

SENATE FILE NO. SF0121

Performance based evaluation and design.

Sponsored by: Senator(s) Bebout, Cooper, Geis and Jennings
and Representative(s) Childers, Lockhart,
Miller and Quarberg

A BILL

for

1 AN ACT relating to environmental quality; providing for
2 performance based evaluation and performance based design
3 in the adoption of solid waste rules, standards or
4 permitting systems; providing definitions; making
5 conforming amendments; and providing for an effective date.

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7 *Be It Enacted by the Legislature of the State of Wyoming:*

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9 **Section 1.** W.S. 35-11-523 and 35-11-524 are created
10 to read:

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12 **35-11-523. Performance based design and performance**
13 **based evaluation in considering rules, regulations,**
14 **standards or permitting systems.**

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1 (a) Notwithstanding any other provisions of this
2 article to the contrary, prior to considering a
3 recommendation or petition to adopt, amend or repeal rules,
4 regulations, standards or permitting systems related to or
5 that may affect engineered containment systems at municipal
6 landfills, the board and council shall give notice and
7 receive public comment on a performance based evaluation
8 related to the recommendation or petition. If the council
9 determines that the performance based evaluation does not
10 accurately or adequately identify and evaluate all the data
11 and criteria required under W.S. 35-11-524(b), then prior
12 to considering the recommended or requested rules,
13 regulations, standards or permitting systems, the council
14 shall direct the department to collect data and perform the
15 evaluations that the council identifies as incomplete or
16 inconsistent with the requirements of W.S. 35-11-524(b).

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18 (b) The council shall give notice, receive public
19 comment, and determine that the revised performance based
20 evaluation is accurate and adequate under W.S. 35-11-524(b)
21 prior to proceeding with consideration of the
22 recommendation or petition to adopt, amend or repeal rules,
23 regulations, standards or permitting systems related to or

1 that may affect engineered containment systems at municipal
2 landfills.

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4 (c) The council shall make performance based design
5 decisions taking into consideration a performance based
6 evaluation prepared by the department when adopting,
7 amending or repealing rules, regulations, standards or
8 permitting systems related to or that may affect engineered
9 containment systems at municipal landfills.

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11 (d) A decision by the council that the performance
12 based evaluation is accurate and adequate under W.S.
13 35-11-524(b) shall be a final decision of the agency
14 pursuant to the Wyoming Administrative Procedure Act.

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16 **35-11-524. Performance based design; performance**
17 **based evaluation.**

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19 (a) The goal of performance based design shall be to
20 identify, evaluate and manage environmental risks, not to
21 eliminate them. A performance based design decision shall
22 be based upon a performance based evaluation in the
23 adoption, amendment or repeal of rules, regulations,
24 standards or permitting systems related to or that may

1 affect engineered containment systems at municipal
2 landfills and when a performance based evaluation is
3 requested by the applicant under W.S. 35-11-801(a). When a
4 performance based design decision is made by the
5 department, it may be appealed to the council.

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7 (b) A performance based evaluation shall explain the
8 department's:

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10 (i) Investigation and verification of the
11 existence of an actual and significant environmental
12 problem;

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14 (ii) Determination of reasonable toxicological
15 endpoints;

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17 (iii) Data demonstrating background conditions
18 and measurable adverse impacts due to pollution;

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20 (iv) Identification and analysis of the exposure
21 of humans, plants and animals to pollution and the degree
22 of exposure;

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1 (v) Evaluation of the statistical relevance of
2 toxicity data;

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4 (vi) Characterization of the nature and severity
5 of the risk and if the risk is acute or chronic;

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7 (vii) Comparison of data on exposure and
8 effects;

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10 (viii) Calculation of the probability of risk
11 that pollution will cause measurable harm to reasonable
12 toxicological endpoints; and

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14 (ix) Analyses of the range of alternative
15 performance based design decisions and the selection of a
16 recommended decision based upon the identification and
17 evaluation of:

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19 (A) The reasonableness of the pollution
20 involved;

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22 (B) The character and degree of injury to,
23 or interference with the health and physical well being of
24 the humans, animals and plants;

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2 (C) The social and economic value of the
3 source of pollution;

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5 (D) The priority of location in the area
6 involved;

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8 (E) The technical practicability and
9 economic reasonableness of reducing or eliminating the
10 source of the pollution;

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12 (F) The social welfare and aesthetic value;
13 and

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15 (G) The effect upon the environment.

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17 **Section 2.** W.S. 35-11-103(d) by creating new
18 paragraphs (viii) through (x), 35-11-109(a)(iv) and
19 35-11-801(a) are amended to read:

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21 **35-11-103. Definitions.**

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23 (d) Specific definitions applying to solid waste
24 management:

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(viii) "Municipal landfill" means a facility for land disposal primarily for municipal solid wastes resulting from or incidental to residential, community, trade or business activities, including garbage, rubbish, ashes, street sweepings, dead animals, tires, abandoned automobiles and all other solid waste other than industrial wastes;

(ix) "Performance based evaluation" means a report prepared by the department in conformance with W.S. 35-11-524(b);

(x) "Performance based design" means a decision made by the department or council pursuant to W.S. 35-11-523 or 35-11-524.

35-11-109. Powers and duties of director.

(a) In addition to any other powers and duties imposed by law, the director of the department shall:

(iv) Conduct, encourage, request and participate in, studies, surveys, investigations, research,

1 experiments, training and demonstrations by contract, grant
2 or otherwise; prepare a performance based evaluation prior
3 to the adoption, amendment or repeal of any rules,
4 regulations, standards or permitting systems related to or
5 that may affect engineered containment systems at municipal
6 landfills, or upon request of the applicant under W.S.
7 35-11-801(a); prepare and require permittees to prepare
8 reports and install, use and maintain any monitoring
9 equipment or methods reasonably necessary for compliance
10 with the provisions of this act; ~~and~~ collect information
11 and disseminate to the public such information as is deemed
12 reasonable and necessary for the proper enforcement of this
13 act; and make performance based design decisions in the
14 issuance, denial, amendment, suspension or revocation of
15 permits related to engineered containment systems at
16 municipal landfills, and in the adoption, amendment or
17 repeal of rules, regulations, standards or permitting
18 systems related to or that may affect engineered
19 containment systems at municipal landfills;

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21 **35-11-801. Issuance of permits and licenses.**

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23 (a) When the department has, by rule or regulation,
24 required a permit to be obtained it is the duty of the

1 director to issue such permits upon proof by the applicant
2 that the procedures of this act and the rules and
3 regulations promulgated hereunder have been complied with.
4 In granting permits, the director shall, upon the request
5 of the applicant for a permit related to engineered
6 containment systems at municipal landfills, prepare a
7 performance based evaluation. In granting permits related
8 to engineered containment systems at municipal landfills,
9 the director shall make performance based design decisions.
10 For any permit, the director may impose such conditions as
11 may be necessary to accomplish the purpose of this act
12 which are not inconsistent with the existing rules,
13 regulations and standards. An administrator shall not issue
14 permits and may issue a license under this act only as
15 specifically authorized in this act.

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17 **Section 3.** This act is effective immediately upon
18 completion of all acts necessary for a bill to become law
19 as provided by Article 4, Section 8 of the Wyoming
20 Constitution.

21

22 (END)