

**FILED**

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**RESPONSE TO COMMENTS**

Jim Ruby, Executive Secretary  
Environmental Quality Council

**Proposed Revisions to Chapters 1, 2, and 7 of the Solid Waste Rules and Regulations  
Principal Reasons Dated November 7, 2012**

Date: March 1, 2103

**Chapter 1 Comments**

**Fremont County Solid Waste Disposal District**

The District commented on Chapter 1, Section 2(e)(iii) - General Permit Application Procedures and Chapter 1, Section 2(g)(iii) - General Permit Application Procedures which require renewal and closure permit applications to be submitted twelve (12) months before permits expire or before the anticipated facility closure respectively. The District recommended that applications be submitted 6 months in advance, citing requirements in other states.

**Response to the District's comment**

The application review and permit issuance processes are included in W.S. §35-11-502. Given these Environmental Quality Act statutory timeframes, completion of the statutory application and permit issuance process can take at least 232 days. Additional time is commonly needed to address application deficiencies and related additional application review cycles. These additional application review cycles can add 60-120 days to the application process and the entire process could take 262- 352 days or more.

The existing rule allows applications to be submitted between 270 and 180 days before an existing permit expires. Department experience indicates that application submittal 270 to 180 days before permit expiration isn't realistic with respect to completion of the application review and permit issuance process; therefore, many permits expire before new permits are issued and facilities operate without valid permits. Administrative orders and notices of violation are necessary to return operators to compliance until permits are issued.

Based on past experience and to ensure that the statutory permit application review and permit issuance requirements are met, the Department believes the requirement that facilities (without lifetime permits) submit renewal or closure permit applications at least twelve (12) months prior to the expiration of the existing permit or before the anticipated facility closure, respectively, is appropriate. Therefore, the Department is not proposing a change to the draft rule in response to this comment.

Fremont County Solid Waste Disposal District

The District commented on Chapter 1, Section 2(e)(iii) - General Permit Application Procedures which require submittal of a lifetime permit renewal application three years prior to the expiration of a lifetime permit. The District noted that this is a statutory requirement.

Response to the District's comment

Because the rule reflects a direct statutory requirement [at W.S. §35-11-502(q)(ii)], no change to the rule is proposed.

**Chapter 2 Comments**

Fremont County Solid Waste Disposal District

The District commented on Chapter 2, Section 2(a)(i)(A) II and III and Chapter 2, Section 2(a)(iii)(A) which require permit renewal applications and closure permit applications to be submitted twelve (12) months in advance.

Response to the District's comment

Based upon the statutory requirements for application review and issuance of renewal and closure permits discussed above, no changes to the draft rule are proposed.

Fremont County Solid Waste Disposal District

The District expressed concern on the details required for the twenty-five (25) year operating permit in Chapter 2, Section – Design and Construction Standards, item 4(k)(vii). In summary, the District believes that submitting "... this level of detail as far as 25 years in advance is an immense waste of effort and money. A general conceptual layout should be adequate for a permit submitted with that much anticipated life. A more appropriate approach, successfully adopted in numerous other states, would be to provide conceptual design drawings with life estimates and then asking all operators to submit construction ready plans 6-months in advance to their regulator for review and approval prior to the actual construction. The solid waste industry is an ever-changing field with substantial changes in materials and concepts on a regular basis. This legislation would force every operator into countless major and minor permit amendments to update their permit to the current "state of the art" design. Again, these amendments would have significant impacts on operating budgets. The abundance of major and

minor permits will also consume a great amount of the regulatory agencies time and materials for review.”

#### Response to the District’s comment

There was a great deal of discussion about this matter at the September 21, 2012, Water and Waste Advisory Board meeting. Stakeholders at the meeting, including consultants, landfill operators, and the Department, worked together to reach agreed upon language now proposed at Chapter 2, Section 4(k)(vii). The Department believes that the “detailed design plans” described in the proposed rule are analogous to the “conceptual design drawings” that the District recommends. Stakeholders generally agreed that detailed design plans are not analogous to construction ready plans. Note that the draft text in Section 4(k)(vii) is consistent with existing requirements in Chapter 2, Section 2(b)(iii) which require a detailed description of the facility liners, caps, berms, or other containment devices.

As the amended proposed rule is written, Chapter 2, Section 4(k)(vii) clarifies that lifetime permit applications only need to contain detailed design plans and that additional or modified plans can be submitted at a later date. Because the Department believes the “detailed design plans” in the rule are analogous to the “conceptual plans” recommended by the District, no changes to the rule are proposed.

#### Fremont County Solid Waste Disposal District

The District commented on Chapter 2, Section 5 – Operating Standards, items (bb)(i) through (v) regarding the level of detail required in annual reports, noting that this is a legislative requirement.

#### Response to the District’s comment

Because annual reporting is a statutory requirement (at W.S. §35-11-523), no change to the draft rule is proposed.

### **Chapter 7 Comments**

#### Fremont County Solid Waste Disposal District

The District commented on Chapter 7, Section 9 – Closure and Post-Closure Account for Municipally-Owned Solid Waste Disposal Facilities, item (b) (iii). The District commented that “The proposed formula changes for the annual premiums can initially lower the annual premiums dues; however, as the sites grow closer to their closure timeframe, the annual

premiums will grow exponentially. The large payments required towards the end of the sites calculations may reach an amount not within their operating budgets.”

#### Response to the District’s comment

Under the State Guarantee Trust Account (W.S. §35-11-515) operators are required to estimate closure and post-closure costs every four (4) years. W.S. §35-11-515 (f) requires that “Each participating facility shall pay annually into the account a premium, the sum of which at facility closure will equal no less than three percent (3%) of the sum of the closure and post closure costs estimates specified in subsection (d) of this section.” Unfortunately, the formula previously in the rule did not give credit for past payments into the account. Therefore, after every four year cycle, operators began making payments toward the same total amount due. It appears that this is the concern expressed by the District.

In addition, other commenters have raised similar issues on how payments to the State Guarantee Trust Account (SGTA) should be calculated. The Department is proposing to address the comments on this issue from the District, the City of Cheyenne and the City of Sundance, as discussed below:

#### City of Cheyenne and the City of Sundance

The Cities of Cheyenne and Sundance offered similar comments regarding Chapter 7, Section 9(iii). The Cities commented that the changes proposed by the Department have the potential to impose an additional financial burden on landfill operators that are making good faith efforts to secure funding and complete closure and post-closure activities. Landfill operators, who are securing funding for these activities, reduce the potential risk that funds will need to be expended from the SGTA to complete closure and post closure activities. To recognize and encourage landfill operators to secure funding for closure and post-closure activities, the Cities recommended changes to the proposed rule that would allow landfill operators to reduce their closure and post-closure cost estimates for the SGTA by the amount of funds, grants, or loans that have been secured to complete these activities, before they calculate their annual payment amount. Revised regulatory language was suggested by the Cities’ to address this issue: “Closure and post-closure costs may be reduced by funds, grants, or loans secured by the operator for closure and post-closure activities prior to calculating the annual payment amount.”

#### Response comments by the Cities of Cheyenne and Sundance:

The Department recognizes this concern, especially in light of the fact that premium payments will increase when more accurate closure and post-closure costs are calculated. The Department agrees that landfill operators should be encouraged to set aside their own funds and that doing so

reduces the possibility that the State of Wyoming will need to expend funds from the SGTA to close landfills and sue local governments to recover costs per the requirements of W.S. §35-11-515(m). Therefore, the Department recommends that the formula proposed at Chapter 7, Section 9(b)(iii) be replaced by the following:

*(iii) Calculate the annual amount to be paid to the account using the following procedure:*

*(A) Calculate three percent (3%) of the sum of closure and post-closure costs using the following formula:*

*3% of the sum of closure and post-closure costs = (0.03(Closure cost – the operator's accumulated net assets earmarked for payment of the operator's closure costs)) + (0.03(Post-closure cost – the operator's accumulated net assets earmarked for payment of the operator's post-closure costs))*

*(I) The facility operator shall account for closure and post-closure liabilities and costs in accordance with Generally Accepted Accounting Principles and certify to the earmarking of the accumulated net assets, subject to audit.*

*(B) Calculate the balance due to the account by deducting the total of previous payments to the account from 3% of the sum of closure and post-closure costs.*

*Balance due = 3% of the sum of closure and post-closure costs – the total of previous payments to the account*

*(C) Calculate annual payments to the account by dividing the balance due by the years of remaining disposal capacity.*

*Annual payment = Balance due / years of remaining disposal capacity*

Note that the Department consulted internal accounting staff when preparing this proposed rule. The language used is from §L10.109 (Reporting MSWLFs in Government Fund Financial Statements) from "Codification of Governmental Accounting and Financial Reporting Standards" published by Governmental Accounting Standards Board.

If the Council chooses not use the approach above, the formula currently in the draft rule will need to be corrected and replaced with the following formula:

*Annual Payment Amount = ((0.03 X (closure cost + post-closure cost)) – the total of previous payments to the account) / years of remaining disposal capacity.*

The Department apologizes for any confusion this may have caused.

- END -