

Proposed Revisions to Water Quality Rules and Regulations Chapter 1

Response to Comments for Comment Period Ending September 22, 2017

December 2017

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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 economic and social impact. 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. WDEQ/WQD revised the proposed rule based on comments received during scoping and released revised rule documents along with a response to comment document on May 23, 2017 to be considered in advance of a June 23, 2017 Water and Waste Advisory Board meeting. WDEQ/WQD received additional comments prior to and at the June 23, 2017 Water and Waste Advisory Board meeting. WDEQ/WQD made additional changes to the proposed rule based on these comments and on August 11, 2017, in advance of the September 22, 2017 Water and Waste Advisory Board meeting, released revised rule documents along with a response to comments document. WDEQ/WQD received additional comments prior to and at the September 22, 2017 Water and Waste Advisory Board meeting. Considering these comments, the Waste Advisory Board recommended advancing the proposed rule to the Environmental Quality Council with the addition of a definition of “nutrients.” However, upon further evaluation, the proposed rule already included examples of what nutrients are within proposed Section 37(a) and thus the addition of a definition is not necessary. This document provides written responses to the written comment received prior to the September 22, 2017 Water and Waste Advisory Board meeting and a subset of comments received at the September 22, 2017 Water and Waste Advisory Board meeting. The full text of the written comment and subset of the verbal comments can be found in Appendix A.

WDEQ/WQD has not made any changes to the proposed rule from the version considered by the Water and Waste Advisory Board on September 22, 2017. WDEQ/WQD is releasing the proposed rule along with this response to comments document in advance of the February 2018 Environmental Quality Council hearing. 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

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3.0 COMMENTS AND RESPONSES

United States Environmental Protection Agency, Region 8: An outstanding concern remains regarding the following proposed language at Section 37(g):

[\(g\) 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.](#)

To ensure consistency with the CWA and the EPA's implementing regulations at 40 CFR § 131, the EPA continues to recommend deleting the portion of Section 37(g) that states "The variance shall become effective either upon EPA approval or 90 day after submittal, whichever comes first." Adoption into state rules without approval by the EPA creates a situation where the state rules are not effective for CWA purposes and cannot be used for CWA Section 303(d) list development or Wyoming Pollutant Discharge Elimination System (WYPDES) permitting. The CWA implementing regulations describe the need for EPA approval for a variance to be effective for CWA purposes at three locations. The first is 40 CFR §131.14, which states:

A WQS variances is a water quality standard subject to EPA review and approval or disapproval.

The second is 40 CFR § 141.14(a)(3), which states:

A WQS variance, once adopted by the State and approved by EPA, shall be the applicable standard for purposes of the [Clean Water] Act under 40 CFR § 131.21(d)-(e).

The third is 40 CFR § 131.21(c)(2), which answers the question "How do I determine which water quality standards are applicable for purposes of the Act?" with the following:

If a State or authorized Tribe adopts a water quality standard that goes into effect under State or Tribal law on or after May 30, 2000...then...once EPA approves that water quality standard, it becomes the applicable water quality standard for purposes of the Act...unless...EPA has promulgated a more stringent water quality standard for the State or Tribe that is in effect...in which case...the EPA promulgated water quality standard is the applicable water quality standard for purposes of the Act until EPA withdraws the Federal water quality standard (emphasis added).

As acknowledged in WDEQ's August 2017 Response to Comments document, CWA Section 303(c)(3) establishes a 60-day deadline for EPA to approve state WQS submissions that are consistent with the CWA and a 90-day deadline for EPA to disapprove state WQS submissions that are not consistent with the CWA. These deadlines do not, however, render EPA approval unnecessary or moot after either 60 or 90 days (CWA Section 303(c), 40 CFR § 131.21(c)(2), 40 CFR § 131.14(a)). The EPA strives to meet its statutory deadlines by early review and engagement in WQS development processes such as this one.

Department Response: As noted in previous response to comments, 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 Clean Water Act. "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 identifies 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.”

The proposed language is also consistent with Wyoming’s existing surface water quality standards, Chapter 1, Section 34(a), which outlines that changes to designated uses shall become effective either upon EPA approval or 90 days after submittal, whichever comes first. This process has been used successfully to implement changes to designated uses since 2001 when the provision was first adopted into Chapter 1.

Water and Waste Advisory Board Member Hanson: I just looked at the list of definitions. I’m, again, in over my head. I was going to find out what nutrients really are.

Water and Waste Advisory Board Member Hanson: There’s no definition here. Maybe you should add that as a term.

Water and Waste Advisory Board Member Hanson: But let me suggest to add it as a term here.

Water and Waste Advisory Board Member Cahn: With the additional definition of nutrients added. So recommend moving this chapter to the EQC.

Department Response: Although it was not discussed at the Advisory Board meeting, the proposed rule at Section 37 (a) does include examples of what may be considered nutrients: “Following public notice and opportunity for comment, including at least one public hearing with a minimum of 45-day notice, the administrator may grant a permittee a variance to a designated use and water quality criteria and/or nutrients (e.g., total nitrogen, total phosphorus).” WDEQ/WQD is therefore not proposing to add a definition of nutrients within the definitions of Chapter 1, since this may conflict with the proposed rule language.

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