

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

FILED

AUG 30 2004

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF CHAPTERS 2, 7, 10 AND 18)
PROPOSED RULE REVISIONS)
WYOMING WATER QUALITY)
DIVISION RULES AND REGULATIONS)

STATEMENT OF PRINCIPAL REASONS

The Department of Environmental Quality, Water Quality Division, pursuant to the authority vested in it by the Act, Wyoming Statutes 35-11-101 et seq., proposes to amend and revise Chapter 2, and remove Chapters 7, 10 and 18 of the Wyoming Water Quality Rules and Regulations. Chapter 2 contains the procedures for applying for, drafting, issuing and complying with National Pollutant Discharge Elimination System (NPDES) permits; Chapter 7 contains NPDES requirements specific to oil and gas producers, in addition to the requirements of Chapter 2; Chapter 10 contains NPDES requirements specific to coal mining facilities, in addition to the requirements of Chapter 2; and Chapter 18 contains provisions and requirements for developing general NPDES permits. This proposal constitutes a major revision of Chapters 2, pulling the relative contents of Chapters 7, 10 and 18 into Chapter 2.

Background

Chapter 2 - Discharges, Permit Regulations for Wyoming

The Federal Water Pollution Control Act (the Act) of 1972, as amended by the Clean Water Act (CWA) of 1977 and the Water Quality Act of 1987, gives the Environmental Protection Agency (EPA) the authority to regulate the discharge of pollutants to waters of the United States. The Act provides broadly defined authority to establish the National Pollutant Discharge Elimination System (NPDES) Permit Program, define pollution control technologies, establish effluent limitations, obtain information through reporting and compliance inspections, and take enforcement actions when violations occur.

The Code of Federal Regulations, Chapter 40 Part 123 provides procedures for States to assume responsibility for implementing the NPDES Permit Program. On November 1, 1974 Wyoming Governor Stan Hathaway submitted a request to the EPA for Wyoming to conduct a state permit program pursuant to the provisions of the NPDES under Section 402 of the Act of 1972. On January 30, 1975 pursuant to Section 402 (c) of the Act, the EPA approved the Wyoming Department of Environmental Quality (WDEQ) NPDES program and suspended the issuance of NPDES permits by EPA, with a few exceptions. The Wyoming NPDES program authority was amended on September 24, 1991 to include state authority for issuance of general permits.

The NPDES program conducted by the WDEQ must, at all times, be in accordance with Section 402 of the Act, all guidelines promulgated pursuant to Section 304 (h) (2) of the Act, and the Memorandum of Agreement between the EPA Regional Administrator and the Director of the WDEQ.

The Wyoming discharges/permit regulations are contained in Chapter 2 of the Wyoming Water Quality Rules and Regulations. The existing discharges/permit regulations were originally approved in 1974 and have never been revised.

Chapter 7 - Surface Discharge of Water Associated with Production of Oil and Gas

The discharge of water associated with the production of oil and gas is a historical practice and one of value to many landowners, wildlife, and the state. EPA regulations at 40 CFR 435.50 allow for the surface discharge of produced water provided the following conditions are met:

1. The discharge is located west of the 98th meridian;
2. The produced water is of good enough quality to be used for wildlife or livestock watering, or other agricultural uses, and the produced water is put to such use during the period of discharge; and
3. The oil and grease concentration does not exceed 35 mg/l.

The state was generally satisfied with the final form of the federal regulation. However, the allowable oil and grease concentration of 35 mg/l was higher than what had been demonstrated to be achievable and would result in a surface sheen. In addition, the state had data from its own sampling, as well as the sampling of the dischargers, which showed that a properly operated and maintained system consisting of a heater treater followed by a series of skim ponds could consistently meet an oil and grease limitation of 10 mg/l.

In 1978, Wyoming adopted its own produced water effluent regulations, within the general framework of the federal regulations, consisting of the following effluent standards:

Summary of Produced Water Effluent Limitations

<u>Parameter</u>	<u>Standard</u>
Chlorides	2,000 mg/l
Sulfates	3,000 mg/l
Total Dissolved Solids	5,000 mg/l
Oil and Grease	10 mg/l
pH	6.5 – 8.5 standard units
Toxic Substances	None in concentrations or combinations that are toxic to humans, animal, or aquatic life

Because the state's oil and grease standard was more restrictive than the federal standard, EPA had no objection to that part of the state regulation. In addition, the state took the position that any discharge

meeting the limitations shown above was suitable for stock and wildlife use, and assumed that the water was actually being put to such use. EPA Region VIII, which has oversight authority for Wyoming's NPDES program, accepted this approach.

Chapter 10 - Performance/Design Standards for Surface Coal Mining Sedimentation Control Facilities

In the mining of coal, process wastewaters from pit dewatering and other operational functions are generated. Additionally, runoff of precipitation and/or snow melt from disturbed areas can carry significant sediment into receiving streams. The federal effluent limitations for the discharge of water associated with the mining of coal are established in 40 CFR Part 434. These regulations describe categorical effluent limits for coal preparation plants and associated areas, acid and ferruginous mine drainage, alkaline mine drainage, and post-mining areas for best available technology economically achievable (BAT), best practicable control technology currently available (BPT), and new source performance standards (NSPS). A modification of the NSPS effluent limits for alkaline mine drainage and post-mining areas were used as the basis for the effluent limits set forth in Chapter 10, Chapter 10 was adopted in 1985. The following standard effluent limits are set forth in Chapter 10:

<u>Effluent Characteristic</u>	<u>Daily Average</u>	<u>Daily Maximum</u>	<u>Instantaneous Maximum</u>
Total Suspended Solids (mg/l)	30	45	90
Total Iron (mg/l)	3.0	6.0	9.0
Total Manganese* (mg/l)	2.0	4.0	6.0
pH (standard units)	N/A	N/A	6.0-9.0

*Applicable only when pH of discharge is less than 7.0 standard units.

Chapter 10 also contains, in Appendix A, minimum design standards for surface coal mining sedimentation control facilities subject to permitting under Water Quality Rules and Regulations, Chapter 3. The provisions of Appendix A were incorporated into Chapter 10 to consolidate the NPDES permitting rules into a single rule package. Through an internal working agreement with the Land Quality Division (LQD) and the Water Quality Division (WQD), reviews of the sedimentation control facilities for compliance with the requirements of Appendix A are conducted by the LQD. The objective of these standards is to ensure that the effluent limitations identified in Chapter 10 are achieved.

Chapter 18 - General NPDES Permits

General permits are designed to cover categories of dischargers, except those with individual permits, within a specified geographic area. Chapter 18, which gives the WDEQ the authority to issue General NPDES permits, was approved by Governor Mike Sullivan in June 1991. Since the adoption of Chapter 18, general permits have been issued for NPDES storm water discharges, temporary discharges and for specific types of coal bed methane discharges.

Principal Reason for Revision of Rules

Chapter 2 has been in effect since 1974, Chapter 7, since 1978, Chapter 10, since 1985, and Chapter 18 since 1991. Since promulgation of each of these rules, various changes in the state and federal water quality protection programs have occurred. Chapter 2 of the Wyoming Water Quality Rules and Regulations contains the requirements for obtaining and issuing NPDES permits. This revised rule, once adopted, not only will become the state requirement, but will be submitted to the United States Environmental Protection Agency (EPA), Region VIII for approval under the Federal Clean Water Act as the applicable federal requirements in the State of Wyoming.

Specifically, these rules are being revised to:

1. Update and revise permit application and issuance requirements and procedures to be consistent with changes in state and federal water quality protection programs.
2. Consolidate the NPDES requirements and procedures into one comprehensive rule.
3. Maintain Wyoming's primacy for delegated programs of the federal Clean Water Act.

Summary of the Proposed Major Revisions

Restructuring of the Rule

The proposed rule has been restructured to enable the incorporation of Wyoming Water Quality Rules and Regulations Chapters 7, 10 and 18; to incorporate applicable provisions of the federal regulations; and to make the proposed rule easier to follow by adding an expanded table of contents and category specific appendices. In addition, the name of the state permitting program has been changed from National Pollutant Discharge Elimination System (NPDES) to Wyoming Pollutant Discharge Elimination System (WYPDES) to clarify the distinction between federal and state issued discharge permits.

Addition of Exclusions

The federal regulations identify categories of discharges that are not subject to discharge permitting requirements in 40 CFR 122.3. The list of exclusions applicable to the state program have been added to Section 2 (Applicability) of the proposed rule to clarify the types of discharges to surface waters of the state that are subject to regulation.

Definition Changes (Section 2)

This section, which is now Section 3 in the rule, has been revised to ensure consistency among the various state and federal regulations when using these terms. In addition, terms from Chapters 7, 10 and 18 have been incorporated into this section.

Definition of "Tributary"

The definition of "tributary" was established in Wyoming Water Quality Rules and Regulations Chapter 1, Wyoming Surface Water Quality Standards promulgated in July 2001. The definition in this rule is consistent with the definition contained in Chapter 1. A tributary is considered a surface water of the state. For consistency the definition of "surface waters of the state" has been modified to mean the same as the definition as provided in Chapter 1.

Application for Permit

Because this rule was written in 1974 when the NPDES program was first started in Wyoming, several parts of this section are outdated and no longer applicable. For example, all of the facilities that would have filed applications with the EPA would by now have been reverted over to the Wyoming NPDES program. Therefore, this section has been updated and restructured to reflect current rules and practices for filing for an application to discharge.

Completeness Review

Based on public comment, it has been concluded that it is a reasonable expectation for an applicant to be advised of the results of the completeness review before the end of the 180 day process. Therefore, a provision that the DEQ notify the applicant of application completeness or deficiency within 45 days of receipt of the application has been added to Section 5 (Effluent Permits).

It is also recognized that there may be circumstances when a completeness review may not be completed within 45 days. Therefore, to address these circumstances, a provision was added to Section 5 (Effluent Permits) that explains the administrator's notification procedures when a completeness review is not complete within 45 days.

General Conditions

This section corresponds to 40 CFR 122.41 "Conditions applicable to all permits." Changes to this section have been made to provide clarity to the administration of the NPDES program and substantive equivalency to federal regulations.

Variations

Consistent with 40 CFR 122.21 (m), (n) and (o) this section describes the applicability and conditions for obtaining a variance from permit effluent limitations. This section also describes the decision making process for granting or denying variance requests.

Reissuance of Permits

Consistent with 40 CFR 122.46 this section currently limits the duration of NPDES permits to a maximum of five years. The provisions of 40 CFR 122.6 (d) allow authorized states to administer the NPDES program to continue EPA or state-issued NPDES permits until the effective date of the new permit. On occasion, when complex issues are raised on permit renewals, resolution of the issues may not be possible before the permits expire. Extension of the permit term is often need to resolve these issues.

In an effort to facilitate adequate responses to public comment, provide a flexible administrative permitting process and to limit unnecessary economic hardship on the regulated community, the WDEQ has included a provision to allow the administrative extension of existing permits, until a renewal permit is issued.

Public Meetings and Hearings

Section 16 (Public Meetings) allows interested parties to request a hearing with respect to a NPDES permit application. Currently, this section states that the hearing will be held by the Environmental Quality Council. This section has been modified to allow public meetings to be held by the Water Quality Division Administrator prior to permit issuance, if it is deemed that there is a significant level of public interest. Section 17 (Hearing) describes the right of persons to appeal decisions made by the WDEQ on permit issuance or denial, to the Environmental Quality Council, has also been retained. This modification is consistent with the procedures for other Water Quality Division rules and the WDEQ Rules of Practice and Procedure.

Addition of Storm Water Discharge Permitting

In 1987, Congress amended the Clean Water Act to require implementation of a comprehensive approach for addressing storm water discharges under the NPDES program. The federal storm water regulations incorporated into the Clean Water Act in 1987 are referred to as Phase I and can be found in 40 CFR 122.26. The current Chapter 2 regulations do not specifically address storm water regulations.

Over the last several years, EPA has been developing the Phase II Storm Water Rules. The Final Storm Water Phase II Rule was signed by EPA Administrator Carol Browner on October 29, 1999 and published in the Federal Register on December 8, 1999.

The Storm Water regulations cover three main categories of activities: Construction, Municipal, and Industrial activities. Specifically, the Storm Water Phase I Rules require NPDES discharge permits for the following: (a) construction activities which disturb five acres or greater; (b) municipalities with populations of greater than 100,000 thousand; and (c) ten categories of industrial activities based on Standard Industrial Classification (SIC) codes.

Phase II of the Storm Water Regulations has expanded the coverage in some areas and provided exemptions in other areas. The primary changes include: (a) expanding the universe of regulated construction activities to include construction projects that disturb between one and five acres; (b) expanding coverage of municipalities to census-defined urbanized areas with a population of 50,000 or greater and to other small municipal separate storm sewers outside of urbanized areas designated by DEQ that impact or have the potential to impact water quality; and (c) providing certain exemptions applicable to industrial activities (currently regulated under Phase I Storm Water Rules) that can meet specific criteria to demonstrate no exposure to storm water.

Because there is no reference to the storm water discharge permitting requirements in the existing Chapter 2 rule and because the EPA has recently promulgated new rules regarding Storm Water NPDES permitting requirements, a new section has been added to addresses storm water discharges. It is also important to define the criteria by which small municipal separate storm sewers would be required to obtain a permit.

Addition of Mitigation Procedures for Dredge and Fill Activities in Isolated Waters

In January of 2001, the United States Supreme Court decided in *Solid Waste Agency of Northern Cook County, petitioner v. United States Army Corps of Engineers, et. al.* that the U.S. Army Corps of Engineers jurisdiction to regulate discharges of dredged and fill material under Section 404 of the Clean

Water Act does not extend to many isolated waters and wetlands. In its decision, the court essentially determined that jurisdiction over such waters is a state rather than a federal power.

As a result of the Court's decision, the Corps of Engineers has discontinued regulation of many isolated waters under the Section 404 permitting program. Though these waters are within the jurisdiction of the state, there are currently no procedures contained in the Water Quality Division's permitting rules to fill the gap left by the court's action.

Section 12 of the Wyoming Surface Water Standards (Chapter 1) prohibits the destruction, damage or impairment of naturally occurring wetlands except when mitigated through an authorized mitigation process. The Chapter 2 rules have been amended to include a new section describing a process for the review and approval of mitigation for impacts associated with the filling of isolated wetlands that are outside federal jurisdiction.

Appendices A through F and K through N

Category specific appendices were added to make the rule easier to read. Appendix A was provided as a quick and easy reference to Standard Industrial Classification Codes regulated by the Industrial Storm Water Program. Appendices B through F and K through N are consistent with federal NPDES requirements found in the Code of Federal Regulations. Appendices G and J contain some provisions which are more stringent than the federal rule and are explained in the Cross Talk Table below.

Appendix G (Concentrated Animal Feeding Operations)

Appendix G - "Criteria for Determining a Concentrated Animal Feeding Operation and Additional Requirements Applicable to New and Existing Concentrated Animal Feeding Operations" was added as an appendix to reflect the federal CAFO designation criteria and to reflect current application requirements necessary to ensure compliance with federal requirements and surface water quality standards.

The proposed provisions of Appendix G are consistent with 40 CFR Parts 122, 123 and 412 which became effective on April 12, 2003. Appendix G contains some provisions which are more stringent than the federal rule and are explained in the Cross Talk Table below.

Incorporation of Chapter 7 provision (Appendix H)

The applicable provisions of chapter 7 were included in the proposed rule as Appendix H - "Additional Requirements Applicable to Produced Water Discharges from Conventional Oil and Gas Production Facilities." Appendix H also includes provisions applicable to discharges of produced water from coal bed methane operations.

Incorporation of Chapter 10 provisions (Appendix J)

Appendix J - "Additional Requirements Applicable to Coal Mining Operations" was originally contained in Chapter 10. The requirements applicable to Coal Mining Operations have been modified to reflect differences between Chapter 10 and the federal rule and to reflect recent changes to the federal rule applicable to Western Alkaline Coal Mines. Appendix J contains some provisions which are more stringent than the federal rule and are explained in the Cross Talk Table below.

Incorporation of Chapter 18 provisions

The applicable provisions of Chapter 18 have been incorporated into Section 4 "General Permits" of the proposed rule. Section 4 describes applicability and permitting process for general permits.

Provisions More Stringent than Federal Regulations - Cross Talk Document

Proposed State WYPDES Rule	Federal EPA Counterpart	Rational for More Stringent Provision
<p>Section 2 (a) states that these rules apply to discharges to "surface waters of the state".</p> <p>Section 2 (d) states "All references to the CWA where there is reference to the phrase "water(s) of the United States" shall be interpreted as "surface waters of the state" for purposes of this rule.</p>	<p>40 CFR Part 122.1 (b) "Scope of the NPDES permit requirement. (1) The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States"</p>	<p>The definition of "surface waters of the state" was established in Wyoming Water Quality Rules and Regulations Chapter 1 - Wyoming Surface Water Quality Standards, promulgated in July 2001. The definition in the proposed rule is consistent with the definition in Chapter 1. In addition, the definition of "waters of the state" in W.S. 35-11-103(c)(vi) is much broader than the federal definition of "waters of the United States".</p>
<p>Section 2 (a) (iii) applicability to "Point source discharges of dredged or fill material into isolated wetlands which are not subject to regulation by the Army Corps of Engineers under Section 404 of the CWA or mining activities subject to a permit or authorization from the Wyoming Department of Environmental Quality, Land Quality Division.</p>	<p>No Federal Counterpart</p>	<p>Discharges pollution or wastes to isolated wetlands are consistent with the federal regulations.</p> <p>However, a permitting program for discharges of dredged or fill material into isolated wetlands is needed to provide a mechanism for any person to comply with the requirements in WS 35-11-301 (Environmental Quality Act) and the surface water quality standard in Wyoming Water Quality Rules and Regulations Chapter 1, <u>Section 12 - Protection of Wetlands</u>.</p> <p>A person conducting some activity such as road construction, mining, housing development or other project that will destroy a wetland area must be authorized to do so by the Department of Environmental Quality (DEQ). Except for mining activities which are authorized by mining permits, there is no mechanism to authorize the destruction of an isolated wetland from other types of construction. Prior to 2001, the necessary authorization occurred under Section 404 permits, issued jointly by the U.S. Army Corps of Engineers and DEQ. This authorization procedure still occurs on all waters in the state except for isolated wetlands. In 2001, the U.S. Supreme Court ruled that Clean Water Act jurisdiction did not extend to intra state isolated waters and that the regulation of such water was appropriately the responsibility of state and local authorities. Subsequent to the court ruling, the Corps of Engineers has ceased regulating construction activities on isolated waters in Wyoming. Currently, a person needing to fill an isolated wetland, which would be considered a "point source discharge of pollution" and certainly would alter the physical properties of the wetland, needs a permit to do so but cannot obtain one.</p>

<p>Section 5 (c) (i) (G) "A requirement that, if requested, by the administrator or the administrator's authorized agent, the permittee shall provide access to physical locations associated with this permit including, but not limited to, well heads, discharge points, reservoirs, monitoring locations, and any waters of the state associated with the permit at the point of discharge."</p>	<p>40 CFR 122.41 (i) Inspection and entry. The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to: (1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under conditions of this permit; (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit; (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.</p>	<p>This provision was added to the proposed rule to ensure the administrator or his authorized agent, through the permittee, has the legal right to conduct compliance inspections. Specifically, this provision is intended to ensure that the landowner, who is not the permittee, will allow the facility and operations associated with the facility to be inspected by the DEQ without condition or trespass.</p> <p>The DEQ recognizes that W.S. 35-11-109 (a) (vi) provides, in part, that the director of DEQ shall: Designate authorized officers, employees or representatives of the department to enter and inspect any property premise or place, except private residences, on or at which an air, water, or land pollution source is located or is being constructed or installed, or any premises in which any records required to be maintained by a surface coal mining permittee are located. Persons so designated may inspect and copy any records during normal office hours, and inspect any monitoring equipment or method of operation required to be maintained pursuant to this act at any reasonable time upon presentation of appropriate credentials, and without delay, for the purpose of investigating actual or potential sources of air, water, or land pollution and for determining compliance or noncompliance with this act, and any rules, regulations, standards, permits or orders promulgated hereunder.</p>
<p>Section 6 - No State Counterpart</p>	<p>122.26 (b) (15) (i) (B) "Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Director that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis."</p>	<p>It is questionable whether this "TMDL waiver" has any practical applicability, because, for the non-impaired waters the requirements for the operator of a small construction project would actually be greater than the permit requirements. In addition, for those waters that are impaired and have an approved TMDL, it does not seem reasonable to allow construction activities to occur without implementing appropriate BMPs to minimize discharge of pollutants addressed in the TMDL.</p>

<p>Section 6 - No State Counterpart</p>	<p>122.32(e) - Storm Water - As an operator of a small MS4, am I regulated under the NPDES storm water program?: "The NPDES permitting authority may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:</p> <p>(1) The permitting authority has evaluated all waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;</p> <p>(2) For all such waters, the permitting authority has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;</p> <p>(3) For the purpose of this paragraph (e), the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and</p> <p>(4) The permitting authority has determined that future discharges from your MS4 do not have the potential to result in exceedences of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts."</p>	<p>This provision would provide an unrealistic expectation that a MS4 waiver is attainable. It is the DEQs position that this provision is unattainable, because the DEQ can not make a determination regarding the potential for future MS4 water quality standards exceedences, impairment of designated uses, or other water quality impacts.</p>
---	--	--

<p>Section 7. "This section applies to the process for approving mitigation for activities that cause the destruction damage, or impairment of naturally occurring isolated wetlands or man-made isolated wetlands used to mitigate the loss of naturally occurring wetlands.</p>	<p>No Federal Counterpart</p>	<p>The permitting program is needed to provide a mechanism for any person to comply with the requirements in WS 35-11-301 (Environmental Quality Act) and the surface water quality standard in Wyoming Water Quality Rules and Regulations Chapter 1, <u>Section 12 - Protection of Wetlands.</u></p> <p>A person conducting some activity such as road construction, mining, housing development or other project that will destroy a wetland area must be authorized to do so by the Department of Environmental Quality (DEQ). Except for mining activities which are authorized by mining permits, there is no mechanism to authorize the destruction of an isolated wetland from other types of construction. Prior to 2001, the necessary authorization occurred under Section 404 permits, issued jointly by the U.S. Army Corps of Engineers and DEQ. This authorization procedure still occurs on all waters in the state except for isolated wetlands. In 2001, the U.S. Supreme Court ruled that Clean Water Act jurisdiction did not extend to intra state isolated waters and that the regulation of such water was appropriately the responsibility of state and local authorities. Subsequent to the court ruling, the Corps of Engineers has ceased regulating construction activities on isolated waters in Wyoming. Currently, a person needing to fill an isolated wetland, which would be considered a "point source discharge of pollution" and certainly would alter the physical properties of the wetland, needs a permit to do so but cannot obtain one.</p>
<p>Appendix G (b) (v) and (vii) and Appendix G (m) include buffalo operations as regulated CAFOs.</p>	<p>40 CFR 122.23 definitions for large concentrated animal feeding operations (CAFOs) and medium CAFOs, do not include buffalo. 40 CFR 412 Subpart C applies to only Dairy Cows and Cattle other than Veal Calves.</p>	<p>The federal CAFO regulations no longer uses animal units to define regulated CAFO operations. Instead, CAFOs are defined by size of operation based on specific types of animals, which do not include buffalo. There are buffalo feeding operations in Wyoming that may confine over 1500 head. Although there are some minor differences in waste characteristics, 1500 head of buffalo have an equal potential to impact surface water as do 1500 head of beef cattle. Therefore, to ensure appropriate protection of Wyoming surface waters, it is reasonable to include these operations in the state discharge permit regulations.</p>
<p>Appendix G (k), (l), (m) and (n) apply to Large and Medium CAFOs.</p>	<p>40 CFR 412 Subparts A through D apply only to Large CAFOs.</p>	<p>Although the federal rule allows the use of Best Professional Judgement by the permitting authority in establishing effluent limitations for Medium CAFOs, the DEQ elected to apply the same requirements to all CAFOs. The rationale for applying the same requirements are 1) In accordance with the DEQs existing CAFO Compliance Strategy, Medium CAFOs are encouraged to work with local conservation districts and other agricultural agencies to remove the unacceptable conditions which will cause the AFO to be classified as a CAFO. 2) Where the unacceptable conditions are not corrected, wether due to circumstances or lack of cooperation on the part of the operator, it is the judgement of the DEQ that the facility should have the same requirements as any other CAFO.</p>
<p>Appendix H (c) (v) "An effluent limitation of 10 mg/l for oil and grease..."</p>	<p>40 CFR 435.52</p>	<p>This provision is consistent with the provisions of Chapter 7, adopted in 1979 and incorporated into these rules. It was determined in 1979, based on data collected from oil treater discharges, that 10 mg/l was technologically achievable and that generally, any discharge of oil and grease greater than 10 mg/l would result in a sheen.</p>

<p>Appendix H (b)(viii) "The following effluent limitations are protective for stock and wildlife consumption.... (i) Chlorides. (ii) Sulfates (iii) Total Dissolved Solids and Specific Conductance. (iv) pH</p>	<p>No Federal Counterpart.</p>	<p>Although there is no direct federal counterpart to these effluent guideline limitations, the federal rule at 40 CFR 435.50 and 435.51 does require discharged water be of good enough quality to be used for wildlife or livestock watering or other agricultural uses. It was determined during the development of the Chapter 7 rules in 1979 that the limitations of 2,000 mg/l chlorides, 3,000 mg/l sulfates, 5,000 TDS (Equivalent to 7,500 Specific Conductance) and a pH of 6.5 to 8.5 would be good enough quality for wildlife and livestock watering. The pH limitation has been modified to 6.5 to 9.0 to reflect changes in Water Quality Standards.</p>
<p>Appendix J (b)(i) Construction application requirements and (ii) Minimum design standards for sedimentation control facilities.</p>	<p>No Federal Counterpart</p>	<p>The applicable provisions to Chapter 3 were incorporated in the existing state NPDES Rules and Regulations Chapter 10 in 1985 to address minimum design standards for surface coal mining sedimentation control facilities. The provisions of Chapter 10 were incorporated into the proposed Chapter 2 rule to consolidate the NPDES permitting rules into a single rule package. Through an internal working agreement with the Land Quality Division (LQD) and the Water Quality Division (WQD), reviews of the sedimentation control facilities for compliance with the Chapter 10 requirements are done by the LQD and a chapter 3 WQD application is not required.</p>
<p>Appendix J (c) (ii) includes an instantaneous maximum for total suspended solids, total iron, total manganese and pH.</p>	<p>No Federal Counterpart</p>	<p>This provision was carried over from the existing Chapter 10 regulations adopted in 1985. The federal rule at 40 CFR 434 provides for a daily maximum effluent guideline limitation equivalent to the daily maximum in the state rule. The term "Daily maximum" in the case of Coal Mining Operations is defined as the value determined by an analysis of a properly preserved composite sample composed of a minimum of four grab samples collected at equally spaced two hour intervals and proportioned according to flow at the time of sampling. The Instantaneous Maximum is incorporated into Appendix J to provide an alternative means of compliance that recognizes short duration discharges and is less resource intensive.</p>

Rulemaking Process

On April 9, 2001 a public notice announcing the department's intention to revise the NPDES regulations was released for the purpose of soliciting comments relating to the proposal. A public meeting was held via the Wyoming Video Conference System on May 15, 2001 during which the department accepted both oral and written comments. Comments received as a result of this public outreach were considered in the drafting of the proposed rule revisions.

The first draft of the proposed rules was made available for public comment on March 12, 2002. The proposed rule was presented to the Water and Waste Advisory Board at their regular meeting on April 23, 2002, where oral and written comments were accepted. The meeting was broadcast via the Wyoming Video Conference System. The Water and Waste Advisory Board extended the public comment period until May 10, 2002. Comments received were considered in the second draft of the proposed rule revision, and a formal response to public comment was prepared. In addition, a formal response to EPA comments was prepared.

The second draft of the proposed rule was presented to the Water and Waste Advisory Board at their regular meeting on December 4, 2002, where oral and written comments were accepted. The meeting was broadcast via the Wyoming Video Conference System. The Water and Waste Advisory Board

extended the public comment period until January 20, 2003. Comments received were considered in the third draft of the proposed rule revision, and a formal response to public comment was prepared.

The third draft of the proposed rule was presented to the Water and Waste Advisory Board at their regular meeting on June 12 2003, where oral and written comments were accepted. Comments received were considered in the fourth draft of the proposed rule revision, and a formal response to comments was prepared.

The fourth draft was presented to the Water and Waste Advisory Board at their regular meeting on September 8, 2003. The meeting was broadcast via the Wyoming Video Conference System. The Water and Waste Advisory Board Recommended the draft rule for formal rule making with suggested modifications.

On May 17, 2004 the draft rule as recommended by the Advisory Board was presented to the Environmental Quality Council (EQC) in Casper, where oral and written comments were accepted. Comments were considered in the first EQC redraft of the rule, and a formal response to public comment was prepared.

On July 7, 2004 the EQC held a meeting in Cheyenne to address the Wyoming Department of Environmental Quality, Water Quality Division (WQD) with specific questions and concerns. The WQD responded to questions and provided written responses to unanswered questions to the EQC for discussion at a follow-up meeting on August 18th in Laramie.

On August 18th, 2004 the EQC held a meeting in Laramie to further discuss questions and concerns on the proposed rule. The EQC unanimously voted to adopt Chapter 2 with a minor revision to Section 4 (1)(iii).

Compliance with Federal Law and Regulation


The provisions of this rule are necessary for the state to comply with Section 402 of the Federal Water Pollution Control Act (Clean Water Act).

Conclusion

The Council has determined that the adoption of this rule is necessary to update and consolidate the requirements of the NPDES permit program to provide the department with adequate authority and flexibility to operate the program and to maintain primacy under the requirements of the Clean Water Act and the requirements of W.S. 35-11-301(a) (i), (ii) and (iv) and W.S. 35-11-302 (a) (ii) and (v) to provide improved protection to public health and the safety for public water supplies.

EXECUTED THIS 27th DAY OF August, 2004.

FOR THE ENVIRONMENTAL QUALITY COUNCIL



Chairperson