

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF ADOPTING NEW)
REGULATIONS, CHAPTER 22, CAPACITY)
DEVELOPMENT STANDARDS FOR PUBLIC)
WATER SUPPLIES, WYOMING WATER)
QUALITY DIVISION RULES AND)
REGULATIONS)

STATEMENT OF PRINCIPAL REASONS

Background

Overview of Capacity Development

Billions of dollars have been spent over the last three decades to address wastewater collection and treatment needs. Although highly successful in correcting water quality problems, a significant shortcoming was realized. In some cases, state of the art facilities did not correct sewage problems. The lesson learned is that infrastructure alone does not correct problems. Systems require additional capabilities, or capacities, to ensure ongoing successful operations. Previous drinking water legislation focused on increasing contaminant lists, monitoring and enforcement. Another lesson learned is that significant advantages are realized by all stakeholders when planning and prevention replace enforcement and litigation.

The 1996 Safe Drinking Water Act (SDWA) amendments require states to obtain the authority to influence the operation of new community and new nontransient noncommunity water systems that may lack the technical, financial and/or managerial capacities. Known as capacity development, this new requirement will affect all SDWA State Revolving Fund loan recipients immediately, and all new or modified community and nontransient noncommunity water systems commencing operation on or after October 1, 1999.

Capacity development is a planning process to identify existing or potential drinking water system deficiencies and to make changes to correct or avoid those deficiencies. It is not meant to be a scorecard or a pass-fail test. All systems can improve, some more than others. Capacity development is a method that brings together operators, managers, local officials and state officials in a non-regulatory approach to examine a system's technical, financial and managerial capabilities and make any necessary corrections to ensure ongoing and continued successful operations.

These proposed rules envision capacity development as a four step process: assessment; identification; planning; and implementation.

Section 1 of the proposed rule refers to the statutory authority for these rules. The State of Wyoming currently administers the Safe Drinking Water Act State Revolving Loan Fund through Enrolled Act 57 which established additional requirements for public water supplies. The new statute requires all new or modified community and nontransient noncommunity water systems commencing operations after October 1, 1999 to demonstrate capacity development. The statute also requires the development of a strategy by October 1, 2001 to assist all community and noncommunity water systems in acquiring and maintaining capacity development.

Additionally, the 54th Wyoming legislature amended Wyoming State Statute 35-11-302 to require the Department of Environmental Quality/Water Quality Division Administrator to develop standards for capacity development. The legislation specifies that these standards will include provisions for the demonstration of technical, financial and managerial capabilities of new or modified community and nontransient noncommunity water systems to ensure current and future operations of the water system in accordance with drinking water regulations. These requirements are being adopted as Chapter 22 of the Water Quality Rules and Regulations.

Section 2 of the proposed rule describes severability of any portion(s) and/or sections determined to be invalid.

Section 3 of the proposed rule lists the purposes of the capacity development standards. These purposes include ensuring all new or modified community and nontransient noncommunity water supplies initiating operations after October 1, 1999 will demonstrate capacity development during construction permitting actions. This process will serve as the state's strategy to achieve capacity development for all systems and assure all SDWA State Revolving Fund loan recipients meet capacity development requirements.

Section 4 of the proposed rule includes definitions relating to capacity development. These definitions are necessary to implement this new chapter of the rules.

Section 5 of the proposed rule describes the steps public water supplies must take to demonstrate capacity development. This is a **key section** of the new program as it defines the requirements for capacity development. System personnel, which includes operators, managers and elected local officials, will be required to take a look at their situation. Technical, financial and managerial areas are scrutinized to examine the system as a whole. Using existing information and assessment worksheets provided by the Water Quality Administrator, systems will perform self evaluations. These assessments are to be done whenever a construction permit or a SDWA State Revolving Fund loan are sought.

Section 6 of the proposed rule describes the requirements for capacity development implementation. Although the assessment documents are not scorecards, they provide a great deal of information about the system's supplies, demands, operations, performance, equipment, breakdowns, repairs, staffing, compliance, safety, maintenance, planning, billing, expenses, incomes, budgets, etc.

Every system has some area that could be improved. This does not mean every system does not have the capability to ensure ongoing successful operation. In most cases capacity development determinations will identify potential shortcomings before they become a problem.

We realize there will be systems that cannot initially demonstrate capacity development. They may have significant technical, financial and/or managerial deficiencies. These deficiencies may include not having required treatment units, not meeting required operator certification levels and/or not generating enough revenue to cover expenses. These are some of the examples, but there are more. Every situation and system will be unique. What will not be unique is the state's effort to work with systems to move toward demonstrating capacity development. That is, working with the system so that it attains technical, financial and managerial capabilities to ensure ongoing successful operations.

If deficiencies are identified, the state can work with a system to help correct these problems. This may involve design changes, operator training and/or rate structure modifications. Again, every situation will be examined on a case-by-case basis.

A system that requires a corrective action plan will likely have additional issues to address. For an existing system, there may be compliance issues. For a new system, there may be financial viability issues. When a corrective action plan is needed, it may serve as a means to avoid more serious issues in the future.

Once a corrective plan is developed, an implementation schedule must also be established. The schedule may call for immediate actions where the quality of the water poses health threats. Conversely, the schedule may call for incremental actions where an operator needs more time on the job or additional training to sit for and to pass a certification test. Regardless of the problems facing a system, the goal is to correct them in an appropriate time frame. The state is available to assist with the development of an implementation schedule, if requested.

Section 7 of the proposed rule describes processing procedures. DEQ will provide a written response regarding submittal completeness within 30 days of receiving the submittal. DEQ will provide a written response notifying the public water supply within 60 days of receipt of a complete submittal with a determination of capacity development demonstration. When capacity development is demonstrated, it is valid until modifications are made that change the system's technical, financial and/or managerial capabilities. At that time, it may be necessary to perform another assessment to determine if the changes affect the system's ongoing successful operation.

If DEQ determines capacity development is not demonstrated, the notifying letter will identify where capacities are lacking and what steps are required to demonstrate capacity. Through a conference and conciliation approach, DEQ will work with the applicant to establish a corrective action plan and implementation schedule to demonstrate capacity development.

If an applicant disagrees with a DEQ final decision, it may be appealed to the Environmental Quality Council in accordance with Department of Environmental Quality Rules of Practice and Procedure.

If the ultimate determination shows that additional measures are required to demonstrate capacity development, DEQ will work with the applicant to finalize a corrective action plan and implementation schedule. If a system or an applicant chooses to disregard the capacity development process, enforcement actions may result in fines and/or a cessation of water system operations.

Rulemaking process. The administrator of the Water Quality Division, having received the Department of Environmental Quality director's approval to proceed with rulemaking, prepared and distributed a capacity development outreach document on September 2, 1998 and made notice of a capacity development public meeting and solicitation of comments in the Casper Star Tribune on September 7, 1998. DEQ held a public meeting on October 7, 1998 to solicit comments on the proposed capacity development rules. After consideration of public input, DEQ prepared draft rules. A committee that includes federal, state, local and advocacy group representatives reviewed this initial draft and made additional comments on November 16, 1998 and January 13, 1999. Considering these comments, DEQ finalized the draft.

The Water and Waste Advisory Board addressed the draft regulations and received public comments at a meeting in Cheyenne, Wyoming on February 8, 1999. Advice of the Water and Waste Advisory Board and

consideration of the public comments were used to prepare a second draft of Chapter 22. With these changes, the Water and Waste Advisory Board recommended the rule to the director and Environmental Quality Council for adoption.

The Environmental Quality Council addressed the second draft of the regulations and received public comments at a meeting in Laramie, Wyoming, on May 12, 1999. Advice of the Council and consideration of the public comments were used to prepare a third draft of Chapter 22.

The rule making process will involve the 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 new 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. The chapter implements the intent of the legislature and Enrolled Act 57 of the 1998 special session.

Federal Law and Rules Consistency

Adoption of this rule is required in order to comply with the 1996 Safe Drinking Water Act amendments, 42 U.S.C. Section 300 g-9. It is also required by Enrolled Act 57 of the 1998 State of Wyoming Special Session. The rule meets the minimum federal requirement that new community and new nontransient noncommunity water supplies demonstrate capacity development for facilities commencing operation on or after October 1, 1999. The federal statute also requires that the state develop a strategy for all public water supplies to demonstrate capacity development by October 1, 2001. In order for the state to have a means of implementing the federally required strategy, the legislature required in W.S. 35-11-302(a)(x) that all new or modified community and nontransient noncommunity systems commencing operation on or after October 1, 1999 demonstrate capacity development. The proposed rule therefore implements the minimum requirements of the federal statute for new systems and an overall strategy for all systems to comply.

Conclusion

The Council has determined that the adoption of these rules is necessary and appropriate to implement Enrolled Act 57, to protect public health, safety, and welfare and to provide the department with adequate authority and flexibility to operate a capacity development program.

EXECUTED THIS 9th DAY OF July, 1999.

FOR THE ENVIRONMENTAL QUALITY COUNCIL



Chairperson