

Proposed Revisions to Water Quality Rules and Regulations Chapter 5

Response to Comments For Comment Period Ending September 22, 2017



December 18, 2017

Prepared by:

Wyoming Department of Environmental Quality

Water Quality Division

Water and Wastewater Program

DRAFT RESPONSES TO CHAPTER 5 COMMENTS

Commenters:

City of Gillette
Clearview Improvement & Service District
Marge Bedessem, Water and Waste Advisory Board

Comments and Responses

City of Gillette: Do we need a responsible "in-charge" operator at the same certification level as the designated facility at all times for all staffing shifts?

Department Response: The current version of Chapter 5, adopted in 2012, requires at Section 15(a), Section 15(a)(i), and Section 15(c) that facility owners designate a responsible charge operator and that for facilities with multiple shifts, that an operator certified to the level of the facility be available for each shift, and that the responsible charge operator and any substitute responsible charge operator are certified at a level equal to or greater than the facility for which they are responsible.

For the wastewater treatment facility that is classified as a Level 4 facility, a Level 4 responsible charge operator must be available for each shift. At Section 15(a)(ii), we have added a provision that states that "owners shall ensure that either the responsible charge operator or the substitute responsible charge operator is capable of being on-site within eight (8) hours and shall initiate the appropriate operational and technical actions within one (1) hour of being notified that there is a problem at the facility." The proposed revision does not require that the responsible charge operator or substitute responsible charge be on site at all times.

City of Gillette: If so, do we need multiple responsible "in-charge" operators for each facility? E.g. one Level 4 operator for the wastewater plant and one Level 2 operator for the wastewater collection system at the same time during the same shift?

Department Response: Chapter 5 currently requires a minimum of one responsible charge operator per facility, per Section 15(a). Each facility must have a designated responsible charge operator. However, one operator may be the responsible charge operator for multiple facilities if they hold the appropriate certifications.

DRAFT RESPONSES TO CHAPTER 5 COMMENTS

City of Gillette: In an attempt to clarify the certification license, training, experience, continuing education and minimum contact hour requirements, can the existing chart located on DEQ's website, from the following web link
<http://deq.wyoming.gov/media/attachments/Water%20Quality/Operator%20Certification/Documents/WY-Licensing-Requirements.pdf>
.... be inserted into the proposed Chapter 5 revisions instead of the proposed language? The proposed language is somewhat awkward and confusing. A chart or table should clarify.

Department Response: WDEQ/WQD considered this request. While we agree that the "Water and Wastewater Operator Certification Program" table from WQD's website is a helpful guide, we believe the current format, which is in the approved Secretary of State format, is the most appropriate way to convey some of the individual requirements. WDEQ/WQD will ensure the table is updated as needed upon adoption of the proposed rule.

City of Gillette: Who is going to enforce and implement these rule changes?

Department Response: When the rule is signed into effect by the Governor, then the Department of Environmental Quality, Water Quality Division (WQD) will enforce the rule.

City of Gillette: What is the effective date of the proposed rule change?

Department Response: The rules will go into effect after the Environmental Quality Council has voted to adopt them and after the Governor signs them and files them with the Secretary of State. We do not have an exact date at this time, but it will likely be in 2018. WQD will notify our interested parties of this rulemaking when the proposed rule is in effect.

City of Gillette: If we are in violation, after the proposed rule changes take effect, what are the consequences? A fine? If so, what will the fine be? Will a corrective action plan be considered in lieu of a fine to possibly hire or retain contract operators if the City does not have sufficient coverage?

Department Response: Enforcement is determined at the Administrator's discretion and by the severity of the violation. Wyoming Statute 35-11-901(a) states that, "any person who violates, or any director, officer, or agent of a corporate permittee who willingly and knowingly authorizes, orders, or carries out the violation of

DRAFT RESPONSES TO CHAPTER 5 COMMENTS

any provision of the Environmental Quality Act, or any rule, regulation, standard or permit adopted hereunder...is subject to a penalty not to exceed \$10,000.00 for each violation for each day during which the violation continues, a temporary or permanent injunction, or both a penalty and an injunction.” However, 35-11-901(a)(ii) and 35-11-701(c) both include provisions concerning the Administrator’s discretion to allow for conference and conciliation and for negotiated settlements that may include implementation of compliance schedules.

City of Gillette: Can the City's "on-call" operators still be the "primary" on call if they have a lower level license?

Department Response: WDEQ/WQD is proposing to clarify the existing passage that requires operators be available. As long as an adequately certified responsible charge is available to “initiate the appropriate operational and technical actions within one (1) hour of being notified of a problem at the facility,” per the proposed passage at Section 15(a)(ii). Inadequately certified operators may not make operation and maintenance decisions, per the proposed passage at Section 15(h). The current rule requires availability; our proposal clarifies what the availability needs to entail at the operator level.

City of Gillette: Can our cross-trained operators still cover both water/wastewater treatment, distribution and collection facilities, or do we need to separate these duties?

Department Response: Yes, the cross-trained operators may continue coverage. However, the operators must be adequately certified for the facility that they are operating.

City of Gillette: If the City copies these requirements into our employee job descriptions, what is a reasonable time period one can expect to obtain a level 4 license if they are hired as an entry-level operator? Three years? Four years? Five years?

Department Response: WDEQ/WQD estimates that it would take a minimum of three years for an operator to obtain a level 4 certificate if they are hired at entry level.

City of Gillette: What training programs through Wyoming Community Colleges or the WDEQ are available to meet education criteria for the required certification requirements?

DRAFT RESPONSES TO CHAPTER 5 COMMENTS

Department Response: WDEQ/WQD maintains a web page of training opportunities at <http://deq.wyoming.gov/wqd/operator-certification/resources/training-opportunities/>

Training is available through as classroom training, through operator conferences, via correspondence course, as an online course, as a webinar or webcast, or as an on-site training. Links on the web page stated above show the variety of approved training providers. WDEQ/WQD also maintains a web page of recommended exam study materials at <http://deq.wyoming.gov/wqd/operator-certification/resources/study-materials/>

City of Gillette: What is the total estimated training cost to obtain a Level 4 license if an employee is hired as an entry level employee with no experience?

Department Response: The training cost from entry level to Level 4 varies from operator to operator based on which training options they choose and from which training providers.

City of Gillette: What continuing education programs are available through Wyoming Community Colleges or the WDEQ to meet the 24 hour continuing education requirements?

Department Response: WDEQ/WQD lists training programs for continuing education on our website. We have previously partnered with other training providers to offer continuing education at operator conferences. Details of upcoming training opportunities are listed on the website, including links to community college trainings.

City of Gillette: What is the average continuing education training cost per license?

Department Response: WDEQ/WQD does not have an estimate of an exact cost because the exact amount may vary by training opportunity and type of training, but we typically recommend budgeting a minimum of \$200 per year, per license.

Section 9

9(b)

Marge Bedessem, Water and Waste Advisory Board: Ms. Bedessem requested the addition of “unless as provided in (ii) below” to the passage.

DRAFT RESPONSES TO CHAPTER 5 COMMENTS

Department Response: WDEQ/WQD changed the passage as requested.

Section 9(b)(i)

Clearview Improvement & Service District: Clearview Improvement & Service District states that Section 9(b)(i) should be modified to read " ... initiate or approve the appropriate operational or technical actions..." and that governing board action would be required prior to rectifying the situation.

Department Response: WDEQ/WQD envisions that there may be situations where the responsible charge operator must enlist the aid of uncertified persons or other operators to accomplish the required action within the first hour after notification of the problem. Some problems that require an immediate response, however, may take days, weeks, or months to resolve completely. WDEQ/WQD chose to use the word 'initiate' to encompass these potential situations. WDEQ/WQD does not feel that the addition of "or approve" will clarify the responsibilities of the responsible charge operator.

WDEQ/WQD does not agree that delaying an operator's response to a problem in order to obtain owner, manager, or governing board approval is appropriate. Owners retain operators with the expectation that they are responsible for making operational and technical decisions an initiating a proper response within one hour of notification of a problem. Operators must either initiate the correct actions themselves or direct a substitute responsible charge operator or a non-certified individual to do so. Requiring an operator to wait for approval from an owner, manager, or governing body before responding to an operational or technical problem could endanger public health and the environment.

Section 10

Section 10(b):

Clearview Improvement & Service District: Clearview Improvement & Service District states that it may not be possible for contract operators to inspect each system that they operate on a weekly basis. Clearview Improvement & Service District states that the rule does not specify what contract operators should inspect, citing that smaller, less complicated systems would require less inspection than larger, more complicated systems. Clearview Improvement & Service District further states that the proposed rule does not specify which contract operator(s) are required to conduct inspections.

DRAFT RESPONSES TO CHAPTER 5 COMMENTS

Department Response: As stated in our response to Clearview Improvement & Service District's May 6, 2017 comment on Section 10(b), WDEQ/WQD is not proposing any revisions to Section 10(b) during this revision of Chapter 5 and the passage will remain as written. WDEQ/WQD believes that it is important for contract operators to be required to inspect each contracted facility on a regular basis. Section 10(b)(i) provides a means for owners to request an exception to weekly visits in cases where the facilities are simple, remote, capable of being operated remotely, or other extenuating circumstances.

WDEQ/WQD did not specify what contract operators should inspect because of the large variation in facilities across the state. WDEQ/WQD believes that this should be a point of negotiation between the owner or manager and the contract operator as part of developing their contract.

In this instance, WDEQ/WQD used 'contract operators' to refer to this general category of operators and does not require a weekly inspection by both responsible charge and substitute responsible charge contract operator(s).

Section 12

Clearview Improvement & Service District: Clearview Improvement & Service District believes Section 12 places an undue financial burden on their district and that it limits the cost-effectiveness of job consolidation.

Department Response: WDEQ/WQD considers multiple factors, including training costs, when considering continuing education requirements. For each certificate held, WDEQ/WQD requires 24 hours of continuing education. The 24 hours of continuing education over a three year period is at or slightly below the national average. WDEQ/WQD allows operators to select which certificate to renew with each hour of training. Operators may "split" the training hours from a training into any or all areas applicable, provided that the total hours recorded does not exceed the number of training hours. For example, a 20 hour pumps class may be applied to multiple certificates, provided that only 20 are recorded in total.

There are a variety of ways to minimize training costs and efficiently train staff and there are many opportunities for free or low-cost training. Many trainers will come to the facility at a reduced rate for larger groups. Webinar training can be done in a group setting at the facility. Facilities can also partner together for training opportunities to minimize the cost of operator training. Operator training on an individual basis will always be more costly. As stated in our response to Clearview Improvement & Service District's May 6, 2017 comment on Section 12, WDEQ/WQD is not proposing any

DRAFT RESPONSES TO CHAPTER 5 COMMENTS

revisions to Section 12(d) during this revision of Chapter 5 and the passage will remain as written.

Section 16

16(a) and 16(b)

Marge Bedessem, Water and Waste Advisory Board: Ms. Bedessem requested that WDEQ/WQD choose consistent wording of either certificate or certification in the passages located at Section 16(a) and 16(b).

Department Response: WDEQ/WQD edited 16(b) from “certification” to “certificate.”