

**RULE MAKING OUTREACH DOCUMENT**

**Responses to Comments**

**for**

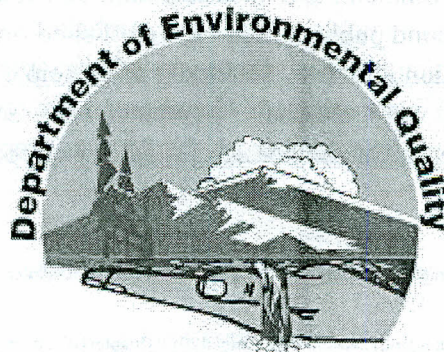
**Comment Period Ending January 15, 2013**

**Wyoming Water Quality Rules and Regulations**

**Chapter 1**

**Surface Water Quality Standards**

**Triennial Review**



**WYOMING**

**February 19, 2013**

1 **Background**

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3 Section 303(c) of the Clean Water Act provides states, tribes and territories with the primary  
4 authority and responsibility to establish water quality standards for waters of the U.S. within  
5 their respective jurisdictions. In Wyoming, the surface water quality standards are administered  
6 by the Wyoming Department of Environmental Quality, Water Quality Division (WDEQ/WQD)  
7 and are contained in Chapter 1 of the Wyoming Water Quality Rules and Regulations. Water  
8 quality standards must be reviewed at least once every three years, known as the triennial review,  
9 at which time existing standards can be modified and new standards adopted as necessary.  
10 Following adoption by the state, the standards are submitted to the Environmental Protection  
11 Agency (EPA) for review to determine whether they meet the goals and requirements of the  
12 Clean Water Act.

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14 WDEQ/WQD initiated a revision of Chapter 1 on September 12, 2011 with the release of a  
15 public notice<sup>1</sup> and Proposed Rule Revision Outreach Document<sup>2</sup>. Proposed revisions included:  
16 resolution of Environmental Protection Agency (EPA) disapprovals from the last rule making,  
17 updates of numeric criteria for priority and non-priority pollutants, revision of *E. coli* sampling  
18 requirements and correction of a number of omissions, errors or inconsistencies that had been  
19 identified since the most recent update in April 2007. The public was invited to submit written  
20 comments between September 12 and October 21, 2011 or submit oral comments during a public  
21 meeting held in Casper, Wyoming on October 13, 2011.

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23 Considering the initial public comment, and in anticipation of a fourth quarter Water and Waste  
24 Advisory Board Meeting, a second public notice<sup>3</sup> was published on August 24, 2012 and drafts  
25 of Chapter 1<sup>4</sup>, the Implementation Policies<sup>5</sup>, Statement of Principle Reasons<sup>6</sup>, and Responses to  
26 Comments (October 21, 2011)<sup>7</sup> were released. Comments were received until September 24,  
27 2012. A Responses to Comments (September 24, 2012)<sup>8</sup> was prepared and minor changes made

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<sup>1</sup>September 12, 2011 Public Notice:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Chapter1/Chapter\\_1\\_Rule\\_Revision\\_Public\\_Notice\\_September\\_12\\_2011.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Chapter1/Chapter_1_Rule_Revision_Public_Notice_September_12_2011.pdf)

<sup>2</sup>September 12, 2011 Outreach Document:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Chapter1/Chapter\\_1\\_Proposed\\_Rule\\_Revision\\_Outreach\\_Document\\_September\\_12\\_2011.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Chapter1/Chapter_1_Proposed_Rule_Revision_Outreach_Document_September_12_2011.pdf)

<sup>3</sup>August 24, 2012 Public Notice:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Chapter\\_1\\_Public\\_Notice\\_for\\_Newspaper\\_and\\_Website\\_0824\\_2012.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Chapter_1_Public_Notice_for_Newspaper_and_Website_0824_2012.pdf)

<sup>4</sup>August 24, 2012 Chapter 1 Draft:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Draft\\_1\\_Surface\\_Water\\_Quality\\_Standards\\_08242012.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Draft_1_Surface_Water_Quality_Standards_08242012.pdf)

<sup>5</sup>August 24, 2012 Policies:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Draft\\_1\\_Implementation\\_Policies\\_08242012.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Draft_1_Implementation_Policies_08242012.pdf)

<sup>6</sup>August 24, 2012 SOPR:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Statement\\_of\\_Principle\\_Reasons\\_08242012.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Statement_of_Principle_Reasons_08242012.pdf)

<sup>7</sup>Responses to Comments (October 21, 2011):

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Response2\\_to\\_Comments\\_Public\\_Comment\\_Period\\_Ending\\_1\\_0212011\\_08242012.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Response2_to_Comments_Public_Comment_Period_Ending_1_0212011_08242012.pdf)

<sup>8</sup>Responses to Comments (September 24, 2012):

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/PublicNotice111312/Response\\_to\\_Comments\\_Public\\_Comment\\_Period\\_Ending\\_09242012\\_11132012.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/PublicNotice111312/Response_to_Comments_Public_Comment_Period_Ending_09242012_11132012.pdf)



28 to the drafts of Chapter 1<sup>9</sup>, Implementation Policies<sup>10</sup> and Statement of Principle Reasons<sup>11</sup>.  
29 These documents were included in the rule package released through a November 13, 2012  
30 public notice<sup>12</sup> and considered by the board at a public meeting in Casper, Wyoming on  
31 December 14, 2012.

32 During the December 14, 2013 meeting, the board extended public comment<sup>13</sup> until January 15,  
33 2013. No additional written comments were received by the department during the extended  
34 public comment period. The document that follows includes WDEQ/WQD responses to the  
35 comments received at the December 14, 2012 board meeting (see Appendix A for meeting  
36 transcript).

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38 Considering public comment, a rule package consisting of Chapter 1, Implementation Policies,  
39 Statement of Principle Reasons, and Responses to Comments (January 15, 2013) will be  
40 considered by the Water and Waste Advisory Board at a public meeting to be held in Casper,  
41 Wyoming on March 21, 2013. At that meeting, the board will either recommend advancing the  
42 rules to the Environmental Quality Council (council) or request that the rules be revised further  
43 and brought before them again. Additional opportunity for public comment will occur during a  
44 public hearing held by the council. The council will determine whether the revised rules will be  
45 recommended for adoption, sent to the governor for approval, to the Legislative Service Office  
46 for review, and the Secretary of State for certification. Following adoption and certification by  
47 the state, the standards will be submitted to EPA for review to determine whether they meet the  
48 goals and requirements of the Clean Water Act.

### 49 50 List of Commenters

51  
52 Chairwoman Marjorie Bedessem, Water and Waste Advisory Board  
53 Vice Chairman David Applegate, Water and Waste Advisory Board  
54 Ms. Lorie Cahn, Water and Waste Advisory Board  
55 John Robitaille, Petroleum Association of Wyoming  
56 Marvin Blakesley, Marathon Oil  
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<sup>9</sup>November 13, 2012 Chapter 1 Draft:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/PublicNotice111312/Draft\\_Surface\\_Water\\_Quality\\_Standards\\_11132012.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/PublicNotice111312/Draft_Surface_Water_Quality_Standards_11132012.pdf)

<sup>10</sup>November 13, 2012 Policies:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/PublicNotice111312/Draft\\_Implementation\\_Policies\\_11132012.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/PublicNotice111312/Draft_Implementation_Policies_11132012.pdf)

<sup>11</sup>November 13, 2012 SOPR:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/PublicNotice111312/Statement\\_of\\_Principle\\_Reasons\\_11132012.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/PublicNotice111312/Statement_of_Principle_Reasons_11132012.pdf)

<sup>12</sup>November 13, 2012 Public Notice:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/PublicNotice111312/FINAL\\_Public\\_Notice\\_WWAB\\_December\\_2012\\_Mtg\\_11132012.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/PublicNotice111312/FINAL_Public_Notice_WWAB_December_2012_Mtg_11132012.pdf)

<sup>13</sup>December 14, 2013 Public Comment Extension:

[http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Public\\_Notice\\_Extended\\_Public\\_Comment\\_Chapter\\_1\\_12142012\\_2.pdf](http://deq.state.wy.us/wqd/watershed/surfacestandards/Downloads/Triennial2011/Public_Notice_Extended_Public_Comment_Chapter_1_12142012_2.pdf)

58 Comments and Responses

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60 Comments with an asterisk (\*) have resulted in a change to Chapter 1 or the *Implementation*  
61 *Policies*.

62

63 **Section 2. Definitions.**

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65 **Entity: Ms. Lorie Cahn, Advisory Board**

66 \***Comment (pg. 46):** “And an additional question. Back on Chapter 1 proposed, page 1-6 of  
67 definitions, the definition of natural says, ‘Natural means that condition which would  
68 exist without the measurable effects or measurable influence of man’s activities.’ And I  
69 guess I was a little confused. What’s the difference between measurable effect and  
70 measurable influence of man’s activities. It’s on line 246 and 247 of page 1-6 of the  
71 proposed chapter.”

72

73 “I know it’s existing language. But if we’re cleaning up these intentionally, I mean, it  
74 seems like a lot of the changes are things that help clarify. And it wasn’t obvious to me if  
75 there’s a difference. So maybe if there isn’t a difference, maybe we should get rid of one  
76 of them.”

77

78 “Maybe it has some meaning, but to me, it didn’t mean anything.”

79

80 **Response:** Miriam Webster defines effect as “power to bring about a result:  
81 influence” and influence as “the act or power of producing an effect without apparent  
82 exertion of force or direct exercise of command” or “the power or capacity of causing an  
83 effect in indirect or intangible ways: sway.” Since the definition of natural specifies a  
84 “measurable influence”, it is essentially synonymous with “measurable effect” and thus  
85 the terms are redundant. Since “measurable influence” will encompass both direct and  
86 indirect effects of anthropogenic activities, WDEQ/WQD has removed the term  
87 “measurable effect” from the definitions of “natural”, “natural biotic community” and  
88 “natural water quality.”

89

90 **Effluent Dependent and Effluent Dominated Waters**

91

92 **Entity: Vice Chairman David Applegate, Advisory Board**

93 \***Comment (pg. 36):** “I have a couple of questions on this. In your response to comment on  
94 this – I’m on page 12 of your response to comments.”

95

96 “The tab that says responses, September 24, 2012. It’s on the top of page 12. This is in  
97 response to a comment from Marathon Oil in terms of the classifications. In your



98 response, toward the end, you say effluent-dominated waters are not appropriate for the  
99 effluent-dependent classes because effluent-dominated waters, by definition, are water  
100 bodies that would be intermittent or perennial without the presence of wastewater  
101 effluent. Effluent-dominated waters therefore have aquatic life that is not dependent on  
102 the effluent. But if you have an intermittent stream, those portions of the intermittent  
103 stream that have effluent and have aquatic life, wouldn't those portions of the stream and  
104 the aquatic life be dependent on the effluent? Intermittent means those parts of the  
105 stream where the water is below the channel bottom."

106  
107 "Or a portion of the stream. Right. So it's not just dependent. It can be spacial  
108 dependent?"

109  
110 "So, I mean, you could have intermittent water bodies that have effluent waters in them,  
111 and the aquatic life that's in those streams, that aquatic life is dependent on the effluent. I  
112 guess I have a suggestion for you to think about, because you've taken out this definition  
113 on page 1-4. Effluent-dependent water means a water body that would be ephemeral  
114 without the presence of permitted effluent. But I think that it can be ephemeral or  
115 intermittent. I mean, I think there's maybe value adding 'or intermittent' to that effluent-  
116 dependent water, because you might have aquatic life in that intermittent streams that is  
117 dependent upon the effluent discharge. And although we haven't – I say 'we.' I'm  
118 transparent here. I'm obviously representing the industry. I think there are probably  
119 opportunities in the future to use that designation. And I'm not sure we want to be  
120 limited entirely to just ephemeral streams. It seems intermittent streams would be a very  
121 maybe adequate part of that toolbox.

122  
123 So I know it's hard to think about this on the fly. But maybe you could give that a little  
124 bit of thought to see if adding 'intermittent' to the existing definition does any damage to  
125 what you had maybe negotiated previously with EPA."

126  
127 **Response:** Chapter 1, Section 2, defines effluent dependent water as "a water  
128 body that would be ephemeral without the presence of permitted effluent", but which has  
129 perennial or intermittent flows for all or a portion of its length as the result of the  
130 discharge of wastewater."

131  
132 Intermittent stream is defined in Chapter 1, Section 2 as "a stream or part of a stream  
133 where the channel bottom is above the local water table for some part of the year, but is  
134 not a perennial stream" and ephemeral stream as "a stream which flows only in direct  
135 response to a single precipitation event in the immediate watershed or in response to a  
136 single snow melt event, and which has a channel bottom that is always above the  
137 prevailing water table."

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As outlined in the Implementation Policy for Use Attainability Analysis, “The basic point is to show convincingly, through a weight of evidence approach, that a waterbody is comprised of essentially 100% permitted effluent and that without the effluent there would be no significant aquatic resource.” Since it is possible to establish water quality criteria that is equivalent to the quality of the discharge for water bodies that are designated as effluent dependent, the main issue surrounding effluent dependent waters is whether or not there is an aquatic life use present in the water body without the presence of the effluent. If there is an aquatic life use present, then it is not appropriate to designate the water as effluent dependent and set the water quality criteria to the level of the effluent because the quality of the effluent water may not be adequate to protect that aquatic life that is there independent of the discharge.

Since intermittent streams are identified as “a stream or part of a stream where the channel bottom is above the local water table for some part of the year, but is not a perennial stream” and the duration of time that the channel bottom is above the local water table is not specified, it is possible to have an intermittent stream that has water for a long enough duration (have sufficient hydrology) to sustain aquatic life, but also possible to have an intermittent stream that does not have water for long enough (has insufficient hydrology) to sustain aquatic life. As such, not all intermittent streams with a wastewater discharge can be identified as “effluent dependent.”

Moreover, since some intermittent streams can have insufficient hydrology to support aquatic life, the current definition of “effluent dependent” is inaccurate since water bodies with hydrologic regimes other than “ephemeral” can also be “effluent dependent.”

Since the most important concept for “effluent dependent” waters is the absence of aquatic life without the discharge of effluent, the definition of “effluent dependent water” should not focus on hydrologic conditions without the discharge (i.e. ephemeral or intermittent), but on a lack of aquatic life without the discharge. In lieu of this, WDEQ/WQD is proposing to change the definition of effluent dependent to “effluent dependent water means a water body with insufficient natural flow to support aquatic life, but which has perennial or intermittent flows for all or a portion of its length as the result of the discharge of wastewater.”

## Appendix B, General Comments

**Entity:** Vice Chairman David Applegate, Advisory Board

**\*Comment (pg. 25):** “So these new criteria, these are based on recommendations from EPA based on studies that they’ve conducted?”



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“I’m assuming this is the case, but I’ll just ask the question. I’m assuming for all of these new standards, there are established analytical methods that can provide these results?”

“The reason I make the comment, these are parts per billion. I’m a few years removed from this type of work, but I have done it in the past. And sometimes you have standards that are so low, you can’t find analytical methods to meet the standard, or the methods are exceedingly expensive. So I guess I would leave that as something for you maybe to look into. Analytical methods have gotten very good. But when I see a standard that’s .000068 PPB, that is a very low standard. And I just wonder if there’s any analytical method out there that’s going to provide that. That’s my comment.”

**Entity:** Ms. Lorie Cahn, Advisory Board  
**\*Comment (pg. 26):** “Or perhaps footnote it as reasonable analytical comments, standard laboratory methods – I don’t know the word to use. But obviously if no laboratory except some research laboratory can get that low.”

**Response:** Section 304(a)(1) of the Clean Water Act outlines that “The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge...” As a result, EPA publishes criteria that are based solely on data and scientific judgments to protect aquatic life and human health; the criteria generally do not reflect the limitations of standard analytical techniques. As identified in the Code of Federal Regulations, (40 CFR 131.11(b), “In establishing criteria, States should: (1) Establish numerical values based on: (i) 304(a) Guidance; or (ii) 304(a) Guidance modified to reflect site-specific conditions; or (iii) Other scientifically defensible methods.”

As a general policy, WDEQ/WQD uses 304(a) criteria to protect aquatic life and human health (fish consumption) and 304(a) criteria or the National Drinking Water Regulation criteria, whichever is more stringent, to protect waters designated for drinking water. While the National Drinking Water Regulation criteria are based on best available treatment technology and take cost into consideration, 304(a) criteria do not. As a result, most of the numeric criteria included in Chapter 1 do not reflect the detection limits of standard analytical techniques.

To clarify this point for entities using Wyoming’s Water Quality Standards, WDEQ/WQD is proposing to include the following language in Chapter 1, Section 10, Testing Procedures: “Numeric criteria included in the standards represent levels

218 necessary to protect designated uses and do not necessarily reflect detection limits that  
219 can be achieved using standard analytical techniques. Standard analytical techniques are  
220 considered during development of discharge permits and evaluation of water quality data.  
221 Sampling entities should consult with the department to determine reporting limit needs  
222 to ensure that adequate testing procedures and reporting limits are requested from the  
223 laboratory.”

224  
225 As a matter of practice, both the Watershed Protection Program and the Wyoming  
226 Pollution Discharge Elimination System (WYPDES) Program take analytical methods  
227 into consideration when evaluating water quality data and establishing permit effluent  
228 limits, respectively.  
229

## 230 **Surface Water Classifications**

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232 **Entity:** Vice Chairman David Applegate, Advisory Board

233

234 **Comment (pg. 41):** “So I’m not sure I’m tracking entirely on the Game and Fish drinking  
235 water issues. But those designations in the previous review are based on the Wyoming  
236 Game and Fish’s database. Correct?”

237

238 “Would that database meet the criteria of credible data?”

239

240 “I guess that’s one thing that maybe you can think about in your review process. I think  
241 that if you get data from an agency like that, it should have to meet the same criteria that  
242 we would have to. And I say ‘we.’ I mean the regulated community. So it may. I don’t  
243 know what their database is. But I think sometimes we may not hold an agency like that  
244 to the same standard that we hold others to. So I think that’s just an avenue to look at.  
245 What was their criteria for making that designation? And there is a definition here about  
246 credible data. And they should have to – if they’re going to provide data for you, they  
247 should have to use the same classification, defensible criteria. They should have some  
248 evidence other than what was in our database.”

249

250 **Response:** The current WDEQ stream classification system is based mostly on a  
251 Wyoming Game and Fish Department (WGFD) database received by WDEQ in 2000.  
252 During the revision of Chapter 1 that was approved in 2001, the department revised  
253 Wyoming’s surface water classifications to ensure that Wyoming’s designated uses were  
254 consistent with Section 101(a) of the Clean Water Act. Section 101(a) requires, where  
255 attainable, water quality that provides for the protection and propagation of fish, shellfish  
256 and wildlife, and recreation in and on the water. Section 101(a) establishes that  
257 fishable/swimmable uses must be designated on all waters unless those uses are shown to  
be unattainable through a use attainability analysis. The 2001 revision represented a



258 major change to Wyoming's surface water classification system and the Wyoming Game  
259 and Fish database was the best available information at the time.

260  
261 Chapter 1, Section 35, Credible Data, was also added during the 2001 revision to  
262 highlight provisions within the Environmental Quality Act that identify that credible data  
263 be used to designate uses. Chapter 1, Section 35, Credible Data, identifies that "all  
264 changes to use designations after the effective date of this rule shall include the  
265 consideration of credible data relevant to the decision. Changes which involve the  
266 removal of a use designation or the replacement of a designation shall be supported by a  
267 use attainability analysis (UAA)." Section 35-11-302 (b)(i) of the Environmental Quality  
268 Act states "...use of credible data in designating uses of surface waters consistent with  
269 the requirements of the Federal Water Pollution Control Act (33 U.S.C. sections 1251  
270 through 1387)."

271  
272 Based on the timing outlined above, both the use of the Wyoming Game and Fish  
273 database and the requirement that credible data be used to make future changes to  
274 designate uses occurred at the same. If making a change to an aquatic life designated use  
275 today, information other than the presence or absence of groups of fish in the Wyoming  
276 Game and Fish database would be required.

277  
278 WDEQ/WQD recognizes that there are limitations to the existing classification system  
279 and is currently evaluating a path forward to revise the classifications. Any revisions to  
280 the surface water classification system and designated uses outlined in Chapter 1 will be  
281 made through the formal rule making process, while placement of waters into revised  
282 categories will proceed through the use attainability analysis (UAA) process outlined in  
283 Chapter 1, Sections 33, 34. Any such changes will be consistent with the credible data  
284 provisions outlined in Chapter 1 and the Environmental Quality Act.

## 285 286 **Chapter 1, General Comments**

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288 **Entity: Chairwoman Marjorie Bedessem, Advisory Board**

289 **Comment (pg. 29):** "I have one comment here. I think the public outreach efforts on your  
290 part to elicit comments are a good thing. However, if you're saying that's what we would  
291 normally do, normally you would have some sort of public comment in front of the  
292 advisory board, as well. For example, in the October 21<sup>st</sup> response set, it says on the  
293 second page that the comment letters are in Appendix A, and the oral comments,  
294 excerpts, are in Appendix B. But I could not find those."

296 “Since you only had twelve, fifteen comments, it would be appreciated, though if you do  
297 give us those actual comments, as opposed to – so we can see the context that they’re in –  
298 in addition to the response and comment typical format, as well.”  
299

300 **Response:** Appendix A has been added to the *Responses to Comments for the*  
301 *Comment Period Ending October 21, 2011* and includes copies of the letters  
302 WDEQ/WQD received as part of the September 12, 2011 to October 21, 2011 public  
303 comment period. Appendix B has also been added to the *Responses to Comments for the*  
304 *Comment Period Ending October 21, 2011* and includes the oral comments received at  
305 the public meeting held in Casper, WY on October 13, 2011. Copies of the letters  
306 WDEQ/WQD received as part of the August 24, 2012 to September 24, 2012 public  
307 comment period have been added to the *Responses to Comments for the Comment Period*  
308 *Ending September 24, 2012* as Appendix A. Both of these documents can be found on  
309 the Surface Water Standards website:  
310 <http://deq.state.wy.us/wqd/watershed/surfacestandards/index.asp>.  
311

312 **Entity:** **John Robitaille, Petroleum Association of Wyoming**

313 **Comment (pg. 43):** “Briefly, just a couple of very general comments, if I may. First of all,  
314 I’d like to applaud the Division for the scoping portion of this. That was very helpful to  
315 us. We very much appreciated that and hope that they continue.  
316

317 I did have some worries and concerns when we look at the future projects. And I did just  
318 want to bring it back to the attention of the board and some of the new members of the  
319 Division. If you look in your green book in 35-11-302, there is a portion in there that  
320 references economics. I’ve heard it a couple times today. I’m very pleased to hear it.  
321 And I would recommend that that continue to remain on the forefront of any decision-  
322 making that comes forward.  
323

324 One other general comment for the Division. In instances – and I apologize. I do not  
325 have any right off the top of my head. But in instances when EPA suggests some change,  
326 sometimes there is a choice to be made. You’re allowed a choice. Rather than defaulting  
327 immediately to the most stringent choice, we would request that debate and perhaps some  
328 allowable comment be made on those choices that are available to use so that we are – we  
329 are allowed the best possible choice, rather than default directly to the most stringent  
330 choice.”  
331

332 **Response:** Section 35-11-302(vi) of the Environmental Quality Act outlines “In  
333 recommending any standards, rules, regulations, or permits, the administrator and  
334 advisory board shall consider all the facts and circumstances bearing upon the  
335 reasonableness of the pollution involved including (B) The social and economic value of  
336 the source of pollution.”



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338 The water quality criteria included in Wyoming's Surface Water Quality Standards are  
339 intended to protect the uses designated on Wyoming's waters. WDEQ/WQD relies on  
340 the public process to identify potential economic impacts of proposed rule changes, as  
341 outlined in the Response to Comments for the Comment Period Ending October 21, 2011  
342 and the Responses to Comment for the Comment Period Ending September 24, 2012. In  
343 addition, as part of this rule revision, WDEQ/WQD reviewed the list of parameters that  
344 oil and gas production facilities, coal mining facilities, and coal bed methane operators  
345 are commonly required to submit as part of obtaining a Wyoming Pollutant Discharge  
346 Elimination System (WYPDES) permit. With the exception of silver, none of the  
347 parameters that are commonly requested in initial monitoring reports are proposed to  
348 change during this revision of Chapter 1. Furthermore, as outlined in the proposed  
349 revisions to footnote 16 of Appendix B, if a permit limit is written as an instantaneous  
350 maximum, the previous silver criteria of 3.4 µg/L can be used. While it is possible that  
351 additional parameters may be requested during the permitting process, WDEQ/WQD  
352 does not foresee significant impacts from the proposed criteria revisions.

353

354 Economic and social values of pollution are also evaluated during the antidegradation  
355 process outlined in Chapter 1, Section 8 and elaborated on in the *Antidegradation*  
356 *Implementation Policy*. During the antidegradation review, as outlined in Section 8, the  
357 department "may issue a permit for or allow any project or development which would  
358 constitute a new source of pollution, or an increased source of pollution..." if it can be  
359 shown that "the lowered water quality is necessary to accommodate important economic  
360 or social development in the area in which the waters are located."

361

362 Moreover, additional mechanisms are in place that can be utilized by various entities to  
363 accommodate sources of pollution in Wyoming. These mechanisms include:  
364 modification of criteria through the development of site-specific criteria, as outlined in  
365 Chapter 1, Sections 33 and 34; change in designated uses through the use attainability  
366 analysis process outlined in Sections 33 and 34; and application of compliance schedules  
367 through the WYPDES program.

368

369 In addition, the department is also evaluating inclusion of a variance process within  
370 Chapter 1. Water quality variances are most often based on economic considerations, as  
371 outlined at 40 CFR 131.10(g)(6), "controls more stringent than those required by section  
372 301(b) and 306 of the Act would result in substantial and widespread economic and  
373 social impact."

374

375 WDEQ/WQD has chosen to adopt the more stringent of the 304(a) or Safe Drinking  
376 Water Act criteria to protect Wyoming's drinking water designated use. Chapter 1,

377 Section 3, defines Wyoming’s drinking water designated use as “maintaining a level of  
378 water quality that is suitable for potable water or intended to be suitable after receiving  
379 conventional drinking water treatment,” indicating that Wyoming’s drinking water use is  
380 intended to maintain a level that is safe for human consumption with little to no  
381 treatment. Protection of drinking water sources is extremely important and much more  
382 cost effective than treatment of water for drinking. The more restrictive criteria protect  
383 drinking water supplies and minimize treatment costs.  
384

385 WDEQ/WQD does recognize that many waters in the state that are protected for drinking  
386 water uses may not in fact be used for drinking water because the drinking water  
387 designated use is based on the presence of game fish. In these circumstances, it may be  
388 appropriate to remove the drinking water use through the use attainability analysis (UAA)  
389 process described in Chapter 1, Section 33 and 34. Furthermore, as mentioned above,  
390 WDEQ/WQD is currently evaluating a path forward to revise the classifications that will  
391 more accurately designate drinking water uses in Wyoming.  
392

393 **Entity:** **Marvin Blakesley, Gene R. George & Associates, Inc., Marathon**  
394 **Oil Company**

395 **Comment (pg. 42):** “I’d like to reiterate and express support for the comments that John  
396 previously made. I think those were very appropriate comments. I would also like to say  
397 that I really like the idea of presenting the public comments to the Water and Waste  
398 Advisory Board for the reasons that we’ve discussed, and that being that it provides the  
399 rationale for the DEQ answer. And I think that very important for the board to hear when  
400 you make those decisions. So I really like that, and I encourage that to take place in the  
401 future.  
402

403 One other comment. Since the Clean Water Act does allow for variances – and I know  
404 you’re talking about this, David, in the next triennial review. I think it’s appropriate to  
405 include something in the future rules and regulations that does allow the State of  
406 Wyoming also to have some sort of variance process in their rules and regulations. And I  
407 think you’re onto that. Your going forward with that in the future. And I just think that’s  
408 important to pursue.  
409

410 That’s all I had. And wanted to thank the board and thank the DEQ, as well, for the  
411 efforts they’ve made. Thank you.”  
412

413 **Response:** As mentioned above, WDEQ/WQD is evaluating inclusion of a section  
414 on water quality variances during the next triennial review. Such a provision would  
415 allow a time-limited change to designated uses and water quality criteria if it can be  
416 demonstrated that imposing the criteria “would result in substantial and widespread



417 economic and social impact”, as outlined at 40 CFR 141.10(g)(6) and reproduced in  
418 Chapter 1, Section 33(b)(vi).

419

## 420 **Implementation Policies**

421

422 **Entity:** **Ms. Lorie Cahn, Advisory Board**

423 **\*Comment (pg. 44):** “I have a couple. As always, I have some editorials. But just on page  
424 61, I’m thinking that the Section 20 decision process should maybe have been deleted. It  
425 shouldn’t maybe have been red. I was confused when I got there. If anybody else has  
426 things, go ahead.”

427

428 “Just an editorial. On page 36 of proposed policies, on line 1438, at the end of the line it  
429 says ‘Wetland occurrence is best used is to identify.’ So I think maybe the ‘is’ might be.  
430 On page 42, same thing, proposed policies, line 1700, ‘A whole body tissue criterion of  
431 0.03 milligrams.’ Is that supposed to be ‘of up to?’”

432

433 “And then just – oh, another one of my generic tech editor comments or editorial  
434 comments. ‘Data’ is plural. ‘Datum’ is singular. I noticed it any number of places. I  
435 would do a global search for ‘data.’ So for instance, on page 35, line 1387 says, ‘When  
436 flow data is not available.’ Should be, ‘When flow data are,’ or, ‘When flow datum is.’  
437 Thanks. That’s all I have.”

438

439 **Response:** WDEQ/WQD has made these editorial changes.

440

441 LP/bb/13-0137

