

Proposed Revisions to Water Quality Rules and Regulations Chapter 1

Response to Comments for Comment Period Ending June 23, 2017

August 2017

Prepared by:
Wyoming Department of Environmental Quality
Water Quality Division
Watershed Protection Program



TABLE OF CONTENTS

1.0 SUMMARY 1
2.0 COMMENTERS 2
3.0 COMMENTS AND RESPONSES 3
APPENDIX AA-1

Recommended Citation: WDEQ/WQD. 2017. Proposed Revisions to Water Quality Rules and Regulations, Chapter 1. Response to Comments for Comment Period Ending June 23, 2017. August 2017. Wyoming Department of Environmental Quality, Water Quality Division, Cheyenne, Wyoming.

1.0 SUMMARY

The Wyoming Department of Environmental Quality/Water Quality Division (WDEQ/WQD) is proposing changes to the Water Quality Rules and Regulations, Chapter 1, that would allow the Administrator of the Water Quality Division to grant a temporary modification to a designated use and water quality criteria in circumstances where meeting a water quality-based effluent limit for ammonia and/or nutrients would result in substantial and widespread social and economic impacts. The process is intended to provide a mechanism for point sources to make incremental progress toward meeting water quality criteria in circumstances where it is currently infeasible to meet the criteria.

WDEQ/WQD originally released the proposed revisions to Chapter 1 for public scoping on February 17th and accepted comments until 5 PM on Monday, March 27th. On May 23, 2017, in advance of a June 23, 2017 Water and Waste Advisory Board meeting, WDEQ/WQD released revised rule documents along with a response to comment document. This document provides written responses to the comments received prior to and at the June 23, 2017 Water and Waste Advisory Board meeting. The full text of the comments can be found in Appendix A.

The proposed revisions to Chapter 1 have been modified based on the feedback received during the public comment period that ended on June 23, 2017. The main changes to the proposed revisions include:

- Minor changes to the definition of discharger specific variance to remove the term “of the receiving water” to ensure sufficient flexibility within the definition to represent the variance as an effluent condition, rather than an instream designated use and criterion, consistent with federal regulations;
- Minor changes to the definition of highest attainable condition to specify that the highest attainable condition may be represented as an effluent condition; and
- Minor changes to proposed Section 37(c)(ii) to specify that the highest attainable condition shall be identified through a comprehensive alternatives analysis **and/or** other supporting documentation. For entities that are already experiencing substantial and widespread economic and social impacts, only supporting documentation may be necessary.

WDEQ/WQD has released revised proposed rule language in advance of the September 22, 2017 Water and Waste Advisory Board meeting along with this response to comments document. WDEQ/WQD would like to thank all the individuals and organizations who provided comments for their interest and involvement in surface water quality issues. Public engagement is an integral part of surface water quality standards development. WDEQ/WQD will continue to work with interested stakeholders to address any outstanding issues related to discharger specific variances.

2.0 COMMENTERS

Citizens United for Responsible Energy Development	3
United States Environmental Protection Agency, Region 8	3, 4
Water and Waste Advisory Board Member Cahn	6, 7, 8, 9
Water and Waste Advisory Board Member Hanson	7, 8, 9
Water and Waste Advisory Board Member Kirkbride	9
Wyoming Outdoor Council	5, 6

3.0 COMMENTS AND RESPONSES

Citizens United for Responsible Energy Development: Please let common sense guide your decisions regarding water quality in Wyoming. Regulations are meant to be protections that keep people, wildlife and our environment healthy and functional. Yes, sometimes those protections make it more expensive to do business. But, please for once, consider the long-term benefits, not the short-term money problems. Rolling back protections won't create jobs, certainly not in the long-term. We are Wyoming – we live here because we value a rural lifestyle, abundant wildlife, scenic views, clean water and air. Please don't favor the minority (industry) over the majority (Wyoming residents and wildlife).

Department Response: WDEQ/WQD is proposing to allow discharger specific variances for ammonia and/or nutrients to primarily address the economic constraints that small municipalities and sewer districts face in meeting very stringent water quality-based effluent limits. WDEQ/WQD is proposing to allow temporary modifications to designated uses and water quality criteria to give such entities additional time to meet water quality-based effluent limits, while at the same time doing what they can to improve effluent quality.

United States Environmental Protection Agency, Region 8: Section 37(g). To ensure consistency with the CWA, the WQU recommends deleting the portion of Section 37(g) that states "The variance shall become effective either upon EPA approval or 90 days after submittal, whichever comes first." Adoption into state rules without approval by the EPA creates a situation where the state rules would not be effective for CWA purposes (e.g., CWA Section 303(d) list development, WYPDES/NPDES permitting). A redline strikeout option to do this is:

[\(g\)Following administrator approval and opportunity for appeal, the variance shall be submitted to EPA pursuant to the Clean Water Act.](#) ~~The variance shall become effective either upon EPA approval or 90 days after submittal, whichever comes first.~~

Department Response: WDEQ/WQD is proposing Section 37(g) to be consistent with the federal Clean Water Act at 303(c)(3) which states that the Administrator must approve of standards within 60-days or notify the State within 90 days of the changes that are necessary to be consistent with the requirements. "If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this Act, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this Act, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection."

WDEQ/WQD is also proposing 37(g) to be consistent with 40 CFR § 131.21(a) which states that the Regional Administrator must notify the State within 60-days that the revisions are approved or within 90 days that the revisions are disapproved. "After the State submits its officially adopted revisions, the Regional Administrator shall either: (1) Notify the State within 60 days that the revisions are approved, or (2) Notify the State within 90 days that the revisions are disapproved. Such notification of disapproval shall specify the changes needed to assure compliance with the requirements of the Act and this regulation, and shall explain why the State standard is not in compliance with such requirements. Any new or revised State standard must be accompanied by some type of supporting analysis."

United States Environmental Protection Agency, Region 8: Section 37(f). The WQU recommends confirming whether this provision should refer to appeals process at Section 17 instead of Section 8 of Chapter 1, Rules of Practice and Procedure.

Department Response: WDEQ/WQD has confirmed that the appeals process is included in Chapter 1, Section 8 of the Rules of Practice and Procedure, which became effective on April 24, 2017.

United States Environmental Protection Agency, Region 8: Section 37(c)(ii)(B). The WQU supports WDEQ’s proposal to include a provision requiring development and implementation of a PMP in addition to a quantifiable expression of the highest attainable condition. The proposed rules require PMP development and implementation for all dischargers receiving a variance. Federal regulations at 40 CFR 131.14(b)(1)(ii)(A)(3) require adoption and implementation of a PMP for variances when no additional feasible pollutant control technology can be identified.

Department Response: WDEQ/WQD recognizes that the federal regulations only require PMPs be developed for those dischargers when no additional feasible pollutant control technology can be identified, however, WDEQ/WQD recognizes the benefit of having all dischargers develop and implement a PMP, regardless of the technology available, to maximize and maintain pollutant removal in order to achieve the highest attainable condition of the receiving water.

United States Environmental Protection Agency, Region 8: Discharger specific variance. The WQU suggests considering whether the definition’s reference to the “receiving water” unintentionally narrows it. The best effluent quality achievable (vs. instream condition) may be easier to determine in some instances and is likely to be highly relevant for discharger-specific variances. The WQU also suggests WDEQ consider expanding the definition to include a reference to “interim milestones” or “interim conditions” to acknowledge that incremental progress towards the highest attainable condition may be necessary during its early phases. An option to accomplish these changes is in redline/strikeout below.

[\(x\) “Discharger specific variance” means a time-limited designated use and water quality criteria granted to a specific permittee that reflects the highest attainable condition of the receiving water and associated interim condition during the duration of the variance.](#)

Department Response: WDEQ/WQD has modified the proposed definition of discharger specific variance to exclude the term “of the receiving water.” WDEQ/WQD is not proposing to add “associated interim condition,” because the proposed rule language and definition of “highest attainable condition” are sufficiently broad to capture the fact that the highest attainable condition may change over the course of the variance.

United States Environmental Protection Agency, Region 8: Highest attainable condition. The WQU suggests considering expanding the definition of “highest attainable condition” to encompass both the “highest attainable interim criterion condition” and “the interim effluent condition that reflects the greatest pollutant reduction achievable.” Federal regulations at 40 CFR § 131.14(b)(1)(ii)(A) identify these terms as options to quantifiably express the highest attainable condition. Including an effluent condition option would improve consistency with the intent established at Section 37(c)(A) and, in some instances, may be simpler to determine than the corresponding instream condition. An option to expand accordingly is captured with the redline/strikeout below.

(xxiii) “Highest attainable condition” means the designated use and water quality criteria or effluent condition closest to the underlying designated use, and water quality criteria, or water quality-based effluent limit that is feasible to achieve without causing substantial and widespread economic and social impacts.

Department Response: WDEQ/WQD has revised the proposed definition of “highest attainable condition” to include USEPA’s suggested revisions.

Wyoming Outdoor Council: Each variance should be tailored carefully and narrowly in regards to both scope and time.

Department Response: WDEQ/WQD considers the proposed rule to require that each variance be “tailored carefully and narrowly in regards to both scope and time” since discharger specific variances are limited to only those entities that are able to demonstrate that meeting a water quality-based effluent limit for ammonia and/or nutrients would create widespread and substantial economic and social impacts. In addition, those entities that are successful in making the widespread and substantial demonstration must then complete another evaluation to identify the best effluent quality they are capable of achieving as well as develop and implement a pollutant minimization program. The term of the variance will be based on how long the entity believes it will take for them to achieve the highest attainable condition of the receiving water.

Wyoming Outdoor Council: We would like to ensure that the discharger must satisfy the two prong analysis set forth in the USEPA guidance. “Demonstration of substantial financial impacts is not sufficient reason to modify a use or grant a variance from water quality standards. Rather, the applicant must also demonstrate that compliance would create widespread socioeconomic impacts on the affected community” at 12. This language in the guidance was intended to ensure that both substantial financial impacts and widespread socioeconomic impacts be met before a variance is granted.

Department Response: The proposed rule language requires that each entity demonstrate that meeting the water quality-based effluent limit would result in substantial and widespread economic and social impacts.

Wyoming Outdoor Council: We applaud the DEQ/WQD for initiating the promulgation of guidance addressing requirements of documentation and specific materials such as financial documents present to grant the variance. We would be happy to review the proposed guidance if that opportunity were provided. Guidance documents are often essential mechanisms in administrative regulatory processes and we want the guidelines to adequately parallel the rules and regulations to ensure that administrative employees have the necessary tools to uphold the law. Variances should be the exception to the norm and we encourage the Board to implement such guidance that indicate this standard to administrative employees.

Department Response: WDEQ/WQD anticipates developing guidance to provide WDEQ/WQD, the public, applicants, and other entities additional details on implementing the proposed rule. WDEQ/WQD anticipates finalizing the guidance once proposed changes to Chapter 1 have been approved.

Wyoming Outdoor Council: We highly encourage DEQ to state a preference for licensed and qualified professionals to produce the necessary information to grant a variance. We would like a statement or form in the application to ensure that the information provided by the professional is certified to be truthful and accurate. Also, the application should have an easily navigable checklist of the necessary requirements to

ensure all the parameters have been met. This would help deter private companies from submitting applications with information that may not be reliably accurate or complete.

Department Response: WDEQ/WQD will consider including these recommendations within the guidance document.

Wyoming Outdoor Council: Lastly, the DEQ has revised Section 37(g) from the initial proposal. The second sentence was not in the previous document and should be omitted. “The variance shall become effective either upon EPA approval or 90 days after submittal, whichever comes first.” This language is inconsistent with the EPA rules set forth in 40 CFR 131.14, the EPA must “review and approve” water quality standards before becoming effective. Therefore, the variance will not become effective until approval from the EPA. This was addressed in the EPA comments submitted March 27th.

Department Response: As noted in the response to EPA, above, the proposed language is intended to be consistent with 303(c)(3) of the Clean Water Act and 40 CFR § 131.21(a).

Water and Waste Advisory Board Member Cahn: Let me—okay. I guess take it page by page. I don’t have very many comments. I thought DEQ did a good job, and I appreciate that you guys are going to be going back to adjust the EPA comments you received.

One of the questions I have is about EPA comment on page 1-3, and it’s 10. Since I don’t have page numbers on this, it’s hard to talk about. But they suggest deleting the – the part that says “of the receiving water.” And EPA felt that was unnecessarily narrow, so I think they were suggesting deleting the words “of the receiving water” and adding “and associated interim conditions.” So I just – this is for the definition of discharger specific variance. So I just wanted to – an explanation of how EPA comments are being addressed on that one. Or maybe it’s too early to say what you’re going to do.

Department Response: Please see response to EPA’s comments, above.

Water and Waste Advisory Board Member Cahn: I have a few editorial comments that I will give to Gina separately. But one of the questions that I had kind of applied to both Chapter 1 and Chapter 14, not questions, but comments, is that there’s inconsistencies in styles between Chapter 1 and Chapter 14. So, for instances, in Chapter 14, changes are made to make department capitalized, but it’s lower case in Chapter 1. And there’s those kids of – “administrator,” whether it’s capitalized or not. So there’s those types of things. So I just would ask the Department could be consistent between the two chapters.

Water and Waste Advisory Board Member Cahn: On page 1-5 and on the version that you sent with the line numbers, it’s the definition of “isolated water,” and it’s line 12 – starting at line 1209. I believe that it should be a “that” instead of a “which.” Isolated water means any surface water of the state should be that is not connected, rather than which is not connected.

And then the 100-year floodplain, there should be a hyphen between hundred and a year. But I can give Gina offline those types of comments. But I can give Gina offline those types of comments --

Water and Waste Advisory Board Member Cahn: I do have to ask a question on page 1-9, on line 372, on the use of “which” in that sentence. Because whether you use “that” or whether you use “which” in the sentence will depend on the meaning. So the sentence reads right now, “This use does not include the protection of aquatic invasive species or other fish.” This is under – sorry for those of you that don’t have line numbers. It is under, B, Fisheries, at about a third of the way down the page.

And so it says “This use does not include protection of aquatic invasive species or other fish which may be considered undesirable by Wyoming Game and Fish.” And really, depending on the meaning –

Water and Waste Advisory Board Member Hanson: Whether it should be that.

Water and Waste Advisory Board Member Cahn: that you mean – what you mean, it would depend on whether you use that. Because they would mean two different things.

So if you take the part about being undesirable out of the sentence, then you would use which. So if – it means the same thing to say this does not include protection of aquatic species or other fish by the Wyoming – or with – yeah, by the Wyoming Game and Fish. Which I don’t think is your meaning. I think you mean it to be that, but you couldn’t take out “which maybe considered undesirable.” So I believe in that case you mean “that.”

Water and Waste Advisory Board Member Hanson: I’m not sure.

Department Response: WDEQ/WQD is proposing to focus this rulemaking on just the proposed Section 37 as well as the new definitions associated with Section 37. WDEQ/WQD will address consistencies between Chapter 1 and the other chapters in a future rulemaking. WDEQ/WQD will also plan to address any outstanding grammatical issues such as the use of “that” and the use of “which” within the next revision of Chapter 1.

Water and Waste Advisory Board Member Cahn: On page 1-26 on mine, 1175 – so for those without line numbers, it’s 37(c)(i), and this is where we were talking about the comprehensive alternative analysis. Klaus and I were both commenting on it’s not clear by who – who would do that. And I understand that you’re trying to make that flexible so that DEQ can also participate in doing the analysis. So I’m – I’m ok with that. But if there was a way to maybe clarify, maybe not to guide a section, to clarify when DEQ helps or maybe you don’t know at this point.

But anyway, I thought if you can clarify that you may be assisting in that, that would be helpful. You may not be able to clarify that. And like Lindsay said, you left that specifically vague, and I’m okay with that, if that’s how you wanted it.

Department Response: In general, WDEQ/WQD expects that the permittee will complete the comprehensive alternatives analyses, conduct the economic analysis, and compile any supporting documentation required to justify a discharger specific variances. That said, WDEQ/WQD also recognizes that there may be circumstances where a discharger lacks sufficient resources to compile the necessary information or there may be circumstances where multiple dischargers may be considered collectively by WDEQ/WQD. In addition, there may be instances where WDEQ/WQD supplements the information provided by a discharger. As such, the proposed rule language is intended to provide flexibility as to who compiles the information. This flexibility is similar to changes to designated uses and/or site-specific criteria, outlined in Section 33. In some cases, a use attainability analysis or site-specific criteria justification is developed by a permittee or other entity, in some instances the UAA or site-specific criteria is developed by WDEQ/WQD, and in some instances a UAA or site-specific criteria is developed by another entity and supplemented by WDEQ/WQD.

Water and Waste Advisory Board Member Cahn: I was – page 127, I was wondering about there seems to be some confusion about whether the variance becomes final after 30 days or upon each day approval, whichever comes first. This is 37 –

Water and Waste Advisory Board Member Hanson: (c)(ii).

Water and Waste Advisory Board Member Cahn: (g). I just wanted to understand if you have some thoughts about how you’re going to address that or if you need more time on that. Because it seems like if EPA must approve it, then why wouldn’t you state that or can you really have it become final after 90 days after submittal without EPA approval. So I would just like a little clarification on that if you’re ready to address that.

Department Response: As noted in the response to EPA, above, the proposed language is intended to be consistent with 303(c)(3) of the Clean Water Act and 40 CFR 131.21(a) that require EPA to approve submissions within 60 days or disapprove submissions within 90 days.

Water and Waste Advisory Board Member Cahn: On page 1-28.

Water and Waste Advisory Board Member Cahn: The very last item under (v) or under 5.

Water and Waste Advisory Board Member Cahn: In EPA’s first set of comments, they requested asking “derived from the underlying designated use and criteria,” and that was not added. And it wasn’t clear from the response to comments why that wasn’t added. So maybe Lindsay could – or Kevin could explain what the objection was to adding that because it may change – I think it changes the meaning.

Water and Waste Advisory Board Member Hanson: You’re referring to (v), right?

Water and Waste Advisory Board Member Cahn: Yeah, (v). The very end where it says “shall be required to meet the water quality-based effluent limits.” And EPA had requested adding “derived from the underlying designated use and criteria.” And that was not added. So I’m just wondering what the reason for that is.

Department Response: The term water quality-based effluent limit is used throughout proposed Section 37 to refer to the effluent limit that is derived from the underlying designated use and criteria. This is in contrast to the term interim effluent condition, which is the effluent limit that will be derived as a condition of the variance. WDEQ/WQD therefore does not consider it necessary to add EPA’s recommended language to proposed Section 37(h)(v).

Water and Waste Advisory Board Member Hanson: I have just one comment on page 1-27, towards the bottom of the page, Section (D), “If the requirements identified in Section 37(i) are not met, the variance shall expire and the permittee shall be required to meet the water quality-based effluent limit.” And it seems like it expires and there’s no time indicated. Within 10 days, within whatever – whether that may be necessary. It strikes me the way it’s listed here or stated here, it’s immediately, you know, that – that it has – it has expired, so tomorrow you better have it in place, whether that’s necessary.

Department Response: As identified in proposed Section 37(d), each variance shall specify a term. As specified in proposed Section 37(h), in circumstances where the term of the variance is greater than five years, the variance must be re-evaluated every five years. If a permittee fails to submit the documentation necessary for WDEQ/WQD to conduct the reevaluation, the variance would expire five

years after the variance is granted or some other date specified in the variance. Permittees should be aware of the expiration date of the variance, as it will be included in the variance.

Water and Waste Advisory Board Member Kirkbride: Mr. Chairman. I was just thinking back to the 90-day thing. Kevin, that's – I assume that – will you guys – you guys have put that in for a purpose, which you just explained. And I was – I hadn't quite thought that through. But if there's a conflict with the EPA, what happens there? I mean, in some ways you have to proceed, say, 90 – I assume you've got that in there because certain things. The DEQ has to operate as if it were approved, even though they haven't heard from the EPA. Maybe that's my thought. Is that kind of where you're coming from?

Department Response: In circumstances where the administrator has approved a discharger specific variance and the variance has been submitted to EPA, the variance shall become effective upon EPA approval or 90 days after submittal. After the 90 days has lapsed, WDEQ/WQD will generally implement the variance by incorporating the interim effluent condition identified in the variance into the discharger's Wyoming Pollutant Discharge Elimination System (WYPDES) Program permit. In circumstances where EPA later disapproves the discharger specific variance, WDEQ/WQD would generally work with EPA to address any issues with the variance and the discharge permit would be modified accordingly. That said, WDEQ/WQD will generally try to avoid any disapprovals by working with EPA during development of any discharger specific variance.

Water and Waste Advisory Board Member Cahn: Okay. So it's on page 4 of the comment responses. And it's the last Department response on the page, where it says "WDEQ has modified the proposed language on effluent limit to effluent condition." And my question is – and maybe this is a question for Lindsay when we return to this. Sometimes the EPA requested changing it from "effluent limit" to "interim effluent conditions." And some places Lindsay included – or the interim part was included and other times it wasn't.

So, for instances, in Section 37(h)(ii) – or (ii), interim was included, but in 37(c)(ii)(A), it was not. And so it's not clear to me when "interim" is included and when it's not. So maybe when you guys come back, unless you can address that now, when you come back, if you can address it.

And then I guess just in terms of a comment on the comment responses. They were good and thorough, although it think it's – if there's reason why you wouldn't include the interim in some cases, then it would be nice in the comment responses to say, well, we included interim in this section but not in that section and here's the reason why. That I think would make it easier - - a little easier to follow.

Department Response: USEPA requested that the proposed rule language be modified from "interim effluent limit" to "interim effluent condition" because USEPA does not have approval over effluent limits. WDEQ/WQD made the requested change to the appropriate portions of the rule. The exception to the term "interim effluent condition" is in proposed Section 37(e) that specifies that the variance shall only be used to develop "interim effluent limits" since a discharge permit will include numeric limits based on the interim effluent condition specified in the variance. Another term used throughout the proposed rule is "water quality-based effluent limit;" this term refers to the effluent limit that is based on the underlying designated use and water quality criteria.

Water and Waste Advisory Board Member Hanson: I have one comment. It's just a word comment. Page 11, "departmental response" at the bottom. The second line from the bottom and what constituents – no, what constitutes, I think, a sufficient comprehensive alternative.

Department Response: WDEQ/WQD has revised the Response to Comments document to the correct term.

17-0483

**APPENDIX A. COMMENTS RECEIVED DURING THE COMMENT PERIOD
ENDING JUNE 23, 2017**

TABLE OF CONTENTS

Citizens United for Responsible Energy Development 2
United States Environmental Protection Agency Region 8 3
Verbal Comments from June 23, 2017 Water and Waste Advisory Board Meeting 6
Wyoming Outdoor Council 21

Figure A-1. Citizens United for Responsible Energy Development (1 page).

Citizens United for Responsible Energy
Development (CURED) - Kendall Brunette,
Vice-Chair

Please let common sense guide your decisions regarding water quality in Wyoming. Regulations are meant to be protections that keep people, wildlife and our environment healthy and functional. Yes, sometimes these protections make it more expensive to do business. But, please for once, consider the long-term benefits, not the short-term money problems. Rolling back protections won't create jobs, certainly not in the long-term. We are Wyoming -- we live here because we value a rural lifestyle, abundant wildlife, scenic views, clean water and air. Please don't favor the minority (industry) over the majority (Wyoming residents and wildlife).

Thank you,

-Kendall Brunette

CURED Vice-Chair

Figure A-2. United States Environmental Protection Agency Region 8 (3 pages).



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

June 22, 2017

Ref: 8WP-CWQ

SENT VIA EMAIL

Gina Thompson
Wyoming Department of Environmental Quality
200 West 17th Street, Suite 400
Cheyenne, Wyoming 82002

Re: Public Notice, Proposed Rules, Water Quality Rules and Regulations, Chapter 1:
Discharger-Specific Variance Provisions

Dear Ms. Thompson:

Thank you for the opportunity to review and provide comments on the Wyoming Department of Environmental Quality's (WDEQ's) proposal to add water quality standards (WQS) variance provisions to Chapter 1. The U.S. Environmental Protection Agency Region 8 Water Quality Unit (WQU) received public notice regarding the proposal on May 23, 2017. The proposed Section 37 provisions and definitions at Section 2(b)(x), (xxiii) and (xlili) specify WDEQ's expectations to grant discharger-specific variances for ammonia and/or nutrients in situations where meeting a water quality-based effluent limit (WQBEL) derived from the underlying designated use and criteria would result in substantial widespread social and economic impacts.

The WQU supports Wyoming's adoption of WQS variance authorizing provisions where it considers them necessary or useful within state law. Federal regulations do not require WQS variance authorizing provisions for a state to adopt a WQS variance (40 CFR § 131.14); however, the WQU has review and approval/disapproval authority when such general policies are adopted (40 CFR § 131.13). The EPA notes that its action on such authorizing provisions does not guarantee EPA approval of subsequent WQS variances adopted by the State pursuant to such provisions. Federal regulations, at 40 CFR § 131.14, specify that each WQS variance is a WQS subject to the provisions of 40 CFR § 131.14 and that EPA must review and approve it before it is effective for Clean Water Act (CWA) purposes. Federal regulations at 40 CFR § 131.5(a)(4) also describe EPA's responsibility to determine "Whether any State adopted WQS variance is consistent with § 131.14."

The WQU provided comments on a draft of the proposed rule on March 27, 2017. The WQU appreciates WDEQ's revisions to its proposed rules in response to our comments. The responsive clarifications at Section 37(f) and Section 37(i)(d), and the use of the term "effluent condition" address WQU concerns. The WQU would like to continue to work with WDEQ to resolve comments that were not addressed and we are not repeating those in this letter.

The WDEQ made several changes from the previous draft rules. Primary changes include:

- implementation of the variance either upon EPA approval or 90 days after submittal (Section 37(g));
- identification of discharger-specific variances as final administrator action subject to appeal pursuant to Rules of Practice and Procedure, Chapter 1, Section 8 (Section 37(f));
- requiring development and implementation of a pollutant minimization program (PMP) as a variance condition for all dischargers (Section 37(c)(ii)(B));
- broader characterization of the WQS variance as the “highest attainable condition” instead of only the greatest pollutant reduction achievable (Sections 37(b)(c)(ii) and 2(b)(xxiii));
- not allowing variances if they result in an increase in the discharge of the pollutant (Section 37(b)(ii)); and
- new and revised definitions in Section 2(b) for the terms “discharger specific variance,” “highest attainable condition” and “pollutant minimization program.”

Section 37: Discharger Specific Variances Provisions

- 1) **Section 37(g).** To ensure consistency with the CWA, the WQU recommends deleting the portion of Section 37(g) that states “The variance shall become effective either upon EPA approval or 90 days after submittal, whichever comes first.” Adoption into state rules without approval by the EPA creates a situation where the state rules would not be effective for CWA purposes (e.g., CWA Section 303(d) list development, WYPDES/NPDES permitting). A redline/strikeout option to do this is:

(g) Following administrator approval and opportunity for appeal, the variance shall be submitted to EPA pursuant to the Clean Water Act. ~~The variance shall become effective either upon EPA approval or 90 days after submittal, whichever comes first.~~

- 2) **Section 37(f).** The WQU recommends confirming whether this provision should refer to the appeals process at Section 17 instead of Section 8 in Chapter 1, Rules of Practice and Procedure.
- 3) **Section 37(c)(ii)(B).** The WQU supports WDEQ’s proposal to include a provision requiring development and implementation of a PMP in addition to a quantifiable expression of the highest attainable condition. The proposed rules require PMP development and implementation for all dischargers receiving a variance. Federal regulations at 40 CFR § 131.14(b)(1)(ii)(A)(3) require adoption and implementation of a PMP for variances when no additional feasible pollutant control technology can be identified.

Section 2(b): Definitions

- 4) **Discharger specific variance.** The WQU suggests considering whether the definition’s reference to the “receiving water” unintentionally narrows it. The best effluent quality achievable (vs. instream condition) may be easier to determine in some instances and is likely to be highly relevant for discharger-specific variances. The WQU also suggests WDEQ consider expanding the definition to include a reference to “interim milestones” or “interim conditions” to acknowledge that incremental progress towards the highest

attainable condition may be necessary during its early phases. An option to accomplish these changes is in redline/strikeout below.

(x) “Discharger specific variance” means a time-limited designated use and water quality criteria granted to a specific permittee that reflects the highest attainable condition of the receiving water and associated interim condition during the duration of the variance.

- 5) **Highest attainable condition.** The WQU suggests considering expanding the definition of “highest attainable condition” to encompass both the “highest attainable interim criterion condition” and “the interim effluent condition that reflects the greatest pollutant reduction achievable.” Federal regulations at 40 CFR § 131.14(b)(1)(ii)(A) identify these terms as options to quantifiably express the highest attainable condition. Including an effluent condition option would improve consistency with the intent established at Section 37(c)(A) and, in some instances, may be simpler to determine than the corresponding instream condition. An option to expand accordingly is captured with the redline/strikeout below.

(xxiii) “Highest attainable condition” means the designated use and water quality criteria or effluent condition closest to the underlying designated use, ~~and~~ water quality criteria, or water quality-based effluent limit that is feasible to achieve without causing substantial and widespread economic and social impacts.

We hope that these comments are useful to you. Please contact Maggie Pierce at 303-312-6550 or pierce.maggie@epa.gov with any questions.

Sincerely,



Sandra D. Spence, Chief
Water Quality Unit

Figure A-3. Verbal Comments from June 23, 2017 Water and Waste Advisory Board Meeting (15 pages).

WWAB Meeting

56

1 BOARD MEMBER CAHN: Excuse me,
2 Mr. Chairman. You haven't asked for board comments on
3 Chapter 1 yet.
4 BOARD MEMBER HANSON: Oh, board comments on
5 Chapter 1, yes. Go ahead, please.
6 BOARD MEMBER CAHN: I have a few editorial
7 comments that I will give to Gina separately. But one of
8 the questions that I had kind of applied to both Chapter 1
9 and Chapter 14, not questions, but comments, is that
10 there's inconsistencies in styles between Chapter 1 and
11 Chapter 14. So, for instance, in Chapter 14, changes are
12 made to make "department" capitalized, but it's lower case
13 in Chapter 1. And there's those kinds of --
14 "administrator," whether it's capitalized or not. So
15 there's those types of things. So I just would ask the
16 Department could be consistent between the two chapters.
17 Let me -- okay. I guess take it page by page. I
18 don't have very many comments. I thought DEQ did a good
19 job, and I appreciate that you guys are going to be going
20 back to adjust the EPA comments you received.
21 So one of the questions I have is about EPA
22 comment on page 1-3, and it's 10. Since I don't have page
23 numbers on this, it's hard to talk about it. But they
24 suggested deleting the -- the part that says "of the
25 receiving water." And EPA felt that that was unnecessarily

Wyoming Reporting Service, Inc.
1.800.444.2826

1 narrow, so I think they were suggesting deleting the words
 2 "of the receiving water" and adding "and associated interim
 3 conditions." So I just -- this is for the definition of
 4 discharger specific variance. So I just wanted to -- an
 5 explanation of how EPA comments are being addressed on that
 6 one. Or maybe it's too early to say what you're going to
 7 do.

8 MR. FREDERICK: Yeah, Lorie. This is
 9 Kevin. We're going to be taking these comments back and
 10 developing formal written responses that will be available
 11 prior to the fall board meeting when we bring any proposed
 12 changes back before the advisory board.

13 BOARD MEMBER CAHN: Okay. All right. That
 14 sounds good.

15 On -- okay. On page 1-5 and on the version that
 16 you sent with the line numbers, it's the definition of
 17 "isolated water," and it's line 12 -- starting at line
 18 1209. I believe that it should be a "that" instead of a
 19 "which." Isolated water means any surface water of the
 20 state should be that is not connected, rather than which is
 21 not connected.

22 And then the 100-year floodplain, there should be
 23 a hyphen between hundred and a year. But I can give Gina
 24 offline those types of comments --

25 MR. FREDERICK: Yeah.

Wyoming Reporting Service, Inc.
 1.800.444.2826

1 BOARD MEMBER CAHN: -- that I have.

2 MR. FREDERICK: That would be perfect,
3 Lorie. Thank you.

4 BOARD MEMBER CAHN: Okay. I do have to ask
5 a question on page 1-9, on line 372, on the use of "which"
6 in that sentence. Because whether you use "that" or
7 whether you use "which" in the sentence will depend on the
8 meaning. So the sentence reads right now, "This use does
9 not include the protection of aquatic invasive species or
10 other fish." This is under -- sorry for those of you that
11 don't have line numbers. It's under B, Fisheries, at about
12 a third of the way down the page.

13 And so it says "This use does not include
14 protection of aquatic invasive species or other fish which
15 may be considered undesirable by Wyoming Game & Fish." And
16 really, depending on the meaning --

17 BOARD MEMBER HANSON: Whether it should be
18 that.

19 BOARD MEMBER CAHN: -- that you mean --
20 what you mean, it would depend on whether you use that.
21 Because they would mean two different things.

22 So if you can take the part about being
23 undesirable out of the sentence, then you would use which.
24 So if -- it means the same thing to say this does not
25 include protection of aquatic species or other fish by the

Wyoming Reporting Service, Inc.
1.800.444.2826

1 Wyoming -- or with -- yeah, by the Wyoming Game & Fish.
2 Which I don't think is your meaning. I think you mean it
3 to be that, but you couldn't take out "which maybe
4 considered undesirable." So I believe in that case you
5 mean "that."

6 BOARD MEMBER HANSON: I'm not sure.

7 MR. FREDERICK: Okay.

8 BOARD MEMBER CAHN: And, Gina, if you
9 call me later, we can go over other "that" versus "which"
10 from -- okay.

11 On page 1-26 on mine, 1175 -- so for those
12 without line numbers, it's 37(c)(i), and this is where we
13 were talking about the comprehensive alternative analysis.
14 Klaus and I were both commenting on it's not clear by
15 who -- who would do that. And I understand that you're
16 trying to make that flexible so that DEQ can also
17 participate in doing the analysis. So I'm -- I'm okay with
18 that. But if there was a way to maybe clarify, maybe not
19 to guide a section, to clarify when DEQ helps or maybe you
20 don't know at this point.

21 But, anyway, I thought if you can clarify that
22 you may be assisting in that, that would be helpful. You
23 may not be able to clarify that. And like Lindsay said,
24 you left that specifically vague, and I'm okay with that,
25 if that's how you wanted it.

Wyoming Reporting Service, Inc.
1.800.444.2826

1 I was -- page 127, I was wondering about there
2 seems to be some confusion about whether the variance would
3 become final after 30 days or upon each day approval,
4 whichever comes first. This is 37 --

5 BOARD MEMBER HANSON: (C)(ii).

6 BOARD MEMBER CAHN: -- (g).

7 I just wanted to understand if you have some
8 thoughts about how you're going to address that or if you
9 need more time on that. Because it seems like if EPA must
10 approve it, then why wouldn't you state that or can you
11 really have it become final after 90 days after submittal
12 without EPA approval. So I would just like a little
13 clarification on that if you're ready to address that.

14 MR. FREDERICK: Sure. We have similar
15 language in approving use attainability analysis
16 designations by DEQ. And there has been, I think, a court
17 case with respect to what's referred to as the Alaska Rule
18 dealing with this very issue that is something that we'll
19 take into consideration in developing our response and the
20 Alaska rule, as I understand it, in this court case, the
21 court decided that -- inconsistent with EPA's comment that
22 was provided to us yesterday, that in all cases they have
23 the ability for -- for the authority for final approval on
24 a variance without time restrictions. And it presents
25 somewhat of a dilemma to the State. And I'll certainly

Wyoming Reporting Service, Inc.
1.800.444.2826

1 visit with the director with respect to what position he
2 wishes to take on this issue, but we have had decision
3 documents before EPA for approval in which EPA, in my
4 opinion, has failed to take a timely action. And the
5 intent, really, is to try and ensure that there is a
6 decision made by EPA within a certain time frame or a
7 presumption of approval in the event that they do not, in
8 this case, provide a decision within -- within 90 days.

9 So, again, a lot of conversation with the
10 director with respect to whether or not we want to agree
11 with the suggested revised language that EPA's provided in
12 their comments or not. And I suspect it's probably going
13 to involve some consultation with the AG's office with
14 respect to our options under the court case on the Alaska
15 rule. So we'll bring that back before the Advisory Board
16 in the fall with our recommendation.

17 BOARD MEMBER CAHN: Okay. Thank you for
18 that clarification.

19 BOARD MEMBER DEURLOO: Mr. Chairman.

20 One second, Lorie.

21 BOARD MEMBER HANSON: Yeah.

22 BOARD MEMBER DEURLOO: There's also similar
23 language in the aquifer exemption rules as well, right,
24 with the 90-day time frame, if you don't hear back from the
25 EPA.

Wyoming Reporting Service, Inc.
1.800.444.2826

1 BOARD MEMBER CAHN: I'm sorry. I can't
2 hear you.

3 BOARD MEMBER HANSON: Speak up for --

4 BOARD MEMBER CAHN: Somebody's rattling
5 papers around so I can't hear you.

6 BOARD MEMBER DEURLOO: I was just asking a
7 question of Mr. Frederick with the 90-day rule. And maybe
8 it's irrelevant right now. It's just something I remember,
9 that there's similar language about the 90-day time frame
10 in aquifer exemptions, as well. If you don't hear back
11 from the EPA within 90 days, move forward.

12 Is that true, Mr. Frederick, or not?

13 MR. FREDERICK: There's similar language in
14 a memorandum of agreement on the EYC program and aquifer
15 exemptions that we have with EPA regarding time frames for
16 decisions. And then there is some federal language in the
17 Code of Federal Regulations as well that I believe placed
18 time restrictions on EPA with respect to responding or
19 approving or denying aquifer exemptions under certain
20 conditions.

21 BOARD MEMBER DEURLOO: Uh-huh. Okay.
22 Thank you.

23 BOARD MEMBER HANSON: That's clear?

24 BOARD MEMBER DEURLOO: Yes, sir.

25 BOARD MEMBER HANSON: Lorie, is that all

Wyoming Reporting Service, Inc.
1.800.444.2826

1 that you have? Because I have --

2 BOARD MEMBER CAHN: No. On page 1-28.

3 BOARD MEMBER HANSON: Yeah.

4 BOARD MEMBER CAHN: The very last item
5 under (v) or under 5.

6 BOARD MEMBER HANSON: Yeah.

7 BOARD MEMBER CAHN: In EPA's first set of
8 comments, they requested asking "derived from the
9 underlying designated use and criteria," and that was not
10 added. And it wasn't clear to me from the response to
11 comments why that wasn't added. So maybe Lindsay could --
12 or Kevin could explain what the objection was to adding
13 that because it may change -- I think it changes the
14 meaning.

15 BOARD MEMBER HANSON: You're referring to
16 (v), right?

17 BOARD MEMBER CAHN: Yeah, (v). The very
18 end where it says "shall be required to meet the water
19 quality-based effluent limits." And EPA had requested
20 adding "derived from the underlying designated use and
21 criteria." And that was not -- in the first set of
22 comments. And that was not added. So I'm just wondering
23 what the reason for that is.

24 MR. FREDERICK: I'm sorry. Where are we?

25 BOARD MEMBER HANSON: On the --

Wyoming Reporting Service, Inc.
1.800.444.2826

1 BOARD MEMBER KIRKBRIDE: The last thing.

2 BOARD MEMBER HANSON: The last thing on 28,
3 (v), last part of the sentence. Lorie's talking --

4 BOARD MEMBER KIRKBRIDE: It isn't there.

5 MR. FREDERICK: Lorie, I have to apologize
6 because Lindsay isn't here, and I haven't reviewed her or
7 our response to that particular comment. So if we could
8 clarify that at the next meeting, we'd be more than happy
9 to do that.

10 BOARD MEMBER CAHN: Sure. That would be
11 great.

12 I'm just going to keep looking through. There
13 were -- I had some comments on the comment responses, but
14 we could get to those after the rest of the board has made
15 their comments, maybe. Thank you.

16 BOARD MEMBER HANSON: Thank you, Lorie.

17 I have just one comment on page 1-27, towards the
18 bottom of the page, Section (D), "If the requirements
19 identified in Section 37(i) are not met, the variance shall
20 expire and the permittee shall be required to meet the
21 water quality-based effluent limit." And it seems like it
22 expires and there's no time indicated. Within 10 days,
23 within whatever -- whether that may be necessary. It
24 strikes me the way it's listed here or stated here, it's
25 immediately, you know, that -- that it has -- it has

Wyoming Reporting Service, Inc.
1.800.444.2826

1 expired, so tomorrow you better have it in place, whether
2 that's necessary.

3 MS. THOMPSON: Lorie, this is Gina. And
4 I'm hoping I can clarify this for the chairman here.

5 So if you look at that line D, it's a subset of
6 (i) that says Upon notification that the Department is
7 initiating a reevaluation or a hundred eight -- eighty --

8 BOARD MEMBER HANSON: Okay.

9 MS. THOMPSON: -- so they have this large
10 window where --

11 BOARD MEMBER HANSON: Okay.

12 MS. THOMPSON: -- we remind them that they
13 have a reevaluation and potentially an expiration coming
14 up.

15 BOARD MEMBER HANSON: Okay.

16 MS. THOMPSON: So they have that window of
17 time to get all their paperwork together. And if they
18 can't meet that, then we expire their variance and they go
19 back to having to meet it instantly.

20 BOARD MEMBER HANSON: Oh, then, so --

21 MS. THOMPSON: So we don't expire it until
22 that 180.

23 BOARD MEMBER HANSON: Okay.

24 MS. THOMPSON: So not until the permit and
25 variance expiration date. So it's not you didn't do it and

Wyoming Reporting Service, Inc.
1.800.444.2826

1 we cut you off. It's we tell you 180 days in advance.

2 BOARD MEMBER HANSON: Uh-huh.

3 MS. THOMPSON: Then we work with you to
4 make sure you get your paperwork in on time and that it
5 meets the requirements of the chapter.

6 BOARD MEMBER HANSON: Makes sense. Thank
7 you.

8 MS. THOMPSON: Okay.

9 BOARD MEMBER HANSON: Anything else?
10 Sir.

11 BOARD MEMBER KIRKBRIDE: Mr. Chairman.
12 I was just thinking back to that 90-day thing. Kevin,
13 that's -- I assume that -- will you guys -- you guys have
14 put that in for a purpose, which you just explained. And I
15 was -- I hadn't quite thought that through. But if there's
16 a conflict with the EPA, what happens there? I mean, in
17 some ways you have to proceed, say, 90 -- I assume you've
18 got that in there because certain things. The DEQ has to
19 operate as if it were approved, even though they haven't
20 heard from the EPA. Maybe that's my thought. Is that kind
21 of where you're coming from?

22 MR. FREDERICK: Mr. Chairman. The section
23 that you're referring to with respect to 90 days really
24 concerns itself with EPA's action after DEQ has already
25 formed a decision.

Wyoming Reporting Service, Inc.
1.800.444.2826

1 BOARD MEMBER KIRKBRIDE: Okay.

2 MR. FREDERICK: I don't believe in this
3 particular case we have time frames or requirements in
4 which DEQ has to make a decision within a certain amount of
5 time. I think the last section we just talked to -- spoke
6 to suggests at least that there is -- there is a
7 responsibility on behalf of the agency to move forward on
8 these variance requests, but I don't believe we have a time
9 limit on the decisions that we --

10 In the case of the Alaska Rule, it gets a little
11 bit more complicated, in that in -- in my opinion, EPA
12 would have the right to approve a variance with respect to
13 a discharge to a jurisdictional water -- or a water of the
14 U.S. And as you know, there's quite a lot of interest now
15 in EPA's revisiting their latest proposed definition of
16 waters of the U.S., and so it's uncertain, really, how that
17 proposed regulation is going to come out with respect to
18 identifying waters of the United States that are
19 jurisdictional under the Clean Water Act.

20 We could contemplate perhaps situations where a
21 discharge -- a discharger requests a variance for a
22 discharge that's not into a jurisdictional water, but it's
23 nevertheless into a water of the state. Our definition of
24 water of the state is much broader than EPA's definition of
25 waters of the U.S. So in that case, arguably, EPA may not

Wyoming Reporting Service, Inc.
1.800.444.2826

1 have authority to essentially weigh in on that
2 determination that we've made for variance or discharge
3 into a nonjurisdictional water.

4 So, as I said, we'll have some conversations with
5 our Attorneys General to help us understand whether or not
6 the Alaska Rule court decision compels us to provide EPA as
7 long as they want to make a decision on a variance or not.
8 We'll proceed accordingly.

9 BOARD MEMBER KIRKBRIDE: Thank you.

10 BOARD MEMBER HANSON: Any other comment by
11 the board?

12 Lorie?

13 I guess we'll close that --

14 BOARD MEMBER CAHN: Yes. Sorry. Yes. Not
15 on the -- sorry. It takes me a while to unmute my phone --

16 BOARD MEMBER HANSON: That's okay.

17 BOARD MEMBER CAHN: -- because I have to
18 sign in again -- or put in my password again. So I only
19 had one comment just on the comment responses. And so I --
20 after -- if we want to move on to that, I'll ask to go
21 ahead.

22 BOARD MEMBER HANSON: Okay. Let me see
23 where -- go ahead.

24 BOARD MEMBER CAHN: Okay. So it's on
25 page 4 of the comment responses. And it's the last

Wyoming Reporting Service, Inc.
1.800.444.2826

1 Department response on the page, where it says "WDEQ has
 2 modified the proposed language on effluent limit to
 3 effluent condition." And my question is -- and maybe this
 4 is a question for Lindsay when we return to this.
 5 Sometimes the EPA requested changing it from "effluent
 6 limit" to "interim effluent conditions." And some places
 7 Lindsay included -- or the interim part was included and
 8 other times it wasn't.

9 So, for instance, in Section 37(h)(ii) -- or
 10 (ii), interim was included, but in 37(c)(ii)(A), it was
 11 not. And so it's not clear to me when "interim" is
 12 included and when it's not. So maybe when you guys come
 13 back, unless you can address that now, when you come back,
 14 if you can address that.

15 And then I guess just in terms of a comment on
 16 the comment responses. They were good and thorough,
 17 although I think it's -- if there's reason why you wouldn't
 18 include the interim in some cases, then it would be nice in
 19 the comment responses to say, well, we included interim in
 20 this section but not in that section and here's the reason
 21 why. That I think would make it easier -- little easier to
 22 follow.

23 So that's all I have. Thank you.

24 MR. FREDERICK: Okay. We'll do that.

25 BOARD MEMBER HANSON: Lorie, you're done?

Wyoming Reporting Service, Inc.
 1.800.444.2826

1 BOARD MEMBER CAHN: I'm done. Thank you,
2 Mr. Chair.

3 BOARD MEMBER HANSON: Okay. Thank you. I
4 have one comment. It's just a word comment. Page 11,
5 "departmental response" at the bottom. The second line
6 from the bottom and what constituents -- no, what
7 constitutes, I think, a sufficient comprehensive
8 alternative.

9 MR. FREDERICK: Sure.

10 BOARD MEMBER HANSON: Okay? It's just got
11 the wrong word in there.

12 MR. FREDERICK: Sure. Thank you. Okay.

13 BOARD MEMBER KIRKBRIDE: Spellcheck, maybe.

14 MS. THOMPSON: It was spelled correctly.
15 It just wasn't --

16 BOARD MEMBER DEURLOO: It was spelled
17 right.

18 BOARD MEMBER HANSON: And I don't catch all
19 these things, but sometimes it goes whoops.

20 MR. FREDERICK: Thank you, Mr. Chairman.

21 At this time, I'd like to introduce Mr. Rich
22 Cripe, here at the table with me. Rich is the manager of
23 the water and wastewater section at DEQ, and he's managing
24 the group responsible for essentially permitting and
25 oversight associated with commercial oil field disposal

Wyoming Reporting Service, Inc.
1.800.444.2826

Figure A-4. Wyoming Outdoor Council (3 pages).



June 22, 2017

Wyoming Water and Waste Advisory Board
Department of Environmental Quality
200 West 17th Street
Cheyenne, Wyoming 82002

Dear Board,

Thank you for the opportunity to comment on the proposed changes to Chapter 1 Section 37 concerning variances of the Water Quality Rules and Regulations. The Wyoming Outdoor Council on behalf of our members submitted comments concerning the proposed changes in March of 2017. This is an important issue for our organization and we appreciated the dialogue created. We are pleased to see that the DEQ/WQD has responded favorably to comments and proposed revisions including but not limited to; informative and helpful FAQ's, changing the language to reflect highest attainable "condition" rather than "limit", including the specific phrase that no variance will be granted if there is an increase in pollutants, and the ability for the DEQ to initiate a reevaluation at any time during the term of the variance. These are all good examples of the way in which the DEQ has been responsive to public comment.

While this process has yielded good results thus far, our members still have the remaining concerns.

Scope of variance

Each variance should be tailored carefully and narrowly in regards to both scope and time.

Term of variance

The federal rule doesn't require a maximum term to a variance, but we believe adequate incentives to ensure that water quality standards are met sooner rather than later are essential to maintain the integrity of our State's water.

Economic Analysis

We would like to ensure that the discharger must satisfy the two prong analysis set forth in the USEPA guidance. "Demonstration of substantial financial impacts is not sufficient reason to modify a use or grant a variance from water quality standards. Rather, the applicant must also demonstrate that compliance would create widespread socioeconomic impacts on the affected community" at 12. This language in the guidance was intended to ensure that both substantial financial impacts and widespread socioeconomic impacts be met before a variance is granted.

Guidance Document

We applaud the DEQ/WQD for initiating a promulgation of guidance addressing requirements of documentation and specific materials such as financial documents presented to grant the variance. We would be happy to review the proposed guidance if that opportunity were provided. Guidance documents are often essential mechanisms in administrative regulatory processes and we want the guidelines to adequately parallel the rules and regulations to ensure that administrative employees have the necessary tools to uphold the law. Variances should be the exception not the norm and we encourage the Board to implement such guidelines that indicate this standard to administrative employees.

Application Requirements

We highly encourage the DEQ to state a preference for licensed and qualified professionals to produce the necessary information to grant a variance. We would like a statement or form in the application to ensure that the information provided by the professional is certified to be truthful

and accurate. Also, the application should have an easily navigable checklist of the necessary requirements to ensure all the parameters have been met. This would help deter private companies from submitting applications with information that may not be reliably accurate or complete.

EPA Approval

Lastly, the DEQ has revised Section 37 (g) from the initial proposal. The second sentence was not in the previous document and should be omitted. “The variance shall become effective either upon EPA approval *or 90 days after submittal, whichever comes first.*” This language is inconsistent with the EPA rules as set forth in 40 CFR 131.14, the EPA must “review and approve” water quality standards before becoming effective. Therefore, the variance will not become effective until approval from the EPA. This was addressed in the EPA comments submitted March 27th.

We appreciate your efforts and time regarding this matter.

Thank you.

Sincerely,



Ian Smith
Legal Intern

Wyoming Outdoor Council
262 Lincoln St.
Lander, WY 82520