

WDEQ Surface Water Quality Standards Triennial Stakeholder Group Meeting

NOTES From 5/19/21

Attendees

Organization/Interest	Contact Name	Contact Email	Present
WY Department of Environmental Quality	David Waterstreet	David.Waterstreet@wyo.gov	Yes
WY Department of Environmental Quality	Lindsay Patterson	Lindsay.Patterson@wyo.gov	Yes
WY Dept. of Envir. Quality	Madeleine Hamel	Madeleine.Hamel@wyo.gov	Yes
WY Dept. of Envir. Quality	Gina Thompson	Gina.Thompson@wyo.gov	Yes
Ruckelshaus Institute	Jessica Western	biggoosecreekresolutions@gmail.com	Yes
US Forest Service Region 2	Andrea Rogers	Andrea.rogers@usda.gov	
US Forest Service Region 4	Mark Muir	mark.muir@usda.gov	Yes
National Park Service	Sharla Stevenson	Sharla_Stevenson@nps.gov	Yes
	Andrew Birch	andrew_birch@nps.gov	Yes
US Bureau of Reclamation	Lyle Myler	lmyler@usbr.gov	
	Shain Wright	slwright@usbr.gov	
US Fish and Wildlife Service	Kim Dickerson	kimberly_dickerson@fws.gov	
Natural Resource Conservation Service	Andi Neugebauer	andi.neugebauer@usda.gov	Yes
US Geological Survey	Cheryl Miller	cemiller@usgs.gov	Yes
Office of State Lands and Investments	Benjamin Bump	benjamin.bump@wyo.gov	Yes
WY State Parks	Conrrado Deniz	conrrado.deniz@wyo.gov	
WY State Engineer's Office	Jason Feltner	jason.feltner@wyo.gov	Yes
WY Game and Fish Department	Amanda Losch	amanda.losch@wyo.gov	Yes
	Lara Gertsch	lara.gertsch@wyo.gov	Yes
Wyoming Water Development Office	Mike Robertson	mike.robertson1@wyo.gov	
WY Department of Agriculture	Scott McDonald	Scott.mcdonald@wyo.gov	Yes
WY Department of Health	Alexia Harrist	Alexia.harrist1@wyo.gov	
	Courtney Tillman	Courtney.tillman@wyo.gov	
WY Outdoor Council	Dan Heilig	dan@wyomingoutdoorcouncil.org	Yes
Trout Unlimited	Liz Rose	liz.rose@tu.org	Yes

Organization/Interest	Contact Name	Contact Email	Present
Powder River Basin Resource Council	Jill Morrison	jmorrisson@powderriverbasin.org	Yes
WY Association of Rural Water Systems	Michelle Christopher	mchristopher@warws.com	Yes
	Mark Pepper	markp@warws.com	Yes
WY Association of Municipalities	Clint Bassett	cbassett@cheyennebopu.org	Yes
	Matt Buelow	mbuelow@cheyennebopu.org	Yes
WY County Commissioners Association	Terry Wolf	terrywolf@washakiecounty.net	Yes
WY Association of Conservation Districts	Cathy Rosenthal	cathy.rosenthal@conservewy.com	Yes
WY Petroleum Association	Tom McCormick	Thomas_McCormick@eogresources.com	
	Matt Smith	matt.smith@vaquerobighorn.com	
	Colin McKee	colin@pawyo.org	Yes
WY Mining Association	Dale Brown	dbrown@wwcengineering.com	Yes
National Outdoor Leadership School	Jonathan Williams	jonathan_williams@nols.edu	
WY Contractors Association	Chris Fare	chris@melgaardconstruction.com	Yes
WY Farm Bureau Federation	Morgan Spiro	mspiro@wyfb.org	Yes
WY Stock Growers Association	Jim Magagna	jim@wysga.org	Yes

- **Introductions** and brief overview of today's discussion
- Lindsay Patterson: **Presentation on Implementation Policies**
 - Reviewed federal requirements and guidance and State of Wyoming's requirements and guidance
 - Chapter 1 has multiple sections that discuss implementation policies
 - Implementation policies are currently referenced in Chapter 1, but not formally incorporated by reference, so creates legal ambiguity.
 - If intended to be incorporated by reference, must meet requirements in the Wyoming Administrative Procedures Act
 - Currently do not meet those requirements
 - Some policies and aspects of the policies are meant to have force and effect of rule, while others are not
 - Federal regulations use 'policy' when they mean elements in the rule and 'implementation methods' that are outside of the rule
 - **Turbidity Policy** is a shorter policy – specific to providing authorizations to exceed the numeric turbidity criteria in Section 23

- There is a desire to establish a permit by rule for activities that result in an increase in turbidity (such as from construction)
- **Implementation policies** provisions that effect the implementation of regulations
 - Federal guidance says that states can adopt general policies into their water quality standards and how those standards are implemented
 - The federal guidance directly mentions flow, variances, and mixing zones
 - There is more detailed guidance from EPA in the Water Quality Standards Handbook, including on Mixing Zones
 - Any new mixing zone “policy” must be approved by EPA before it can be used for Clean Water Act Purposes
- Wyoming has a specific Mixing Zone section (Section 9 in Chapter 1)
 - States that you can comply with the standards after letting time for mixing
 - Not all water quality criteria can be ignored
 - Cannot be lethal to aquatic life, zone of passage must be secured, and must protect drinking water intakes
 - The policy combines dilution and the way the mixing zone policy is implemented
- Mixing Zone Examples of other States
 - Colorado
 - Has a mixing zones policy in their standards, with multiple definitions of mixing zones when referencing specific situations (lake vs. river for example)
 - Idaho
 - Similar to Colorado, but shorter policy description
 - Ohio
 - Much more detailed in their descriptions of mixing zones compared to Wyoming, Idaho, and Colorado
- Ideas for changes to the mixing zone and dilution allowances policy
 - Move the policy into the rule
 - The rule would include specific sections and flesh out that information more (when can a mixing zone be authorized, etc.)
 - A lot of this policy is used by the permitting program
 - Desire to have more transparency, which would be achieved by moving the policy to the rule
 - Moving the policy into the rule could lengthen the rules, but would remove the need for the separate policy and for incorporating the policy by reference
- **Use Attainability Analysis Implementation Policy**

- Clean Water Act says that we must designate all waters for fishable and swimmable uses
 - In order to remove a fishable/swimmable use, must complete a use attainability analysis (UAA) to show the use cannot be met due to one of six factors
 - Cannot remove any existing uses and must designate the highest attainable use
- Administrative process for modifying designated uses or changing criteria are outlined in Section 34 in Chapter 1
 - Must have a public hearing, approved by the EPA, and follow administrative process
- Section 33 in Chapter 1 outlines the requirements for modifying designated uses and modifying criteria on a site-specific basis
 - Includes six factors for demonstrating attainability
 - Naturally occurring pollutants, natural low flows, human caused conditions that cannot be remedied, hydrologic modifications, physical conditions, economic and social impacts
- *There does not seem to be a lot of background and data in these policies, do we have a lot of these UAA's?*
 - It might seem like there is not a lot of information, but there is most likely more information deeper into their paperwork. Wyoming has done a decent amount since 2000 where mostly we were trying to remove an aquatic life use, and we have a paper trail on our website to show the different changes we have made in terms of uses and criteria.
 - These types of changes require a lot of scientific backing to support the changes, it generally takes a lot of money and time to try to make this work. It is a lot of deliberation between us at WDEQ and anyone who wants to change a criteria or designated use
- *Is the final outcome of a UAA a change to the rule?*
 - Yes, all of these are technically changes to the rules and they are all part of the standards; in the case of designated use changes, they do not result in a direct change to Chapter 1 of the standards because these are in the Surface Water Classification List. If modifying a criteria, the changes are made within Chapter 1
- The big thing is to consolidate all the rules regarding designated uses and the process to modify designated uses (it is currently separated into 4 different sections)
 - Would be beneficial to retain a guidance document for those trying to change designated uses
- Also need to consolidate water quality criteria and modifications for water quality criteria
 - This section would include process for establishing water quality criteria for effluent dependent waters
- Would increase length of the rules, but it could eliminate need for reference

- **Antidegradation Policy**
 - Federal regulations tell state they should develop a legally binding policy for antidegradation, and there are three tiers for this policy
 - Tier 1 is to protect existing uses
 - Tier 2 is to protect water quality when water quality is better than the criteria necessary to protect the designated use
 - Intent is to try and keep waters at higher quality, so if there is any desire to lower this water quality there must be a very good reason why and a demonstration that it is necessary to achieve economic and social development
 - Section 8 in Chapter 1 of the standards is all about Antidegradation
 - Elements of the federal regulations are included in the standards
 - Biggest improvement would be to combine the nearly 5 sections into 1 for antidegradation
 - There is a need for guidance for the time of designation and water quality in the interim policy for water quality and there needs to be elaboration on the tier system
 - *The permit by rule, for the turbidity waiver, how would that change from what we are doing now?*
 - That would eliminate the need for individual turbidity waivers, and that would be covered in the permit by rule because it would mean you were in agreeance for the whole rule
- **Breakout session to discuss suggestions for rules changes and suggestions**
 - Gina Thompson's Breakout room information:
 - There are concerns that antidegradation reform will end up making the policy more complicated than it currently is, and that revisions should be made at the same time when going through Chapter 1 (this includes the guidance documents)
 - There was a bit of a confusion between mixing zones and antidegradation
 - In favor of streamlining the turbidity policy process and that the WDEQ clarifies what the Best Available Technology would be in order to handle turbidity and other water quality concerns so that way there is no wiggle room to use less than necessary technology
 - *Is the tiered process for UAAs [antidegradation] something that will be proposed and will it be aligned with Clean Water Act?*
 - Clarification that the tiered system is for antidegradation. Wyoming has a three-tiered system for antidegradation currently and the intention would be to consolidate and not modify too much.

- There is a desire to clarify mixing zone information because it is a complex chapter
- Madeleine Hamel's Breakout room information:
 - Desire to figure out what is a rule and policy, making sure that there are clarifications
 - WDEQ needs to require an applicant to pay the cost of an UAA
 - UAAs should be required for decreasing protections, not increasing protections
 - There are questions about a permit by rule, and where and how such a thing functions in real life, with examples for a permit by rule
- Lindsay Patterson's Breakout room information:
 - Wanted clarification for what was going to be substantive change, versus clarification, versus consolidation for the changes presented in the draft rule
 - High desire for using as plain as language as possible for rule making
 - Should not require for UAA when trying to raise standards because the federal regulations does not require such an action
 - A lot of support for guidance documents that have diagram information and other more visual explanations because long narratives can be confusing
 - Make sure that there is a real benefit for making changes to the standards, not just changing for changings sake
 - Desire for a draft to be provided to the working group prior to public comment ability is available
- **Breakout Session for Initial Considerations for Comments on the topics for the Working Group**
 - The breakout groups will work on making suggestions on specific issues that we have worked with through the last four meetings
 - This is being done on a shared spreadsheet that the WDEQ facilitators are going to transcribe onto the shared spreadsheet
 - Gina Thompson's Breakout group Summary:
 - Looking at a basin approach instead of a waterbody approach
 - Looking at a use-based system, but there is hesitancy because there is a level of uncertainty with how such a change would look in practice, and want to see an example before any other action takes place
 - Talked about scenic value's inclusion due to the subjective nature of this idea
 - There needs to be an awareness of scale for water user, smaller users might not be able to hold onto standards in that manner
 - Varying water quality along the course of a river needs to be considered

- Current system is complicated to use
- Lindsay Patterson's Breakout Group Summary:
 - A lot of clarifying done and cleaning up language (like what exactly would a basin model look like?)
- Madeleine Hamel's Breakout Group Summary:
 - Some confusion with how current comments are written.
- Look forward to what should be expected for the next meetings. **End of session.**