

**FILED**

**AUG 02 2007**

Terri A. Lorenzon, Director  
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

WYOMING OUTDOOR COUNCIL, )

Petitioner, )

v. )

WYOMING DEPARTMENT OF )  
ENVIRONMENTAL QUALITY, WATER )  
QUALITY DIVISION, )

Respondent. )

Consolidated Docket  
Nos. 06-3816 & 06-3817

EXHIBITS A-F FOR RESPONDENT DEQ'S BRIEF IN RESPONSE  
TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT

WATER QUALITY RULES AND REGULATIONS

CHAPTER XVIII

GENERAL NPDES PERMITS

**EXHIBIT**

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RULES AND REGULATIONS

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY DIVISION

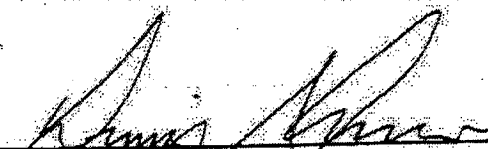
I certify that the attached is a true and correct copy of the new rules of the Wyoming Department of Environmental Quality on the subject of General NPDES Permits adopted in accordance with W.S. 35-11-302 (a) (v). These are new rules.

Prior to adoption, these rules were made available for public inspection on February 11, 1991, and a notice of intended adoption was mailed to the Attorney General and Legislative Service Office.

The rules have been approved by the Governor as indicated below.

The attached rules are effective immediately upon filing with the Secretary of State.

Signed June 18, 1991.

  
Dennis Hemmer  
Director  
Department of Environmental Quality

  
Reviewed and Approved by the Governor

STATE OF WYOMING  
KATHY KOURTAN  
Secretary of State  
26K  
10 9 1 at 8:40 A.M.  
Jay of July  
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CHAPTER XVIII

GENERAL NPDES PERMITS

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## CHAPTER XVIII

### GENERAL NPDES PERMITS

Section 1. Authority. These regulations are promulgated pursuant to W.S. 35-11-101 through 1428, specifically 302(a)(v).

Section 2. Definitions. The following definitions supplement those contained in section 35-11-103 of the Wyoming Environmental Quality Act.

(a) Administrator - The administrator of the Water Quality Division, Wyoming Department of Environmental Quality.

(b) Division - The Water Quality Division of the Wyoming Department of Environmental Quality.

(c) General Permit - A NPDES permit authorizing a category of discharges within a geographical area.

(d) Individual Permit - A NPDES permit issued to a single specified discharger.

(e) NPDES Permits - Those permits issued to point source dischargers to surface waters of the state and which are identified as "National Pollutant Discharge Elimination System" permits.

### Section 3. Coverage

(a) Area - Each general permit shall cover a category of discharger, except those with individual permits, within a specified geographic area. The area may correspond to existing geographic or political boundaries or any other appropriate division or combination of boundaries.

(b) Sources - A general permit may be written to regulate within an area as described in section 3(a) above, either:

(i) Storm water point sources; or

(ii) A category of point sources other than storm water point sources if the sources all:

(A) Involve the same or substantially similar types of operations;

- (B) Discharge the same types of wastes;
- (C) Require the same effluent limitations or operating conditions;
- (D) Require the same or similar monitoring; and
- (E) In the opinion of the administrator, are more appropriately controlled under a general permit than under individual permits.

#### Section 4. Administration.

(a) General permits shall be issued in accordance with the requirements of Wyoming Water Quality Rules and Regulations, Chapter II.

(b) The administrator may require any discharger authorized by a general NPDES permit to apply for and obtain an individual permit. Any interested person may petition the administrator to take action under this paragraph. Reasons for requiring an individual permit include, but are not limited to the following:

- (i) The discharge is a significant contributor of pollution as determined by the administrator;
- (ii) The discharger is not in compliance with the conditions of the general permit;
- (iii) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
- (iv) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- (v) A water quality management plan containing requirements applicable to such point sources is approved;
- (vi) Circumstances have changed so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (vii) The requirements of section 3 of this regulation are not met.

(c) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. In addition to the application, the owner or operator shall state reasons supporting the request for an individual permit. The request shall be granted by the issuance of the individual permit if the reasons cited by the owner or operator are adequate to support the request.

(d) When an individual permit is issued to a discharger otherwise subject to a general permit, the applicability of the general permit to the individual permit is terminated on the effective date of the individual permit.

(e) A discharger excluded from a general permit solely because it is operating under an individual permit may request that the individual permit be revoked, and that the discharge be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the discharge.

(f) It shall be stated within the public notice of intent to issue, and in the permit, whether the permit provides automatic coverage to all discharges within the specified class, or if individual permit applications are required.

Westlaw.

56 FR 52030-01

56 FR 52030-01, 1991 WL 208298 (F.R.)

(Cite as: 56 FR 52030)

NOTICES

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4022-1]

Wyoming's General Permits Program Approval

Thursday, October 17, 1991

\*52030 AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Wyoming.

SUMMARY: On September 24, 1991 the Regional Administrator for Region VIII of the Environmental Protection Agency (EPA) approved the State of Wyoming's National Pollutant Discharge Elimination System (NPDES) General Permits Program. This action authorized the State of Wyoming to issue general permits in lieu of individual NPDES permits. The approval was made under 40 CFR 123.62 which sets forth procedures for revision of a State's NPDES program.

FOR FURTHER INFORMATION CONTACT: Robert Shankland at (303) 293-1597, Compliance Branch (8WM-C), Water Management Division, Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202-2466.

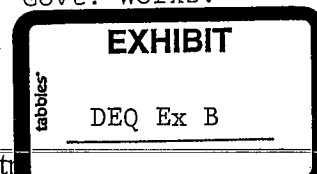
SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Wyoming was authorized to administer the NPDES program on January 30, 1975. Their program, as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For this reason, Wyoming has requested a revision of their NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include, but are not limited to: Storm water discharges, discharges of hydrostatic test water; discharges of well test water, construction site dewatering discharges; and

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56 FR 52030-01, 1991 WL 208298 (F.R.)

(Cite as: 56 FR 52030)

recreational gold dredging discharges.

Each general permit will be subject to EPA review as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

## II. Discussion

Wyoming's general permits submission consists of an Attorney General's statement, a copy of the State statutes and regulations providing authority to carry out the program, a copy of the amended Memorandum of Agreement (MOA), and an amended program description. Based upon this information and Wyoming's experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

\*52031 Under 40 CFR 123.62, NPDES program revisions are either substantial (requiring publication of proposed program approval in the Federal Register for public comment) or non-substantial (where approval may be granted by letter from EPA to the State). EPA has determined that assumption by Wyoming of general permit authority is a non-substantial revision of its NPDES program. EPA has generally viewed approval of such authority as non-substantial because it does not alter the substantive obligations of any discharger under the State program, but merely simplifies the procedures by which permits are issued to a number of point sources. Moreover, under the approved state program, the state retains authority to issue individual permits where appropriate, and any person may request the state to issue an individual permit to a discharger eligible for general permit coverage. While not required under § 123.62, EPA is publishing notice of this approval action to keep the public informed of the status of its general permit program approvals.

## III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide Federal Register notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of Wyoming's authority to issue general permits.

State NPDES Program Status

State	Approved State NPDES permit program	Approved to regulate federal facilities	Approved state pretreatment program	Approved state general permits program

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(Cite as: 56 FR 52030)

Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	-----	-----	03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	-----
Delaware	04/01/74	-----	-----	-----
Georgia	06/26/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	-----
Illinois	10/23/77	09/20/79	-----	01/04/84
Indiana	01/01/75	12/09/78	-----	04/03/91
Iowa	08/10/78	08/10/78	06/03/81	-----
Kansas	06/28/74	08/28/85	-----	-----
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	-----
Michigan	10/17/73	12/09/78	06/07/83	-----
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	-----
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	-----	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	-----	-----
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	-----	-----
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	-----	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	-----
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	-----	08/02/91
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	-----
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	-----	03/16/82	-----
Virgin Islands	06/30/76	-----	-----	-----
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73	-----	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	-----	09/24/91
Total	39	34	27	25

Number of fully authorized NPDES Programs (Federal Facilities, Pretreatment, General Permits)=17

#### IV. Review under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the requirements

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of Executive Order 12291 pursuant to section 8(b) of that Order. Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a number of small entities.

Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number of small entities. Approval of the Wyoming NPDES State General Permits Program merely provides a simplified administrative process.

Dated: October 9, 1991.

Jack McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 91-25027 Filed 10-16-91; 8:45 am]

BILLING CODE 6560-50-M

56 FR 52030-01, 1991 WL 208298 (F.R.)

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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

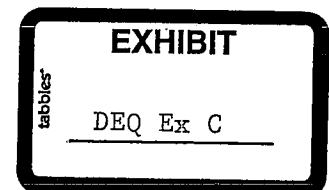
The Department of Environmental Quality, Water Quality Division, pursuant to the authority vested in it by the Act, Wyoming Statutes 35-11-101 *et seq.*, proposes to amend and revise Chapter 2, and remove Chapters 7, 10 and 18 of the Wyoming Water Quality Rules and Regulations. Chapter 2 contains the 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 98<sup>th</sup> 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 WDBQ 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

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 18<sup>th</sup> in Laramie.

On August 18<sup>th</sup>, 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 27<sup>th</sup> DAY OF August, 2004.

FOR THE ENVIRONMENTAL QUALITY COUNCIL



Chairperson

THE STATE



OF WYOMING

*Attorney General*

123 CAPITOL BUILDING  
CHEYENNE, WYOMING 82002  
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MIKE SULLIVAN  
GOVERNOR

JOSEPH B. MEYER  
ATTORNEY GENERAL

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CONSUMER AFFAIRS 777-6286  
WORKERS' COMPENSATION 777-5934  
NATURAL RESOURCES 777-7824, 777-7825  
CRIMINAL DIVISION 777-6743, 777-7874  
CIVIL DIVISION 777-7886, 777-7876, 777-6397  
TORT LITIGATION 777-6886  
CRIME VICTIMS COMPENSATION 777-5984

June 1, 1990

M E M O R A N D U M

TO: JOHN WAGNER  
Technical Support Supervisor  
Water Quality Division  
Department of Environmental Quality

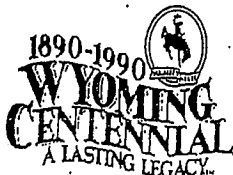
FROM: STEVE JONES  
Senior Assistant Attorney General  
Wyoming Attorney General's Office *SA*

RE: Authority for General Permits Under the Wyoming  
Environmental Quality Act

You have inquired whether the Wyoming Department of Environmental Quality has authority to issue "general permits" for discharges of pollution to waters of the state, pursuant to W. S. §§35-11-301 and 302. A general permit, as I understand it, is a permit which would authorize discharges at various points (either specified or unspecified in the permit) in a given geographic area, as long as all of those discharges are of a similar nature. Typically, storm sewer drainage discharge points would be covered by this type of permit. See 40 C.F.R. § 122.28.

W. S. 35-11-301(a)(i) and (ii) provides that discharges of pollution to waters of the state are not allowed, without a permit. The statute does not state what kind of permit would be acceptable.

Up until now, the Wyoming Department of Environmental Quality has utilized individual permits which are issued to a permittee upon application by that permittee. Specific discharge point locations are identified in the permit. The Environmental Protection Agency apparently anticipates that a



EXHIBIT

tabbles

DEQ Ex D

Memorandum to John Wagner

June 1, 1990

Page 2

General permit will be a sort of "fast-track" process by which a permittee will notify the issuing agency (DEQ, in this case) that it intends to apply for a general permit of a specific type (e.g. permits for storm water run-off or permits for water from pipes that have been hydrostatically tested) and then the issuing agency would make a fast decision regarding approval or disapproval of the application. Both the application and the approval could be verbal, with a follow-up letter issued by the permitting agency.

Your concept, as I understand it, would involve a simple publication of the permit in a newspaper of general circulation whereby every discharger who comes under the general permit provisions would be notified that they now "have" a permit and are expected to comply with the terms and conditions of the permit. This is, in effect, a permit by rule. It is similar to the "nationwide permits" utilized by the Army Corps of Engineers which are, in effect, exemptions for less-than-one-acre dredge and fill disturbances. See § 404 of the Clean Water Act (33 U.S.C. § 1344) and 33 C.F.R. Part 330.

The Environmental Protection Agency does not anticipate a simple publication of permits for all potential permittees. Thus, your approach may not get EPA approval, in any event.

Generally speaking, however, I do not see a legal problem with the Department of Environmental Quality going ahead and promulgating rules and regulations covering the issuance of general permits, in some fashion. The statutory authority appears to be present in the Environmental Quality Act. See W. S. 35-11-301(a)(i) and W. S. 35-11-302(a)(v). The Department should not proceed with the issuance of general permits, however, without an appropriate chapter of Water Quality Rules and Regulations covering the issuance of such permits. While the statute might allow the issuance of such permits, there is nothing covering general permits in our regulatory scheme, and promulgation of appropriate rules and regulations to cover the general permit concept must be achieved before issuance of general permits can be authorized.

Memorandum to John Wagner  
June 1, 1990  
Page 3

You should be aware, however, that the State of Wyoming is not required to utilize general permits in order to retain primacy over the NPDES Program. See 40 C.F.R. §123.25(a)(11). But I understand that issuing individual permits for storm sewer discharges may be more time consuming.

cc: Ray Ann Lambert  
Tom Roan  
Bill Garland  
Dennis Hemmer

## HOUSE BILL NO. HB0212

Water quality-watershed permits.

Sponsored by: Representative(s) Brown and Childers and  
Senator(s) Jennings and Townsend

A BILL

for

1 AN ACT relating to environmental quality; clarifying  
2 general watershed permits relating to coal bed methane  
3 production; and providing for an effective date.

4

5 *Be It Enacted by the Legislature of the State of Wyoming:*

6

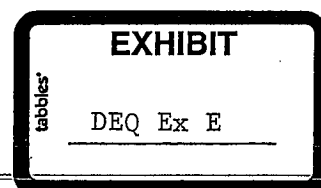
7 **Section 1.** W.S. 35-11-302(a)(v) is amended to read:

8

9 **35-11-302.** Administrator's authority to recommend  
10 standards, rules, regulations or permits.

11

12 (a) The administrator, after receiving public comment  
13 and after consultation with the advisory board, shall  
14 recommend to the director rules, regulations, standards and  
15 permit systems to promote the purposes of this act. Such



1 rules, regulations, standards and permit systems shall  
2 prescribe:

3

4 (v) Standards for the issuance of permits as  
5 authorized pursuant to section 402(b) of the Federal Water  
6 Pollution Control Act as amended in 1972, and as it may be  
7 hereafter amended, including watershed general permits for  
8 surface discharges related to coal bed methane production;

9

10 Section 2. This act is effective immediately upon  
11 completion of all acts necessary for a bill to become law  
12 as provided by Article 4, Section 8 of the Wyoming  
13 Constitution.

14

15

(END)

FISCAL NOTE

No significant fiscal or personnel impact.

Prepared by: Jim Uzzell, DEQ

Phone: 777-7198

HB 212



65 FR 30886-01, 2000 WL 574702 (F.R.)

(Cite as: 65 FR 30886)

RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22, 117, 122, 123, 124, 125, 144, 270,  
and 271

[FRL-6561-5]

RIN 2040-AC70

Amendments to Streamline the National Pollutant Discharge Elimination System  
Program Regulations: Round Two

Monday, May 15, 2000

\*30886 AGENCY: Environmental Protection Agency.

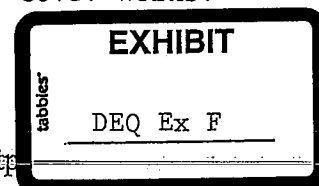
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today revising the National Pollutant Discharge Elimination System (NPDES) regulations. This revision is part of an Agency-wide effort to respond to a directive issued by the President on February 21, 1995, which directed Federal agencies to review their regulatory programs to eliminate any obsolete, ineffective, or unduly burdensome regulations.

In response to that directive, EPA initiated a detailed review of its regulations to determine which provisions were obsolete, duplicative, or unduly burdensome. On June 29, 1995, EPA issued a rule (60 FR 33926) which removed some regulatory provisions in the Office of Water program regulations (including certain NPDES provisions) that were clearly obsolete. Today's revision is intended to further streamline NPDES, Resource Conservation and Recovery Act (RCRA), Prevention of Significant Deterioration (PSD), and Underground Injection Control (UIC) permitting procedures, and CWA 301(h) variance request procedures, by revising requirements to eliminate redundant regulatory language, provide clarification, and remove or streamline unnecessary procedures which do not provide any environmental benefits. Conforming changes to other requirements are also made in today's rule. These revisions are identified and discussed in the Supplementary Information section below.

DATES: This rule becomes effective June 14, 2000. For judicial review purposes, this final rule is promulgated as of 1:00 P.M. (eastern standard time) on May 30, 2000 as provided in:

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65 FR 30886-01

65 FR 30886-01, 2000 WL 574702 (F.R.)

(Cite as: 65 FR 30886)

EPA believes that general permits are a better permitting mechanism.

c. Final Rule. EPA has adopted the final rule as proposed.

#### 8. General Permits (40 CFR 122.28)

a. Summary of Proposed Rule. In the proposal to today's rule, EPA proposed to revise the NPDES regulations to allow non-storm water general permits to cover more than one point source category or subcategory. [FN1] This revision was expected to increase the effectiveness of general permits that are issued on a geographic basis since it would be easier to use a single general permit to provide comprehensive controls on number of different discharges (as separate categories) within a geographic area such as a watershed. This revision was also expected to result in cost savings to permitting authorities since a single multi-category general permit could take the place of multiple single category general permits.

FN1 Before this amendment, EPA's general permits regulations at 40 CFR 122.28(a)(2) provided that the "general permit may be written to regulate \* \* \* either: (i) Storm water point sources, or a category of point sources other than storm water that \* \* \* (A) involve the same or substantially similar types of operations; (B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices; (C) require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; (D) Require the same or similar monitoring; and (E) in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits." (Italics added.)

EPA noted, however, that the types of operations conducted or wastes discharged within each category or subcategory authorized by the general permit (except for general permits for storm water discharges) would still have to be substantially the same. Within each identified category or subcategory, limitations would have to be identical for all covered dischargers or treatment works treating domestic sewage.

EPA also proposed to revise the general permit regulations to clarify that where dischargers are subject to water quality-based limitations (WQBELs), discharges within a specific category or subcategory shall be subject to the same WQBELs.

b. Significant Comments and EPA response. In response to the proposal, several commenters expressed concern regarding WQBELs in general permits, stating that they are more appropriate for site-specific permits. They recommended that only technology-based limits and best management practices be used. EPA notes these concerns but declines to limit general permits to imposing only technology based limits. EPA believes there are situations where general permits can effectively impose WQBELS such as where a general permit is developed in close coordination with a total maximum daily load (TMDL) and/or a wasteload allocation. There are already cases in which general permits are being used to impose WQBELs on

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65 FR 30886-01, 2000 WL 574702 (F.R.)

(Cite as: 65 FR 30886)

facilities with the same water quality requirements. One example of this is in the Commonwealth of Puerto Rico. Puerto Rico does not allow for mixing zones and thus discharges must meet water quality standards at the point of discharge making it possible to establish WQBEL in general permits which apply to all discharges without variation. \*30891 Therefore, EPA believes that there are enough situations in which WQBELs are appropriate in general permits for this modification to be useful.

A commenter has requested an explanation of how general permits can be used to impose WQBELs. As mentioned above, general permits could impose WQBELs in areas where there are no mixing zones. A general permit containing WQBELs, for example, could also be developed in close coordination with a total maximum daily load (TMDL) and/or a wasteload allocation, or to cover a category of dischargers at a certain discharge level for an entire watershed.

A commenter expressed concerns over allowing general permits to cover multiple categories of dischargers. The commenter is concerned that development of overly broad general permits covering similar, but distinct, practices would result in unnecessary limits and conditions for some covered facilities. The commenter requested language in the preamble stating that coverage of general permits must not be so expansive that unnecessary requirements are placed on any of the categories that are regulated. Although EPA believes that such a scenario is possible, it is more likely that general permits will be developed to minimize imposing undue requirements on facilities. Also, applicants can always request coverage under an individual permit if they believe a general permit's requirements to be unnecessarily onerous. Thus, EPA declines to include such language.

Additionally, a commenter has suggested that general permits covering multiple categories are inappropriate for sludge disposal because of differing methods of disposal. EPA disagrees because general permits can be developed with categories that are based on differing methods of disposal.

A further comment has been made to request that general permits be expanded to cover cooling water discharges and discharges from remedial technologies for removing Volatile Organic Compounds. EPA believes that the creation of those categories is best left to the permitting authority who is familiar with the circumstances surrounding each general permit (subject to the requirements of 40 CFR 122.28(a)(2)), and declines to create a specified general permit category in this regulation. However, EPA does not by this decision mean to imply that general permits for such categories are prohibited if the permitting authority believes them to be appropriate.

Lastly, a commenter has stressed the importance of proposed paragraph 40 CFR 122.28(a)(4) and requested that it be retained in the final rule. EPA agrees with the commenter and has retained this provision in the final rule.

c. Final Rule. EPA has adopted the final rule as proposed.

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