

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

IN THE MATTER OF REVISIONS)	
TO WATER QUALITY RULES AND)	STATEMENT OF
REGULATIONS, CHAPTER 1,)	PRINCIPAL REASONS
WYOMING SURFACE WATER)	FOR ADOPTION
QUALITY STANDARDS)	

INTRODUCTION

The Environmental Quality Council, pursuant to the authority vested in it by Wyoming Statutes 35-11-112(a)(i) has adopted revisions to the following chapter of the Wyoming Water Quality Rules and Regulations: Chapter 1, Wyoming Surface Water Quality Standards.

Section 35-11-302(a) of the Environmental Quality Act (Act) states that the administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director rules, regulations, standards and permit systems to promote the purposes of this act. Such rules, regulations, standards and permit systems shall prescribe:

- (i) Water quality standards specifying the maximum short-term and long-term concentrations of pollution, the minimum permissible concentrations of dissolved oxygen and other matter, and the permissible temperatures of the waters of the state;
- (ii) Effluent standards and limitations specifying the maximum concentrations of pollution and wastes which may be discharged into the waters of the state;
- (vi) In recommending any standards, rules, regulations, or permits, the administrator and advisory board shall consider all facts and circumstances bearing about the reasonableness of the pollution involved including:
 - (A) The character and degree of injury to or interference with the health and well being of the people, animals, wildlife, aquatic life and plant life affected;
 - (B) The social and economic value of the source of pollution;
 - (C) The priority of location in the area involved;

(D) The technical practicability and economic reasonableness of reducing or eliminating the source of pollution; and

(E) The effect upon the environment.

Water Quality Rules and Regulations Chapter 1 contain water quality standards for surface waters in the state that include designated uses, narrative and/or numeric water quality criteria to support designated uses, and antidegradation provisions. In addition to implementing portions of the Environmental Quality Act, Chapter 1 is intended to implement portions of the federal Clean Water Act, which provides states, tribes and territories with primary authority and responsibility to establish water quality standards for waters of the U.S. within their respective jurisdictions. Following adoption by the state, Chapter 1 shall be submitted to the United States Environmental Protection Agency (USEPA) pursuant to the Clean Water Act.

PROPOSED REVISIONS TO CHAPTER 1

Consistent with the Clean Water Act and federal regulations, Wyoming's water quality criteria must be scientifically defensible and protective of designated uses. As such, water quality criteria are developed without any consideration of the feasibility or costs associated with meeting the criteria. As information on the impacts of various pollutants improves, water quality criteria and associated water-quality-based effluent limits have become increasingly stringent. In some cases, meeting water-quality-based effluent limits may require millions of dollars in capital investments that may be unrealistic for small communities or small businesses to meet. In these circumstances, meeting water quality criteria may not currently be feasible, but may become feasible in the future as economic conditions change or technologies improve or become cheaper.

The Clean Water Act allows states to adopt a time limited modification to a designated use and water quality criteria, known as a water quality standards variance, in circumstances where meeting water quality standards may not currently be feasible, but may become feasible in the future. USEPA's recent revision to the federal regulations for water quality standards, 40 CFR § 131, finalized in August 2015, elaborate on the use and requirements for water quality standards variances.

The proposed revisions to Chapter 1 are intended to provide a mechanism whereby the Water Quality Division Administrator may grant a variance to a point source discharger in circumstances where meeting a water-quality-based effluent limit for ammonia and/or nutrients would result in substantial and widespread economic and social impacts. In lieu of meeting a water-quality-based effluent limit, dischargers must implement actions necessary to achieve the highest attainable condition in the receiving water. The highest attainable condition of the receiving water is defined as the designated use and water quality criteria or effluent condition closest to the underlying designated use and criteria or water quality-based effluent limit that is

feasible to achieve without causing substantial and widespread economic and social impacts. The highest attainable condition shall be identified through a comprehensive alternatives analysis and/or other supporting documentation and requires the permittee to meet an interim effluent condition that represents the greatest pollutant reduction achievable and develop and implement a pollutant minimization program. The proposed revisions are based on federal regulations, 40 CFR § 131.14. The Water Quality Division (WQD) would rely on federal guidance such as EPA's March 1995 Interim Economic Guidance for Water Quality Standards (EPA-823-B-95-002), and other information to determine whether meeting a water-quality-based effluent limit would result in substantial and widespread economic and social impacts.

Section 2. Definitions.

A definition of "discharger specific variance" was added.

A definition of "highest attainable condition" was added.

A definition of "pollutant minimization program" was added.

Section 37. Discharger Specific Variances.

Section 37 was added to describe the conditions and process whereby the Administrator would grant a discharger a variance. The conditions are based on federal regulations, 40 CFR § 131.14, but have been limited in the following ways:

1. Variances to surface water quality standards can only be granted to a permittee;
2. Variances to the surface water quality standards can only be granted for nutrients and/or ammonia, since Wyoming dischargers may have difficulty meeting water-quality-based effluent limits for these pollutants;
3. Variances to the surface water quality standards can only be granted when meeting an ammonia and/or nutrient water-quality-based effluent limit would create substantial and widespread economic and social impacts; and
4. The justification for granting the variance, for establishing an interim effluent limit, and establishing an appropriate term for the variance must be based on the results of a comprehensive alternatives analysis and/or supporting documentation. This is included to clarify the information required to be submitted on behalf of the permittee that will be used in development of the variance.

The council finds that these regulations are reasonable and necessary to accomplish the policy and purpose of the ACT, as stated in W.S. 35-11-102, and that they have been promulgated in accordance with rulemaking provisions of the Wyoming Administrative Procedures Act.

Dated this 21 day of FEB, 2018.



Hearing Examiner – *Printed Name*
Wyoming Environmental Quality Council



Hearing Examiner – **Signed Name**
Wyoming Environmental Quality Council

17-0800