

Wyoming Hazardous Waste Rules and Regulations, Revised Chapter 1

TAKINGS CHECKLIST

	CRITERIA	YES	NO
1.	Does the action affect private property? (if no, no further inquiry is necessary)	X	
2.	Is the action mandated by State or federal law? (If yes, go to question 3. If no, go to question 4.)	X	
3.	Does the proposed action advance a statutory purpose?	X	
4.	Does the action result in permanent occupation of private property?		X
5.	Does the action require the property owner to dedicate property or grant an easement?		X
6.	Does the regulatory action interfere with the owner's investment-backed expectations?		X
7.	Does the character of the government action balance the public interest and private burdens?	X	
8.	Does the action deprive the owner of all economically viable uses of the property?		X
9.	Does the action have a significant impact on the landowner's economic interest?		X
10.	Does the action deny the owner a fundamental attribute of ownership?		X
11.	Does the action serve the same purpose that would be served by directly prohibiting use of the land?		X
12.	Could the problem which has necessitated the action be addressed in a less restrictive manner?		X

If these questions are answered yes, legal counsel should be consulted, for it is possible the proposed action will be a taking.*

*The attorney general's office was consulted for legal counsel. The regulations being adopted protect health and safety, and therefore are not a taking.

SOLID AND HAZARDOUS WASTE DIVISION

Chapter 1, Hazardous Waste Rules and Regulations (HWRR), Update 1

TAKINGS ANALYSIS

1. Does the action affect private property? - YES

The proposed regulations affect private treatment, storage, and disposal facilities and generators that are on private property. The rules do not require the acquisition of private property in order to institute the rules.

2. Is the action mandated by State or federal law? - YES

The proposed rule package is required by statute to keep the Wyoming HWRR consistent with, and equivalent to, the Subtitle C of the Resource Conservation and Recovery Act (W.S. 35-11-503(a)(v) and 35-11-503(d)).

3. Does the proposed action advance a statutory purpose? - YES

The proposed rules are intended to meet the requirements of W.S. 35-11-503(a)(v) and 35-11-503(d).

4. Does the action result in permanent occupation of private property? - NO

The proposed rules do not result in a permanent occupation of private property. The rules are largely designed to meet the Federal requirements for permitted hazardous waste management facilities and the management of hazardous wastes. The facilities may or may not be located on private property.

5. Does the action require the property owner to dedicate property or grant an easement? - NO

The rules as proposed do not require the property owner to grant any dedications of property or grant an easement to the property.

6. Does the regulatory action interfere with the owner's investment-backed expectations? - NO

The proposed rules do not impose greater interference with the owner's investment-backed expectations.

7. Does the character of the government action balance the public interest and private burdens? - YES

The proposed rules deal with the permitting, waste management, and corrective action requirements for private businesses and private property, while also protecting human health and the environment.

8. Does the action deprive the owner of all economically viable uses of the property? - NO

The proposed rules do not limit the economic uses of the property. The rules regulate the management of hazardous waste at hazardous waste treatment, storage, and disposal facilities, as well as generation and management of waste and corrective action of releases to the environment. The rules do not affect the viable uses of the property.

9. Does the action have a significant impact on the landowner's economic interest? - NO

The proposed rules do not significantly impact the landowner's economic interest. The rules are required by Federal law. Some of the new rules enable generators of hazardous waste to more easily and less-expensively comply with the 40 CFR, thus reducing their economic burden.

10. Does the action deny the owner a fundamental attribute of ownership? -NO

The proposed rules do not deny the owner a fundamental attribute of ownership.

11. Does the action serve the same purpose that would be served by directly prohibiting use of the land? - NO

The proposed rules are intended to allow for the use of the permitted facility while protecting the environment. Prohibition would not allow the continued use of the permitted facility.

12. Could the problem which has necessitated the action be addressed in less restrictive manner? - NO

The proposed rules are intended to bring the SHWD's rules and regulations up-to-date with the Federal 40 CFR while maintaining State primacy with the Environmental Protection Agency. The implementation of IBR is the most efficient method available to both meet Federal regulations and also to show State differences from the Federal rules. W.S. 16-3-103(h)(i) - (v) permits the use of IBR for State rule-making.