

**BEFORE THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

IN THE MATTER OF CHAPTER 1, SECTION 15           )  
PROPOSED RULE REVISION WYOMING                )  
DEPARTMENT OF ENVIRONMENTAL QUALITY        )  
RULES OF PRACTICE AND PROCEDURE             )

**STATEMENT OF PRINCIPAL REASONS**

The Environmental Quality Council (Council) pursuant to the authority vested in it by the Environmental Quality Act, Wyoming Statutes §§ 35-11-101 *et seq.* proposes to amend and revise Chapter 1, Section 15 of the Wyoming Department of Environmental Quality, Rules of Practice and Procedure (Section 15). Section 15 creates a Water Discharge Permit Subcommittee to hold contested case hearings on National Pollutant Discharge Elimination System (NPDES) permits. This proposal constitutes a revision of Chapter 1, Section 15, to make the rule easier to read and update the Code of Federal Regulation (C.F.R.) citation.

**Background**

In 1973 the Wyoming Environmental Quality Council was established as a quasi-judicial, citizen board in the Environmental Quality Act, (the Act), Wyoming Statutes §§ 35-11-111 and 112. The seven Council members are appointed by the Governor and confirmed by the Wyoming State Senate. In 1974, the Council adopted Chapter II of the Water Quality Rules and Regulations, and it is this chapter that contains the permit program for NPDES permits. On November 22, 1974, the Department of Environmental Quality (DEQ) Rules of Practice and Procedure were adopted, and Section 15 was a part of these rules of practice. This section was written to accommodate 40 C.F.R. § 123.25 and it has been a part of the Council's practice since that time.

**Principal Reason for Revision of Rules**

On March 5, 2001, the Wyoming Outdoor Council (WOC) and the Powder River Basin Resource Council (PRBRC) filed a petition with the USEPA in which they alleged the Council does not comply with 40 C.F.R. § 123.25. The petition makes no mention of Section 15 of the DEQ Rules of Practice and Procedure. The Council responded to the petition with a discussion of Section 15 and the Council's history of compliance with this section. As a result of the discussions about Section 15, the Council recommended that the regulation be rewritten to clarify its intent and to update the references to the Code of Federal Regulations. This rule revision was incorporated into the rule making process initiated on the NPDES permit program.

Various Council members have been employed by entities that hold NPDES permits, and they regularly remove themselves from consideration of contested issues involving NPDES permits. The new Section 15 states that those Council members who do not comply with 40 C.F.R. § 123.25 must recuse themselves from hearings and decisions on NPDES permits. The chart below contains a comparison of the old Section 15, the new Section 15 and the federal regulations.

CURRENT WYOMING REGULATION	CURRENT FEDERAL REGULATIONS
<p>Section 15. Water Discharge Permit Subcommittee.</p> <p>The Environmental Quality Council shall appoint a subcommittee entitled the Water Discharge Permit Subcommittee. This subcommittee shall exercise all authority given to the Council with regard to National Pollutant Discharge Elimination System permits. The members of this subcommittee shall, as a minimum, comply with Sections 33 U.S.C. 13, 14(h)(2)(D) and 40 C.F.R. 124.94.</p>	<p>[Code of Federal Regulations]            [Title 40, Volume 19]            [Revised as of July 1, 2003]            From the U.S. Government Printing Office via GPO Access            [CITE: 40CFR123.25]</p> <p>[Page 248-249]</p> <p><b>TITLE 40--PROTECTION OF ENVIRONMENT</b></p> <p><b>CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)</b></p> <p><b>PART 123--STATE PROGRAM REQUIREMENTS--Table of Contents</b></p>
<p><b>NEW SECTION 15:</b></p> <p>Section 15. Contested Water Discharge Permit Hearings</p> <p>Members of the Environmental Quality Council who do not comply with the requirements set forth in 40 C.F.R. § 123.25 (July 2003) shall recuse themselves from contested case proceeding in which the approval of a surface water discharge permit, or portions of a permit, is being considered by the Council.</p>	<p>Subpart B--State Program Submissions            Sec. 123.25 Requirements for permitting.</p> <p>.....</p> <p>©) State NPDES programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.</p> <p>(1) For the purposes of this paragraph:            Board or body includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.            Significant portion of income means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.            Permit holders or applicants for a permit does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.            Income includes retirement benefits, consultant fees, and stock dividends.</p> <p>(2) For the purposes of paragraph ©) of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.</p> <p>[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985; 50 FR 7912, Feb.27, 1985, as amended at 54 FR 18784, May 2, 1989; 55 FR 48075, Nov. 16, 1990; 58 FR 9414, Feb. 19, 1993; 58 FR 67981, Dec. 22, 1993; 60 FR 15386, Mar. 23, 1995; 63 FR 45122, Aug. 24, 1998; 64 FR 42470, Aug. 4, 1999; 64 FR 68849, Dec. 8, 1999; 65 FR 30909, May 15, 2000; 66 FR 65338, Dec. 18, 2001]</p>

**Compliance with Federal Law and Regulation**

The provisions of this rule are necessary for the state to comply with 40 C.F.R. § 123.25.

To comply with state law, the Council held a public work session on the revisions to the NPDES regulations as well as Section 15 on March 16, 2004. The public was notified of this work session and participated in the discussion of Section 15. Subsequent to the work session, a public notice of the proposed changes to Section 15 was published in 1 (one) Wyoming newspaper of general statewide circulation. Notice was also posted on the Council's website and notice was mailed to permanent mailing lists maintained by the Council and the DEQ Water Quality Division. Written comments were received for 45 days and on May 17, 2004, the Council held a formal public hearing to accept oral comments on the NPDES revisions and the Section 15 revision. One public comment was received in writing and that comment supported the change to Section 15. The WOC and the PRBRC were present and participated in the public hearing and the Council solicited comments on the proposed revision to Section 15 from the audience. No oral comments on Section 15 were presented. The public record was closed and the Council reviewed Section 15 in a public meeting on August 18, 2004, in Laramie, Wyoming. By a unanimous vote of those on the EQC, the revision to Section 15 was approved on August 18, 2004.

**Conclusion**

The Council has determined that the adoption of this rule is necessary to update the requirements of 40 C.F.R. § 123.25 to provide the state with adequate authority and flexibility to maintain primacy under the requirements of the Clean Water Act to provide improved protection to public health and the safety for public water supplies.

EXECUTED THIS 27<sup>th</sup> DAY OF August, 2004.

FOR THE ENVIRONMENTAL QUALITY COUNCIL



Chairperson