

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

IN THE MATTER OF CHAPTER 23,)
MINIMUM STANDARDS FOR)
SUBDIVISION APPLICATIONS)
WYOMING WATER QUALITY)
DIVISION RULES AND REGULATIONS)

STATEMENT OF PRINCIPAL REASONS

Background

In 1997, the Wyoming legislature amended Wyoming Statute (W.S.) 18-5-306, “Minimum requirements for subdivision permits” to begin to require, among other things, that information be submitted to the Department of Environmental Quality (DEQ) for review to evaluate the adequacy of proposed subdivision water supply and sewage systems, and the feasibility of on-lot sewage disposal systems where those types of systems are proposed. The responsibility for the review of water supply and sewage systems lies within DEQ’s Water Quality Division (WQD). At the time, DEQ did not have statutory authority to develop regulations that established standards for ‘adequacy’ and ‘feasibility’ of these systems and developed, instead, a guidance document intended to assist applicants with an understanding of the types of information the department believed was necessary to perform its evaluation. WQD worked with an informal group consisting of local government planners and representatives from the State Engineer’s Office, Water Development Office, and others to develop the guidance document.

In 1999, the Wyoming legislature repealed and recreated W.S. 18-5-306 and included the requirement that information be submitted to DEQ for review of the ‘safety’ and ‘adequacy’ of proposed subdivision water supply and sewage systems. The new law also allows DEQ to delegate this review authority to counties, subject to the conditions set forth in the law. At the same time, the legislature also added an amendment to W.S. 35-11-302 of the Environmental Quality Act requiring that DEQ, through consultation with county commissioners and the State Engineers Office, develop standards for subdivision applications. The DEQ consulted with the County Commissioners Association and the State Engineer’s Office in developing this rule.

The Proposed Rule

Pursuant to the new law (W.S. 18-5-306(c)) subdivision permit applications filed with a county are to be provided to the DEQ for review of the safety and adequacy of the proposed sewage system and proposed water supply system. The proposed rule is intended to establish those standards that the department believes are necessary to ensure that subdivision applications demonstrate the safety and adequacy of the proposed systems pursuant to the statutory requirements. Where practical, the division is relying

upon and incorporating into the proposed rule appropriate standards taken from existing regulations. This is especially the case for applicants proposing to connect to existing water or sewer systems, or to develop new 'central' water or sewer systems.

Where applications propose the use of on-lot sewage systems, conventional septic systems generally, the division is relying upon and incorporating into the proposed rule several standards taken from existing regulations with a few exceptions. First, the proposed rule provides for an evaluation to determine whether existing 'default' isolation, or setback, distances between septic system leachfields and existing or proposed domestic use wells completed within an unconfined aquifer are adequate in protecting users of the well from potentially harmful exposure to nitrate and/or pathogenic bacteria and viruses. Where the analysis reveals that existing 'default' setbacks may not be sufficient, either an adjusted setback or use of an 'enhanced treatment system' is required.

Secondly, the proposed rule provides for an evaluation of the potential cumulative effect of nitrate loading from multiple septic systems within the proposed subdivision on downgradient domestic use, or potential domestic use, of an unconfined aquifer.

Lastly, the proposed rule acknowledges the findings of several recent studies substantiating that, especially where high transport rates exist, the potential for nitrate and pathogen contamination of drinking water wells from conventional septic systems is greatly increased. Under such circumstances the use of 'enhanced treatment systems', such as sand filters, have been shown to be cost-effective alternatives for reducing the potential for contamination of drinking water wells. In recognition of these developments the proposed rule requires under certain conditions (e.g. high groundwater velocity, fractured, faulted, or karst conditions) either adjustments to setback distances or the use of 'enhanced treatment systems' to help ensure that public health is protected.

This proposed rule will result in a more efficient review process for the both the agency and the applicants, and should result in better protection of the water resources.

Rulemaking process

The administrator of the Water Quality Division, having received the Department of Environmental Quality director's approval and having consulted with the Association of County Commissioners and the State Engineer's Office, proceeded with rulemaking, prepared and distributed a Chapter 23 outreach document on August 12, 2000 and made notice of a public meeting and solicitation of comments. DEQ held a public meeting on September 12, 2000 to solicit comments on the proposed rule. After consideration of public input, DEQ prepared the draft rule.

The Water and Waste Advisory Board considered and received public comment on the draft rule at a meeting in Laramie, Wyoming on November 14, 2000 and a meeting in Cheyenne, Wyoming on April 23, 2001 before recommending that the rule proceed to the Council. The Environmental Quality Council held a public hearing to take comment on the draft rule in Cheyenne on February 22, 2002.

One set of written comments was submitted to the Council at this hearing. At the request of the Council, the DEQ developed and provided the Council an analysis and response to comments.

The rule making process involved the Water and Waste Advisory Board, Environmental Quality Council, Legislative Services Office, Legislative Management Council, Attorney General, Governor, and the Secretary of State in accordance with the provisions of the Wyoming Administrative Procedure Act and the Environmental Quality Act.

The proposed chapter of the Water Quality Rules and Regulations is consistent with the department's mission statement and strategic plan to protect public health and the environment.

Compliance with Federal Law and Regulation

This new chapter of rules is not required by federal law or regulations.

Conclusion

The Council has determined that the adoption of this new chapter of rules is necessary to implement the requirements of W.S. 35-11-302 (a) (xi), to protect public health, safety, and the environment and to provide the department with adequate authority and flexibility to review applications for subdivision water and sewer supply systems.

EXECUTED THIS 12th DAY OF August, 2002.

FOR THE ENVIRONMENTAL QUALITY COUNCIL



Chairperson

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