



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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March 19, 2020

Ref: 8WD-CWQ

David Waterstreet
Watershed Protection Section Manager
Wyoming Department of Environmental Quality
Water Quality Division
200 West 17th Street, 4th Floor
Cheyenne, WY 82002

Re: Draft Changes to WY Assessment Methods

Dear Mr. Waterstreet:

We have reviewed the draft changes to Wyoming's Methods for Determining Surface Water Condition. The only substantial changes proposed are on pages 5 and 6 of the document regarding qualifications necessary to collect water samples in Wyoming for the use of listing or delisting of impaired waters. We submit the following comments for your consideration.

EPA is concerned with the language under the Credible Data section of the proposal stating that "data used to make use support determinations must be collected by a person employed by, or under contract with, a governmental entity." In short, the State proposes to prohibit the use of data collected by non-governmental entities in use determinations for particular waterbodies unless a governmental entity has also collected data for that waterbody. 40 C.F.R. § 130.7(b)(5) does not allow the State to do this. That regulation requires that "Each State shall assemble and evaluate all existing and readily available water quality-related data and information *to develop the list* required by § 130.7(b)(1)." (emphasis added.) "[A]ll existing and readily available water quality related data and information" is defined to include information about waterbodies for which water quality problems have been reported by members of the public and academic institutions, in addition to governmental entities. Thus, in determining whether a particular waterbody belongs on the impaired waters list (i.e., in determining whether uses are being met and whether applicable criteria are being exceeded), the State must assemble and evaluate information and data from members of the public and academic institutions, in addition to information and data from governmental entities. If the only existing and readily available water quality related data and information for a water body comes from a member of the public or an academic institution, the State is not permitted to ignore the data or refuse to make a use determination merely on the basis of the origin of the data.

EPA is also concerned that Sections 1 and 2 under the Credible Data section of the proposal specify education and training requirements that are vague and overly restrictive. For example, is any four-year science degree an acceptable qualification? The training requirements proposed for those who do not have a four-year science degree are similarly vague and arbitrary. The stated training hours required for each type of sampling may not match the training hours necessary to become proficient, depending on specific sampling to be performed. This specificity appears overly prescriptive when actual training

needed to become proficient may require less time, or even more. Additionally, it is not specified in the draft methods who will develop the training curriculum, who will determine whether the training meets the necessary requirements, who will determine the applicability of relevant work experience, what criteria will apply to such determinations, and ultimately, who will decide if a person is now qualified to collect data. It is implied that this would be the responsibility of water quality staff within WDEQ, since they review data for use in determining impaired waters. EPA believes that this could potentially be a substantial workload.

Finally, the EPA is concerned with the requirements in Sections 3 and 4 under the Credible Data section of the proposal. These include the requirement that samplers “document familiarity” with quality assurance planning, sampling and analysis plans, and a requirement that “an audit of field sampling activities must be conducted and documented at least every four years or at the discretion of WDEQ/WQD”. In particular, the EPA is concerned that there are no guidelines for how a sampler could document familiarity with quality assurance processes or how such documentation should be provided. The audit requirement, meanwhile, provides no guidelines or criteria as to how audits would be conducted, nor does it explain how WDEQ will determine whether the 4-year audit period should be longer or shorter. While adequate training and quality assurance is necessary to ensure accurate sample collection, this proposal will likely serve primarily to restrict who can collect samples in Wyoming.

Although EPA does not formally approve or disapprove assessment methodologies, when taking an action on a Section 303(d) list submitted by Wyoming, EPA would take into account whether requirements placed on the process hindered appropriate listing or delisting actions of impaired waters. In that case, EPA may, pursuant to 40 C.F.R. § 130.7(b)(6), request that the State provide “a rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in § 130.7(b)(5)” and request that the State “demonstrate good cause for not including a water or waters on the list.”

Please contact Tom Johnson at 303-312-6226 or by email at johnson.tom@epa.gov, if you have any questions regarding our comments.

Sincerely,



Andrew Todd, Ph.D.
Chief, Water Quality Section
Clean Water Branch

cc: Jason Gildea, 8WD-CWS
Maggie Pierce, 8WD-CWQ
Everett Volk, 8ORC