

Jan 08, 2013

MEMORANDUM

Jim Ruby, Executive Secretary
Environmental Quality Council

TO: Environmental Quality Council

FROM: Bob Doctor, SHWD/Casper

SUBJECT: Response to comments – Proposed changes to Chapters 1, 2, and 7 of the Solid Waste Rules and Regulations

DATE: November 19, 2012

The Wyoming Department of Environmental Quality/Solid and Hazardous Waste Division (DEQ) received comments via testimony at the Water and Waste Advisory Board's (Board) June 22, 2012 meeting. The Board extended the public comment period until July 31, 2012. During that period DEQ received additional written comments from the Wyoming Solid Waste and Recycling Association (WSWRA), the City of Casper (Casper), the City of Laramie, Lincoln County, the City of Cheyenne (Cheyenne), BNSF Railway (BNSF), Nelson Engineering, and the Johnson County Solid Waste Disposal District (JCSWDD). (Note that page numbers referenced in these comments refer to the redline/strikeout version of the proposed rule change.) The Board met again on September 21, 2012.

The following are DEQ's responses to the comments. Revisions based on comments are shown in redline and ~~strikeout~~. The entity responsible for each comment has been noted in parentheses and, where appropriate, similar comments have been grouped together with a single response. The DEQ has noted when comments are beyond the scope of these limited rule changes. The DEQ will keep these comments in mind for the next rule change which will have a broader scope.

Comment 1 (WSWRA/Casper): Page 1-2, the definition of "Aquifer" for MSW landfills in State Statute needs clarification related to pumping rate and pipe sizing. 1-1 Requested Change: WDEQ develop rules or a guidance document defining pumping rate and pipe size to clarify the definition of "Aquifer."

Response: This rule change is focused on incorporating the statutory definition. The statutes do not address these technical standards. The DEQ agrees that guidance in this area may be helpful, but is not proposing to address this issue through rulemaking at this time.

Comment 2 (WSWRA/Casper): Page 1-4, the definition of "Composite Liner" for MSW landfills in State Statute 35-11-103(d)(viii) conflicts with Engineered Containment description in Chapter 2 of the rules. Requested Change: WDEQ develop rule to make the definition of Engineered Containment described in Chapter 2 rules to be consistent with the definition of "Composite Liner" as provided in W.S. 35-11-103(d)(viii).

Response: A composite liner is not the same as an engineered containment system. Rather, a composite liner is a component of an engineered containment system which can include other components such as caps and gas management systems. The DEQ is not proposing a change in current language, but we believe the engineered containment system portion of the rules should be revised during the next rule change to clarify issues such as this.

Comment 3 (WSWRA/Casper): Page 1-5, the definition of "Construction/demolition waste" is very broad and does not include specific details needed for defining low volume/low hazard regulations for construction & demolition (C&D) recycling. WSWRA board members are concerned outside low volume/low hazard recycling operations may be problematic for sheet rock, treated or painted lumber, etc. where materials may be leached into the ground & groundwater or carried in storm water. Requested Change: WDEQ develop a guidance document to clarifying (sic?) what types of C&D wastes may be included in a C&D low volume/low waste operation specifically relating to outdoor operations.

Response: A vast array of materials may or may not be considered CD waste. The DEQ agrees that guidance, not rule, is the best way to list materials that may or may not be considered CD waste. To address concerns about CD waste transfer facilities, the DEQ proposes separate exemption and low volume/low hazard categories in the rule for facilities that manage only CD waste for transfer to recycling and disposal facilities, rather than the current proposal which groups CD recycling with other common recyclable materials. Note that while the LH/LV process primarily minimizes permitting requirements, LH/LV and exempt facilities are nonetheless subject to DEQ inspection. Note also that privately operated LH/LV facilities are subject to financial assurance requirements to ensure that funds are available for closure and to clean up a release.

The following changes are proposed to the exemptions in Chapter 1, Section 1(I):

(x) Facilities storing waste, other than construction/demolition waste, for transfer to a recycling facility: A solid waste storage, treatment, or transfer facility occupying no more than one (1) acre and used only for the storage, treatment, or transfer of source-separated or presorted paper, cardboard, plastic, aluminum cans, glass, and metal, clean wood, and other nonputrescible municipal solid wastes which may be specifically authorized by the administrator, for the primary purposes of transfer to a recycling facility or beneficial reuse in a manner approved by the administrator. Unless all waste management occurs indoors, the facility shall ~~have~~ maintain a twenty foot buffer zone/fire lane ~~within~~ separating waste from a fenced facility boundary. This exemption applies to the sorting, shredding, grinding, crushing, baling, and storage of these wastes prior to ~~being transferred~~ to a recycling facility or approved beneficial reuse site. This exemption does not apply to drum and barrel reconditioning or recycling facilities, scrap tire management facilities, electronic waste management facilities, or to underground storage tank decommissioning or storage facilities;

(xi) Facilities storing construction/demolition waste for transfer to a recycling facility: A solid waste storage, treatment, or transfer facility occupying no more than one (1) acre and used only for the storage, treatment, or transfer of construction/demolition waste as authorized by the administrator for the primary purposes of transfer to a recycling facility or beneficial reuse in a manner approved by the administrator. Unless all waste management occurs indoors, the facility shall maintain a twenty foot buffer zone/fire lane separating waste from a fenced facility boundary. This exemption applies to the sorting, shredding, grinding, crushing, baling, and storage of these wastes prior to transfer to a recycling facility or approved beneficial reuse site. This exemption does not apply to drum and barrel reconditioning or recycling facilities, scrap tire management facilities, electronic waste management facilities, or to underground storage tank decommissioning or storage facilities;

The following changes are proposed to the low hazard/low volume provisions in Chapter 1, Section 1(e):

Facilities storing waste, other than construction/demolition waste, for transfer to a recycling facility: Facilities occupying no more than 10 acres and used only for the transfer, treatment, and storage of less than 500 tons received per day of paper, cardboard, plastic, aluminum cans, glass, metal, clean wood, ~~construction/demolition waste~~, and other nonputrescible municipal solid wastes which may be specifically authorized by the administrator, for the primary purposes of transfer to a recycling facility or beneficial reuse in a manner approved by the administrator. Unless all waste management occurs indoors, the facility shall have a twenty foot buffer zone/fire lane within a fenced facility boundary. This provision applies to the sorting, shredding, grinding, crushing, baling, and storage of these wastes prior to transfer to a recycling facility or approved beneficial reuse site. This provision does not apply to scrap tire or electronic waste management facilities.

Facilities storing construction/demolition waste for transfer to a recycling facility: Facilities occupying no more than 10 acres and used only for the transfer, treatment, and storage of less than 500 tons received per day of construction/demolition waste authorized by the administrator, for the primary purposes of transfer to a recycling facility or beneficial reuse in a manner approved by the administrator. Unless all waste management occurs indoors, the facility shall maintain a twenty foot buffer zone/fire lane separating waste from a fenced facility boundary. This provision applies to the sorting, shredding, grinding, crushing, baling, and storage of these wastes prior to transfer to a recycling facility or approved beneficial reuse site. This provision applies only if all waste management activities occur either indoors or outdoors in containers. This provision does not apply to scrap tire or electronic waste management facilities.

Comment 4 (WSWRA/Casper): Page 1-7, the definition of "Green Waste" is inaccurate because some green waste, such as grass clippings, are putrescible waste. Requested Change: WDEQ delete "nonputrescible" from the definition.

Response: DEQ proposes revising the green waste definition by removing the term

“nonputrescible.” Note that other comments were received about the use of manure in “green waste” compost piles. Rather than remove the term “manure” in this definition, the Department specifically included a provision to include manure in green waste compost piles.

The following changes are proposed to the definition of green waste in Chapter 1, Section 1(e):

"Green waste" means ~~nonputrescible~~ organic plant materials, such as yard trimmings, grass clippings, house and garden plants, tree trimmings, and brush. Green waste does not include other putrescible waste including, but not limited to food waste, animal waste, and manure, ~~or other putrescible wastes.~~

Comment 5 (WSWRA/Casper): Page 1-11, the definition of "Household hazardous waste" includes quarterly collection. No WSWRA members have quarterly collection events. WSWRA members either have drop off locations during their normal operational hours or annual collection events. Low volume facilities should only collect (sic) HHW at annual events or provide storage units with secondary containment & proper labeling for storing only compatible materials during operating hours. For example, corrosive materials should not be stored with oxidizers or flammable materials. Requested Change: WDEQ change definition of HHW for low volume/low hazard operations to Household hazardous waste (HHW) collected on annual collection events or collected in compliance with Small Quantity Generator RCRA storage rules, provided that the HHW collected is removed from the site and transported to a permitted facility within thirty (30) days of receipt.

Response: As landfills close, the need to manage HHW may increase. The Department did not feel that limiting collection to annual collection days would provide sufficient opportunity for operators to remove HHW from the waste stream. The rule for exempt and low hazard/low volume (LH/LV) facilities was revised to provide collection days no more frequently than semiannually or quarterly, respectively. The rule would not permit long term storage of HHW at exempt or LH/LV facilities and the requirement to remove collected HHW within 30 days of receipt has been retained.

Comment 6 (WSWRA/Casper): Page 1-11, the definition of "lead acid batteries" for low volume/low hazard is inappropriate for a small operation because 1,200 is a large volume for even large solid waste transfer stations. Lead acid batteries have an extremely high potential to leak and they are extremely corrosive. A reasonable low volume would be 100. Lead acid batteries are sold on a quick turnaround for even large solid waste transfer station operations. Requested Change: WDEQ delete 1,200 and replace with 100 for lead acid batteries.

Response: Current rules provide for an exemption for a retail facility or a facility used only for the storage of no more than 1,200 lead acid batteries. This provision was applied to LH/LV facilities in the proposed rules. Batteries must be stored in an upright position and must not be leaking. Facilities storing batteries are subject to DEQ inspections to ensure compliance. The DEQ contacted one of the larger local retail battery outlets and confirmed that the 1,200 battery

limit allows them to conduct business, but requires them to ship used batteries regularly. Reducing the limit below the existing 1,200 battery limit could adversely affect their business. The facility indicated that about 66 passenger car batteries fit on a pallet. Therefore, 1,200 batteries could be stored and shipped on approximately 18 pallets. The current rules allow the storage of 1,200 batteries (approximately 18 pallets) at an auto salvage yard. DEQ's proposed rule would allow a maximum of 1,200 batteries (18 pallets) at a LH/LV solid waste transfer station and 9 pallets at an exempt transfer station. The DEQ proposes revising these limits to 250 batteries at an exempt transfer station, 500 at a LH/LV transfer station. Based on Comments received, the DEQ plans to postpone the discussion of reducing the current battery storage limits at auto salvage yards for the next rule change. This will provide time to investigate battery storage at auto salvage yards to determine if a reduction in battery storage and other regulatory changes are warranted at auto salvage yards.

The exemptions for solid waste transfer, treatment, storage and processing facilities in Chapter 1, Section 1(l)(xii) includes the following:

250 used lead acid batteries, if the batteries are stored in an upright position and are not leaking, for the purpose of transfer to a recycling facility; and

The provision for LH/LV treatment, processing, storage, and transfer facilities in Chapter 1, Section 1(e) includes the following:

500 lead acid batteries, if the batteries are stored in an upright position and are not leaking, for the purpose of transfer to a recycling facility ; and

Comment 7 (WSWRA/Casper): Page 1-12, the definition for low volume/low hazardous facilities storing waste for transfer to a recycling facility is inappropriate for a small operation because 500 tons per day is a large volume for even a large recycling facility. A reasonable low volume would be 50 tons per day. Several WSWRA members believed a 25 ton per day limit would be the most appropriate. Requested Change: WDEQ delete 500 tons per day and replace with 25 tons per day.

Response: The Department proposes separate categories for facilities that manage traditional recyclables and construction waste (see below). The waste managed at a traditional recycling facility is limited to paper, cardboard, plastic, aluminum cans, glass, metal, clean wood, and other nonputrescible municipal solid wastes which may be specifically authorized by the administrator. Therefore, the threats to human health and the environment are limited. Considering the nature of the waste and the need to improve recycling in Wyoming, DEQ has not proposed reducing the waste quantities managed under this provision. This provision could improve recycling and may attract new recycling businesses to Wyoming. Please note that the LH/LV process was developed to apply an appropriate level of permitting and oversight for facilities managing certain types and quantities of wastes. LH/LV and exempt facilities are subject to DEQ inspections and many waste management standards. Note also that privately operated LH/LV

facilities are subject to financial assurance requirements to ensure that funds are available for closure and to clean up a release.

Comment 8 (WSWRA/Casper): Page 1-28, the (ii) provision related to auto salvage yards and scrap metals is a major concern for a majority of the WSWRA members because we believe auto salvage yards SHOULD BE REGULATED by WDEQ. Auto salvage yards consistently contaminate surrounding soil with used oil and fuel at their storage yards. We understand these rule changes are suppose to be related to the new state statute defining lifetime permits for MSW landfills; however, we have strong opposition to WDEQ SHWD exempting Auto Salvage Yards from regulation to require a solid waste permit and from WDEQ SHWD inspections. Requested Change: WDEQ leave the limit for gallons of used oil storage to 500 and not increase to 1,000 and reduce used lead acid batteries storage limit to 100 from 1200. The lead acid battery limit of 100 should be made on page 1-28 under 1(i)(C) and page 1-30 under 1(vii).

Response: Permits have traditionally not been required for auto salvage yards, but the facilities are subject to DEQ inspections. The issue of permits for auto salvage yards is beyond the scope of the current rule change. Assessing the existing provisions for lead acid battery storage at auto salvage yards is also beyond the scope of this rule change. These concerns will be considered for the next rule change. Per the goal of streamlining permit requirements for used oil management and because auto salvage yards are subject to inspection, the DEQ is proposing to keep the 1,000 gallon storage limit in this rule change.

Comment 9 (WSWRA/Casper): Page 1-40, a requirement to submit a permit renewal application to WDEQ three years prior to the permit expiration date would not be needed if landfill owners use the Kaizen process (Quality by Design process) which includes WDEQ SHWD as a stake holder member of the permit application development team. For example, the landfill owner should contract a consultant to prepare the permit renewal application no later than three years prior to the permit expiration date, and include WDEQ SHWD in the project kickoff meeting. During the project kickoff meeting develop a project timeline including a hands-on meeting with landfill owner, consultant, and WDEQ SHWD staff at the 50%, 75% and 90% completion milestone dates. Involving WDEQ SHWD staff in project meetings helps insure WDEQ knows what is in the permit renewal application before it arrives to them for review, and allows necessary negotiation and cooperation upfront rather than after the permit renewal application is received by WDEQ SHWD staff. Requested Change: WDEQ develop guidance outlining a process for "How to Develop a Permit Renewal Application" using a "Quality by Design" approach, AND WDEQ develop guidance outlining what to include in a Permit renewal application with examples, and what to include in the required annual report with examples.

Response: New statutes require renewal applications for lifetime permits 3 years prior to permit expiration and this provision cannot be changed by rule. The DEQ intends to continue the "Quality by Design" process recommended by WSWRA/Casper. The DEQ believes the guidance recommended by WSWRA/Casper would be helpful. See also Comments 12, 25, 31, and 90.

Comment 10 (WSWRA/Casper): Page 1-40, (iv) it is critical to provide line & strike-out versions of permit renewal changes when submitting only copies of the updated or revised portions of the previous application. Requested Change: WDEQ add the following after the last line (into the previous permit document) in section (e)(iv) on Page 1-40 and to the last line in section (viii) Page 1-49: -, and the revisions are clearly identified.

Response: The DEQ agrees that this is a good idea and will make the recommended changes.

The DEQ proposes the following change to Chapter 1, Section 2(e)(iv):

(iv) Three (3) copies of the permit renewal application shall be submitted to the administrator. The application shall be organized in three ring binders, and the information presented in an order that conforms to the order set forth in the applicable application requirements sections of these rules and regulations, unless the administrator approves an alternate format for the organization of the application. The applicant shall have the option to submit copies of only the updated and revised portion of the previous application, if the revised and updated pages and drawings are appropriately numbered and dated to facilitate incorporation into the previous permit document and the revisions are clearly identified.

The DEQ proposed the following changes to proposed Chapter 1, Section 2(j)(viii):

(viii) Three (3) copies of the permit renewal application shall be submitted to the administrator. The application shall be organized in three ring binders, and the information presented in an order that conforms to the order set forth in the applicable application requirements sections of these rules and regulations, unless the administrator approves and alternate format for the organization of the application . The applicant shall have the option to submit copies of only the updated and revised portion of the previous application, if the revised and updated pages and drawings are appropriately numbered and dated to facilitate incorporation into the previous permit document and the revisions are clearly identified.

Comment 11 (WSWRA/Casper): Page 2-22, section (i) most landfill owners are not familiar with Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. How does this federal act relate to landfill permits? Requested Change: WDEQ add the provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21 51 Century that relate to landfill permitting, such as adding another sentence that states, "New landfills must be permitted at least 6 miles from any airport and existing landfills prior to April 5, 2000 are exempt.

Response: Add to the end of Section 3 paragraph (a)(i): “The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century requires that after April 15, 2000, no new facility that receives putrescible waste capable of attracting birds shall be constructed within 6

miles of a public airport that has received grants under 49 U.S.C. Chapter 471 and is primarily served by general aviation aircraft and regularly scheduled flights of aircraft designed for 60 passengers or less unless the Wyoming Department of Transportation, Aeronautics Division requests that the Administrator of the Federal Aviation Administration exempt the landfill from this requirement and the Administrator determines that such exemption would have no adverse impact on aviation safety. For the purposes of this section putrescible waste means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.”

Comment 12 (WSWRA/Casper): Page 2-34, section (vii) states Construction-ready design plans must be submitted four years prior to construction. It is NOT REASONABLE to ask landfill owners to develop construction-ready bid documents for awarding a contract to construct landfill cells four years in advance. Reserving funds for construction at best is done so there are enough funds one year prior to needing a landfill constructed. For example, if a landfill constructs a new lined landfill cell every five (5) years, the landfill owner is reserving money each of those five (5) years to insure funding is available for the construction. Also, landfill owners have not been asked by WDEQ SHWD staff for construction-ready design plans prior to construction so we don't understand this change. Requested Change: WDEQ SHWD delete Construction-ready and replace with Detailed; WDEQ SHWD delete four (4) years and replace with eighteen months; and WDEQ SHWD develop a guidance document to define what design detail is required prior to construction or develop rules for construction permits.

Response: See also Comments 9, 25, 31, and 90. The DEQ proposed changing the term “construction ready” to “detailed” and proposed that detailed plans should be submitted three years before construction is expected to commence. However, after further discussion at the Board’s September 21, 2012, meeting, the Board voted to recommend the following text which the DEQ proposes including in Chapter 2, Section 4(k)(vii) verbatim:

Detailed design plans, including but not limited to plans for liners, leachate collection and management systems, caps and associated QA/QC plans shall be submitted as part of the lifetime permit or renewal as applicable. Additional or modified detailed design plans for engineered containment systems shall be submitted as a minor change unless a design change is proposed that constitutes a major change.

Comment 13 (WSWRA/Casper): Page 7-10, lifetime permits are for 25 years not four; therefore, the wording in section (II) stating the operator shall provide revised closure cost estimates every four years or with the permit renewal application, whichever comes first is saying every 4 or 25 years whichever comes first. Four years will always come first. Requested Change: WDEQ delete on page 7-10 and page 7-12, Section (II) If written bids are not used to estimate closure costs, the operator shall provide revised closure cost estimates every four years or with the permit renewal application, whichever comes first, and replace with If written bids are not used to estimate closure costs, the operator shall provide revised closure cost estimates every four years.

Response: Municipally operated landfills participating in the State Guarantee Trust Account are required by statute to submit revised closure and post-closure cost estimates once every four (4) years. All municipally operated landfills participate in the trust account. Note that this section of the rule applies to any facility that does not participate in the trust account, not just municipally operated landfills. The Department is not proposing a change to these provisions at this time. See also Comments 14, 29, 80, and 86.

Comment 14 (WSWRA/Casper): Page 7-34, Section (d)(i) changing the method for estimating closure and post-closure costs to have no specific requirements may cause conflict between landfill owners and WDEQ SHWD staff and/or confusion for landfill owners on how to prepare an estimate for closure and post-closure costs. Many landfill owners may ask WDEQ SHWD staff to provide the method the Director uses so the landfill owner can use the Director's method to reduce conflict. Requested Change: WDEQ prepare a guidance document giving one or more examples of how to estimate closure and post-closure costs and include the method that will be used by the Director.

Response: The DEQ will prepare guidance to address this issue. See also Comments 13, 29, 80, and 86.

Comment 15 (Laramie): Chapter 1, Section 1. (e)(ii) Definitions: "Cover Material" means soil or other suitable material... Is there a definition for or a list of other suitable materials?

Response: This comment is beyond the scope of the current rule change. (The DEQ plans to address this question directly with Laramie.)

Comment 16 (Laramie): Chapter 1, Section 1. (e)(ii) Definitions: "Friable Asbestos." This definition seems very subjective to me. Whose hand pressure determines friable?

Response: This comment is beyond the scope of the current rule change. (The DEQ plans to address this question directly with Laramie.)

Comment 17 (Laramie): Chapter 1, Section 1. (e)(ii) Definitions: "Petroleum-contaminated soils". This does not identify how much petroleum is allowable. It would be nice to have some parameters for Solid Waste Managers to compare to real analytical data.

Response: This comment is beyond the scope of the current rule change. (The DEQ plans to address this question directly with Laramie.)

Comment 18 (Laramie): Chapter 1, Section 1. (e)(ii) Definitions: "Transfer" means the temporary holding of solid waste pending transportation of the solid waste for treatment, storage, and/or disposal. Strike ~~the temporary holding of solid waste pending~~ as it is covered in the Facility definition.

Response: This comment is beyond the scope of the current rule change, but the DEQ believes keeping the text in this location helps the reader understand requirements without turning to another section of the rule.

Comment 19 (Laramie): Chapter 1, Section 1 (i) (e)(ii) Inspections: ADD SENTENCE. Inspections to be conducted during normal operating hours unless otherwise coordinated with the facility manager.

Response: This comment is beyond the scope of the current rule change. However, statutes (35-11-109) include provisions for inspections to be conducted “at reasonable times”. (The DEQ plans to address this question directly with Laramie.)

Comment 20 (Laramie): Chapter 2, Section 4 (e) and (f) Fire Lanes and Buffer Zones: Need to clarify is this a total of 30 feet or does the 20 foot buffer zone include the 10 foot fire lane?

Response: This comment is beyond the scope of the current rule change. (The DEQ plans to address this question directly with Laramie.)

Comment 21 (Laramie): Chapter 2, Section 4, page 2-34 (vii) 4 years is impractical. This is a huge cost and so much can and will change in 4 years that the plans will be non effective.

Response: See the response to Comments 9, 12, 25, and 90.

Comment 22 (Laramie): Chapter 2, Section 5, page 2-40. (iv) An approved cover material. ...: Is there a list of covers that have all ready been approved or is this site specific? If there is no list, the section should indicate that the approved covers are site specific.

Response: This comment is beyond the scope of the current rule change. (The DEQ plans to address this question directly with Laramie.)

Comment 23 (Laramie): Chapter 2, Section 5, page 2-40.(r) Intermediate Cover: The way this is written requires a minimum of 18 inches which is a waste of landfill space. My recommendation is : (r) Intermediate Cover: For any area where wastes will not be disposed for a period of 180 days, that area shall be covered with a minimum of ~~the required six (6) inches of cover material and an additional~~ twelve (12) inches of ~~intermediate cover~~ compacted soil.

Response: This comment is beyond the scope of the current rule change. (The DEQ plans to address this question directly with Laramie.)

Comment 24 (Laramie): Chapter 2 Section 3 Location Standards (a) New facilities (xiii) Sage-Grouse (B) Non-Core Areas: On page 2-25 of the strike-out version, delete the last sentence that indicates construction should not be done March 15 through June 30. Not constructing during this time is always feasible but hampers the City’s ability to take advantage of the full

construction season and may not be cost effective or even necessary, particularly when a site may be completely unrelated to any sage grouse habitat (this is listed as a non-core area restriction). This restriction seems to go beyond the Governor's Executive Order. Also, the use of "unit" here is confusing because this looks like we can't construct a new cell in an already permitted area that previously cleared the location standards for new facilities.

Response: See also Comments 30 and 88. The DEQ had proposed landfill location standards based upon the Governor's Executive Order on sage-grouse. At its September 21, 2012, meeting the Board expressed concern about including policy in rules. The Department committed to consult with the Attorney General's office on this matter. After consultation with the Attorney General's office and in consideration of the DEQ's current policy of addressing sage-grouse standards using internal resources, the Department no longer plans to include sage-grouse provisions in the location standards. The following changes have been made to Chapter 2, Section 3(a)(xii):

(xii) ~~Big game winter range/grouse breeding grounds:~~ Facilities shall not be located within critical winter ranges for big game ~~or breeding grounds for grouse~~, unless after ~~consultation with~~ **considering information from** the Wyoming Game and Fish Department, the administrator determines that facility development would not conflict with the conservation of Wyoming's wildlife resources.

The following proposed text has been removed from Chapter 2, Section 3(a)(xiii):

~~(xiii) Sage Grouse:~~

~~——— (A) Core Areas: Facilities shall not be located in areas where development or land use will cause declines in Greater Sage Grouse (*Centrocercus urophasianus*) populations. The applicant shall submit documentation that current State and Federal requirements for greater sage grouse core area protection have been met. A complete analysis package shall be submitted, including recommendations from the Wyoming Game and Fish Department and other appropriate agencies.~~

~~——— (B) Non Core Areas: Facilities should be located in non-sagebrush habitat if feasible. Facilities shall not be located within 0.25-mile of the perimeter of any sage-grouse lek. Construction of new landfill units and expansion of existing units should not be conducted from March 15 through June 30 if feasible.~~

Comment 25 (Laramie): Chapter 2 Section 4 Design and Construction Standards k (vii) Design/Construction of engineered containment systems: Page 2-34 strikeout version, paragraph vii specifies submittal of construction plans for engineered containment systems. I thought that the new lifetime permit system in conjunction with annual reports was supposed to streamline permitting. This looks like a new submittal that's outside of the lifetime/annual report format. If these are to be submitted 4 years ahead of time, it seems like we are back to the 4-yr renewal

situation we had in the previous rules. The City suggests that these more detailed plans (not construction ready) should just be provided as part of the annual report at least one year ahead of the ECS construction. If it is not a major change and is in line with the lifetime permit, no permitting/public notice should be required and DEQ staff should just be able to check that the plans meet regulatory requirements when they review the annual report. The City would prefer not to see regulations that require additional submittals to DEQ above and beyond the lifetime permit/annual report format.

Response: See also Comments 9, 12, 31, and 90. Construction of new units may often be required on a schedule that is completely independent of annual reports and renewal applications. Since each of these have different review requirements and standards for content, the current rule keeps them independent. The changes described in Comments 12 and 90 are proposed to address concerns about the submittal of design plans per the Board's recommendations.

Comment 26 (Laramie): Chapter 2, Section 5. Operating Standards (bb) Annual Reports: I wanted to look in the rules to find out when annual reports were due, what they entailed and what the approval process was but I found it difficult to find that information. I finally found it in Chapter 2 (bb), under Operating Standards on page 2-44 of the strike-out version, but it only referenced the statute and did not give the language from the statute or provide any more detail. Suggest that DEQ expand the text so that this information is available in the rule.

Response: Per similar requests, the DEQ will propose including current statutory requirements in the rule. See also Comment 32. Specific to this comment and reporting, the following text has been added to Chapter 2, Section 5:

(bb) Annual reports:

(i) Facilities with lifetime permits: Effective January 1, 2012, every operator shall file an annual report with the administrator on or within thirty (30) days prior to the anniversary date of each lifetime permit. The report shall include:

(A) The facility name, the name and address of the operator and the permit number;

(B) A report in such detail as the administrator shall require supplemented with maps, cross sections, aerial photographs, photographs or other material indicating:

(I) The extent to which the landfill operations have been carried out;

(II) The progress of all landfill work;

(III) The extent to which regulatory requirements, expectations and predictions made in the original permit or any previous annual reports have been fulfilled, and

any deviation there from, including but not limited to the capacity of landfill used, the results of any environmental monitoring, any remediation required or completed and the remaining usable municipal solid waste landfill capacity.

(C) A revised schedule or timetable of landfill operations and an estimate of the available capacity to be affected during the next one (1) year period.

(ii) Upon receipt of the annual report the administrator shall make such further inquiry as deemed necessary. If the administrator objects to any part of the report or requires further information he shall notify the operator as soon as possible and shall allow a reasonable opportunity to provide the required information, or take such action as necessary to resolve the objection.

(iii) Within forty-five (45) days after the receipt of the annual report the administrator shall conduct an inspection of the landfill. A report of this inspection shall be made a part of the operator's annual report and a copy shall be delivered to the operator.

(iv) Within sixty (60) days after receipt of the annual report, inspection report and other required materials, if the administrator finds the annual report in order and consistent with the landfill operation plan and solid waste management plan as set forth in the permit, or as amended to adjust to conditions encountered during landfill operations as provided by law, the director shall determine if any adjustment is necessary to the size of the bond required pursuant to W.S. 35 11 504.

(v) Landfill gas reporting: The following information related to landfill gas emissions shall be reported annually in a format specified by the administrator and may be part of the annual report set forth in this subsection:

(A) The maximum design capacity of the landfill in megagrams (Mg) and cubic meters (m³) of waste, including any modifications or expansions in the last year which have increased or decreased the maximum design capacity in megagrams (Mg) and cubic meters (m³) of waste. If the design capacity is converted from mass to volume or volume to mass, the calculations must be provided. Information regarding the site-specific waste density and how it was estimated must also be provided.

Comment 27 (Laramie): Suggest that DEQ consider putting the annual report details in a separate Section 8 Reporting Requirements rather than buried in the Operating Standards. If reporting is presented as separate section, DEQ could include other information needs (QA/QC plan etc) related to more detailed design of subsequent phases of a lifetime permit within the annual reporting format.

Response: This is beyond the scope of the current rule change, but the DEQ believes this suggestion has merit in a future rule change.

Comment 28 (Laramie): The annual reports subsection (ii) (A) (page 2-45) requests information that AQD can use regarding applicability of landfill gas reporting requirements, however, the title is misleading because it does not ask for any reporting regarding landfill gases – it just specifies design capacity info – not sure why there is a ii and then an A, unless DEQ is planning on requiring more landfill gas related information. Can that just be simplified to ask for design capacity info and define design capacity?

Response: This reporting is required by Air Quality Division rules and has been included in the Solid Waste Rule to simplify reporting requirements. Reporting a facility's design capacity is the primary information needed to determine if there have been changes that could trigger additional regulation under Air Quality Division Rules. The rule was formatted this way to provide for additional requirements should changes be needed in the future. No changes to the rule are proposed in response to this comment.

Comment 29 (Laramie): Chapter 7, Section 9 Closure and Post-Closure Account for Municipally–Owned Solid Waste Disposal Facilities (d) Estimating closure and post-closure costs (i). On page 7-34 (strike-out version) subsection (d) (i) – I'm not clear on when the operator will be preparing the estimate or when DEQ will be. Will DEQ be preparing a cost estimate for every facility? Does participation in the State Guarantee Trust Fund means that the Director will be preparing the cost estimate and/or providing the format to do so in a guidance? Please clarify when the operator can prepare a site specific cost estimate.

Response: Landfill operators can prepare their own estimates for the cost of closure and post-closure activities or the Director can prepare estimates. For example, an operator can prepare an estimate of the cost for final cover construction or the Director can prepare an estimate that the operator can use instead. The Director's cost estimates were previously included in the rule, but the costs are out of date and don't include costs for all current closure activities. The Department is proposing to include the Director's estimates in a guidance document which can be more responsive to changing costs. See also Comments 13, 14, 80, and 86.

Comment 30 (Cheyenne): Chapter 2 Section 3 Location Standards. The section on (a) New facilities (xiii) Sage-Grouse (B) Non-Core Areas includes language restricting construction times and appears to extend applicability to new excavations. We would suggest deleting this sentence and reexamining the provisions in general in this section for consistency with the Governor's Executive Order. I heard at the WWAB meeting that Game and Fish reviewed this but they might not be familiar enough with the solid waste rules to fully understand the implications to solid waste facilities. The construction season is short, and we do not want to limit it unnecessarily.

Response: See also Comments 24 and 88. The DEQ had proposed landfill location standards based upon the Governor's Executive Order on sage-grouse. At its September 21, 2012, meeting the Board expressed concern about including policy in rules. The Department committed to

consult with the Attorney General's office on this matter. After consultation with the Attorney General's office and in consideration of the DEQ's current policy of addressing sage-grouse standards using internal resources, the Department no longer plans to include sage-grouse provisions in the location standards.

Comment 31 (Cheyenne): Chapter 2 Section 4 Design and Construction Standards. Suggest deleting paragraph (vii) in subsection k Design/Construction of engineered containment systems and instead including a revised version in separate section requirements for annual reporting. Do not include a requirement for construction ready plans or a 4-yr advance requirement - 1 year ahead of time is ample if the review will be handled as part of annual reporting.

Response: See responses to Comments 9, 12, 25 and 90.

Comment 32 (Cheyenne): I heard a discussion at the WWAB meeting about the use of citations to include provisions specified in the Wyoming statutes. I just want to voice my support of making the rules user-friendly. The text from the applicable provisions of the statutes should be included and expanded upon in the rules so that owner-operators can find the rules more straightforward and informative.

Response: As others have recommended the DEQ will propose including statutory text in the rule. See also Comments 26 and 87.

Chapter 1 Comments from Nelson Engineering:

Comment 33 (Nelson Engineering): I'm confused as to what the term "Unit" is. In Chapter 1 it seems to mean any space containing solid waste. In Chapter 1 and 2 it replaces the term "cell" in a number of places. I think it needs to be clarified because as it stands presently, it is ambiguous.

Response: See Comment 91. This issue was discussed at the Advisory Board's June 22, 2012 meeting. Changes were needed to comply with statutory requirements for performance based designs. The progression, from larger to smaller, is facility, unit and cell. A facility (landfill) may contain multiple units (disposal areas, waste treatment or storage areas, etc.) and a unit may contain multiple cells (disposal areas within the larger disposal unit). No additional changes to the rule are proposed based on this comment.

Comment 34 (Nelson Engineering): Page 10-fourth paragraph last sentence revise to read "in combination manage no more than the specified types and quantities"

Response: The DEQ made the following change to Chapter 1, Section 1(e):

Solid waste transfer, treatment, storage, and processing facilities: Solid waste transfer, treatment, storage, and processing facilities receiving 50 cubic yards or less of solid waste per day and occupying no more than 5 acres, including a twenty foot buffer zone within a fenced facility

boundary, which individually or in combination manage no more than the specified types and quantities of the following wastes:

Comment 35 (Nelson Engineering): Page 10, 5th paragraph-Suggest following wording: Paper, cardboard, plastic, aluminum cans, glass, and metal, or other non-putrescible municipal solid wastes which may be specifically authorized by these rules, for the primary purposes of being transferred to a recycling facility or beneficial reuse in a manner approved by these regulations. Comment: I would prefer that these requirements be less discretionary and more completely prescribed; in that manner an applicant knows more fully what the requirements are and there are less surprises.

Response: The existing text, “authorized by the administrator,” has been in use for many years. The DEQ does not propose a change because it is not possible for a rule to list every potential item that may or may not be acceptable. Accepting only the waste specified in the rule would unnecessarily limit flexibility and the ability of the DEQ to consider unanticipated situations.

Comment 36 (Nelson Engineering): Page 12, 2nd Paragraph lines 8,9,10. I would suggest the following " ... which may be specifically authorized by these rules for the primary purposes of transfer to a recycling facility or beneficial reuse in a manner provided by these rules ". Same concern as item above.

Response: The DEQ does not propose a change because it is not possible for a rule to list every potential item that may or may not be acceptable. Limiting this to only what is specified in rule would limit flexibility and the ability of the DEQ to consider unanticipated situations.

Comment 37 (Nelson Engineering): Page 13, 5th item "Incompatibility"; Seems to me that can be interpreted to mean incompatible with anything; should be elaborated on to say Incompatible with something.

Response: This comment is beyond the scope of the current rule changes.

Comment 38 (Nelson Engineering): Page 13, 4th paragraph revise with suggested wording- "Wastes that are not authorized by these regulations and/or have a ".

Response: The DEQ does not propose a change because doing so would limit flexibility and the ability of the DEQ to consider unanticipated situations.

Comment 39 (Nelson Engineering): Page 14, 4th Paragraph-suggest following revised wording- "with any applicable facility standard, as set forth in these regulations."

Response: The DEQ does not propose a change because doing so would limit flexibility and the ability of the DEQ to consider unanticipated situations.

Comment 40 (Nelson Engineering): Page 15, 2nd paragraph-"Unit" still confusing

Response: See Comments 33 and 91 and DEQ responses.

Comment 41 (Nelson Engineering): Page 20 paragraph 7, what's a landfill unit if it's not a cell?

Response: See Comments 33 and 91 and DEQ responses. A cell is an individual disposal area within a unit.

Comment 42 (Nelson Engineering): Page 27, Subsection i(iv)-Instead of all the references such as this one I suggest including the referred text, in this particular case subsection W.S. 35-11-23(c). The user does not have to go to all the other sources to figure out what this regulation means.

Response: See also Comments 26, 32, and 87 and DEQ responses. Statutory text will be proposed for inclusion in the rule.

Comment 43 (Nelson Engineering): Page 32 Subsection l(x)-Exempt facilities storing waste for transfer I don't think you want to exempt facilities that store paper and cardboard outside from obtaining a solid waste permit. I don't think outside storage of these materials should be allowed unless they are baled or bagged as it creates too much litter due to Wyoming wind. I suggest a revision in wording starting on line 4, " are specifically authorized by these regulations for the primary purposes of transfer to a recycling facility, or beneficial reuse" as provided for by these regulations.

Response: While a facility may be exempt from the need to obtain a permit, the facility will still need to control litter, odors, etc. DEQ can conduct inspections and respond to complaints if problems arise. Again, limiting this section to only those things specifically listed in the rule unnecessarily limits flexibility and the ability of the DEQ to consider unanticipated situations. No changes to the rule are proposed at this time.

Comment 44 (Nelson Engineering): Page 32 Subsection I (xi) 4th paragraph-"mixed municipal solid wastes" should be mixed solid wastes or municipal solid wastes. This issue was also discussed at the September 21, 2012, Board meeting.

Response: The term "municipal" will be removed from Chapter 1, Section 1(l)(xi) (this Subsection is now (xii)) as follows:

| 50 cubic yards of mixed ~~municipal~~ solid wastes stored in containers; and

The definition of LH/LV solid waste transfer, treatment, storage, and processing facility in Chapter 1, Section 1(e) will be revised as follows:

| 150 cubic yards of mixed ~~municipal~~-solid wastes stored in containers.

Comment 45 (Nelson Engineering): Page 33, 6th paragraph- should delete paper, cardboard and plastic from 1st sentence

Response: As these materials are common recyclables managed almost universally at facilities of this type, the DEQ does not propose removing this text. See also Comment 43 regarding controls for litter, odors, etc., which can be implemented without imposing permit requirements.

Comment 46 (Nelson Engineering): Page 33, 6th paragraph 4th sentence-replace the administrator with "these regulations"

Response: The DEQ does not propose a change because it is not possible for a rule to list every potential item that may or may not be acceptable. Limiting this to only what is specified in rule would limit flexibility and the ability of the DEQ to consider unanticipated situations.

Comment 47 (Nelson Engineering): Page 33, 7th paragraph-Delete "on semiannual collection days"; or what happens with HHW collected on other days???

Response: See Comment 94 and DEQ response. This provision was added to allow local governments to periodically collect and promptly remove HHW for recycling or proper disposal. If operators would like to collect HHW more frequently or maintain it on site for longer periods of time, a full Chapter 6 permit may be required to ensure that measures to protect human health and the environment are well defined and enforceable. No changes are proposed in response to this comment.

Comment 48 (Nelson Engineering): Page 35 Section 2 General Permit Application Procedure-What is the process for a Major Amendment Application and approval; it's somewhat obscure?

Response: Permit amendment requirements are specified in Chapter 1, Section 3. Requirements differ for municipal solid waste landfills and other facilities per W.S. 35-11-502 (r). Per Chapter 1, Section 3(a), the major amendment requirements for municipal landfills are in Chapter 2 to avoid confusion with requirements for other facilities. No changes are proposed in response to this comment.

Comment 49 (Nelson Engineering): The following all have to do with the same issue. Although the language says "unless the administrator approves" my experience has been that the regulators use that latitude to require variations in format. Consequently, in preparing the documents it's very difficult to ascertain what is going to be required. The rules should provide a standardization of requirements and formats for submitted documents.

Page 38, Subsection c(i)-Delete proposed language giving the administrator latitude to require an alternate format

Page 40, Subsection e(iv)- Delete proposed language for the administrator approving an alternate format.

Page 42, Subsection g(v)-Delete proposed language for the administrator approving an alternate format.

Page 46, Subsection j(i)- Delete proposed language for the administrator approving an alternate format.

Page 49, 1st paragraph-Delete language "unless the administrator approves an alternate for the organization of the application".

Page 54, 3rd paragraph- Delete language "unless the administrator approves an alternate format for the organization of the request".

Response: The current rule rules require application information to be submitted in the order specified in the rules. This provision was written when permit terms were 4 years. Unfortunately, the current format of the rules does not lend itself well to longer permit terms because even simple changes and additions made during the permit term can affect multiple parts of the application; this results in confusion and unnecessary time and cost to update applications. Until the rules can be reorganized, the DEQ believes it is appropriate to allow some flexibility in the organization of the rules. We plan to provide guidance on application formats until the rules can be reorganized. No changes to the rule are planned in response to this comment.

Chapter 2 Comments from Nelson Engineering:

Comment 50 (Nelson Engineering): This chapter has been difficult to follow, interpret and read since it was adopted 20+ years ago. SHWD should reformat and reorganize it to make it more reader friendly so that requirements are presented in a logical order and Section headings are easier to find. For instance relocate Section 2.e Permit Term, which is very important and put it at Section 2.a or b, where it's easy to find. If the formatting for this chapter were revised and improved, it would be less confusing and easier to follow.

Response: See the response to Comment 49 above. Reorganization is beyond the scope of this rule change, but planned for the next rule change.

Comment 51 (Nelson Engineering): Page 2-7, Section 2(b)(ii) last sentence should read "In addition, all portions of the permit application which require geological services or work shall be stamped, signed, and dated by a professional geologist registered in the State of Wyoming."

Response: This change is beyond the scope of this rule change, but it will be considered in the next rule change. In the mean time, this requirement is already addressed by Wyoming statutes.

Comment 52 (Nelson Engineering): Page 2-10 Subsection (5) this requirement is stated in too general of a fashion and SHWD should itemize the important features of the components you want addressed. An extensive amount of the required description is "made up on the fly when applications are prepared and submitted".

Response: This is beyond the scope of the current rule change, but will be considered for the next rule change.

Comment 53 (Nelson Engineering): Page 2-10 Subsection (6) this requirement is stated in too general of a fashion and SHWD should itemize the important features of the components you want addressed. An extensive amount of the required description is "made up on the fly when applications are prepared and submitted".

Response: This is beyond the scope of the current rule change, but will be considered for the next rule change.

Comment 54 (Nelson Engineering): Page 2-11 Subsection (XI)(5). SHWD should review the monitoring standards in Subsection 6 and ascertain what else is required and list it under this subsection.

Response: This is related to other comments above about the organization of the rule. This is beyond the scope of the current rule change, but will be considered for the next rule change.

Comment 55 (Nelson Engineering): Page 2-12 Subsection (XII)(4) What constitutes a description of final cover? SHWD should identify what they want USCA classification? atterberg limits? proctor?, agronomic classification ? chemical properties? hydraulic conductivity?

Response: This is beyond the scope of the current rule change, but will be considered for the next rule change.

Comment 56 (Nelson Engineering): Page 2-12 Subsection XII(9). SHWD should review the closure standards in Subsection 7 and ascertain what else is required and list it under this subsection.

Response: This is beyond the scope of the current rule change, but will be considered for the next rule change.

Comment 57 (Nelson Engineering): Page 2-15 Subsection G(XI) States "Any other design details requested by the administrator". This statement basically opens the door for the reviewing individual to require any additional information he may desire or request the information be presented differently if he prefers. I would propose SHWD determine the type of details they want under this provision, list them, and eliminate this statement.

Response: This is beyond the scope of the current rule change, but will be considered for the next rule change.

Comment 58 (Nelson Engineering): Page 2-16 Subsection 1(11) and (III) Addresses QA/QC requirements for synthetic membrane installation and lateral drainage layers. QA/QC requirements for other components of construction should be addressed or noted as not being required. SHWD should develop a QA/QC outline of their liking and attach it to Chapter II as an Appendix.

Response: This is beyond the scope of the current rule change, but will be considered for the next rule change.

Comment 59 (Nelson Engineering): Page 2-17 subsection ii(A) "period" should be "term".

Response: This is beyond the scope of the current rule change, but is a good suggestion and will be considered for the next rule change.

Comment 60 (Nelson Engineering): Page 2-20 Subsection e(ii) this section allows the Administrator to extend the closure permit period, which includes post closure of 30 years per Section 7.(q) until it's demonstrated the landfill is stabilized and is protective of the environment and human health. The "benchmarks" or thresh hold values need to be identified by SHWD and included in this section.

Response: This is beyond the scope of the current rule change, but will be considered for the next rule change.

Comment 61 (Nelson Engineering): Section 3(a)(i) Why not append Section 503 of the Wendell H. Ford Act so that applicants can readily find the requirement and comply.

Response: See Comment 11 and the DEQ response.

Comment 62 (Nelson Engineering): Page 25 Section (xiii) Limits construction of new units during the interval of March 15 to June 30. What is the wisdom of this requirement. Normal daily operations at a landfill is no different than new unit construction i.e. earth moving for daily cover, compactors, heavy machinery running. This provision just places a hardship on landfill operators that seems unnecessary. The birds are not likely to be in the site because its fenced and there is already a buffer area requirement.

Response: See Comments 24, 30 and 88 and DEQ responses.

Comment 63 (Nelson Engineering): Page 33 Subsection j(ii) last sentence says "This bearing strength shall be documented through materials testing as specified by the administrator". It is

preferable to state what method(s) shall be used to determine bearing strength instead of relying on some unknown future decision. Methods customarily used in the industry can be quoted.

Response: This is beyond the scope of the current rule change, but will be considered for the next rule change.

Comment 64 (Nelson Engineering): Page 33 Subsection j(iv) last sentence says "Lateral drainage layers or a graded granular layer of a design approved by the administrator. It would be preferable to state a method for filter design; there are documented methods for designing filter gradation, just quote the methodology required.

Response: This is beyond the scope of the current rule change, but will be considered for the next rule change.

Comment 65 (Nelson Engineering): Page 45 Subsection (A) I would propose converting from metric to English units.

Response: This issue was discussed in the Advisory Board's June 22, 2012 meeting. This is an air quality requirement and has been included in the Solid Waste Rule to minimize reporting requirements. DEQ will provide guidance to operators if they need assistance with the conversions.

Comment 66 (Nelson Engineering): Page 47 Subsection B(I) I would propose converting to English units (1 meter = 3.2808 feet)

Response: This requirement is based on EPA Subtitle D standards and is used in Wyoming's statutes, therefore, no changes are proposed.

Comment 67 (Nelson Engineering): Chapter 2 is replete with statements allowing latitude in requirements, document format, and discretionary decision making by the administrator. Solid Waste Permitting technical requirements as written are much different than as practiced. That discretionary authority has always been delegated to the regulatory personnel in the District office(s). I believe the rules should be written such that applicants can discern what the technical requirements generally are, and less latitude is allowed in the decision making.

Response: This is beyond the scope of the current rule change, but will be considered for the next rule change. The DEQ believes there is room for improvement, but also a need for a certain amount of professional discretion to address unanticipated situations, site-specific conditions, and new developments in practice and technology.

Comment 68 (portions extracted from a longer BNSF letter): BNSF applauds the WDEQ's efforts to simplify and streamline permitting requirements for Facilities storing used oil to be recycled. Removing barriers to efficient and effective recycling promotes sustainability and

preserves natural resources.

Recognizing that management of used oil is now regulated by other federal and State programs, and that management of used oil is more appropriately regulated by these programs, the proposed changes to the Solid Waste Rules and Regulations include a provision at 1(1)(ix) allowing the Administrator to exempt used oil generators from the requirement to obtain a solid waste management authorization or permit. While this is a step in the right direction, BNSF suggests that the WDEQ go a step further. BNSF suggests that the WDEQ adopt a final rule that categorically exempts used oil generators that store their own used oil for later transfer to a used oil recycling facility from any requirements to obtain a solid waste management authorization or permit under the Solid Waste Rules and Regulations. The same rationale for allowing the Administrator to have the discretion to provide an exemption for used oil generators provides the basis for a categorical exemption. Further, a categorical exemption is a logical outgrowth of the current proposal to allow the Administrator to exempt used oil generation, so adoption of a categorical exemption would not require a new notice and comment period. If the WDEQ does not adopt a categorical exemption in the final rule, BNSF suggests that WDEQ provide a simplified procedure for the Administrator to grant the exemption. For example, may the Administrator grant the exemption on a categorical basis? May the Administrator grant the exemption on a generator-by-generator basis? How does a used oil generator seek an exemption? Preferably, these procedures should be promulgated as part of the rule. Alternatively, the procedures could be published as a WDEQ guidance document. In any event, the WDEQ, the Administrator, and the regulated community will all benefit from the certainty of a simple and clear exemption process.

Response: Statutes do not provide a categorical exemption for used oil storage facilities as they do some other facilities. The “may exempt” provision provides some latitude for regulation of facilities that mismanage waste and threaten human health and the environment. A specific exemption letter from DEQ is not necessarily mandatory, but any operator may request a written exemption letter from DEQ. It should be possible to provide an exemption letter on a generator-by-generator basis to further streamline the process. No specific changes to the rule are proposed in response to this comment. Facilities that follow used oil standards in Chapter 12 of the Hazardous Waste Rules are not required to obtain a permit under the Hazardous Waste Rules. DEQ’s current proposal would only require a Solid Waste permit for commercially operated facilities storing more than 10,000 gallons of used oil and then only a low hazard/low volume permit would be required. This proposed change is much less stringent than current rules, but some may consider this to be more stringent than the hazardous waste rules. The DEQ believes that this proposal is an appropriate measure to protect public health and safety and to provide financial assurance for proper closure of large used oil storage facilities.

Comment 69 (Lincoln County): While it makes sense to cite statute references for an item such as the Wyoming Environmental Quality Act, it does not make sense to force the operator trying to comply with the rules to also have a copy of the statutes to find definitions or other items that need to be covered in the rules and regulations. Including the reference that it is set by the

specific statute is fine because it serves to alert the reader that if their copy of the rules is old, that it is necessary to check to see if the statute has been modified.

Response: See Comments 26, 32, and 87 and DEQ responses.

Comment 70 (Lincoln County): Pg. 1-14 There is no definition for “minor change.” Since a major change requires public notice, and renewals and closure require public notice, it would be nice to define a minor change other than in usage on page 1-49 under (b) (i).

Response: This is a bit beyond the scope of the current rule change, but will be considered for the next rule change. Major change is defined in Chapter 1, Section 1(e). Historically, any change not considered major is considered minor.

Comment 71 (Lincoln County): Pg. 1-24 The wording is confusing and does not tie clearly to statute 35-11-527(c) which references 150 meters. If I understand it, I have no objection as long as this change in the definition is not the sole reason to require a change in the approved Environmental Monitoring Plan, that is, it is not used to require additional monitoring wells absent any other changes in operation or management.

Response: This change is directly related to W.S. 35-11-527 and the establishment of a relevant point of compliance. This should not trigger the need for additional monitoring wells, unless perhaps a performance based design demonstration indicates that monitoring wells are not monitoring the uppermost aquifer which may be affected by leakage from the facility. (See also Chapter 2, Section 2(i)(B) (I) groundwater monitoring system requirements.)

Comment 72 (Lincoln County): Pg. 1-25 Changing from “is not” to “may not be” implies that DEQ will make a determination. My observation, from permits I have submitted, is that DEQ is understaffed and does not have the capacity to review all of these types of situations in a timely manner while still addressing those issues that clearly require a permit. I support giving DEQ the authority to require additional information if there is a compliance question.

Response: This section was discussed at the Advisory Board’s June 22, 2012 meeting in relation to activities that are not solid waste facilities by statute and which may by rule be exempted from the need to obtain a permit. The previous rule was confusing because facilities that are exempt by statute were mixed with facilities that may be exempt by rule. See Comment 97 and DEQ response for proposed changes to clarify this problem.

Comment 73 (Lincoln County): Pg. 1-49 (iii) Changing from 45 days to 60 days for review of a major amendment seems reasonable. It is not reasonable for a minor amendment. 30 days would be more reasonable to determine whether or not a minor amendment request contains adequate information to make a decision. Minor amendments could well be tied to seasonal issues and it could be necessary to make the requested modification before winter.

Response: Because engineered containment system designs may now be considered minor amendments, the DEQ believes 60 days will be needed. See Comment 98 and DEQ response.

Comment 74 (Lincoln County): Pg. 2-34 I am adamantly opposed to having to have construction ready design plans four (4) years prior to construction. It does take time to prepare design plans and then the detailed construction plans, so, a year of preparation before submitting “construction plans” is not unreasonable.

Response: See Comments 9, 12, 25, 31, and 90 and DEQ responses.

Comment 75 (Lincoln County): Pg. 7-34 (d) (i) I have no objection to the sentence as long as everyone knows what a site specific or standard cost estimate should address. What if the director prefers his standard cost estimate to the operator’s site specific estimate? What is the new “standard” cost estimate? Is it the operator’s or the director’s choice of which type to use? If it is the operator’s choice, what safeguard is there to ensure that all costs are foreseen and included?

Response: Ultimately, W.S. 35-11-109(a)(xiii) requires the Director to “determine the amount of bonds to be posted.” Therefore, if an operator’s estimate is not determined adequate, the Director’s estimate may be required. Removing specific standards from rule and including them in guidance will allow flexibility to consider alternatives, site specific conditions, and unforeseen circumstances.

Comment 76 (WWAB): Reorganize the statement of principal reasons (SOPR) so the miscellaneous changes are more prominent – try to house them in Bullet Number 6.

Response: The SOPR has been reorganized.

Comment 77 (Casper at the June 22, 2012 WWAB meeting): Concerns about the definition of “green waste” including the term “non-putrescible”.

Response: The definition has been revised. See Comment 4 and DEQ response.

Comment 78 (Casper at the June 22, 2012 WWAB meeting): The City expressed concerns about a 500 ton construction/demolition (CD) waste transfer facility being a low hazard/low volume (LH/LV) facility, especially if any of the CD waste is managed outside.

Response: The LH/LV provisions for facilities that store waste for transfer to a recycling facility or beneficial use have been divided into two categories; one for CD waste and one for more “conventional” recyclables. See Comment 3 and DEQ response.

Comment 79 (Casper at the June 22, 2012 WWAB meeting): Recommended that revisions in renewal applications are clearly identified.

Response: Added this provision to Chapter 1, Section 2(e)(iv). See Comment 10 and the DEQ response.

Comment 80 (Casper at the June 22, 2012 WWAB meeting): Casper encouraged DEQ to put out guidance on compliance with Chapter 7 financial assurance requirements for municipal solid waste landfills.

Response: The DEQ agrees and intends to prepare guidance on compliance with Chapter 7 financial assurance requirements. See also Comments 13, 14, 29, and 86 and DEQ responses.

Comment 81 (JCSWDD at the June 22, 2012 WWAB meeting): Asked if facilities that received permits in the last couple of years are “grandfathered” into the lifetime permits or if they need to redo and go after another permit under the new rules.

Response: Lifetime permits (with 25 year terms) are a statutory provision being incorporated into the rule. W.S. 35-11-502 states that “Effective July 1, 2012, the term for a new or renewed municipal solid waste landfill permit shall be for the lifetime of the solid waste landfill, through closure, not to exceed twenty-five (25) years. Effective July 1, 2012, for any existing municipal solid waste landfill permit, the next renewal permit shall be converted to a lifetime municipal solid waste permit.” Therefore, for existing facilities, lifetime permits will not be issued until the next renewal permit is needed.

Comment 82 (JCSWDD at the June 22, 2012 WWAB meeting): Expressed concern about the operational time that must be addressed in design drawings drawings/plans given changes from 4 or 8 year permits to 25 year permits and the need to submit construction ready plans 4 years prior to construction which the JCSWDD feels is too far in advance.

Response: See Comments 9, 12, 25, 31, and 90 and DEQ Responses.

Comment 83 (WWAB): In light of performance based landfill design requirements, at the June 22 and September 21, 2012, meetings, the Board suggested deleting the requirement that monitoring wells be as close as possible to waste.

Response: The DEQ has made the following change to Chapter 2, Section 6 (b)(i)(B)(I):

(I) A groundwater system must be installed which consists of a sufficient number of wells to monitor water from the uppermost aquifer which may be affected by leakage from the facility. The system must be capable of monitoring background and downgradient water quality. Well locations must be approved by the administrator, and downgradient wells shall be placed in locations ~~as close as possible but in no case greater than~~ **within** 150 meters ~~from~~ **of** the waste management unit boundary on land owned, leased, or otherwise controlled by the operator.

Comment 84 (WWAB): Typographical error noted on page 1-49. Change to "unless the administrator approves an alternate format," from "~~and~~ alternate format."

Response: The typo has been corrected in Chapter 1, Section 2(j)(viii) as follows:

(viii) Three (3) copies of the permit renewal application shall be submitted to the administrator. The application shall be organized in three ring binders, and the information presented in an order that conforms to the order set forth in the applicable application requirements sections of these rules and regulations, unless the administrator approves ~~and~~an alternate format for the organization of the application. The applicant shall have the option to submit copies of only the updated and revised portion of the previous application, if the revised and updated pages and drawings are appropriately numbered and dated to facilitate incorporation into the previous permit document.

Comment 85 (WWAB): Question about whether design capacity is defined in the rule.

Response: Chapter 2, of the SWRR requires the application to include the estimated site capacity and site life, including the calculations on which these estimates are based. Permit application forms are also required to include the landfill's total disposal capacity. Information will be provided to operators regarding procedures for calculating design capacity for Air Quality reports. Chapter 2, Section 2(b)(iii)(A)(X)(2.) has been changed as follows:

(2.) Estimated site capacity, in tons and cubic yards of waste, and site life, including the calculations on which these estimates are based;

A similar question was raised at the Board's September 21, 2012, meeting regarding the annual reporting of landfill design capacity reporting in Chapter 2, Section 5(bb)(v)(A). The following changes were made in response to these recommendations:

(A) The maximum design capacity of the landfill in megagrams (Mg) and cubic meters (m³) of waste, including any modifications or expansions in the last year which have increased or decreased the maximum design capacity in megagrams (Mg) and cubic meters (m³) of waste. If the design capacity is converted from mass to volume or volume to mass, the calculations must be provided. Information regarding the site-specific waste density and how it was estimated must also be provided.

Comment 86 (WWAB): Leave in the rule the general topics, but not the costs, that need to be addressed when operators calculate closure and post-closure costs.

Response: The general site specific topics of what needs to be considered in closure and post-closure cost estimates are included previously in Chapter 7, Section 3 (e)(i) and (ii). The items removed from Section 9(d)(i) and (ii) only pertain to standard cost estimates for municipal landfills participating in the trust account. These items will now be provided in guidance to be

more responsive to changing costs and conditions. See also Comments 13, 14, 29, and 80 and DEQ responses.

Comment 87 (WWAB): Asked that statutory definitions be included in the rule to help applicants understand regulatory requirements and we add text explaining to applicants that they should refer to the statute for the current definition.

Response: DEQ will include statutory definitions in the rule. See also Comments 26 and 32 and DEQ responses.

The following statutory definitions have been added to Chapter 1, Section 1(e):

"Aquifer" means, in relation to all solid waste facilities except municipal solid waste landfills, a geologic formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs. For municipal solid waste landfills, "aquifer" means an underground geologic formation:

Which has boundaries that may be ascertained or reasonably inferred;

In which water stands, flows or percolates;

Which is capable of yielding to wells or springs significant quantities of groundwater that may be put to beneficial use; and

Which is capable of yielding to wells or springs which produce a sustainable volume of more than one-half (1/2) gallon of water per minute.

"Composite liner" means a system consisting of two (2) components; the upper component must consist of a minimum thirty (30) mil flexible membrane liner (FML) and the lower component shall consist of at least a two (2) foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second. A flexible membrane liner components consisting of high density polyethylene (HDPE) shall be at least sixty (60) mil thick. The flexible membrane liner component shall be installed in direct and uniform contact with the compacted soil component.

"Groundwater" means, in relation to all solid waste facilities except municipal solid waste landfills, water below the land surface in a saturated zone of soil or rock. For municipal solid waste landfills, "groundwater" means any water, including hot water and geothermal steam, under the surface of the land or the bed of any stream, lake, reservoir or other body of surface water, including water that has been exposed to the surface by an excavation such as a pit which:

Stands, flows or percolates; and

Is capable of being produced to the ground surface in sufficient quantity to be put to beneficial use.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such wastes.

"Lifetime" for municipal solid waste landfills means the estimated time to fill and close a municipal solid waste landfill, not to exceed twenty-five (25) years.

Comment 88 (WWAB): Discussed construction timing and distances from leaks outside sage grouse core areas.

Response: See also Comments 24 and 30. The DEQ had proposed landfill location standards based upon the Governor's Executive Order on sage-grouse. At its September 21, 2012, meeting the Board expressed concern about including policy in rules. The Department committed to consult with the Attorney General's office on this matter. After consultation with the Attorney General's office and in consideration of the DEQ's current policy of addressing sage-grouse standards using internal resources, the Department no longer plans to include sage-grouse provisions in the location standards.

Comment 89 (WWAB): The Board discussed "construction ready" (now "detailed") design plans on page 2-34 and asked if submitting these plans would be considered a major or minor amendment. The Board was also concerned that this section wasn't clear about the Department's review process.

Response: Unless the plans included a major amendment to the conceptual design already permitted, the submittal of these plans would not be considered a major amendment and would not be subject to the notice and comment requirements of a major amendment. Per the Board's recommendation September 21, 2012, the following text is included as Chapter 2, Section 4(k)(vii):

(vii) Detailed design plans, including but not limited to plans for liners, leachate collection and management systems, caps and associated QA/QC plans shall be submitted as part of the lifetime permit or renewal as applicable. Additional or modified detailed design plans for engineered containment systems shall be submitted as a minor change unless a design change is proposed that constitutes a major change.

Comment 90 (WWAB): Additional discussion followed about "construction ready" design plans and the timing for plan submittal, including whether or not plans could be submitted with annual reports.

Response: See also Comments 9, 12, 25 and 31 and the DEQ responses.

Comment 91 (WWAB): The definitions of cells, landfill units, municipal solid waste landfill units, construction/demolition landfill units, facilities, etc. were discussed.

Response: See Comment 33 and DEQ response. From larger to smaller, industry standards are facility, unit, and cell. The definition of “solid waste management unit” will be edited to read:

"Solid waste management unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing solid waste constituents in the same area of a solid waste management facility. Examples of solid waste management units include a surface impoundment at a solid waste management facility, a waste pile, a land treatment area, a municipal, construction/demolition, or industrial landfill unit, an incinerator, a tank and its associated piping and underlying containment systems at a solid waste management facility and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

Comment 92 (WWAB): The Board noted that manure is excluded from the definition of green waste and that this could unnecessarily prevent the use of manure in green waste compost piles.

Response: The compost provisions for low hazard/low volume facilities and facilities that may be exempt from a permit will be edited as follows to include manure in green waste compost piles if the piles do not create odors, constitute a nuisance, or attract vectors.

The list of activities that may be exempt at a solid waste transfer, treatment storage and processing facility in Chapter 1, Section 1(l)(xi) has been revised to separate compost piles from storage piles as follows:

“Green waste and clean wood waste storage piles; and”

“Compost piles for green waste and manure operated in a manner that does not create odors, constitute a nuisance, or attract vectors; and”

The list of activities at a low hazard/low volume solid waste transfer, treatment storage and processing facility in Chapter 1, Section 1(e) has also been revised to separate compost piles from storage piles as follows:

“Green waste and clean wood waste storage piles; and”

“Compost piles for green waste and manure operated in a manner that does not create odors, or a public or private nuisance; and”

Comment 93 (WWAB): The Board asked that the definition of “waste management unit boundary” be edited to clarify that the definition applies to municipal solid waste landfill units.

Response: The definition has been revised as follows:

"Waste management unit boundary" For the purpose of establishing a relevant point of compliance for municipal solid waste landfills, "waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the municipal solid waste landfill unit. This vertical surface extends down to the uppermost aquifer.

Comment 94 (WWAB): The Board asked that the frequency of household hazardous waste collection days at low hazard/low/volume and exempt transfer stations be clarified.

Response: The following changes have been made:

For LH/LV facilities in Chapter 1, Section 1(e) the text has been revised as follows:

Household hazardous waste (HHW) collected no more frequently than quarterly collection days, provided that the HHW collected is removed from the site and transported to a permitted facility within thirty (30) days of receipt; and

For exempt facilities in Chapter 1, Section 1(l)(xi) the text has been revised as follows:

Household hazardous waste (HHW) collected no more frequently than semiannual collection days, provided that the HHW collected is removed from the site and transported to a permitted facility within thirty (30) days.

Comment 95 (WWAB): The Board asked that the volume limit for storage of e-waste at low volume/low hazard facilities be increased from 40 to 50 cubic yards.

Response: For LH/LV facilities in Chapter 1, Section 1(e) the text has been revised as follows:

4050 cubic yards of electronic waste stored in containers ; and

Comment 96 (WWAB): The Board asked why clean wood waste storage facilities needed to maintain a 200 foot separation between storage piles and off-site structures.

Response: The Department conducted additional research and found a variety of requirements. However, many require 100 feet of separation between wood piles and structures. Therefore the Department has revised Chapter 1, Section 1(l) to require 100 feet of separation as follows:

Clean wood waste storage facilities: Facilities storing clean wood waste in storage piles with a combined base surface area larger than 10,000 square feet or containing greater than 100,000 cubic feet of clean wood waste. Clean wood waste at such facilities shall be stored no less than 200100 feet from off-site structures, storm water shall be properly managed, and the pile shall

not create a public or private nuisance.

For exempt facilities in Chapter 1, Section 1(l)(iv) the text has been revised as follows:

(iv) Clean wood waste storage facilities: Facilities storing clean wood waste in storage piles with a base surface area no larger than 10,000 square feet containing no greater than 100,000 cubic feet of clean wood waste. Clean wood waste at such facilities shall be stored no less than ~~200~~100 feet from off-site structures, storm water shall be properly managed, and the pile shall not create a public or private nuisance .

Comment 97 (WWAB): The Board asked that the rules include the facilities not considered to be solid waste facilities in statute.

Response: The statutory exclusions have been included in the rule at the end of Chapter 1, Section 1(l) in a separate section as follows:

(xvi) An exemption or solid waste management permit are not required for facilities which are not solid waste facilities as defined by W.S. 35-11-103(d)(ii).

(A) Facilities regulated by the Wyoming Oil and Gas Commission under W.S. 30-5-104(d)(vi)(A) or (B);

(B) The disposal of waste soil and rock directly connected with mining, subject to the Land Quality Division rules and regulations, and including overburden, reject mineral and mill tailings;

(C) The disposal of sewage waste, municipal wastewater treatment sludges, wastewaters, or bulk liquid waste at facilities, other than solid waste landfills, which are permitted in accord with the Water Quality Division rules and regulations;

(D) Open burning of wood, brush, weeds and tree trimmings conducted in compliance with the Air Quality Division rules and regulations;

(E) Facilities which would have been subject to the permitting requirements of Article 3 (Water Quality) of the act if constructed after July 1, 1973;

(F) Lands and facilities subject to the permitting requirements of Articles 2 (Air Quality), 3 (Water Quality), or 4 (Land Quality) of the act used solely for the management of wastes generated within the boundary of the permitted facility or mine operation by the facility or mine owner or operator or from a mine mouth electric power plant or coal drier;

(G) Lands and facilities owned by a person engaged in farming or ranching and used to dispose of solid waste generated incidental to his or her farming and ranching operation;

(H) Transport vehicles, storage containers and treatment of waste in containers.

Comment 98 (WWAB): The Board asked why the review time for major amendments and minor amendments was extended to 60 days.

Response: In addition to the discussion at the Board's June 22, 2012, meeting regarding the Department's work load the Department notes a previous discussion regarding the submission of detailed design drawing and plans for engineered containment systems. Under the proposed rules, these plans would now be considered minor amendments in most instances. When the 45 day review time was established in the previous rule, municipal landfill designs rarely included engineered containment and a 45 day review may have been considered adequate. Due to the complexity of these plans the Department believes the previous 45 day review time was too short and the Department will need 60 days to complete our review. The proposed 60 day maximum review time has not been changed. Note that this is a maximum time. We anticipate that reviews of simple changes can be completed much more quickly.

END OF MEMORANDUM