

Wyoming Outdoor Council (Lindsey Washkoviak)

Hello, please see attached comments from the Wyoming Outdoor Council for the Methods for Determining Attainment of Surface Water Quality Standards: Basis and Overall Approach. Thank you for the opportunity to provide additional clarity to the process and help strengthen the methods.



04/24/26

Joanna Harter
Water Quality Division, TMDL
Department of Environmental Quality
510 Meadowview Drive, Lander Wy. 82520

Comments electronically submitted via: <https://wyomingdeq.commentinput.com/?id=jFbTSmrNY>

Re: Comments for methods for Determining Attainment of Surface Water Quality Standards: Basis and Overall Approach

Dear Ms. Harter,

Thank you for the opportunity to comment on Wyoming Department of Environmental Quality (DEQ) updated methods for determining attainment of Surface Water Quality Standards: Basis and Overall Approach. Founded in 1967, the Wyoming Outdoor Council strives to protect Wyoming's environment and quality of life for current and future generations. Of our thousands of members and supporters, the vast majority reside in Wyoming and are deeply invested in maintaining water quality to the benefit of ecosystems and our communities. We submit the following comments for consideration.

Overall, we see these updated methods as a positive step forward for the DEQ, and we commend the agency for moving them forward in order to fulfill its statutory responsibilities under the Wyoming Environmental Quality Act and Clean Water Act. We submit the following comments to help provide additional clarity to the process and strengthen the methods.

The methods unnecessarily restrict the source of credible data used to make designated use attainment decisions which contradicts with 40 CFR 130.7 of the Clean Water Act, Wyoming Department of Environmental Quality Rules and Wyoming State Statutes.

The proposed requirement that data used for designated use attainment determinations must be collected solely by individuals employed by, or under contract with, a governmental entity is unnecessarily restrictive and is inconsistent with both federal expectations and the DEQ's own framework for evaluating credible data.

40 CFR 130.7 of the Clean Water Act (CWA) requires states to assemble and evaluate all existing and readily available water quality-related data and information when making

assessment decisions. 40 CFR 130.7(b)(5)(iii) clearly states that data may originate from a variety of sources, including academic institutions, governmental and non-governmental organizations, private consultants, and members of the public. The proposed limitation to only government-collected data is more restrictive than this federal expectation and undermines the intent of considering all relevant and available information.

Section 3.3 of the assessment methods document cites several Wyoming statutes to define “credible data” and states that such data must be used in determining a water body’s attainment of designated uses¹. However, none of the cited statutes impose limitations on the affiliation of the individual or entity collecting the data.

Similarly, DEQ Water Quality Rules Chapter 1, Section 5 emphasizes the use of credible data, defined by the adherence to appropriate quality assurances, approved sampling plans and analytical standards, and collected by persons who have specialized training. This framework appropriately focuses on data quality and scientific defensibility, rather than the affiliation of the data collector. Excluding data that meet these standards solely because they were not collected by a governmental entity is not supported by this rule.

As such, the requirement that only government-collected data can be used for designated use support determination is more restrictive than federal guidance and is not explicitly required by Wyoming statutes or rules. By limiting credible data to data collected by, or under contract with, a governmental entity, the methodology excludes scientifically valid data solely because of who collected it and thereby narrows the scope of usable data beyond what 40 CFR 130.7 and Wyoming law authorizes.

Restricting designated use attainment decisions to data only collected by governmental entities is fiscally irresponsible.

As stated above, data that meet the DEQ’s rigorous quality assurance requirements, as well as established sampling and analysis plans, are routinely collected by a wide range of qualified non-governmental entities that may have more rigorous training and qualifications than governmental entities. These include the University of Wyoming researchers and their students, non-governmental organizations, private consultants, and trained citizen scientists.

Under the current approach, this data may be submitted to identify locations that warrant further investigation by the DEQ, or can inform trend analysis, but cannot be used to inform designated use compliance, even when they fully meet established standards for credibility and quality assurances. As a result, the DEQ is required to expend additional time and resources duplicating data collection efforts that have already been completed to acceptable standards.

¹ Wyoming Statute § 35-11-103(c)(xix), *Wyoming Statute § 35-11-302 (b)*, and Wyoming Statute § 35-11-302 (b)

This practice leads to unnecessary duplication and inefficient use of public funds, particularly when existing data already meet or exceed the criteria for credible, decision-quality information but are excluded solely based on the affiliation of the collector rather than their scientific validity.

Affiliation associated restrictions are a recent policy decision and are a departure from Wyoming's previous methods.

Previous methodology focused on the scientific validity and defensibility of data rather than the affiliation of the collector. Restricting “credible data” to data only collected by government entities or their contractors was not introduced into Wyoming’s methodologies until 2020. As noted above nothing in federal law or state rules and statutes require this shift. This action unnecessarily narrows the scope of usable data beyond what Wyoming law authorizes and it should be removed to alleviate conflict with the intent of the CWA.

Recommendation:

As discussed above, limiting credible data for designated use attainment decisions to that collected by government entities conflicts with federal and state rules and statutes, is fiscally irresponsible, and is a relatively new addition to the Wyoming assessment methods. DEQ should delete the following paragraph as unnecessary. Section 4.1 already adequately identifies appropriate data sources, and section 4.2 establishes clear criteria for evaluating and validating data used in designated use determinations.

~~“Data used to make use support determinations must be collected by a person employed by, or under contract with a governmental entity. Governmental entities are defined as the government of Wyoming, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them. Data collected by non-governmental entities may be used by WDEQ for supporting information for use support determinations, to identify trends in water quality over time, for determining effectiveness of best management practices, and to guide prioritization of monitoring activities for WDEQ and other entities.”~~

Discharge Monitoring Report (DMR) data from Wyoming Pollution Discharge Elimination System (WYPDES) and other departmental data used in decision making.

It is unclear how DEQ incorporates data from other internal divisions when making designated use attainment decisions. For example, DMRs submitted as part of the WYPDES program contain a substantial amount of water quality data that is directly relevant to making use attainability decisions. Similarly, data reported to the DEQ spills database may indicate water quality impairments that warrant further investigation.

However these data are frequently collected by permittees, private companies, or third party contractors that do not meet the definition of a governmental entity as defined in the current methods. In addition these data may be collected outside of an approved sampling and analysis plan. It is unclear whether, and to what extent, these data are eligible for consideration in use attainability determinations under current data acceptance policies.

Recommendation:

- DEQ should clarify how DMR data collected under the WYPDES program, as well as data generated from spill response and remediation, are treated under the current governmental entity data restrictions.
- DEQ should clarify if DMR and other internal programmatic data sets meet the “credible data” requirements for assessment purposes and how these datasets are incorporated into designated use attainment decisions, including any relevant criteria or limitations dictating their use.

Wetland Assessments

Section 3.3.2 indicates wetland monitoring is being done by the Wyoming Natural Diversity Database (WYNDD) however their wetland assessment program ended in January 2020 due to lack of funding². While WYNDD does provide useful documentation for wetland assessment methodology, there is no longer an active wetland assessment program in Wyoming.

Additionally, the lack of wetland condition assessment efforts leave a critical gap to understanding the condition and ecological health of our state's water resources as required by section 305(B) of the CWA. Wetlands are considered “waters of the state” in Wyoming and should be included in future integrated reporting.

Recommendations:

- DEQ should update the methods document to indicate wetland assessments are not currently happening in Wyoming outside of the limited scope of the National Wetland Condition Assessment.
- DEQ should prioritize re-establishing a Wyoming Wetland Assessment program and include wetland condition assessment into future integrated reports.

² Tibbets, T., Washkoviak, L., & Tronstad, L. 2020. Wetland Monitoring and Assessment in Wyoming: Addressing the Challenges of Wetlands in Highly-Managed Basins. Wyoming Natural Diversity Database. https://www.uwyo.edu/wyndd/_files/docs/reports/WYNDDReports/20tib01.pdf

Thank you for the consideration of these comments. We appreciate the opportunity to participate and welcome further discussion to help ensure the final methods best reflect the intent of the Clean Water Act and represent Wyoming rules and statutes.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsey Washkoviak". The signature is written in a cursive, flowing style.

Lindsey Washkoviak
Water Program Manager