

**Department of Environmental Conservation
Division of Environmental Health**

**Solid Waste Regulation Revision
18 AAC 60**

**Public Noticed
April 21, 2017 – May 26, 2017**

**Supplemental Public Noticed
May 16, 2017 – June 26, 2017**

**RESPONSIVENESS SUMMARY
October 5, 2017**

Acronyms and Abbreviations

AAC	Alaska Administrative Code
AS	Alaska Statute
CFR	Code of Federal Regulations
DEC	Alaska Department of Environmental Conservation
DHSS	Alaska Department of Health and Social Services
EPA	United States Environmental Protection Agency
IRP	Inactive Reserve Pit
RCRA	Resource Conservation and Recovery Act
SWP	Solid Waste Program
WIIN Act	Water Infrastructure and Improvements for the Nation Act

INTRODUCTION

Summary of Project

The Department of Environmental Conservation's (DEC) Solid Waste Program (SWP) adopted regulation changes to Title 18, Chapter 60 of the Alaska Administrative Code (18 AAC 60). The changes address storage, treatment, and disposal requirements for oil and gas exploration and production waste, and beneficial use requirements. The amendments also address treatment requirements for small waste treatment facilities for medical waste and biosolids, as well as update user fees.

The SWP also public noticed proposed regulations regarding freezeback landfills and disposal requirements for coal ash; however, the SWP has decided to eliminate these requirements from the current adoption package, as explained later in this document. These regulations may be considered in a future regulations package.

For coal ash disposal, as discussed further in this document, we will proceed separately from the other regulations changes described below, pending ongoing work by the Environmental Protection Agency concerning Coal Combustion Residual (CCR) permitting program approval procedures under the Water Infrastructure and Improvements for the Nation Act (WIIN Act), and what flexibility may be allowed for a state program.

The DEC Commissioner adopted the regulations changes on September 21, 2017. The Lieutenant Governor signed the adopted regulations on September 27, 2017 with an effective date of October 27, 2017.

The adopted regulation changes include the following:

- 1) 18 AAC 60.005 is amended to exclude drilling waste treatment facilities, facilities treating sewage solids or septage to create biosolids, and medical waste treatment facilities from the exemption for small treatment facilities.
- 2) 18 AAC 60.007 and 18 AAC 60.008 are repealed and replaced with new sections at 18 AAC 60.007, 18 AAC 60.008, and 18 AAC 60.009 that establish revised standards for beneficial use of solid waste as structural fill material or as an ingredient in a manufactured product.
- 3) 18 AAC 60.200 is amended to clarify small treatment facilities permitting requirements and allow for approval of short-term solid waste treatment facilities via plan approval rather than permit.
- 4) 18 AAC 60.210 is amended to include treatment facilities in the requirement regarding professional engineer approval.
- 5) 18 AAC 60.430 is amended to eliminate provisions for drilling waste disposal facilities, which will be addressed in 18 AAC 60.432.

- 6) 18 AAC 60.432 is established to set new standards for drilling waste disposal facilities.
- 7) 18 AAC 60.440 is amended to establish closure standards for inactive reserve pits.
- 8) 18 AAC 60.490 is amended to reflect revised closure standards established in 18 AAC 60.432 for drilling waste disposal facilities.
- 9) 18 AAC 60.505 is amended to reference more recent revisions of 40 C.F.R. 503.
- 10) 18 AAC 60.510(b) is amended to clarify requirements for biosolids.
- 11) 18 AAC 60.700 is repealed and readopted to update user fees.
- 12) 18 AAC 60.990 is amended to add, modify, and repeal definitions.

Opportunities for Public Participation

The 67 day public comment period for the proposed regulation changes began on April 21, 2017, when SWP published notice in the Alaska Dispatch News. The public comment period listed an end date of May 26, 2017. Publication included information about the proposed changes and the opportunity to submit comments. SWP also posted the public notice online at <http://dec.alaska.gov/eh/sw> and <http://dec.alaska.gov/Commish/public-notice.htm>.

SWP received a number of requests to extend the public comment period. SWP agreed with those requests and a supplemental public notice was published on May 16, 2017 extending the public comment period to June 26, 2017. The supplemental notice was published, as the original notice, both online and in the Alaska Dispatch News.

For the original and supplemental public notices, SWP sent a “Dear Interested Person” letter by email or US Postal Service to interested parties. The letter provided notice of the proposed changes and methods to obtain the related documents. It was sent to:

- Property developers utilizing solid waste(s) as fill material,
- Utilities and non-utilities that generate coal ash,
- Oil and gas industry drilling and support companies and landfill owners/operators,
- Responsible parties for open Inactive Reserve Pits,
- Medical waste treatment facilities,
- Facilities that treat sewage solids or septage to create biosolids, and
- Solid waste facilities subject to user fees.

Decision Process and Purpose of Responsiveness Summary

SWP received 19 written comments on the regulation revision and reviewed each comment. The purpose of this document is to summarize and respond to comments received during the public comment period.

The following pages provide information about SWP’s decision process, a summary of the comments that were submitted by one or more individuals during the public comment period, and SWP’s response to those comments.

RESPONSE TO COMMENTS

COMMENTS ON PROPOSED CHANGES TO FREEZEBACK LANDFILLS [18 AAC 60.228]

SWP proposed changes to existing or new freezeback landfills. Due to improper notice of the change, SWP has removed these proposed changes from this regulations package, but may reintroduce it in a future package.

COMMENTS ON PROPOSED CHANGES TO BENEFICIAL USE [18 AAC 60.007-009]

SWP regulations have long allowed the beneficial use of particular solid wastes, either as fill material or as an ingredient in a manufactured product - with prior approval from SWP. However, because the existing regulations do not include the details needed to fully characterize proposed projects, SWP proposed revisions to address that lack of detail. One of SWP's primary concerns is having sufficient information to ensure that a proposed project is a legitimate beneficial use of a solid waste and not a *de facto* disposal action. Although many commenters assumed these regulations were specific to coal ash, the regulations are intended to apply to a variety of solid wastes.

1. Comment Summary:

Potential conflicts exist between the requirements of 18 AAC 60.007 and the exemptions granted under 18 AAC 60.005(c) for crushed asphalt pavement, clean concrete, and wood waste. Concerns were expressed about the impact of this section on existing uses of these materials, noting that "it appears they would now require approval through an undefined process with undefined acceptance criteria."

Response:

The exemptions under 18 AAC 60.005(c) specifically apply to either the disposal or a specified use of the listed wastes and materials, and 18 AAC 60.007 applies to specific solid wastes that are either used as structural fill or used as an ingredient in a manufactured product. The exemption for concrete is understood to be more general so, to eliminate any conflict between the regulations, concrete was removed from 18 AAC 60.007. Since the exemption under 18 AAC 60.005(c) for both wood waste and crushed asphalt pavement lists specific uses, there is no conflict with 18 AAC 60.007-009. Wood waste is exempted under 18 AAC 60.005(c) when used to construct roads, building pads, and parking lots as long as specified conditions are met, and crushed asphalt pavement is also exempted when used for specified purposes. Therefore, if a project is proposed under 18 AAC 60.007-009 that uses wood waste or crushed asphalt pavement in accordance with the specifications of 18 AAC 60.005, SWP would simply allow the project under the exemption with no further approval. If the proposed project did not meet the conditions specified under 18 AAC 60.005(c), then SWP would proceed with reviewing the project for compliance with 18 AAC 60.007-009.

2. Comment Summary:

Excluding animal waste and putrescible waste from beneficial use seems to imply that these materials would not be allowed for use in making compost. Also, these regulations will prohibit the use of certain solid wastes to make compost, which is a manufactured product.

Response:

18 AAC 60.007 only excludes these materials from use as structural fill or as an ingredient in a manufactured product. However, to eliminate confusion, SWP added language in 18 AAC 60.007 to make clear that a “manufactured product” does not include compost.

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3. Comment Summary:

Excluding sewage solids from beneficial use under 18 AAC 60.007 creates a conflict with the Land Application of Biosolids regulations of Article 5 that allow sewage solids to be used as either a soil conditioner or as a fertilizer for crops or vegetation.

Response:

The land application of sewage solids does not involve either the use of sewage solids as structural fill or the use of sewage solids as an ingredient in a manufactured product. As such, excluding sewage solids under 18 AAC 60.007 does not conflict with the land application of sewage solids under Article 5.

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4. Comment Summary:

It was requested that coal ash from non-utility boilers be exempted from the state regulations because the federal regulations under 40 CFR 257 Subpart D include this exemption. It was noted that SWP had not done any studies to support including coal ash from non-utility boilers in the regulations, and linked the requested exemption to the exemption granted to fossil fuel combustion wastes under the Bevill Amendment to the Resource Conservation and Recovery Act (RCRA) regulations.

Response:

Coal ash from non-utility boilers has never before been exempted from the state solid waste regulations. As such, SWP did not consider it necessary to conduct any studies to support the continuation of this existing practice. Also, the Environmental Protection Agency’s (EPA) decision not to regulate coal ash from these sources was based on the fact that those sources burn less than one percent of the coal used nationally¹. That same reasoning does not apply in Alaska where non-utility boilers account for just over half of the coal ash generated each year. By not exempting coal ash from non-utility boilers, SWP seeks to establish a consistent regulatory program that applies the same requirements to this solid waste regardless of its source.

SWP also notes that the Bevill Amendment is specific to the hazardous waste regulations under RCRA Subtitle C. This was an important consideration for the EPA because regulating coal ash as a hazardous waste under RCRA Subtitle C was one option in the draft regulation released in

¹ 80 FR 21340, April 17, 2015.

2010. However, by choosing to regulate coal ash as a non-hazardous waste under RCRA Subtitle D, both the federal and state regulations are effectively complying with the Bevill Amendment.

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5. Comment Summary:

Objections were made to the proposed restriction that solid wastes used in structural fill projects must be 10 feet above the seasonal high water table. Objections included the fact that in many areas the ground surface is less than 10 feet above the water table.

Response:

SWP proposed the 10-foot limit to retain continuity with the requirements for landfills elsewhere in the regulations. State regulations do not allow solid wastes to be placed into water and the intent of the 10-foot setback is to prevent contact between solid wastes and groundwater. However, all of the solid wastes acceptable for use in structural fill projects are materials with low leaching potential. To accommodate the concerns raised while still retaining a level of protection against solid waste coming into direct contact with groundwater, SWP is changing the setback requirement to five feet, but is also only applying this requirement to fill projects in which the solid waste is placed below the natural ground surface. While this may limit the volume of solid wastes that can be used as fill in projects, SWP notes that many other materials can be used as fill; and SWP is not obligated to ensure that an approved solid waste can comprise the entirety of the fill in any project.

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6. Comment Summary:

The proposed requirement for groundwater monitoring at large fill projects would apply even if the fill project uses concrete or crushed asphalt pavement, which are either defined to be inert waste or otherwise excluded from the solid waste regulations. Thus, groundwater monitoring is required “whether or not the structural fill material is an inert waste, and does not require demonstration that the inert waste is not contaminated.”

Response:

SWP recognizes the conflict between the proposed regulation and existing regulations and has removed groundwater monitoring as a requirement for large structural fill projects.

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7. Comment Summary:

Although roadway projects are exempt under the proposed amended 18 AAC 60.008(c), there appear to be no requirements for roadway projects elsewhere in 18 AAC 60. As such, will SWP require approval to use wastes listed in 18 AAC 60.007(c) for large roadway structural fill projects?

Response: There are no requirements for roadway projects in 18 AAC 60 because roadway projects do not involve the disposal of solid waste. The only situation in which 18 AAC 60 would apply is a roadway project in which a solid waste is used as fill material. The most likely solid wastes in 18 AAC 60.007(c) that are likely to be used in a roadway project are coal ash and crushed asphalt as those are the materials most likely to meet the engineering specifications for a roadway project. Because the federal coal ash regulations exempt roadway projects, SWP opted

to similarly exempt roadway projects from the solid waste used as fill regulations. Although the exemption in 18 AAC 60.008(c) assumes the fill material in roadway projects will be coal ash or crushed asphalt, if another solid waste were used the roadway project would still be exempt because 18 AAC 60.008(c) does not place any limitations on the exemption.

8. Comment Summary:

Under the proposed amendment to 18 AAC 60.008(f), the use of asphalt or concrete pavement as cover material for waste approved for a structural fill project requires approval from the department. Please explain the department's rationale as to why asphalt or concrete pavement is not listed as a pre-approved cover material.

Response: Asphalt and concrete generally require a prepared base in order to be stable and not all solid wastes potentially available for use as fill will provide that stable base. In order to prevent the placement of asphalt or concrete directly on a solid waste that doesn't provide a stable base, SWP opted to require pre-approval of asphalt and concrete as alternative cover materials to ensure that the stability of the final cover has been considered in the project planning.

9. Comment Summary:

In place of the various proposed requirements for structural fill projects, it was requested that SWP simply adopt the federal definition of "beneficial use" as spelled out in Title 40 Part 257.53 of the Code of Federal Regulations (40 CFR 257.53).

Response:

In response to these comments, SWP significantly revised this regulation to adopt the federal criteria for beneficial use. However, because those criteria are specific to coal ash, SWP has incorporated necessary modifications to accommodate solid wastes other than coal ash. The regulation now includes the following:

- The distinction between large and small fill projects was revised to 23,000 cubic yards of the solid waste, which was determined by calculating the volume equivalent of the 12,400 tons of coal ash allowed under the federal beneficial use standards.
- The requirement for groundwater monitoring was dropped and, in its place, the proposal for a large fill project must include a demonstration that environmental releases from the solid waste will not be greater than the material it replaces or will not exceed health-based standards. For projects lasting more than one year, SWP has the option to require that the solid waste be analyzed once each year for the duration of the project for comparison to the results on which the demonstration is based.
- The separation distance from groundwater was reduced to 5 feet (in keeping with the federal standard), but will apply only to solid waste that is placed below the natural ground surface, which will allow for above-grade fill projects in areas with a high water table.

10. Comment Summary:

This regulation might impede existing and potential future recycling operations such as the recycling of paper into insulation and hydroseeding mulch, and the use of tire bales as structural components. In that regard, “this section could become an additional barrier to recycling in Alaska.”

Response:

The SWP notes that this regulation does not apply to recycling efforts in which the recyclable materials are collected and then sent to a recycling facility for further processing. As for existing beneficial use projects, it is difficult to assess the scope of those efforts in Alaska because SWP to date has not received written proposals for any existing recycling operations, even though this is already required under the current beneficial use regulation in 18 AAC 60.008. While SWP encourages recycling and recognizes there are many potential uses for recycled wastes, SWP notes that both the recycling process and the products produced are not necessarily risk-free. Also, SWP has encountered situations in which the recycling effort was simply a means for avoiding disposal. In that regard, the proposed changes are intended to minimize the potential for sham recycling efforts. Thus, the intent of this regulation is to provide oversight to ensure that a recycled product is useable, that there is a viable market for the product, and that the recycling process is protective of human health and the environment.

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11. Comment Summary:

Requiring information on the potential market for a product is “beyond the objectives of the department”. SWP should evaluate proposals on whether or not the use of the solid waste would continue to meet product standards.

Response:

It is not SWP’s intent to engage in market analysis for proposed manufactured products. This requirement is solely intended to minimize the potential for sham recycling projects by ensuring that some level of effort has been made by the applicant to ensure that the proposed product can be utilized as intended. However, since this is only needed for new products, the regulation has been revised so that documenting the potential market is required only for new products. Proposals to modify existing products through the beneficial use of a solid waste will not have to include that documentation.

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**COMMENTS ON PROPOSED CHANGES FOR TREATMENT FACILITIES
[18 AAC 60.005(d), 18 AAC 60.200(a)(10), and 18 AAC 60.265]**

SWP removed the exemptions for treatment facilities for sewage solids/septage and medical waste as they are an inherent risk to human health if improperly managed or treated. Drilling waste was included to ensure that treatment of all drilling waste is addressed under the regulations.

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12. Comment Summary:

It was requested that the change requiring specified facilities treating under 5 tons of material per day be explained, and that drilling waste be excluded from the change and allowed to qualify for the exemption of treating waste under 5 tons per day without an authorization.

Response:

The intent of the change was to address treatment and handling of wastes that pose an inherent risk to human health or the environment if improperly managed. For drilling waste, this requires proper management under 18 AAC 60.430 and 432, or treatment according to a plan authorized under 18 AAC 60.005(e) or by permit. Functionally, this is not a change for drilling waste, as treated product was only exempted under an authorization and all disposal options are regulated regardless of quantity.

13. Comment Summary:

Hospitals, medical offices, laboratories, or other medical or research institutions should not be exempted from the permitting requirement for treating medical waste.

Response:

Hospitals and other medical facilities are licensed by the Alaska Department of Health and Social Services (DHSS), including their medical waste handling and treatment processes. This regulation is intended to address other facilities that are currently unregulated in the state to ensure that they meet the necessary standards. SWP will work with DHSS to ensure that all facilities are held to the appropriate standards.

14. Comment Summary:

Interested parties should be allowed to review and comment on the medical waste treatment facility permit application, since the treatment regulations are not specific.

Response:

SWP will develop a permit application and guidance that incorporates best management practices for medical waste handling and treatment from multiple state and federal sources. While comments will not be solicited prior to publication, SWP will consider any comments submitted regarding the documents.

15. Comment Summary:

Treatment works that can be removed and used elsewhere should be excluded from the requirements for financial assurance.

Response:

Requiring financial assurance for treatment works would consider the cost of disassembling and removing the treatment facility, as well as treatment and disposal of any remaining waste at the facility should the owner/operator not complete the process. This protects the State or other property owners from assuming the costs of treatment and disposal of wastes and removing the facility.

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**COMMENTS ON PROPOSED CHANGES TO OIL AND GAS REGULATIONS
[18 AAC 60.432 and 18 AAC 60.440]**

SWP updated the regulations for storage and disposal of drilling waste and the regulations requiring closure of inactive reserve pits to reflect the current technologies practiced in the state. This includes prescriptive liner systems and monitoring requirements for disposal facilities and site specific plans for closure and corrective action at inactive reserve pits.

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16. Comment Summary:

The decision tree and tables for containment and monitoring requirement have been removed from the drilling waste monofill regulations.

Response:

The decision tree and tables that addressed requirements for containment and monitoring are no longer necessary as these requirements for a drilling waste monofill are now prescribed in 18 AAC 60.432(d) and (g), respectively.

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17. Comment Summary:

The drilling waste monofill regulations do not require a permit applicant to show proof of land ownership or consent for proposed activity.

Response:

18 AAC 60.210(b)(7) requires that a permit or authorization applicant identify the property landowner. If the applicant is not the landowner, they must provide documentation that the landowner consents to the activity.

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18. Comment Summary:

Changes to the Inactive Reserve Pit (IRP) Closure requirements will be inconsistent with the previously closed IRPs. Monitoring standards should be included in the regulation.

Response:

The change to the IRP regulation was primarily to address the outdated regulation that required submittal of a closure plan by January 28, 2002. Most of the state's 600 identified IRPs have had closure plans submitted and are closed, with a small number awaiting site-specific corrective action. SWP has modified the language of the regulation to more clearly indicate which requirements apply to IRPs which have not been identified or for which no closure plan has been submitted, and those that apply to IRPs requiring corrective action. Functionally, for corrective action, this is not a change to the regulation, just an addition of language that meets the current standard practices for closure.

SWP has chosen to remove the monitoring standards from the regulation, as the preferred test methods and the water quality standards have changed. SWP will address any new closure plan

or corrective action plan on a site-specific basis; not specifying monitoring requirements will allow for developing site specific parameters for analysis based on the site history and the most updated knowledge regarding the waste disposed at the site.

19. Comment Summary:

Sampling “all” surface water within 1,000 feet of the IRP would be excessive and unnecessary in some cases.

Response:

SWP agrees and has modified the text to remove “all”. A site-specific sampling plan, approved by SWP, would be required for each IRP.

COMMENTS ON PROPOSED CHANGES TO COAL ASH LANDFILL REGULATIONS [18 AAC 60.465-468 and 18 AAC 60.990]

With the implementation of the federal coal ash regulations (40 CFR 257 Subpart D) in October 2015, the disposal of coal ash in Alaska is subject to two sets of regulations with conflicting requirements. For instance, the federal regulations require that coal ash landfills must have a liner, a leachate collection system, and a groundwater monitoring program, but the existing state regulations require none of those items for a coal ash landfill. In order to minimize the discrepancies between the two sets of regulations, SWP proposed revisions to the state regulations to adopt the design, operation, and monitoring standards within the federal regulations. The intent was to minimize the degree to which a coal ash landfill is subject to two different sets of regulatory standards.

As mentioned previously in this document, the SWP has decided to proceed with the coal ash landfill regulations (18 AAC 60.465-.468, and associated changes to other sections) separately from the other changes which were included in the public notice, and as such, the regulations that are adopted in this package do not include coal ash landfills. This is due to a combination of uncertainty as to what EPA’s program approval process will include (EPA is currently working on finalizing and gaining approval of their process, based on WIIN Act authority), and due to the requests of commenters, as documented below, that 18 AAC 60 should reflect flexibility permitted under the WIIN Act.

20. Comment Summary:

Although the regulations proposed by SWP for the design, operation, monitoring, and closure of coal ash landfills were almost identical to the federal regulations, many commenters objected to this approach and provided many comments on different aspects of the proposed regulations. However, the common thread among the different commenters was the suggestion that SWP should pursue a permitting program that incorporates the flexibility allowed under the recently-passed WIIN Act.

Response:

The WIIN Act was passed to address the fact that under 40 CFR 257, the EPA does not have authority to approve state permitting programs for coal ash landfills. Thus, prior to the WIIN Act, the only option available for avoiding dual regulation of coal ash was for SWP to adopt the federal standards. That was the motivation behind the proposed regulations. The WIIN Act allows the EPA to approve a state-specific coal ash landfill permitting program that can function in lieu of the federal regulations. Thus, SWP appreciates the clear consensus among the commenters that utilizing the flexibility offered by the WIIN Act is preferable to adopting the federal standards for coal ash landfills. In response to the comments and in recognition of the characteristics of Alaska coal ash, SWP is splitting these regulations into two parts, and will consider the proposed coal ash landfill regulations separately to allow for consultation with the EPA regarding how much flexibility it will allow for state permitting programs and the extent to which SWP can include Alaska-specific considerations in its coal ash landfill permitting program while still obtaining EPA approval of that program.

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21. Comment Summary:

“Coal ash” should not be removed from the definition of “inert waste” in 18 AAC 60.990(64). Alaskan coal ash routinely yields very low to non-detectable results from leaching tests, which confirms that it has a low potential to pollute air or water; and thereby meets the definition of an inert waste.

Response:

To avoid dual regulation of coal ash landfills, SWP must implement a permitting program specific to these landfills. Although the WIIN Act allows an as-yet unknown degree of flexibility in designing a state-specific permitting program, that program must be “at least as protective” of human health and the environment as are the federal standards. SWP recognizes and acknowledges the consistent results from leaching analyses for Alaskan coal ash; however coal ash cannot be included in the definition of “inert waste” if the standards for a coal ash landfill differ in any way from the standards for an inert waste landfill.

This was the reasoning behind SWP’s proposal to remove coal ash from the definition of inert waste. SWP did not intend to imply that coal ash is not an inert waste or that coal ash is a hazardous waste. Our sole purpose and intent was to make it possible to apply whatever different standards might need to be applied to coal ash landfills without also having to apply those standards to inert waste landfills that do not receive coal ash. SWP has chosen to proceed with defining coal ash separately from inert waste in the current package, both because we eliminated the term “inert waste” from the list of wastes specifically allowed for beneficial use in 18 AAC 60.007, and because we believe it is unlikely that EPA will approve a permitting program for coal ash with flexibility that is so broad that the current requirements for inert waste would be allowed. As such, “coal ash” and “inert waste” need to be defined separately.

To that end, and to better communicate our intent regarding this material, SWP has revised the definition of “coal ash” to read (with added text underlined): “the non-hazardous residue that includes fly ash, bottom ash, boiler slag, and flue gas desulfurization materials resulting from the

combustion of coal for the purpose of generating electricity, heat, or a combination of electricity and other thermal energy”.

22. Comment Summary:

The phrase “beneficial use of coal ash,” as used within the definition of “coal ash landfill,” should be defined. The proposed regulations do not mention an exemption for coal ash disposed in a municipal solid waste landfill.

Response:

In response to these comments, the definition for “coal ash landfill” was revised and now reads as follows (with added text underlined): “coal ash landfill” means an area of land or an excavation other than a municipal solid waste landfill that receives coal ash and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. A coal ash landfill also includes sand and gravel pits and quarries that receive coal ash, and any practice that is not an approved beneficial use under 18 AAC 60.008 or 18 AAC 60.009.

COMMENTS ON PROPOSED CHANGES TO FEES [18 AAC 60.700]

SWP is required to develop annual fees under Alaska Statute (AS) 37.10.052 for standard designated regulatory services that it provides. Control of solid waste facilities is a designated regulatory service, as defined in AS 37.10.058(2)(A). Under this statutory authority, SWP must calculate fees that represent the direct cost of regulatory services.

Under this statutory authority, fixed fees may not exceed the average reasonable direct cost incurred [AS 37.10.052(a)].

- Direct Cost includes [AS 37.10.058(3)]
 - Hourly salary and benefits of employees directly involved in providing service. Benefits are fixed at 49% of salary [AS 37.10.058(6)]
 - Expenditures for goods or services made in providing the service
- Direct Cost does not include – AS 37.10.058(3)
 - Personnel not directly engaged in providing service
 - Overhead expense (rent, utilities, etc.)
 - Public consultation costs, unless required by permit regulations
 - Costs for appeal if brought by a party other than the applicant
 - Travel expenses for inspections for businesses with 20 employees or fewer

The Cost Recovery and Information Time Tracking System tracks personal service costs by specific project code. Travel costs are documented on Travel Authorization (TA) forms, which are logged into a DEC-wide log.

SWP contracted with Cost Management Alaska, LLC to perform a fee study, covering the period of 7/1/2011 through 6/30/2016. The costs computed and presented in the proposed regulations are a result of this fee study.

23. Comment Summary:

The proposed annual fee of \$2,225 for medical waste treatment facilities, which will be classified as Type Z facilities, is costly. The basis for this fee was questioned.

Response:

The fees for facility types were computed as explained above. Medical waste treatment facilities are a new treatment permit type as permits will be required under 18 AAC 200(a)(10). Since SWP does not yet have data specific to this facility type to determine a specific fee, we estimated which fee class that medical waste treatment facilities will fall into based on the work we anticipate will be conducted by SWP to deliver this regulatory service. Medical waste treatment facility regulatory services are anticipated to include permitting and compliance activities, which will include yearly inspections. This is a similar level of effort as what we have performed for other treatment facilities that do not include lined storage cells or groundwater/surface water monitoring, thus it is similar to biosolids and municipal waste treatment, which are also Type Z facilities.

SWP is expected to perform a fee review every 4 years under AS 37.10.052, and as such, the fee for these facilities will be re-evaluated based on actual data in the future.

24. Comment Summary:

Concerns were expressed about the potential adverse impact of the new 18 AAC 60.700(e)(2) and (h) in that these requirements could be used by opponents of a project to submit inapplicable comments designed to drive a project cost up.

Response:

SWP notes that while (e)(2) is a new requirement, (h) is a current requirement [currently 18 AAC 60.700(g)].

In the case of the proposed 18 AAC 60.700(h) [currently 18 AAC 60.700(g)], SWP has not yet invoked this requirement, and expects that it would only be considered for a very significant, relevant issue if used in the future.

Regarding the new 18 AAC 60.700 (e)(2), SWP recognizes the concern. The language of this change was carefully chosen to reflect the language used in AS 37.10.058(10), which defines “standard designated regulatory service” as *designated regulatory services for categories of activities that do not generally raise complex or controversial legal, technical, or policy issues*. Standard designated regulatory services are the basis for set fees in the tables in 18 AAC 60.700(a). While it is legitimate concern that commenters could attempt to use this provision to impact a project financially, SWP is typically able to easily separate frivolous concerns from legitimate ones, and typically does not spend much effort responding to such issues.

25. Comment Summary:

How does SWP organize facilities into Types X, Y, and Z, particularly as this pertains to coal ash monofills?

Response:

As mentioned above, fees are computed based on requirements in AS 37.10.052. Costs are tracked based on facility type; and as such, SWP can determine the cost of performing standard designated regulatory services for facilities. Typically, there are common factors to facilities in the Type X, Y, or Z categories that drive costs. For instance, the facility types in Type X typically include engineered liner or cover systems, more complex permitting, groundwater and/or surface water monitoring, and periodic inspections. Type Z facilities typically have somewhat less complexity, while Type Y have the least complexity.

Coal ash monofills are included under Type X because these would require liner systems, leachate collection, and groundwater monitoring under the federal Coal Ash Rule. SWP is withdrawing the proposed coal ash monofill changes (proposed 18 AAC 60.465 - .468), pending anticipated EPA actions concerning state coal ash approval programs. Concerns were raised that the WIIN Act allows for program flexibility, and if such flexibility is allowed, a coal ash monofill should not be considered as a Type X.

At this point it is not clear exactly what EPA will allow for flexibility. As such, the fee table is amended as follows: Type X will include a “lined Coal Ash Monofill.” Type Z will include an “unlined Coal Ash Monofill.” This should allow for a fee that reflects the anticipated level of effort for performing designated regulatory services for these facilities.