

Proposed Revisions to Water Quality Rules, Chapter 12, Design and Construction Standards for Public Water Systems

Analysis of Written Comments Received between January 27, 2023 and March 14, 2023 for Docket 22-3103



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Prepared by:

Wyoming Department of Environmental Quality

Water Quality Division

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Commenters:

EPA Region 8
Lorie Cahn
Tammy Reed, Trihydro Corporation

Chapter 12 Comments and Responses

General

Lorie Cahn Ms. Cahn notes that “flexibility that is incorporated into the TSS is not always IBR into the proposed rule. Examples of this can be found by looking at sections of the TSS that are highlighted with portions inside the section that are not highlighted. An example of this is in Section 4.3.1.6(d)...Section 4.3.1.6 (d)(5)...which states “Other media types or characteristics may be considered based on experimental data and operating experience.” If this flexibility is considered acceptable by all the States that use the TSS, wouldn’t it be prudent to allow this flexibility in WY? Other examples may be:

- TSS Section 2.6 alternatives to standby power;
- TSS Section 3.1.3(c) minimum treatment for surface waters;
- TSS Section 3.2.7.5 pitless adaptors;
- TSS Section 3.2.7.9 liners;
- TSS Section 4.2(c) measuring/modifying flow to each clarifying unit;
- TSS Section 4.2.3(d) baffling for flocculation in small plants
- TSS Section 4.2.4(a) sedimentation settling time;
- TSS Section 4.2.5.9 detention period;
- TSS Section 4.2.6 tube or plate settlers;
- TSS Section 4.2.7 high rate clarification processes”

Tammy Reed, Trihydro Corporation: Ms. Reed notes concern that “sections that are in the TSS that specifically mention the possibility of considering alternative designs do not appear to be included in the proposed rule (not shown in the highlighted version). Perhaps WDEQ is relying on an existing general clause that gives the Administrator or Director that option, but it is very difficult for the reader to understand that other design solutions can be considered when it is not referenced within these sections as it is in the TSS.”

Department Response: WDEQ/WQD considered the comments and agrees the regulations need to provide a certain amount of flexibility to avoid being overly prescriptive with some requirements. Chapter 12 has always allowed some flexibility to accommodate

technology improvements, EPA rule changes, and other unforeseen events. The proposed Chapter 12 continues to allow this flexibility by incorporating by reference specific sections of the TSS that allow flexibility where WDEQ/WQD has determined flexibility is warranted. Additionally, Chapter 12 Section 6(a) allows the requested flexibility for applicants to submit projects with different design characteristics that still meet the purpose of the Wyoming Environmental Quality Act. The WDEQ/WQD will include information about design flexibility in the guidance material it plans to prepare for outreach with the regulated community.

Tammy Reed, Trihydro Corporation: Ms. Reed noted “The proposed regulations incorporate sections of the Recommended Standards for Water Works 2018 edition. The 2022 edition of these standards are readily available, and it may be prudent to take the time to update the citations to reference the most up to date standards rather than adopt regulations that are out of date the moment they are promulgated. Can the rule be modified to incorporate new citations?”

Department Response: WDEQ/WQD considered the comment. Wyoming Statutes (W.S.) § 16-3-103(h)(ii) requires incorporations by reference (IBR) to include specific dates of the material to be incorporated, which results in the need to periodically review the rule to determine if updates are needed. WDEQ/WQD has developed the proposed changes to Chapter 12 over the course of several years. The 2022 version of the Recommended Standards was released in February 2023. While we understand the goal of being as current as possible when promulgating rules, Chapter 12 has not been significantly updated for decades, and WDEQ/WQD believes it is in the best interest of the state to complete the current promulgation now to ensure that permittees have relevant and appropriate regulations available upon the Governor’s signature. Withdrawing the rule now for additional review will take a significant amount of time and delay much-needed updates to this rule. WDEQ/WQD is committed to future rulemakings to ensure all our rules are updated as needed and will consider the relevant standards in effect at the time of those rulemakings. The WDEQ/WQD proposes to only incorporate the 2018 TSS at this time.

Tammy Reed, Trihydro Corporation: Ms. Reed noted “Are the words “Ten States Standards” included anywhere in the regulation? We see it immediately referred to as “2018 TSS” in Section 4(a) in response to earlier comments. Since most engineers typically refer to these as Ten States Standards, it would be useful to have the actual term used at least once at the beginning to connect with the acronym, rather than immediately going to TSS, which most engineers associate with the term total suspended solids. Perhaps we missed it? - Or perhaps there is a problem with using that name that we are unaware of?”

Department Response: WDEQ/WQD considered the comment. Through discussions with the WWAB, it was determined that the rule would reference the 2018 Great Lakes-Upper Mississippi River Board Standards as the “2018 TSS.” The standards are commonly referred to as the Ten State Standards leading to the proposed reference. WDEQ/WQD proposes to update Section 4(a) to further clarify the reference to these standards by adding to the passage “...also known as the Ten State Standards.”

Tammy Reed, Trihydro Corporation: Ms. Reed noted “previous comments mentioned the concern that addressing these new rules will drive up design costs dramatically. As engineering consultants, we support updating the regulations wholeheartedly and understand that some increase in costs go hand in hand with updated standards. However, cost increases because the regulations are difficult to understand for both WDEQ staff and the designers, and the excess paperwork that will likely be required to establish equivalency of alternative designs (since the shoulds are now shalls) seems like an increase in costs that municipalities and businesses will be paying for unnecessarily. We would also like to support the comment provided earlier by Mr. Engels of ACEC and dismissed in the Response to Comments document. That is, many publicly funded projects have a budget limit on the percentage of funds that are used for design, and this will impact smaller projects disproportionately. That is certainly not a reason to defer updating standards, but some communication from WDEQ to other agencies to potentially support an increase in the formal/informal percentage limit considering the new rules would be greatly appreciated by the engineering community.”

Department Response: WDEQ/WQD considered the comment. As noted in our previous response to Mr. Engels of ACEC, the proposed standards are consistent with design standards that are widely used throughout the United States and Canada; therefore, while WDEQ/WQD understands the concern, we disagree that complying with the proposed standards will be economically unreasonable. WDEQ/WQD understands that under any new rule, there is a learning curve to become familiar with the new regulations, whether they be for WDEQ, EPA, American Water Works Association, National Sanitation Foundation, or local government agencies to meet project requirements. Thus, WDEQ/WQD agrees with the need for communication and is working to update Chapter 12 guidance material to assist agencies and the engineering community with navigating the rule and incorporated material. Such outreach will include discussing design requirements, and opportunities for flexibility as discussed above, with other agencies.

EPA Region 8: EPA Region 8 noted “Chapter 12 does not include applicable reference in TSS of 4.4.3(f)...This section of TSS requires that “All continuously recording chlorine residual analyzers must be compatible with the requirements of EPA Method 334.0 or ChloroSense (Palintest).”

Proposed Revisions to Water Quality Rules, Chapter 12, Design and Construction Standards for Public Water Systems

Analysis of Written Comments

Docket 22-3103

Comments Received between January 27, 2023 and March 14, 2023

These are the two EPA approved analytical methods for online chlorine analyzers or amperometric chlorine sensors.”

Department Response: WDEQ/WQD considered the comment and proposes incorporating by reference 2018 TSS 4.4.3(f), which requires all chlorine residual analyzers to be compliant with EPA Method 334.0 or ChloroSense (Palinstest). Incorporating 2018 TSS 4.4.3(f) will ensure systems comply with EPA’s Safe Drinking Water Act (SDWA) requirements during sanitary survey inspections. As Wyoming does not have primacy over drinking water regulations, WDEQ/WQD conducts permitting of design and construction of facilities for compliance with the Wyoming Environmental Quality Act, and EPA Region 8 conducts drinking water system inspections, compliance, and enforcement for compliance with the requirements of the SDWA.

Section 4

4(c)

Tammy Reed, Trihydro Corporation: Ms. Reed notes concern that the proposed revisions to Chapter 12 include the passage at 4(c) that states “The State term “shall” shall replace the term “should” used in the Recommended Standards for Water Works 2018 Edition.” Ms. Reed acknowledges the statement “shall” ensures enforceability of the rule but disagrees with a global substitution as “perhaps these components should not be strictly enforced because they do not meet the criteria of standardized practice or necessity to safeguard the public health.” Ms. Reed notes concern about losing flexibility and complicating the permitting process. Ms. Reed suggests that items noted as “should” in the 2018 TSS are more suited in guidance documents.

Department Response: WDEQ/WQD considered the comment. The passage at 4(c) was added to address a comment received earlier in the rulemaking process that noted that WDEQ/WQD needed to clarify requirements in certain passages. “Shall” is an enforceable term, and the purpose of this rulemaking is to propose enforceable standards that meet the requirements of W.S. § 35-11-302(a)(iii). WDEQ/WQD disagrees that the statements in the 2018 TSS that contain “should” are universally suited for guidance and has carefully considered which standards are incorporated by reference for inclusion in the rule. As discussed above, Section 6(a) allows for flexibility if an applicant proposes an alternative design that meets the purpose of the Wyoming Environmental Quality Act; the Water and Wastewater Section Manager will evaluate such instances with the WQD Administrator, with final approval from the Administrator. After the rule is promulgated, WDEQ/WQD will

update associated Chapter 12 guidance material to assist with navigation of the rule and incorporated material.

Section 8

8(a)

Lorie Cahn Ms. Cahn notes that Chapter 12, Section 8(a) incorporates 2018 TSS Section 1.2.2(r), which references Security Measures in Section 2.19, but that Section 2.19 is not incorporated into Chapter 12, and suggests removing the incorporation of 1.2.2(r). Ms Cahn notes that Section

(a), which incorporates 2018 TSS 7.0.4, and 7.0.8.2, which both include cross-references to Section 2.19.

Department Response: WDEQ/WQD considered the comment. WDEQ/WQD has intentionally incorporated 1.2.2(r) to require applicants to address security in the submittal required in Section 8. The passage 2.19 is redundant to specific security requirements (that have already been IBR'd in 1.1.17 – 1.1.17(d)) and is overly specific in certain elements while not including language to tailor security by site type or by technology and security evolutions over time. Therefore, the WDEQ/WQD intentionally did not incorporate by reference passage 2.19. If a TSS passage cross-references another TSS section, the cross-referenced section is not incorporated by reference unless the rule specifically identifies it as being incorporated by reference (see subsection (a) in Sections 8 through 17 and Section 19). As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR'd in their entirety, IBR'd selectively, or not IBR'd in favor of covering the topic specifically in Chapter 12. After the rule is promulgated, WDEQ/WQD will update associated guidance related to Chapter 12 to assist with the navigation of the rule and incorporated material.

Lorie Cahn Ms. Cahn notes that Chapter 12, Section 8(a) incorporates 2018 TSS Section 1.3(c), which references Section 5.1. As Section 5.1 is partially, not wholly, incorporated into Chapter 12, Ms. Cahn notes the reference “creates confusion.”

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR'd in their entirety, IBR'd selectively, or not IBR'd in favor of covering the topic specifically in Chapter 12. The proposed application of IBR was selected after

*Proposed Revisions to Water Quality Rules, Chapter 12, Design and Construction Standards for Public Water Systems
Analysis of Written Comments*

Docket 22-3103

Comments Received between January 27, 2023 and March 14, 2023

discussions with the WWAB and commenters to afford rule flexibility, not be overly prescriptive, and pertain to necessary regulations for the Chapter. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). After the rule is promulgated, WDEQ/WQD will update associated guidance related to Chapter 12 to assist with the navigation of the rule and incorporated material.

Section 8 and Section 11

8 (a), Line 980 –11 (e), 11(e)(iii)(F)(xviii)H

EPA Region 8: EPA Region 8 noted “The proposed Chapter 12 regulations in Section 8 (a) and Section 11(a) do not require the installation of a raw water groundwater sample taps for each individual groundwater source. Recommended language: "A water sample tap shall be installed on all groundwater sources prior to any treatment or water storage." WDEQ Chapter 12, Section 11 (e)(iii)(F)(xviii) indicates that designs are subject to CFR 141.402(a)(1)(i) and ii or iii to demonstrate compliance with CFR 141.402 (e). This regulation requires sampling before treatment and not the installation of source water taps.”

Department Response: WDEQ/WQD considered the comment and proposes incorporating by reference 2018 TSS 2.10 into Section 11(a) and adding language to Section 11(e)(i), “...shall have a water sample tap installed on groundwater sources prior to treatment or water storage and comply with the following requirements:”. Including the proposed language and 2018 TSS 2.10 will ensure systems comply with EPA’s SDWA requirements during sanitary survey inspections.

Section 10

10(a)

Lorie Cahn Ms. Cahn notes that Chapter 12, Section 10(a) incorporates 2018 TSS Section 2.11, which references Section 4.4.1, which is only partially incorporated into Chapter 12.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR'd in their entirety, IBR'd selectively, or not IBR'd in favor of covering the topic specifically in Chapter 12. The proposed application of IBR was selected during discussions with the WWAB and commenters to afford rule flexibility, not be overly prescriptive and pertain to necessary regulations for the Chapter. After the rule is promulgated, WDEQ/WQD will update associated guidance related to Chapter 12 to assist with the navigation of the rule and incorporated material.

Section 10 and Section 12

10(u) and Line 1578 - 12(k)(vi)(G)

EPA Region 8: EPA Region 8 noted “These two sections only require a recording device on the online turbidimeter at treatment plants (section 10(u)) and at individual filters (Section 12(k)(vi)(G)) at treatment plants with a capacity of 500,000 gpd or greater. The Surface Water Treatment Rules (SWTR) require continuous turbidity monitoring and associated recording at the effluent of each individual filter at conventional, direct, and membrane filtration treatment plants. This requirement is based on the filtration type, not on the size of the treatment plant. Additionally, turbidity monitoring and recording of the combined filter effluent at all surface water treatment plants may be required by the SWTR at a minimum frequency of once every 4 hours dependent on system size and filtration type.”

Department Response: WDEQ/WQD considered the comment and proposes removing the 500,000-treatment capacity threshold from Section 10(u) and Section 12(k)(vi)(G). This modification to the Chapter would ensure systems will comply with EPA’s SDWA requirements during sanitary survey inspections.

Section 11

11 (e)(i)(C)

Lorie Cahn Ms. Cahn notes she appreciates “DEQ modifying the proposed regulation in response to comments to include some flexibility for transient water systems, like campgrounds, and other seasonal facilities. However, the wording is a little confusing. Section 11(e)(i)(C)...states, “For public water supplies that are not community water systems or nontransient noncommunity water systems, as determined by the Administrator, one well that is capable of supplying the maximum daily demand.” The confusion is in the use of “not” before

“nontransient noncommunity”. Is DEQ referring to nontransient noncommunity or not nontransient noncommunity? If it’s the former, then the 2 phrases should be reversed. If it’s the later, then perhaps an extra “not” should be added, although the double negatives would be confusing. It would be helpful if this could be reworded to clarify the meaning. Also, please ensure that the proposed regulation accounts for a small seasonal facility that does not need to supply year-round maximum daily demand water if it is closed seasonally, and may shut down when it is out of water, or operate with some limited temporary water supply.”

Department Response: WDEQ/WQD considered the comment. The terms included in the new passage, “community water systems” and “nontransient noncommunity water systems”, are defined in W.S. 35-11-103(c) at paragraphs (xvii) and (xviii). These terms are used to classify the type of public water system. The Environmental Protection Agency has defined a third term, transient non-community water system; however, the Wyoming Statutes do not adopt this third term. The type of facility described in the comment would be a transient non-community water system, which is neither a community water system, nor a nontransient noncommunity water system. With the limitations on restatement or expansion of statutory language, WDEQ/WQD proposes to clarify the passage as follows:

For public water supplies that, as determined by the Administrator, are ~~not~~ neither community water systems ~~or~~ nor noncommunity nontransient water systems, ~~as determined by the Administrator~~, one well that is capable of supplying the maximum daily demand.

11 (e)(vii)(D)(II)

EPA Region 8: EPA Region 8 noted “EPA Region 8 requires that overflows to storm or sanitary sewer terminate 3 pipe diameters above the surface entrance creating an air gap. This requirement should be added to WDEQ Chapter 12, Section 11 (e)(vii)(D)(II)”

Department Response: WDEQ/WQD considered the comment and proposes adding language to Section 11(e)(vii)(D)(II) as follows: “and all terminations shall provide for an air gap of 3 pipe diameters for drain or overflow above an opening to a sanitary or storm sewer.” This modification to the Chapter would ensure systems will comply with EPA’s SDWA requirements during sanitary survey inspections.

Section 12

12(a)

Lorie Cahn Ms. Cahn notes that the design standards for rapid mix are confusing as Section 12(a) incorporates 2018 TSS part 4.5.1, which states that “design standards for rapid mix, flocculation and sedimentation are in Section 4.2.” Within Section 4.2, rapid mix is addressed at 4.2.5.4, but Chapter 12 does not include an incorporation by reference to 4.2.5.4 and it is not highlighted in the highlighted copy of the 2018 TSS.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR’d in their entirety, IBR’d selectively, or not IBR’d in favor of covering the topic specifically in Chapter 12. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). 2018 TSS Section 4.5 covers Lime Softening for Treatment. 2018 TSS Section 4.2.5.4 covers rapid mix. Rather than incorporating TSS Section 4.2.5.4 by reference, the WDEQ/WQD chose to include a narrative design standard in Section 12.e. After the rule is promulgated, WDEQ/WQD will provide associated guidance to assist the regulated community with navigating the rule and incorporated material.

Lorie Cahn Ms. Cahn notes that the design standards for flocculation are confusing as Section 12(a) incorporates 2018 TSS part 4.5.1, which states that “design standards for... flocculation are in Section 4.2.” Within Section 4.2, flocculation is addressed at 4.2.3, but Chapter 12 does not include an incorporation by reference to 4.2.3 and it is not highlighted in the highlighted copy of the 2018 TSS.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR’d in their entirety, IBR’d selectively, or not IBR’d in favor of covering the topic specifically in Chapter 12. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly

identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). 2018 TSS Section 4.5 covers Lime Softening for Treatment. 2018 TSS Section 4.2.3 covers flocculation which is covered in Chapter 12 at Section 12.f. After the rule is promulgated, WDEQ/WQD will look to update associated guidance related to Chapter 12 to assist with navigation of the rule and incorporated material.

Lorie Cahn Ms. Cahn notes that the design standards for sedimentation are confusing as Section 12(a) incorporates 2018 TSS part 4.5.1, which states that “design standards for...sedimentation are in Section 4.2.” Within Section 4.2, sedimentation is addressed at 4.2.4, but Chapter 12 does not fully incorporate all of Section 4.2.4.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR’d in their entirety, IBR’d selectively, or not IBR’d in favor of covering the topic specifically in Chapter 12. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). 2018 TSS Section 4.2.4 covers Sedimentation which is also covered in Chapter 12 Section 12.g. After the rule is promulgated, WDEQ/WQD will look to update associated guidance related to Chapter 12 to assist with navigation of the rule and incorporated material.

Lorie Cahn Ms. Cahn notes that the proposed rule incorporates by reference 2018 TSS Section 4.3.4.7 filter gravel, which in turn references 4.3.1.6.e2, which is not highlighted.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR’d in their entirety, IBR’d selectively, or not IBR’d in favor of covering the topic specifically in Chapter 12. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable

narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). Requirements for filter gravel can be found in Chapter 12.k.iii.(A)-(B). After the rule is promulgated, WDEQ/WQD will look to update associated guidance related to Chapter 12 to assist with navigation of the rule and incorporated material.

Lorie Cahn Ms. Cahn notes that the proposed rule incorporates by reference 2018 TSS Section 4.4.6.3, which in turn references 2018 TSS Section 8.10.2, which is not highlighted.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR'd in their entirety, IBR'd selectively, or not IBR'd in favor of covering the topic specifically in Chapter 12. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). These sections have been reviewed, and in this instance, 2018 TSS Section 4.4.6.3 covers ozone generators for treatment. 2018 TSS Section 8.10.2 covers cross-connection requirements, which is covered in Chapter 12 Section 16.m. After the rule is promulgated, WDEQ/WQD will look to update associated guidance related to Chapter 12 to assist with the navigation of the rule and incorporated material.

Lorie Cahn Ms. Cahn notes that the proposed rule incorporates by reference 2018 TSS Section 4.6.8, which in turn references 4.5.2.12 through 15. However, 2018 TSS 4.5.2.12 for sampling taps is not highlighted. TSS Section 4.5.2.13.g allows for alternative designs but is not highlighted. Section 12(a) also specifically incorporates 2018 TSS 4.5.2.12 through 15.

Department Response: WDEQ/WQD considered the comment and proposes incorporating by reference 2018 TSS Section 4.5.2.12 into Chapter 12 Section 12(a).

2018 TSS Section 4.5.2.13.g allows for alternative designs and is not highlighted to reduce redundancy. Chapter 12 Section 6(a) allows the flexibility for applicants to submit projects with different design characteristics that still meet the purpose of the Wyoming Environmental Quality Act. After the rule is promulgated, WDEQ/WQD will look to update associated guidance related to Chapter 12 to assist with the navigation of the rule and

incorporated material.

Lorie Cahn Ms. Cahn notes that the proposed rule incorporates by reference 2018 TSS Section 4.8.1.3, which states, “Filters shall be provided and shall conform to Section 4.3”. However, Section 4.3 is only partially highlighted.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR’d in their entirety, IBR’d selectively, or not IBR’d in favor of covering the topic specifically in Chapter 12. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). These sections have been reviewed, and in this instance, 2018 TSS Section 4.8.1.3 covers filtration for iron and manganese removal. 2018 TSS Section 4.3 covers drinking water filtration types and design parameters. Some of 2018 TSS Section 4.3 have been incorporated by reference, some information is included narratively in Chapter 12, and some sections have not been included. After the rule is promulgated, WDEQ/WQD will look to update associated guidance related to Chapter 12 to assist with the navigation of the rule and incorporated material.

Lorie Cahn Ms. Cahn notes that the proposed rule incorporates by reference 2018 TSS Section 4.10.8 potassium permanganate, which references TSS 5.4.6, which is not highlighted.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR’d in their entirety, IBR’d selectively, or not IBR’d in favor of covering the topic specifically in Chapter 12. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). These sections have been reviewed, and in this instance, 2018 TSS Section

4.10.8 covers the use of potassium permanganate so that by-products are not visible in the finished water. 2018 TSS 5.4.6 provides options to assist in the use of potassium permanganate. 2018 TSS 5.4.6 was not selected to afford rule flexibility, not be overly prescriptive, and pertain to necessary regulations for the Chapter. After the rule is promulgated, WDEQ/WQD will look to update associated guidance related to Chapter 12 to assist with the navigation of the rule and incorporated material.

Lorie Cahn Ms. Cahn notes that the proposed rule incorporates by reference 2018 TSS Section 6.6.6, which in turn references TSS Section 2.6, which is not highlighted.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR'd in their entirety, IBR'd selectively, or not IBR'd in favor of covering the topic specifically in Chapter 12. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). These sections have been reviewed, and in this instance, 2018 TSS Section 6.6.6 covers the necessary standby power requirements and references a redundant section for general design considerations. After the rule is promulgated, WDEQ/WQD will look to update associated guidance related to Chapter 12 to assist with the navigation of the rule and incorporated material.

12(k)(ii)(J)

Lorie Cahn Ms. Cahn identified a typo of an extra "the" in the passage.

Department Response: WDEQ/WQD has corrected the passage.

12(n)(ii)(B)

EPA Region 8: EPA Region 8 noted "This section does not ensure adequate contact time to protect the 1st customer in the distribution system. The 4-log inactivation of viruses should be required as adequate protection for public health."

Department Response: WDEQ/WQD considered the comment and proposes modifying the passage at Section 12(n)(ii)(B) to the following: “When chlorine is applied to a groundwater source to maintain a residual, a 4-log inactivation shall be achieved prior to the first customer.” This modification will ensure systems will comply with EPA’s SDWA requirements during sanitary survey inspections.

Section 12(q)(ii)

EPA Region 8: EPA Region 8 noted “This section references the incorrect maximum containment level section in the CFR and should reference 40 CFR 141.64.”

Department Response: WDEQ/WQD considered the comment and proposes to correct the passage to include the correct reference of “40 CFR 141.64.”

12 (r)

EPA Region 8: EPA Region 8 noted “This section infers that the results of a wastewater impact study prior to implementation of phosphates for corrosion control treatment could result in limits on the use of orthophosphate as a corrosion inhibitor. The SDWA requires corrosion control treatment (CCT) to be implemented to protect public health against lead and copper levels in drinking water. The federal requirements for CCT are very prescriptive. Wastewater impacts can be evaluated but cannot be considered when establishing required phosphate feed concentrations to protect public health. Systems must select the CCT that “minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.” 40 CFR Part 141.2.”

Department Response: WDEQ/WQD considered the comment and proposes the following modification to the passage in Section 12(r): “Designs that include the addition of phosphates for stabilization and corrosion control shall demonstrate the evaluation of reactions with aluminum and impacts on wastewater treatment plants to overcome the secondary impacts of phosphates.”

Section 15

15(a)

Lorie Cahn Ms. Cahn notes that the proposed rule incorporates by reference 2018 TSS Section 7.1.1, which in turn references 4.3.1.11, which is not highlighted.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR'd in their entirety, IBR'd selectively, or not IBR'd in favor of covering the topic specifically in Chapter 12. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). These sections have been reviewed, and in this instance, 2018 TSS Section 7.1.1 covers filter washwater tanks and references requirements for backwash requirements (2018 TSS Section 4.3.1.11). Some of the items in 2018 Sections 4.3.1.11 are covered in Chapter 12, Section 12(k) and some of these items were determined to be too prescriptive. After the rule is promulgated, WDEQ/WQD will update associated guidance related to Chapter 12 to assist with the navigation of the rule and incorporated material.

Lorie Cahn Ms. Cahn notes that the proposed rule incorporates by reference 2018 TSS Section 7.2, which in turn references 7.1 of which not all is highlighted, and 7.3, which is not highlighted.

Department Response: WDEQ/WQD considered the comment. As part of the rule development and incorporation by reference (IBR) process, certain sections of the 2018 TSS were either IBR'd in their entirety, IBR'd selectively, or not IBR'd in favor of covering the topic specifically in Chapter 12. When an incorporated-by-reference TSS section refers to additional TSS sections, the cross-referenced TSS sections are not automatically incorporated by reference. Some or all of such cross-referenced TSS sections may not be applicable, either because WDEQ/WQD determined the cross-referenced section was not appropriate for inclusion in the rule or because it opted to provide a more suitable narrative design standard (i.e., non-IBR standard) in the rule. Only TSS sections clearly identified as IBR in the rule are incorporated (see subsection (a) in Sections 8 through 17, and Section 19). These sections have been reviewed, and in this instance, 2018 TSS Section 7.2 covers hydropneumatic tanks and references requirements for treatment plant storage (2018 TSS Section 7.1) and distribution storage (2018 TSS Section 7.3). Some of the items in Sections 7.1 and 7.3 are covered in Chapter 12, Section 12 where appropriate, and some of these items were determined to be too prescriptive. After the rule is promulgated, WDEQ/WQD will update associated guidance related to Chapter 12 to assist with the navigation of the rule and incorporated material.

15 (i)

EPA Region 8: EPA Region 8 noted “This section on vents does not include specifications for non-downturned vents. WDEQ includes specifications for downturned vents and not for non-downturned vents. WDEQ and TSS do not address non-downturned vents. There is no mention of shroud height or non-downturned tank vent height at 8 inches or more and that openings must be covered in 24 mesh. This requirement should be included in WDEQ Chapter 12, Section 15 (i).”

Department Response: WDEQ/WQD considered the comment and proposes adding the following to passage 15(j): “Non-downturned vents or roof vents must extend a minimum of eight inches from the top of the tank to a #24 mesh screened opening, and the vent opening is to be covered by a protective shroud to the bottom of the screen.” This modification will ensure systems will comply with EPA’s SDWA requirements during sanitary survey inspections.

15 (f)

EPA Region 8: EPA Region 8 noted “Section 15 does not reference TSS 7.0.7 and it does not include the requirement for water storage tank overflows to be 12 – 24 inches above the ground surface. Overflows are typically brought down to an elevation between 12 and 24 inches above the ground surface to control the discharge water from the top of water storage tanks. This requirement should be included in WDEQ Chapter 12, Section 15 (f)”

Department Response: WDEQ/WQD considered the comment and proposes modifying Section 15(h) to the following, “Overflow lines shall not be considered as vents and overflow lines shall terminate between 12 and 24 inches above ground surface.” This modification will ensure systems comply with EPA’s SDWA requirements during sanitary survey inspections.

Section 16

16(l)(ii)(B)

Lorie Cahn Ms. Cahn identified a typo of an extra “of” in the passage.

Department Response: WDEQ/WQD considered the comment and has corrected
*Proposed Revisions to Water Quality Rules, Chapter 12, Design and Construction Standards for Public Water Systems
Analysis of Written Comments
Docket 22-3103
Comments Received between January 27, 2023 and March 14, 2023*

the passage.

Section 17

17 (d)(v)

EPA Region 8: EPA Region 8 noted “Laboratory sink traps are allowed to have traps constructed of lead. The EPA Strategy to Reduce Lead Exposures and Disparities in U.S. Communities dated October 2022 has a key goal to reduce community exposures to lead sources.”

Department Response: WDEQ/WQD considered the comment and recommends removing lead from the passage.