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# R-35 Proposed Rulemaking

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## **Wyoming DEQ – Air Quality Division Presentation**

Wyoming Environmental Quality Council Hearing  
March 27, 2024



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## R-35 Overview

- ◆ The R-35 proposed rulemaking involves revising the following chapters of the Wyoming Air Quality Standards and Regulations (WAQSR):
  - Chapter 2 – Ambient Standards
  - Chapter 3 – General Emissions Standards
  - Chapter 4 – State Performance Standards for Specific Existing Sources
  - Chapter 5 – National Emission Standards
  - Chapter 8 – Nonattainment Area Regulations
  - Chapter 11 – National Acid Rain Program
  - Chapter 14 – Emission Trading Program Regulations



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## R-35: Key Proposed Revisions

- Updates the date of Incorporation by Reference (IBR) sections of WAQSR to July 1, 2023
- Removes language pertaining to an outdated State plan for Municipal Solid Waste Landfills in Chapter 4, Section 4
- Incorporates four subparts from 40 CFR Part 60 and 40 CFR Part 63 into Chapter 5, Section 2 (New Source Performance Standards) and Chapter 5, Section 3 (National Emission Standards for Hazardous Air Pollutants)
- Adds 1-bromopropane (1-BP) to list of Clean Air Act Hazardous Air Pollutants in Chapter 5, Section 3



## R-35: History

- Last update to IBR sections of WAQSR became state-effective 4/4/18 and changed IBR date to July 1, 2017
- Series of reasons for the delayed, lengthy timeframe elapsing since last update:
  - 2019 proposed rulemaking (R-31) was voided (*AQD inadvertently did not file with SOS Office within statutory timeframe following EQC approval*)
  - COVID-19 pandemic
  - Air Quality Advisory Board vacancies
  - Federal Administration change in January 2021



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## R-35: Pre-Rulemaking

- Work on R-35 initiated in August 2022 (involved tracking the many associated CFR changes since July 1, 2017 that will be incorporated as a result of updated IBR date in WAQSR)
- Pre-rulemaking AG Office reviews were undertaken in October 2022, April 2023 (also reviewed chapters for written clarity, grammar, stylistic consistency, consistency with SOS Rules on Rules, etc.)
- Presented before Air Quality Advisory Board on July 11, 2023 (received AQAB recommendation to proceed to EQC)



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## R-35: Dec. 5, 2023 EQC

- R-35 was originally scheduled to go before the EQC at the December 5, 2023 hearing
- The AQD had undertaken the statutory public noticing requirements under typical procedure and electronically noticed the R-35 proposed rules on October 19, 2023
- The AQD had also scheduled publication of notice in a statewide newspaper for October 19, 2023
- Upon later review of the newspaper affidavit of publication, the AQD realized the newspaper hadn't published on October 19 as requested, but rather, on October 28 (publisher's error)
- The AQD had to remove the R-35 proposed rule from the EQC's agenda at the last minute and delay until the March 27, 2024 hearing.



## R-35: IBR Explained

- IBR helps keep Wyoming's state-level regulations concise and user-friendly:
  - Makes direct reference to certain subparts of the CFR that Wyoming takes state regulatory primacy over through incorporation
  - Some of the CFR subparts are very lengthy and would extend the WAQSR by hundreds or even thousands of pages if they were not IBR'd
  - Assists regulated community in Wyoming by allowing them to interface with WDEQ's Compliance Program on the IBR'd regulations
  - Wyoming will submit state-effective revisions to EPA for State Implementation Plan approval for sections in Wyoming's SIP.



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## R-35: IBR Explained

- IBR sections included in this rulemaking:
  - Chapter 2, Section 12 (part of Wyoming's SIP)
  - Chapter 3, Section 9 (part of Wyoming's SIP)
  - Chapter 4, Section 6
  - Chapter 5, Section 4
  - Chapter 8, Section 10 (part of Wyoming's SIP)
  - Chapter 11, Section 2
  - Chapter 14, Section 5
  - NOTE: Chapter 6, Section 14 is not included in this IBR rulemaking – *explanation to come*





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## R-35: IBR Explained (cont'd)

- Changing IBR date to July 1, 2023 will involve Wyoming obtaining regulatory primacy over many regulations in the CFR that have been revised since July 1, 2017:
  - Affects all CFR parts/subparts/appendices referenced in WAQSR Chapters 2, 3, 4, 5, 8, 11, 14 that were revised between July 1, 2017 – July 1, 2023
  - WDEQ compiled 36-page summary reference sheet detailing changes that occurred during that time (too detailed to walk through in this presentation)
  - Utilized “Timeline” feature on eCFR.gov website to track all changes



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## R-35: IBR Explained (cont'd)

- Changing IBR date to July 1, 2023 will involve Wyoming obtaining regulatory primacy over many regulations in the CFR that have been revised since July 1, 2017:
  - Updates include 40 CFR Part 60, subpart XXX, 40 CFR Part 60, subpart QQQQ, 40 CFR Part 63, subpart CCCCCC, and 40 CFR Part 63, subpart XXXXXX (which are also being newly incorporated into WAQSR through this proposed rulemaking – *were not in WAQSR during previous IBR update*)



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## R-35: IBR Explained (cont'd)

- Changing IBR date to July 1, 2023 will involve Wyoming obtaining regulatory primacy over many regulations in the CFR that have been revised since July 1, 2017:
  - WAQSR Chapter 6, Section 14 (IBR section) is not included as part of this rulemaking
  - Chapter 6, Permitting Requirements, is 157 pages long and contains many specific requirements for Wyoming's New Source Review and Title V permitting programs
  - IBR update will occur in future rulemaking, potentially for November 2024 EQC hearing (coordination and timing with other state agencies – AG, AQAB, EQC, etc.)



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## R-35: Other aspects

- Chapter 4, State Performance Standards for Specific Existing Sources, Section 4, Existing Municipal Solid Waste Landfills:
  - Current WAQSR language is outdated
  - Wyoming elected to not develop a state plan for this subset of landfills
  - EPA promulgated a Federal Implementation Plan (FIP) covering these affected sources (40 CFR Part 62, subpart OOO)
  - Numerous other states also subject to this FIP



## R-35: Other aspects

- Chapter 4, State Performance Standards for Specific Existing Sources, Section 4, Existing Municipal Solid Waste Landfills:
  - Existing language that had matched 40 CFR Part 60, subpart WWW has now been removed
  - Replaced with [Reserved.]
  - State of Wyoming can revisit this in the future if it chooses to develop a state plan for 40 CFR Part 60, subpart Cf to replace the FIP



## R-35: Other aspects

- Chapter 5, National Emission Standards, Section 2, New Source Performance Standards:
  - Incorporating 40 CFR Part 60, subpart XXX – Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014
  - Incorporating 40 CFR Part 60, subpart QQQQ – Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces

## R-35: Other aspects

- Chapter 5, National Emission Standards, Section 2, New Source Performance Standards:
  - The AQD proposed removal of 40 CFR Part 60, subpart TTTT– Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units
  - This proposed revision will be further explained in the “Response to Comments Received” section of this presentation

## R-35: Other aspects

- Chapter 5, National Emission Standards, Section 3, National Emission Standards for Hazardous Air Pollutants:
  - Incorporating 40 CFR Part 63, subpart CCCCCC – National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities
  - Incorporating 40 CFR Part 63, subpart XXXXXX – National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories



## R-35: Other aspects

- Chapter 5, National Emission Standards, Section 3, National Emission Standards for Hazardous Air Pollutants:
  - Proposed revision would add the solvent 1-bromopropane (1-BP) to the list of Hazardous Air Pollutants in (C)(i)(A), page 5-39 (page 5-40 in redline)
  - EPA added 1-BP to Clean Air Act list of HAPs effective February 4, 2022 (*87 Federal Register 393*)



## R-35: Other aspects

- Recurring revisions:
  - AG Reviews: suggestions made for AQD to conform WAQSR as closely as possible with SOS Rules on Rules formatting, including correcting page margins throughout
  - AG Reviews: suggestions made for AQD to revise WAQSR for consistency with capitalization, written clarity, removing redundancy, fixing typographical errors, etc.

## R-35: Other aspects

- Recurring revisions:
  - Inserting a tabbed space in front of each paragraph/subparagraph
  - Correcting capitalization in Section headers
  - Formatting of Chapter titles
  - Capitalizing “P” in Part; changing “s” in subpart to lowercase
  - Using acronyms subsequently when terms have already been specified by acronyms earlier in Chapter
  - Correcting outdated website URLs
  - Eliminating duplicative numbers (i.e., “twelve (12) months”)

## R-35: Other aspects

- Other miscellaneous revisions:
  - Ch. 3: Correcting a recurring CFR reference to 40 CFR Part 763
  - Ch. 5, Sec. 2: Reordering (c), Word or Phrase Substitutions, so that WAQSR references are in chronological order
  - Ch. 8, Sec. 2 & Sec. 3: Reorganized tables into a clearer format for users
  - Ch. 14: Lowercase “c” in “chapter” throughout
  - NOTE: There are several underlined references in Chapter 8 that are not proposed changes; were already underlined in state-effective regulations



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## R-35: Public Comment

- Public comment period for submitting written comments on the proposed revisions for EQC:
  - Opened at 8:00 a.m. MST on January 25, 2024
  - Closed at 5:00 p.m. MST on March 11, 2024
  - The AQD received one comment on the proposed rule (from Black Hills Energy, Derek Silbaugh, on March 4, 2024)



## R-35: Public Comment

- Black Hills Energy (BHE) Comment:
  - Raised concerns that proposed removal of 40 CFR Part 60, subpart TTTT would abdicate enforcement of subpart to EPA.
  - Noted that BHE holds an Air Quality Construction Permit that includes requirements to comply with New Source Performance Standards subpart TTTT.
  - If the proposed rule is approved, BHE would be subject to enforcement by both EPA and WDEQ for the same permit.
  - BHE prefers to work with a single agency and requested that AQD and the EQC retain subpart TTTT within Chapter 5, Section 2.



## R-35: Public Comment

- Black Hills Energy (BHE) Comment:
  - The AQD responded to BHE's comment in agreement with BHE's request that the AQD and the EQC retain subpart TTTT.
  - The AQD proposed removal of subpart TTTT by mistake under the belief that it had been affected by the Supreme Court's ruling on the Clean Power Plan in June 2022 in *West Virginia v. EPA*. This was the basis for the removal of subpart TTTT that the AQD listed in its Statement for Principal Reasons for Rulemaking and public notice throughout the proposed rulemaking process.



## R-35: Public Comment

- Black Hills Energy (BHE) Comment:
  - The Supreme Court's decision in *West Virginia v. EPA* only affected Existing Stationary Sources: Electric Generating Units (regulated under Section 111(d) of the Clean Air Act) and not New, Modified, and Reconstructed Stationary Sources covered by subpart TTTT (and regulated under Section 111(b) of the Clean Air Act).
  - The proposed removal of the subpart was a mistake on the AQD's behalf and the **AQD recommends to the EQC that subpart TTTT remains in WAQSR Chapter 5, Section 2.**





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## Questions?

- Please feel free to ask any questions at this time about this presentation or other aspects of the proposed R-35 rulemaking.