action Requirements.**

247
248 (a) The Department shall notify the operator of the need to take corrective action to
249 remedy a violation of a permit condition, standard, rule or requirement relating to a regulated
250 facility. The notification shall describe the nature of the violation.

251
252 (i) If deemed necessary by the Department, the operator will be required to
253 close the facility and cease further receipt of waste materials.

254
255 (ii) If the facility is closed, the operator shall post one (1) sign notifying all
256 persons of the closing and prohibition against further receipt of waste materials. Further, suitable
257 barriers shall be installed at former accesses to prevent new waste from being deposited.

258
259 (b) Remediation Activities: In the event of a release, the operator shall demonstrate to
260 the Department compliance with Water Quality Rules and Regulations Chapter 4, Section 4 and :

261
262 (i) Initiate immediate measures to:

263
264 (A) Prevent further release to the environment.

- 265
266 (B) Prevent further migration of the released substance into
267 surrounding soils and Waters of the State.
268
269 (C) Identify, monitor and mitigate any safety hazards or health risks
270 associated with the violation.
271
272 (ii) If the release is not exempt from Water Quality Rules and Regulations
273 Chapter 4, Section 4(a)(ii), then the operator shall Ppprepare a plan to conduct an investigation of
274 the release, the release site, and any surrounding area that may be affected by the release. The
275 plan shall include:
276
277 (A) A comprehensive subsurface investigation to define the extent and
278 degree of contamination.
279
280 (B) A schedule for conducting the investigation.
281
282 (C) A cost estimate for a third-party to perform the tasks identified by
283 the plan.
284
285 (iii) Submit the investigation plan to the Department within thirty (30) days.
286 The extent of contamination study should begin as soon as the plan has been approved and all
287 necessary permits obtained.
288
289 (iv) Conduct the extent of contamination study in accordance with the
290 approved plan and submit a written report of the findings to the Department.
291
292 (v) If required by the Department, develop a comprehensive plan for
293 mitigation and clean-up. The remediation plan shall be submitted to the Department for approval.
294 The remediation plan shall be implemented as soon as the Department has approved the plan and
295 all necessary permits have been obtained. The remediation plan shall contain an estimate of the
296 costs for a third-party to perform the tasks identified by the plan.
297
298 (c) Cost Estimate for Corrective Action:
299
300 (i) The operator of a commercial oil field disposal system regulated under
301 W.S. § 35-11-306 or a commercial sludge facility regulated under W.S. § 35-11-307 in
302 submitting an application for a construction permit as required by Chapter 3, Wyoming Water
303 Quality Rules and Regulations shall include a written estimate of the cost of corrective actions to
304 remediate a release from the facility. The estimated cost of corrective action and clean-up of a
305 release shall be determined by the Department on a case-by-case basis considering information
306 submitted by the operator. Such costs shall be based on the work required for a third-party
307 contractor.

308 (ii) The factors to be considered in estimating the cost of corrective actions
309 and clean-up of a release shall include the following:

- 310 (A) Soils, geologic and hydrogeologic conditions at the site.
- 311
- 312 (B) The type and quantity of waste received.
- 313
- 314 (C) Disposal method and sequential disposal plan.
- 315
- 316 (D) The potential for significant leachate production and the possibility
317 of contaminating groundwater.
- 318
- 319 (E) Environmental monitoring systems.
- 320
- 321 (F) The location of the site and the character of the surrounding area.
- 322
- 323 (G) A minimum of fifteen percent (15%) contingency fee to cover
324 other corrective action and clean-up costs as determined appropriate by the Department.
- 325
- 326 (H) The ability of the facility to prevent and detect a release and to
327 facilitate clean-up activities. The criteria used to evaluate this ability shall include design,
328 construction, operation, monitoring, and contingency plans submitted as part of the application
329 package.
- 330
- 331 (I) The class, use, value and environmental vulnerability of surface
332 and groundwater resources that may be impacted by a release.
- 333
- 334 (J) Other site-specific factors.
- 335
- 336

337 **Section 5. Establishment of Financial Assurance Requirements.**

338
339 (a) The Department shall establish the amount of financial assurance required for
340 regulated facilities based on the plans and cost estimates for closure, post-closure, and corrective
341 action. Upon receipt of a cost estimate, the Department shall determine whether the cost estimate
342 meets the requirements of this Chapter and notify the operator in writing of its determination.

343
344 (b) If the Department determines that a cost estimate meets the requirements of this
345 Chapter:

346
347 (i) The Department shall establish the amount of financial assurance required
348 and notify the operator in writing of the amount established; and

349

350 (ii) The operator shall submit documentation of financial assurance in an
351 amount at least equal to the Department's established financial assurance amount within thirty
352 (30) days of the Department's establishment of the financial assurance amount.

353
354 (c) If the Department determines that a cost estimate does not meet the requirements
355 of this Chapter:

356
357 (i) The Department shall notify the operator of the deficiencies in the cost
358 estimate, and the operator shall revise and resubmit the cost estimate to the Department within
359 thirty (30) days of the Department's determination; or

360
361 (ii) The Department shall establish the amount of financial assurance required
362 and notify the operator in writing of the amount established, and the operator shall submit
363 documentation of financial assurance in an amount at least equal to the Department's established
364 financial assurance amount within thirty (30) days of the Department's establishment of the
365 financial assurance amount.

366 **Section 6. Forms of Financial Assurance.**

367
368 (a) An operator of a regulated facility shall provide financial assurance in an amount
369 at least equal to the established financial assurance amount for closure, post-closure, and
370 corrective action in one (1) or a combination of the following:

371 (i) Surety bond;

372 (ii) Federally insured certificates of deposit;

373 (iii) Government-backed securities;

374 (iv) Cash.

375
376
377
378
379 (b) Surety Bonds:

380 (i) A corporate surety shall not be considered good and sufficient for
381 purposes of W.S. § 35-11-307 or W.S. § 35-11-306 unless:

382 (A) It is licensed to do business in the State;

383 (B) The estimated bond amount does not exceed the limit of risk as
384 provided for in W.S. § 26-5-110, nor raise the total of all bonds held by the applicant under that
385 surety above three (3) times the limit of risk; and

386 (C) The surety agrees:

393 (I) Not to cancel bond, except as provided for in W.S. § 35-11-
394 307 or W.S. § 35-11-306 or where the Department gives prior written approval of a good and
395 sufficient replacement surety with transfer of the liability that has accrued against the operator on
396 the permit area;

397
398 (II) To be jointly and severally liable with the permittee.

399
400 (III) To provide immediate written notice to the Department and
401 operator once it becomes unable or may become unable due to any action filed against it to fulfill
402 its obligations under the bond.

403
404 (ii) The provisions applicable to cancellation of the surety's license in W.S. §
405 35-11- 307 or W.S. § 35-11-306 shall also apply if for any other reason the surety becomes
406 unable to fulfill its obligations under the bond. Upon such occurrence, the operator shall provide
407 the required notice. Failure to comply with this provision shall result in suspension of the permit.

408
409 (c) In lieu of a bond, the facility operator shall deposit federally insured certificates of
410 deposit payable to the Wyoming Department of Environmental Quality, cash, or government
411 securities, or all three (3).

412
413 (i) Securities that are unencumbered shall only include those that are United
414 States Government securities or State Government securities that are acceptable to the Director.
415 Government securities must be endorsed to the order of the Department and placed in possession
416 of the Department. Possession shall be in the form of the cash value of the irrevocable trust for
417 the full amount of the reclamation obligation and payable to the Department and federally
418 insured.

419
420 (ii) An operator shall satisfy the requirements of this subsection by
421 establishing an irrevocable trust that conforms to the requirements below and submitting an
422 originally signed duplicate of the trust agreement to the Administrator for consideration.

423
424 (A) The irrevocable trust must be submitted to the Director on the
425 Wyoming Department of Environmental Quality Irrevocable Trust Form and be signed by the
426 operator or guarantor as principal and the financial institution as Trustee, and made payable to
427 the Department;

428 (B) The Trustee must be a bank organized to do business in the United
429 States that has the authority to act as a trustee and whose trust operations is regulated and
430 examined by a Federal Agency;

431
432 (C) The irrevocable trust must be cash funded for the full amount of
433 the financial assurance obligation to be provided in the irrevocable trust before it may be
434 approved to satisfy the requirements of financial assurance in lieu of a bond. For purposes of
435 this subsection, "the full amount of the financial assurance obligation to be provided" means the

436 amount of coverage for Closure, Post-Closure and Corrective Action required to be provided for
437 the permit/facility, less the amount of financial assurance obligation that is being provided by
438 other financial assurance mechanisms being used to demonstrate financial assurance by the
439 operator or guarantor;

440

441 (D) Cancellation of an irrevocable trust shall follow the same
442 procedures detailed in W.S. §35-11-306(j) for performance bonds; and

443

444 (E) Forfeiture proceeding for an irrevocable trust shall follow the same
445 procedures detailed in W.S. §35-11-306(m) for performance bonds.

446