

# Wyoming

## **State Water Quality Agency**

Wyoming's water quality laws are administered by the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD).<sup>1</sup>

## **Delegated Permit Authority**

Wyoming has been delegated permit authority for the NPDES permit program including stormwater permits for all areas except Indian lands. Wyoming has not been delegated authority from the EPA for the section 404 dredge and fill permit program.

## **State Definition of Covered Waters**

According to Wyoming State water quality laws, "waters of the state" include "all surface and groundwater, including waters associated with wetlands, within Wyoming."<sup>2</sup> "Surface waters of the state" means "all perennial, intermittent and ephemeral defined drainages, lakes, reservoirs, and wetlands which are not man-made retention ponds used for the treatment of municipal, agricultural or industrial waste; and all other bodies of surface water, either public or private which are wholly or partially within the boundaries of the State."<sup>3</sup>

State surface water quality standards extend to all surface waters of the state whether they are natural or man-made, isolated or tributary, perennial, intermittent, or ephemeral, with the sole exception for treatment facilities. There are separate groundwater standards.

## **Point Sources and NPDES Permits**

The BLM holds two NPDES permits in Wyoming. These are both storm water permits and include the Ralston Gas Plant remediation (WYR102286) and the Wind Flat Community Gravel Pit (WYR320350).

## **Water Quality Standards**

### **Designated Uses**

Chapter 1, Section 3 of Wyoming's Water Quality Rules and describes the State's designated uses. The objectives of Wyoming's designations are to provide, wherever attainable, the highest possible water quality commensurate with the following uses:

- **Agriculture.** For purposes of water pollution control, agricultural uses include irrigation or stock watering.
- **Fisheries.** The fisheries use requires water quality, habitat conditions, spawning and nursery areas, and food sources necessary to sustain populations of game and nongame fish. This use does not include the protection of exotic species which are designated "undesirable" by the Wyoming Game and Fish Department or the U.S. Fish and Wildlife Service within their appropriate jurisdictions.

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<sup>1</sup> Additional information is available on their webpage: <http://deq.state.wy.us/wqd/>.

<sup>2</sup> Wyo. Stat. § 35-11-103(c)(vi).

<sup>3</sup> Wyoming Water Quality Rules and Regulations, Chapter 1, Wyoming Surface Water Quality Standards, Section 2(b)(xliv). Available at: <http://soswy.state.wy.us/RULES/4475.pdf>.

- **Industry.** Industrial use protection involves maintaining a level of water quality useful for industrial purposes.
- **Drinking water.** The drinking water use involves maintaining a level of water quality that is suitable for potable water or intended to be suitable after receiving conventional drinking water treatment.
- **Recreation.** Recreational use protection involves maintaining a level of water quality which is safe for human contact. It does not guarantee the availability of water for any recreational purpose.
- **Scenic value.** Scenic value use involves the aesthetics of the aquatic systems themselves (odor, color, taste, settleable solids, floating solids, suspended solids, and solid waste) and is not necessarily related to general landscape appearance.
- **Aquatic life other than fish.** This use involves maintaining the water quality and habitat necessary to sustain populations of organisms other than fish in proportions which make up diverse aquatic communities common to the waters of the state. This use does not include the protection of insect pests or exotic species that are considered "undesirable" by the Wyoming Game and Fish Department or the U.S. Fish and Wildlife Service within their appropriate jurisdictions and human pathogens.
- **Wildlife.** The wildlife use requires protection of water quality to a level that is safe for contact and consumption by avian and terrestrial wildlife species.
- **Fish consumption.** The fish consumption use involves maintaining a level of water quality that will prevent any unpalatable flavor and/or accumulation of harmful substances in fish tissue.

Wyoming divides its designated uses into four major surface water classes.<sup>4</sup> The water classes are a hierarchical categorization of waters according to existing and designated uses. Except for Class 1 waters, each classification is protected for its specified uses plus all the uses contained in each lower classification. Class 1 designations are based on value determinations rather than use support and are protected for all uses in existence at the time or after designation. The classifications and their subcategories are:

- **Class 1, Outstanding Waters.** Class 1 waters are those surface waters in which no further water quality degradation by point source discharges other than from dams will be allowed. In designating Class 1 waters, water quality, aesthetic, scenic, recreational, ecological, agricultural, botanical, zoological, municipal, industrial, historical, geological, cultural, archaeological, fish and wildlife, the presence of significant quantities of developable water, and other values of present and future benefit to the people are considered.
- **Class 2, Fisheries and Drinking Water.** Class 2 waters are waters, other than those designated as Class 1, that are known to support fish or drinking water supplies or where those uses are attainable. Class 2 waters may be perennial, intermittent, or ephemeral and are protected for the uses indicated in each subcategory listed below. There are four subcategories of Class 2 waters:
  - **Class 2AB.** Class 2AB waters are those waters, and all their perennial tributaries and adjacent wetlands, that are known to support game fish populations or spawning and nursery areas at least seasonally and where a game fishery and drinking water use is otherwise attainable. Unless it is shown otherwise, these waters are presumed to have

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<sup>4</sup> A more complete explanation of the various classes can be found in Chapter 1, Wyoming Surface Water Quality Standards. See table 1 for a diagrammatic view of classification.

- sufficient water quality and quantity to support drinking water supplies and are protected for that use.
- Class 2A. Class 2A waters are those waters, including all their perennial tributaries and adjacent wetlands, that are not known nor do they have the potential to support game fish, but are used for public or domestic drinking water supplies.
  - Class 2B. Class 2B waters are those waters, and all their perennial tributaries and adjacent wetlands, known to support or having the potential to support game fish populations or spawning and nursery areas at least seasonally and where it has been shown that drinking water uses are not attainable.
  - Class 2C. Class 2C waters are those waters, including their perennial tributaries and adjacent wetlands, known to support or having the potential to support only nongame fish populations or spawning and nursery areas at least seasonally.
  - Class 3, Aquatic Life Other than Fish. Class 3 waters are 1) waters, other than those designated as Class 1, that are intermittent, ephemeral, or isolated waters, and because of natural habitat conditions, do not support nor have the potential to support fish populations or spawning; or 2) certain perennial waters that lack the natural water quality to support fish (e.g., geothermal areas).
    - Class 3A. Class 3A waters are isolated waters, including wetlands, that are not known to support fish populations or drinking water supplies and where those uses are not attainable.
    - Class 3B. Class 3B waters are tributary waters, including adjacent wetlands, that are not known to support fish populations or drinking water supplies and where those uses are not attainable. Class 3B waters are intermittent and ephemeral streams with sufficient hydrology to normally support and sustain communities of aquatic life, including invertebrates, amphibians, or other flora and fauna that inhabit waters of the State at some stage of their life cycles.
    - Class 3C. Class 3C waters are perennial streams without the natural water quality potential to support fish or drinking water supplies but do support wetland characteristics. These may include geothermal waters and waters with naturally high concentrations of dissolved salts or metals or pH extremes.
  - Class 4, Agriculture, Industry, Recreation and Wildlife. Class 4 waters are waters, other than those designated as Class 1, where it has been determined that aquatic life uses are not attainable pursuant to the provisions of Section 33 of Wyoming's water quality regulations. Class 4 waters will be designated only after a Use Attainability analysis has been conducted since these waters are not protected for the uses specified in Section 101 (a)(2) of the Federal Clean Water Act (e.g., fishable, swimmable, etc.).
    - Class 4A. Class 4A waters are artificial canals and ditches that are not known to support fish populations.
    - Class 4B. Class 4B waters are intermittent and ephemeral stream channels that have been determined to lack the hydrologic potential to normally support and sustain aquatic life pursuant to the use attainability provisions of Section 33(b) of the Chapter 1 regulations.
    - Class 4C. Class 4C waters are all waters that have been determined to lack the potential to normally support and sustain aquatic life pursuant to the provisions of Section 33(b)(i), (iii), (iv), (v), and (vi) of the Chapter 1 regulations.

Wyoming's Water Quality Rules and Regulations correlate the above mentioned designated uses to these water classes. This correlation is presented in Figure 1.

**Figure 1: Designated Uses as Related to Specific Surface Water Classes**

	Drinking water	Game Fish	Non-Game Fish	Fish Consumption	Other Aquatic Life	Recreation	Wildlife	Agriculture	Industry	Scenic Values
1*	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2AB	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2A	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
2B	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2C	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3A	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
3B	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
3C	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
4A	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes
4B	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes
4C	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes

\*Class 1 waters are not protected for all uses in all circumstances. For example, all waters in the National Parks and Wilderness are Class 1, however, all do not support fisheries or other aquatic life uses (e.g. hot springs, ephemeral waters, wet meadows etc.). For stormwater permitting, § 401 Certification, and WQ assessment purposes, the actual uses for each particular water must be determined independently.

## Water Quality Criteria

Wyoming has established both numeric and narrative water quality standards. Most of the numeric criteria are based on chemistry, while most narrative criteria address physical and biological integrity.

Numeric water quality standards are enforced at all times except during periods below low flow. Low flow can be determined by using the 7Q10 (the minimum seven consecutive day flow which has the probability of occurring once in ten years) for acute exposure; or the EPA’s biologically-based flow method which determines a four day, three year low flow for chronic exposure and a one day, three year low flow for acute exposure; or other defensible scientific methods. During periods when stream flows are less than minimums, the department may, in consultation with the Wyoming Game and Fish Department and the affected discharger(s), require permittees to institute operational modifications as necessary to insure the protection of aquatic life. This provision does not require the maintenance of any particular stream flow.

Wyoming has adopted narrative biological criterion which reads: “Class 1, 2 and 3 waters<sup>5</sup> of the state must be free from substances, whether attributable to human-induced point source discharges or nonpoint source activities, in concentrations or combinations which will adversely alter the structure and function of indigenous or intentionally introduced aquatic communities.”<sup>6</sup>

## Sediment

<sup>5</sup> Class 1 waters are “outstanding waters,” Class 2 waters are “Fisheries and Drinking Water,” and Class 3 waters are “Aquatic Life Other than Fish.”

<sup>6</sup> Wyoming Water Quality Rules and Regulations, Chapter 1, Wyoming Surface Water Quality Standards, Section 32. Available at: <http://soswy.state.wy.us/RULES/4475.pdf>.

Chapter 1 of Wyoming's Surface Water Quality Standards addresses sediment. Sections 15 and 16 include narrative criteria for suspended and settleable solids, and Section 23 contains numeric criteria for turbidity.<sup>7</sup>

### **Antidegradation**

Wyoming's antidegradation policy is included in section 8 of the State regulations.<sup>8</sup> Wyoming's antidegradation program does not follow the federal three-tiered structure. The State's antidegradation program follows its water classification scheme. Class 1 Waters, Outstanding Aquatic Resources (OARs), essentially receive Tier III (or Outstanding Natural Resource Water (ONRW)) protection. Similarly, Class 2 Waters receive Tier II protection, and Class 3 & 4 Waters receive Tier I antidegradation protection.

Implementation of the antidegradation policy is covered by an agency policy rather than an adopted rule. This detailed antidegradation implementation policy was adopted in 2001.<sup>9</sup>

As mentioned above, the State has "Class 1 Waters, Outstanding Aquatic Resources," which receive the Tier III level of antidegradation protection contemplated by the EPA's concept of ONRWs. OARs are defined as "those surface waters which have been determined to have outstanding environmental, ecological, recreational, aesthetic, or economic value. To the greatest extent possible, the water quality and physical and biological integrity which existed on the water at the time of designation will be maintained and protected."<sup>10</sup> Class 1 waters are designated by the Environmental Quality Council in rulemaking hearings. Appendix A of Chapter 1 of the Water Quality Rules and Regulations lists Wyoming's Class 1 waters.<sup>11</sup>

Wyoming does not make use of the Tier II \_ concept.

### ONRWs on BLM Land

There are BLM lands bordering Class 1 water bodies in Wyoming.

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<sup>7</sup> Wyoming Water Quality Rules and Regulations, Chapter 1, Wyoming Surface Water Quality Standards, Sections 15, 16, and 23. Available at: <http://soswy.state.wy.us/RULES/4475.pdf>.

<sup>8</sup> Wyoming Water Quality Rules and Regulations, Chapter 1, Wyoming Surface Water Quality Standards, Section 8. Available at: <http://soswy.state.wy.us/RULES/4475.pdf>.

<sup>9</sup> Wyoming's antidegradation implementation policy is available at: <http://deq.state.wy.us/wqd/surfacestandards/Downloads/11968-doc.pdf>.

<sup>10</sup> Wyoming Water Quality Rules and Regulations, Chapter 1, Wyoming Surface Water Quality Standards. Available at: <http://soswy.state.wy.us/RULES/4475.pdf>.

<sup>11</sup> Wyoming Water Quality Rules and Regulations, Chapter 1, Wyoming Surface Water Quality Standards Appendix A. Available at: <http://soswy.state.wy.us/RULES/4475.pdf>.

## **State 305(b) Reporting**

The National Assessment Database (NAD) contains information on the attainment of water quality standards. Assessed waters are classified as Fully Supporting, Threatened, or Not Supporting their designated uses. This information is reported in the National Water Quality Inventory Report to Congress under Section 305(b) of the CWA.<sup>12</sup>

## **State 303(d) List and TMDLs**

The EPA TMDL Tracking System contains information on all impaired waters under section 303(d) of the CWA. The database also has information on EPA-approved TMDLs.<sup>13</sup> Wyoming's 2004 303(d) List can be found in Tables A, B, & C of Wyoming's 2004 Integrated Report.<sup>14</sup> As of 2002, the date of the most recent data in the EPA's tracking system, Wyoming reported 128 water bodies on its 303(d) List and had 268 TMDLs approved.

Wyoming maintains GIS coverage of impaired water bodies, but it is not available on-line.<sup>15</sup>

## **303(d) List**

### **Listing and Credible Data Standards**

In Wyoming, a water is deemed to be "impaired" or "non-supporting" if any narrative or numeric criteria are exceeded or designated uses are shown to be adversely affected by human activities. In 2002, the DEQ released "Wyoming's Method for Determining Water Quality Condition of Surface Water."<sup>16</sup> The purpose of this document is to outline the criteria and decision-making processes used by the DEQ for making determinations about the quality of surface waters.

A determination of support (full or partial) is achieved through the evaluation of credible data in a weight-of-evidence approach based on the specific water quality standards applicable to each designated use. The determination of the degree to which chemical, physical, and biological parameters meet water quality standards is contingent upon sampling the parameter for all hydrologic conditions. Those water bodies that are determined to be threatened, partially supporting, or not supporting are recommended for addition to the 303(d) List. Wyoming's Method for Determining Water Quality Condition of Surface Water outlines the criteria for fully supporting, fully supporting but threatened, partially supporting, and not supporting for each of the State's designated uses.<sup>17</sup>

State law requires that only credible data be used in making water quality condition determinations. Wyoming's credible data requirements are contained in Chapter 1, Section 35 of

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<sup>12</sup> Information about Wyoming's attainment of water quality standards can be found at: [http://oaspub.epa.gov/waters/w305b\\_report.state?p\\_state=WY](http://oaspub.epa.gov/waters/w305b_report.state?p_state=WY).

<sup>13</sup> Wyoming's 303(d) Lists and approved TMDLs are available at: [http://oaspub.epa.gov/waters/state\\_rept.control?p\\_state=WY](http://oaspub.epa.gov/waters/state_rept.control?p_state=WY).

<sup>14</sup> Wyoming Department of Environmental Quality. Wyoming's 2004 305(b) State Water Quality Assessment Report and 2004 303(d) List of Waters Requiring TMDLs. June, 2004. Available at: <http://deq.state.wy.us/wqd/watershed/Downloads/305b/4-0539doc.pdf>.

<sup>15</sup> A copy of the GIS coverage can be obtained from DEQ.

<sup>16</sup> Wyoming Department of Environmental Quality. Method for Determining Water Quality Condition of Surface Waters. June 10, 2002. Available at: <http://deq.state.wy.us/wqd/watershed/Downloads/TMDL/2-2223-doc.pdf>.

<sup>17</sup> See pages 4-12 of Wyoming Department of Environmental Quality. Method for Determining Water Quality Condition of Surface Waters. June 10, 2002. Available at: <http://deq.state.wy.us/wqd/watershed/Downloads/TMDL/2-2223-doc.pdf>.

Wyoming's Surface Water Quality Standards.<sup>18</sup> Credible data means scientifically valid chemical, physical and biological monitoring data collected under an accepted sampling and analysis plan that incorporates quality control and quality assurance (QA/QC) procedures and available historical data. Wyoming's QA/QC procedures for data collection and analysis are contained in the "Manual of Standard Operating Procedures for Sample Collection and Analysis."<sup>19</sup>

Wyoming's credible data standards state that data must be collected using accepted referenced laboratory and field methods by a person who has received specialized training. Less than a complete suite of data (chemical, physical, biological) may be used to make a decision on attainment of water quality standards or designated uses only in those instances where numerical standards are exceeded or on ephemeral and intermittent water bodies where chemical and biological sampling may not be practical or feasible. Where water quality standards are expressed in narrative terms, credible data includes information that documents the water as not being "free from" a pollutant. All three categories of water quality measurement -- chemical, physical, and biological -- need not show an exceedance in order to call a water body impaired. If any one of the three has an element that exceeds a standard, the water body may be listed as impaired after reviewing all relevant data and judging the weight of the evidence.

### De-Listing

In Wyoming, a water body will be de-listed from the 303(d) List for good cause. Good cause includes, but is not limited to more recent and accurate data, more sophisticated water quality modeling, flaws in the original analysis that led to the water body being listed, or changes in condition (e.g. new control equipment, elimination of discharges, or restoration of the water quality through planned projects). The determination of whether a water body should be de-listed follows the same analytical procedure used to list it. Monitoring must demonstrate that the water body has met designated uses for three consecutive years.

The water bodies Wyoming de-listed in 2004 can be found in Table D of Wyoming's 2004 Integrated Report.<sup>20</sup>

### **TMDLs**

Since the early 1980's, the State has established TMDLs for point source discharges to achieve in-stream designated uses. In 1989, the State adopted a Nonpoint Source Management Plan to address nonpoint sources of pollution. Under this voluntary program, the State provides CWA Section 319 funds to local entities for projects that address nonpoint source pollution. Though never formally adopted as TMDLs, many of these projects were considered comprehensive watershed plans containing all the components of a TMDL. On December 9, 1996, the Sierra Club Legal Defense Fund, on behalf of Wyoming Outdoor Council, Biodiversity Associates, and American Wildlands, filed a lawsuit in Federal court to require EPA Region VIII to implement the TMDL program in Wyoming. The litigants claimed that the State had not adequately monitored its streams, had not listed all impaired streams, and had not developed

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<sup>18</sup> Wyoming Water Quality Rules and Regulations, Chapter 1, Wyoming Surface Water Quality Standards, Section 35. Available at: <http://soswy.state.wy.us/RULES/4475.pdf>.

<sup>19</sup> WDEQ/WQD. 2004. Manual of Standard Operating Procedures for Sample Collection and Analysis. Wyoming Department of Environmental Quality, Water Quality Division, Watershed Program, Cheyenne, WY. Available at: <http://deq.state.wy.us/wqd/watershed/Downloads/QA/4-1089.pdf>.

<sup>20</sup> Wyoming Department of Environmental Quality. Wyoming's 2004 305(b) State Water Quality Assessment Report and 2004 303(d) List of Waters Requiring TMDLs. June, 2004. Available at: <http://deq.state.wy.us/wqd/watershed/Downloads/305b/4-0539doc.pdf>.

sufficient point or nonpoint source TMDLs. Although Wyoming did not intervene in the lawsuit, the State is attempting to respond to the issues raised by the litigants.

The schedule for establishing TMDLs is contained in the Wyoming TMDL Workplan. The State has developed criteria to provide general guidance for prioritizing TMDLs in Wyoming, which will be used to implement the specifics of the schedule. Wyoming's TMDL prioritization criteria can be found in the state's Method for Determining Water Quality Condition of Surface Waters.<sup>21</sup> The state's workplan establishes a five-year timeframe for monitoring streams on the 1996 303(d) List and a ten-year schedule for adopting TMDLs on those streams with credible data indicating TMDLs need to be established.

Currently, the major TMDL issues that Wyoming must address in its TMDLs include pathogens, habitat degradation, salt and metals, and ammonia.

### **Water Quality Monitoring**

Wyoming's DEQ sponsors USGS water quality sampling at 25 fixed stations across the State. Sampling is conducted quarterly, with sampled parameters dependent upon suspected pollutants. The sampling is used to identify problem areas, trends in water quality condition, and for NPDES permitting and compliance.

In addition to the statewide sampling, the DEQ has sponsored USGS water quality monitoring at 20 fixed stations in the coal bed methane (CBM) region of northeast Wyoming since 2001. These stations have an expanded suite of parameters sampled and increased sampling frequency. Biological monitoring occurs at a subset of those locations, and bed sediment and fish tissue contaminant sampling conducted at two locations. Objectives of this monitoring program are to determine baseline water quality and biological conditions at locations presently unaffected by CBM discharges and to determine water quality and biological conditions at stream stations currently receiving CBM effluent.

In 2004, the DEQ released a four-year water quality monitoring strategy.<sup>22</sup> This comprehensive monitoring plan for 2004-2008 builds upon the past monitoring plan by continuing to collect the data required to make determinations of designated use support. The past plan largely employed a targeted-station design, where assessment station locations were selected based upon known or suspected influences on water quality (both natural and anthropogenic). The goal of this new strategy is to define water quality in a specific segment or region and at the same time, partition out potential sources and causes of impairment. The new approach differs from past plans in many ways, but most significantly, it outlines multiple approaches that will be used to address monitoring objectives and the approximate relative weight each will be given within each year of the four-year period. However, it does not list specific water bodies to be monitored. The following approaches are integrated into the 2004-2008 plan:

1. Continued monitoring of stream reference stations;
2. Targeted stream station design using both screening and intensive-level monitoring to assess designated use support using a rotating basin approach;

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<sup>21</sup> Pages 12-14 of Wyoming Department of Environmental Quality. Method for Determining Water Quality Condition of Surface Waters. June 10, 2002. Available at: <http://deq.state.wy.us/wqd/watershed/Downloads/TMDL/2-2223-doc.pdf>.

<sup>22</sup> Wyoming Department of Environmental Quality, Water Quality Division, Watershed Management Program. Water Quality Monitoring Strategy 2004-2008. July, 2004. Available at: <http://deq.state.wy.us/wqd/watershed/Downloads/Monitoring/4-0661 doc.pdf>.

3. Randomized stream station selection design;
4. Lakes/wetlands monitoring;
5. Monitoring in support of NPDES permitting;
6. Evaluation of projects funded through CWA Section 319 grants;
7. Special studies; and
8. Contractual agreements (synoptic studies, fixed stations).

### **Nonpoint Source Pollution Program**

Wyoming's nonpoint source pollution program is a voluntary program aimed at providing information, education, demonstration, technical assistance, and cost-share assistance to local sponsors for implementation of pollution prevention measures. Additionally, the program offers economic incentives to local government entities, as well as citizen groups, to implement water quality planning and improvement projects.

Although the State retains authority to take enforcement actions for violations to Wyoming Water Quality Standards, a voluntary approach to nonpoint source control is emphasized. It is the policy of the DEQ that enforcement action may be taken only where water quality standards violations have been documented based on credible data, and where best management practices (BMPs) have not been implemented in good faith.

For more information on Wyoming's nonpoint source pollution program, see the 2000 Nonpoint Source Management Plan Update.<sup>23</sup> The goals and actions set forth in this plan are broken into six major categories: 1) agriculture; 2) hydromodification; 3) silviculture; 4) groundwater protection; 5) urban and industrial; and 6) watersheds, outreach, and partnerships.

### **BMPs**

Wyoming has established BMPs and issued guidance manuals for hydromodification, silviculture, cropland, grazing, and urban nonpoint sources of pollution. These BMP documents can be downloaded from the DEQ's Watershed Management Section webpage.<sup>24</sup>

### **Implementation on Federal Land**

In Wyoming, the BLM's planning process is the principal mechanism for guiding the implementation and management of soil and water resource conservation practices. Formal comments are requested at several key points in the resource management planning process and public involvement is encouraged. The State reviews and comments on proposals for management. The Bureau's nonpoint source strategy in Wyoming is to continue to:

- Provide cooperation and assistance to State agencies in the management of the public lands to reduce nonpoint source pollution sources.
- Incorporate water quality impacts, including nonpoint sources, into land management actions planned and implemented by the Bureau, including BMPs.
- Identify and address nonpoint source water quality issues in Bureau activity plans.
- Provide personnel and resources to identify nonpoint source pollution and control techniques through coordinated research efforts and the implementation of BMPs.
- Implement program practices in land use and land management activities to reduce or avoid water quality impacts and to improve water quality as necessary to meet management objectives and regulatory requirements.

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<sup>23</sup> Available at: <http://deq.state.wy.us/wqd/watershed/Downloads/NPS%20Program/00712-DOC.pdf>.

<sup>24</sup> Available at: <http://deq.state.wy.us/wqd/watershed/index.asp>.

Wyoming's DEQ and the BLM meet at least annually to evaluate the current memorandum of understanding (MOU) to determine if roles and responsibilities are accurately defined, as well as procedures for identifying and addressing nonpoint source pollution issues on BLM-managed lands.

CWA §319 grants have not been awarded directly to the BLM in Wyoming, however, funds are expended on BLM lands. Since 1989, there have been many grants and projects that have had BLM involvement.

### **Federal Consistency**

The Federal consistency provisions of section 319 of the CWA authorize Wyoming to review Federal financial assistance programs and development projects for their effects on water quality. If the State determines that an application or project is not consistent with the State Nonpoint Source Management Program and notifies the Federal agency of its concerns, the agency must make efforts to accommodate the State's concerns, or explain its decision to not make accommodations, in accordance with Executive Order 12372. Additionally, section 313 of the CWA requires Federal agencies having jurisdiction over property or facilities, or engaged in activities which may result in water pollution, to comply with State and local water pollution control regulations and authorities to the same extent as any non-governmental entity.

Wyoming's WQD reviews all activities for which a permit is requested under section 404 of the CWA to determine whether the action could cause, or contribute to, a violation of State water quality standards. Wyoming has denied §401 certification for several nationwide permits, and also for certain activities which could be covered under a nationwide permit, but which would be located in waters classified as Class 1 by the WQD.

### **Enforceable State Laws/Policies/Programs to Limit NPS Pollution**

#### **Water Pollution Control Laws**

The Wyoming Environmental Quality Act contains a general prohibition against "caus[ing], threaten[ing] or allow[ing] the discharge of any pollution or waste into the waters of the state" or "alter[ing] the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state" unless authorized by permit.<sup>25</sup> This prohibition has been held to apply to all polluting activities, not only those for which a permit could have been obtained.<sup>26</sup> In other words, the prohibition may apply to nonpoint sources.

The Act authorizes the Wyoming DEQ to issue environmental permits and allows the department to "impose such conditions as may be necessary to accomplish the purpose of this act."<sup>27</sup> Since the permitting authority is not expressly limited to point sources, it could be applied to nonpoint sources. Further, the water quality section of the Wyoming Administrative Code contains an antidegradation provision which requires that "reasonable best management practices for nonpoint sources" be implemented before a permit can be issued.<sup>28</sup> "Best

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<sup>25</sup> Wyo. Stat. § 35-11-301(a)(i) – (ii).

<sup>26</sup> *People v. Platte Pipe Line Co.*, 649 P.2d 208, 211-12 (Wyo. 1982).

<sup>27</sup> Wyo. Stat. § 35-11-801.

<sup>28</sup> Code of Wyo. Rules Code 020-080-001, § 8(a)(iii).

management practices” are defined as practices “determined to be the most technologically and economically feasible means of managing, preventing, or reducing nonpoint source pollution.”<sup>29</sup>

### **Fish and Fisheries Laws**

The Fish and Game Code states as follows: “No person shall allow any refuse or substance to pass into any public water: (i) Which drives away or is injurious to fish, or wildlife; or (ii) Which obstructs the natural flow, channels, or condition of any stream or body of water.”<sup>30</sup>

### **Operational Requirements**

#### Forestry Requirements

State forestry laws do not contain enforceable provisions for nonpoint source pollution.

#### Agriculture and Grazing Requirements

The Wyoming Statutes authorize the DEQ to issue regulations governing livestock feedlots and to establish schedules for compliance with the rules.<sup>31</sup> Feedlot operators are also required to comply with applicable local zoning requirements.<sup>32</sup> Until recently, there appears to have been little, if any, regulatory activity under this chapter of the statutes.

The Wyoming Statutes establish soil conservation districts and authorize them to conduct research, demonstration projects, improvement projects, and so on.<sup>33</sup> The districts may develop and publicize comprehensive plans that specify BMPs for soil conservation.<sup>34</sup> These do not appear to be enforceable, but incentive measures can be conditioned on implementation of BMPs.<sup>35</sup>

#### Earth-Disturbing Activities

Under the Land Use Planning Act,<sup>36</sup> the State land use commission is authorized to develop a State land use plan, which may include “areas of critical or more than local concern.”<sup>37</sup> These are defined as “areas ... where uncontrolled or incompatible large scale development could result in damage to the environment, life, or property” and can include “fragile or historic lands, natural hazard lands, [and] renewable resource lands.”<sup>38</sup> This statewide plan is intended to serve as a guideline for the development and adoption of local land use plans and zoning regulations.

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<sup>29</sup> Code of Wyo. Rules Code 020-080-001, § 2(b)(v).

<sup>30</sup> Wyo. Stat. § 23-3-204(b).

<sup>31</sup> Wyo. Stat. § 11-39-103.

<sup>32</sup> Wyo. Stat. § 11-39-104.

<sup>33</sup> Wyo. Stat. § 11-16-101 et seq.

<sup>34</sup> Wyo. Stat. § 11-16-122(b)(xvi)-(xvii).

<sup>35</sup> Wyo. Stat. § 11-16-122(xxvii).

<sup>36</sup> Wyo. Stat. § 9-8-101 et seq.

<sup>37</sup> Wyo. Stat. § 9-8-202(vii), (ix).

<sup>38</sup> Wyo. Stat. § 9-8-102(a)(i).

### **Wetlands and §404 Permits**

Wyoming's DWQ regulates wetlands using the Wyoming Wetlands Act and the State's water quality standards.

The Wyoming Wetlands Act of 1991 established a Wetland Banking Program. The BLM has developed policy regarding wetland banking on BLM land in Wyoming.<sup>39</sup>

Wetlands are addressed in the State's water quality standards. Surface water standards extend to all wetlands including isolated wetlands. There have been some modifications made to the State NPDES permitting regulations regarding mitigation of damage to naturally occurring isolated wetlands that are not otherwise regulated by the Army Corps of Engineers through the CWA § 404 permit program.

### **Stormwater Provisions**

The State of Wyoming is the stormwater permitting authority for all lands in Wyoming, including BLM land, except for Indian country. Construction projects that disturb five or more acres must be covered under the general construction permit (WYR10-0000).<sup>40</sup> Small construction activities -- those disturbing at least one acre, but less than five acres -- require coverage under a small construction general permit (WYR10-A000).<sup>41</sup> In Indian country within the State of Wyoming, the EPA is the permitting authority and requires the submission of permit number WYR 10000I.

Chapter 2 of Wyoming's Water Quality Rules and Regulation regulates discharges to Wyoming's surface waters including stormwater permits.<sup>42</sup> More information on Wyoming's stormwater program can be obtained from its homepage.<sup>43</sup>

Wyoming has not developed specific stormwater BMPs. However, the State's urban BMPs for nonpoint source pollution address urban stormwater issues.

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<sup>39</sup> The details of this policy are available at: <http://www.blm.gov/nhp/efoia/wy/1997im/wy1997-086atch.pdf>.

<sup>40</sup> Available at: <http://deq.state.wy.us/wqd/npdesprogram/Storm/downloads/2-0924-doc.pdf>.

<sup>41</sup> Available at: [http://deq.state.wy.us/wqd/npdesprogram/Storm/downloads/3-0087-doc\\_final\\_SCGP\\_12\\_22\\_03.pdf](http://deq.state.wy.us/wqd/npdesprogram/Storm/downloads/3-0087-doc_final_SCGP_12_22_03.pdf).

<sup>42</sup> Available at: [http://deq.state.wy.us/wqd/npdesprogram/downloads/Chapter\\_2/Chapter2\\_12\\_09\\_04\\_BD.pdf](http://deq.state.wy.us/wqd/npdesprogram/downloads/Chapter_2/Chapter2_12_09_04_BD.pdf).

<sup>43</sup> On-line at: <http://deq.state.wy.us/wqd/stormwater.asp>.