

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

IN THE MATTER OF CHAPTER 1,            )  
QUALITY STANDARDS FOR                )  
WYOMING SURFACE WATERS,            )  
WATER QUALITY 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 to 1507 *et seq.*, proposes to amend and revise Chapter 1 of the Wyoming Water Quality Rules and Regulations. Chapter 1 contains the quality standards for surface waters in the state including water classifications and designation of protected uses. This proposal does not include extensive consideration of the standards and classifications, but is limited to activities that may be authorized in or along Class 1 waters in the state. This proposal would only consist of a limited revision of Section 7 and the inclusion of two new definitions for storm water and construction-related discharges in Section 2.

Section 7 describes the standard of protection which shall be applied on Class 1 waters in the state. Class 1 waters are sometimes referred to as “outstanding resource waters” and are those streams, rivers, lakes, wetlands etc. in which no further degradation from point sources is allowed. Class 1 waters in Wyoming include all the waters within congressionally designated wilderness areas; Yellowstone and Grand Teton National Parks; Fremont Lake; and 14 specifically designated stream segments (*Attachment A*). Also treated as Class 1 are wetlands adjacent to Class 1 waters and many streams which are tributaries to the listed Class 1 waters.

The terms “stormwater” and “construction-related discharge” are used in the proposed revision to section 7. These terms specify the scope of the regulation and need to be defined. Definitions for each term have been added to Section 2. The definition of the term “tributary” has also been amended to clarify that upstream segments of the mainstem of any stream are treated as tributaries of the downstream reaches.

**Purpose and Intent of this Proposed Revision**

The purpose for this revision is to obtain clarification of the existing prohibition on new or increased point source discharges into Class 1 waters. Certain limited human-induced activities must be allowed to occur along and within Class 1 waters. These activities may include point sources such as storm water discharges or construction-related discharges. The proposed language is intended to protect and maintain the existing quality and beneficial uses of Class 1 waters while codifying the practice of allowing limited and necessary activities which are in the

public interest. This will be accomplished by setting a standard of performance on all activities permitted on Class 1 waters that will maintain existing quality and water uses rather than categorically prohibiting classes of activities.

These revisions affect only point source discharges which are subject to NPDES effluent permits, NPDES stormwater permits and Section 401 Water Quality Certifications. The Council is not proposing any change to the existing controls on nonpoint source discharges to Class 1 waters.

**The principle reasons for these new and revised rules include:**

Clarification of the prohibition of new discharges on Class 1 waters. Section 7, as it is currently written prohibits any new point source discharge of pollution or any increased discharge from an existing point source on Class 1 waters. This component of the standards has been in effect since at least 1979. It has been applied since that time to prohibit any new activity which would involve an "end of the pipe" type effluent discharge into a Class 1 water. These types of discharges are normally associated with domestic or industrial process wastewater from treatment plants, power plants, food processing facilities, gravel processing operations, mining, oil production and refining, fish hatcheries, aquaculture, feedlots and similar facilities and activities. The proposed revision will continue to prohibit any new or increased discharges of this type on Class 1 waters.

The current standard has never been applied by the Department in a manner which prohibited limited construction activities in, across, or along Class 1 waters. Section 7, as it is currently written, however, may be construed to prohibit construction activities in or along these waters including any activities which will disturb five (5) or more surface acres within the vicinity of a Class 1 water. Such an interpretation could result in the elimination of road and bridge construction, repair and maintenance; utility construction and maintenance; flood control construction and maintenance; habitat and fisheries improvement projects, mine reclamation projects and severely impact the use of private property over large areas of the state. Additionally, certain categories of industrial activities and projects requiring section 404 permits from the U.S. Army Corps of Engineers for the discharge of dredged or fill material could also be prohibited under the current rule.

An unanticipated conflict originated in 1992 when the Department began requiring permits for storm water discharges associated with construction or industrial activities. These activities are considered to be "point sources" under the regulations and the issuance of any permit may arguably be prohibited. It has never been the intent of the Department to prohibit construction or certain industrial activities that did not involve "end of the pipe" effluent discharges in Class 1 waters. This is evidenced by the fact that many storm water permits and water quality certifications have been and continue to be issued on these waters.

The purpose of the proposed revision to Chapter 1, Section 7 is to amend the language so that it accurately reflects the intent and actual application of the standard. The proposed language in Section 7(b) allows both stormwater and construction-related discharges so long as existing chemical quality and beneficial uses are maintained. Temporary increases in turbidity associated

with construction-related activities may also be allowed but cannot exceed the duration of the construction period. The language also provides for the imposition of necessary controls and monitoring to ensure that existing quality and uses are maintained.

The proposed revisions to section 7 also clarify that the purpose of the standard is to protect the beneficial uses of the water as well as maintaining existing water quality. Activities which would result in the loss or reduction of the ability of the Class 1 water to continue to support an existing use as defined in section 3 of the standards is prohibited.

The terms “stormwater” and “construction related discharge” are new terms within the proposed revision to Section 7. Definitions of these terms are proposed to be added to Section 2 of the regulations. The proposed definition for stormwater is intended to be limited to those types of surface runoff which are subject to the permitting requirements of section 402(p) of the Federal Clean Water Act or Chapter 18 of the Wyoming Water Quality Rules and Regulations. The proposed definition for construction-related discharge is intended to be limited to temporary discharges of turbidity or sediment that are related to construction activities in or along waters of the state.

The U.S. Environmental Protection Agency (EPA) commented that federal effluent limitations have been established for 10 categories of industrial stormwater discharges. Those discharges should be treated as traditional “end-of-pipe effluents” and be excluded from the definition of “stormwater” in the state rules. The Council agrees with this comment and has made the appropriate modification of the definition in Section 2 of the rules.

A comment was received at the Water and Waste Advisory Board meeting on November 9, 1997 that the current definition of “tributary” in the Chapter 1 rules should be clarified to show that it includes upstream segments of the main stem of streams as well as upstream branch channels. The Council agrees with this observation and has amended the existing definition in Section 2 to reflect this concept.

### **Antidegradation Implementation**

A comment was received that the federal regulations (40 CFR 131.12) require an approved antidegradation implementation plan as an integral part of the state water quality standards program.

Implementation of this antidegradation requirement of this rule change is included as discussion in the administrative record. Since the proposed rule revision is limited to the protection of Class 1 waters, the implementation procedures need only to address Class 1 waters at this time. Antidegradation on all other waters may be addressed during the normal triennial review of the standards program.

The rule provides adequate “tier 3” antidegradation protection by requiring that water quality and water uses will be maintained at existing levels. The purpose of the implementation policy is to disclose the procedures that will be employed in any of the Department’s permitting actions to

assure that the required level of protection is achieved. Therefore, the Council wishes to include the following antidegradation implementation policy for each of the Water Quality Division's regulatory programs on Class 1 waters as part of this administrative record:

### **Federal Requirements**

EPA Region 8 has issued guidance identifying a number of "bottom line" requirements that are to be addressed in a State's antidegradation policy and its implementation. There are four requirements that apply specifically to tier 3 waters (Class 1 waters in Wyoming). This Statement of Principal Reasons will explain the Department's approach to each of the four issues and public participation in Department's decision-making for Class 1 waters. The four requirements and the Department's analysis of compliance with those requirements are listed and discussed below:

1. *What are the qualification requirements and procedures tier 3 designation (Class 1)?*

The qualification requirements for Class 1 waters are listed in Chapter 1, Water Quality Rules and Regulations, Section 4 (a). In addition, the general categories of waters (e.g., waters in national parks, etc.) and specific waters designated as Class 1 are listed in Appendix A of Chapter 1.

2. *What are the procedures by which the public can nominate a specific waterbody for Class 1 designation?*

Class 1 waters are designated by the Environmental Quality Council in rulemaking hearings. Both the Wyoming Administrative Procedures Act and the Department's Continuing Planning Process (CPP) provide for public input during regulatory and planning processes. Any interested person may petition the Council for designation and classification of a waterbody in accordance with the rulemaking requirements of Chapter III, Council's Rules of Practice and Procedure.

3. *What requirements apply to proposed new or expanded sources to Class 1 waters, including sources located on upstream segments?*

The revised rule continues to prohibit new or increased "end-of-the-pipe" effluent discharges of pollution but allows limited discharges associated with stormwater runoff and construction activities. Permits issued by the Department for stormwater or construction-related discharges will contain the following safeguards: (1) changes in water quality will be limited to temporary increases in turbidity; (2) turbidity increases will be limited to those allowed in Section 23 of Chapter 1; and (3) necessary controls and monitoring will be required to ensure existing water quality and uses are maintained and protected. Furthermore, the Department will impose whatever controls are necessary on regulated point source discharges to tributaries of Class 1 waters to the extent that the existing quality and uses of the downstream Class 1 segment will be protected and maintained. It is the Department's interpretation that "tributary" means any waters feeding the mainstem and any upstream mainstem segments (see revised definition).

Nonpoint sources of pollution are not regulated by permits issued by the Department, but are controlled by the voluntary application of cost effective and reasonable best management practices. For Class 1 waters, best management practices will maintain existing quality and water uses.

4. *What types of limited and temporary impacts to Class 1 Waters, if any, may be authorized, and what guidelines will be applied to identify the activities resulting in, or not resulting in, such impacts?*

The following procedures and decision-making processes will be used for each of the Water Quality Division's discharge permitting authorizations:

NPDES point source discharge permits:

Per the rule, permits for new or increased effluent discharges to Class 1 waters will not be issued. This prohibition is not intended to include industrial stormwater permits for which effluent limits have been established, as discussed in the next section. Stormwater permits for industrial activities may be issued upon a demonstration that substances for which effluent limitations apply will not be discharged into a Class 1 water.

NPDES Stormwater Permits (*Industrial Activities*):

May be issued with appropriate conditions and monitoring requirements on an individual case-by-case basis on Class 1 waters. An application for an industrial stormwater permit must contain: (1) a list of all pollutants which can reasonably be expected to occur on-site and be exposed to runoff events; (2) a map showing the location of the industrial facility in relation to the Class 1 receiving water and/or tributaries; (3) water quality data which characterizes the existing quality of the receiving Class 1 water and/or its tributaries in relation to the potential on-site pollutants; (4) a stormwater pollution prevention plan that provides (a) runoff from the industrial site resulting from up to a 100-year storm event will not discharge to a Class 1 water; or (b) runoff which may discharge to a Class 1 water as the result of any storm event will be of equal or better quality than the receiving water; and (5) a monitoring plan designed to assure compliance with item 4.

Prior to issuing an industrial stormwater permit, the Department will make a determination based upon the information submitted in the application that the potential effects on the Class 1 receiving stream, if any, will be temporary in nature and limited to discharges of clean sediment and turbidity. The Department may also include any additional construction practices, treatment processes, monitoring and reporting requirements or other special conditions as may be necessary to achieve and demonstrate that existing water quality and uses will be maintained.

The Department will conduct a 30-day public notice and comment period prior to the issuance of any industrial stormwater permit on Class 1 waters disclosing its intent to issue a permit for industrial stormwater discharges. Information received as a result of

the public notice will be considered by DEQ and may affect the final determination regarding permit approval.

Existing general stormwater permits for industrial activities will remain in effect for the remainder of their terms. The reauthorization of these permits, however, is not guaranteed and will be subject to the provisions of the revised rule and the implementation policy described herein.

#### NPDES Stormwater Permits (Construction Activities):

General stormwater permits for construction activities may be issued with appropriate conditions and monitoring requirements on Class 1 waters. An application for a construction stormwater permit must contain a Notice of Intent (NOI) to discharge stormwater prepared according to the provisions of Appendix B of the Wyoming General Stormwater Permit for Construction Activities (*Appendix B is included as Attachment B in this administrative record*). The applicant must submit along with the NOI, a detailed pollution prevention plan which includes sufficient controls on all potential sources of pollution. The pollution prevention plan must demonstrate that the only types of pollution that could reasonably be expected to reach a Class 1 water during a runoff event are limited to turbidity and clean sediment.

Runoff from ancillary, construction-related facilities such as borrow areas, gravel processing areas, asphalt processing plants, concrete mixing, fuel & solvent storage areas, equipment staging and maintenance areas, and any area which may be a source of pollutants other than turbidity and sediment must be controlled so as not to discharge to any Class 1 water. This provision applies to runoff resulting from up to a 100-year storm event.

The Department shall conduct an in-house review of the NOI and pollution control plan prior to approving coverage under the general stormwater permit. The Department may also include any additional construction practices, monitoring and reporting requirements or other special conditions as may be necessary to achieve and demonstrate that existing water quality and uses will be maintained. The DEQ will not normally conduct a public notice and comment period prior to authorizing specific activities under the stormwater general permit. Public comment was solicited during the establishment of the general permit and public notice will be provided at each subsequent renewal (at least once every five years). Upon review of any application for a construction stormwater permit, the Department may deny authorization under the general permit and require an individual permit. In such instances, a 30-day public notice will be provided as described in the previous section for an industrial activity.

#### 401 Water Quality Certifications:

The Department adopted a policy on October 11, 1996 regarding the issuance of 401 certifications for activities on Class 1 waters. This policy was specifically designed to

ensure the protection of existing quality and uses of Class 1 waters and serves as the antidegradation implementation procedure for activities subject to 401 certification on Class 1 waters (*the 401 certification policy is included as Attachment C in this administrative record*).

Individual 401 certifications are issued on all section 404 permits including the U.S. Army Corps of Engineers' nationwide and statewide general permits on Class 1 waters, and hydropower licences issued by the Federal Energy Regulatory Commission (FERC). A joint DEQ/Corps of Engineers public notice is issued by the Corps prior to the issuance of all individual 404 permits. There is no public notice prior to the authorization of any activity under a Section 404 nationwide or statewide general permit on Class 1 waters. The DEQ does not have a joint permitting agreement with FERC, therefore, shall conduct a separate public notice and comment period prior to issuing 401 certification for FERC licenses and permits on Class 1 waters.

**Effect of the Rule Revision:**

The Council anticipates that the result of these proposed revisions will reduce the potential for unreasonable and onerous interpretations and applications of the regulations. The amended standard will not reduce the actual level of protection which is afforded these waters nor will it result in any allowable lowering of water quality or adverse impact on beneficial uses. Any authorization for activities on Class 1 waters will continue to contain appropriate requirements for best management practices, monitoring, reporting, and mitigation. The net effect of the proposed language on the associated permitting programs will be as follows:

NPDES point source discharge permits:	No change - These types of permits will continue to be prohibited;
NPDES Stormwater Permits: ( <i>Industrial Activities</i> )	Individual permits may be issued with appropriate conditions and monitoring requirements ensuring maintenance of existing quality and water uses;
NPDES Stormwater Permits: ( <i>Construction Activities</i> )	General permits may be authorized with or without special conditions after an in-house application review; and in some cases, individual permits may be required;
401 Water Quality Certifications:	May be issued with appropriate conditions and monitoring requirements ensuring maintenance of existing quality and water uses;
404 Permits:	Will be allowed with appropriate 401 certification conditions.

**Public Participation**

On July 21, 1997, a public notice announcing the Department's intention to revise the regulations was released for the purpose of soliciting comment relating to the proposal. A public meeting was held via the Wyoming Video Conference System on September 10, 1997 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 revisions.

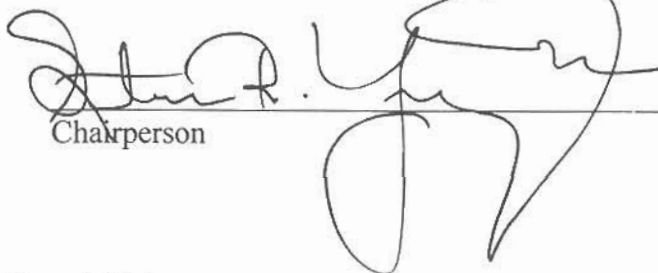
A subsequent public notice was issued by the Water and Waste Advisory Board on September 22, 1997 and a public meeting held on November 9, 1997. Additional written comments were solicited during this public review period and oral comments were accepted at the November meeting. All of the comments received and the Advisory Board's recommendations have been considered and addressed in this rule revision. The Advisory Board recommended this rule to the Council at their meeting on November 7, 1997.

Finally, the Council held a public hearing via the Wyoming Video Conference System on May 7, 1998. All public comments were considered during the adoption of these rules. An analysis of these comments is contained in Attachment D.

**Conclusion.** The Council has determined that the adoption of these rules is necessary to clarify and update the requirements of the surface water protection program and to provide the department with adequate authority and flexibility to operate the program.

EXECUTED THIS 24th DAY OF August, 1998.

FOR THE ENVIRONMENTAL QUALITY COUNCIL

  
Chairperson

Attachments to this document:

- Attachment A, Wyoming Class 1 Waters
- Attachment B, Pollution Prevention Plans for Discharges Associated with Construction Activities
- Attachment C, Policy for 401 Certification on Class 1 Waters

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