

MATTHEW H. MEAD
GOVERNOR



2323 Carey Avenue
CHEYENNE, WY 82002

Office of the Governor

May 12, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Evaluation of Existing Regulations – Docket ID No. EPA-HQ-OA-2017-0190

Dear Administrator Pruitt,

I appreciate the Environmental Protection Agency's (EPA) request for input on regulations in need of repeal, replacement or modification. This request stems from President Trump's Executive Order 13777 – Enforcing the Regulatory Reform Agenda. Enclosed is a preliminary list of EPA regulations for your consideration. This is not a comprehensive assessment because of the time constraints. Wyoming remains ready to work with EPA on all regulations with the goal of making them effective and workable.

The mineral industry, agriculture and tourism are all economic drivers in Wyoming. Wyoming is committed to strong workable environmental regulations that keep industry moving and our air, land and water clean. Wyoming has primacy of many federal regulations and is responsible for their effective implementation. The variability of Wyoming's geography, weather, elevation, topography and population require regulations tailored to accommodate its specific needs.

I look forward to a strong partnership with the EPA. This is the best way to develop a regulatory system that promotes economic activity while protecting and preserving environmental resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew H. Mead".

Matthew H. Mead
Governor

MHM:dp

Administrator Pruitt

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Encl. Evaluation of Existing Regulations - Docket ID No. EPA-HQ-OA-2017-0190
(Wyoming)

cc: The Honorable Mike Enzi, U.S. Senate
The Honorable John Barrasso, U.S. Senate
The Honorable Liz Cheney, U.S. House of Representatives
Todd Parfitt, Director, Wyoming Department of Environmental Quality

Federal Rule or Policy	Dates
Water Quality	
NPDES Updates Rule	Proposed: May 18, 2016 Extended Comment Deadline: Aug. 2, 2016
Waters of the US (WOTUS)	Draft Guidance sent to OMB: Feb. 2012 Proposed Rule Sent to OMB: Sept. 17, 2013 Draft version of rule leaked: Nov. 17, 2013

Description	WYDEQ/WQD Recommendation
<p>EPA is proposing to update the NPDES regulations in order to eliminate inconsistencies between regulations and application forms, improve permit documentation and transparency, and provide clarifications to the existing regulations. Likely updates include: definition updates, application requirements for vessels and pesticides, effluent limit bases--max daily/average monthly for POTWs, reasonable potential, conflicts of interest, fact sheet requirements, public notice requirements, §401 certification process, anti-backsliding, anti-degradation, and objection to administratively continued permits. The proposal is published in the Federal Register at: https://federalregister.gov/a/2016-11265</p>	Re-work
<p>In May 2011, EPA and the Army Corp of Engineers (Corps) released for public comment draft guidance for determining whether a waterway, waterbody, or wetland is jurisdictional as a Water of the U.S." ("WOTUS") under the CWA. EPA received 230K comments on the draft WOTUS guidance document. On 9/17/13, EPA and the Corps announced that they had withdrawn the guidance from OMB and sent to OMB a proposed rulemaking instead. Existing 2008 guidance remains in place. On 11/7/2013, a version of the draft proposed rule was leaked to the press. EPA</p>	Remand

	<p>Proposed: April 21, 2014 Comment Deadline: Nov. 14, 2014 ACWA Comments: Nov. 12, 2014 Final: June 29, 2015 Effective Date: Aug. 28, 2015 Stay: October 9, 2015</p>	<p>indicated that the leaked version is not the final version sent to OMB. On 4/21/14, EPA published the proposal in the Federal Register, along with an associated "Interpretive Rule" on exemptions from CWA jurisdiction for certain agricultural conservation practices. On Jan. 9, 2015, EPA and the Corps withdrew the Interpretive Rule. The final rule was published in the Federal Register on 6/29/15 and made effective on 8/28/15. On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the WOTUS Rule. The EPA and Corps resumed using the previous regulations and case law defining "WOTUS." ACWA will work with EPA/Corps on coordinating opportunities for states to discuss implementation questions and training needs.</p>	
<p>Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater</p>	<p>Draft Rule: July 2015 Response to 2015 Public Comments: June 30, 2016 Final: July 13, 2016</p>	<p>The 2016 criterion document is the final update of EPA's 1999 recommended national chronic aquatic life criterion for selenium. The 2016 criterion reflects the latest scientific knowledge, which indicates that selenium toxicity to aquatic life is primarily based on organisms consuming selenium contaminated food rather than by being exposed only to selenium dissolved in water. The link to the Federal Register is here: https://federalregister.gov/a/2016-16585 The link to the fact sheet is here: https://www.epa.gov/sites/production/files/2016/06/documents/se_2016_fact_sheet_final.pdf</p>	<p>Re-work</p>
<p>Environmental Standards for Uranium and Thorium Mill Tailings (40 CFR 192)</p>	<p>Proposed: January 26, 2015</p>	<p>Proposes to add a new subpart to address potential changes in groundwater at uranium in-situ recovery facilities.</p>	<p>Remand</p>
<p>CERCLA Section 108(b)</p>	<p>Proposed:</p>	<p>On January 29, 2016, the US Court of Appeals for</p>	<p>Re-work</p>

Financial Responsibility	December 1, 2016
Federal Baseline Water Quality Standards for Indian Reservations	Advance Notice of Proposed Rulemaking: September 19, 2016 Comment Deadline: Dec. 28, 2016
USACE - Proposal to Reissue and Modify the 2017 Nationwide Permits	Comment Deadline: Aug. 1, 2016
EPA - Policy to determine 'current use' of aquifers for Aquifer Exemptions	Under development
EPA Region 8 – Policy on determining 'significant deficiencies' from Sanitary Surveys of Public Water Systems	In effect.
Steam Electric Power Generating Effluent Guidelines - 2015 Final Rule	In effect

<p>the District of Columbia Circuit issued an order establishing a schedule for EPA proceedings under CERCLA 108(b). The order requires EPA to sign a notice of proposed rulemaking for the hardrock mining industry by December 1, 2016, and to take final action by December 1, 2017.</p> <p>Conflicts with existing CERCLA and UMTRCA rules.</p>	
<p>Invitation to comment on whether to establish federal baseline water quality standards (WQS) for Indian reservation waters that currently do not have CWA WQS in place.</p>	Re-work
<p>Solicitation for comments on proposal to modify nationwide permits for dredge and fill activities.</p>	Expedite finalization of revised permits prior to March 18, 2017.
<p>EPA proposal to modify the approach for establishing whether an aquifer currently serves as a source of drinking water.</p>	Re-work
<p>EPA's policy for determining significant deficiencies of public water systems in Wyoming is inconsistent with policies implemented in other Region 8 states and can result in expensive system modifications which yield little, if any additional protection of the drinking water system.</p>	Remand
<p>EPA, on September 30, 2015, finalized a rule revising the regulations for the <u>Steam Electric Power Generating</u> category (40 CFR Part 423).</p>	Re-work

		<p>The rule sets the first federal limits on the levels of toxic metals in wastewater that can be discharged from power plants, based on technology improvements in the steam electric power industry over the last three decades.</p> <p>Some Wyoming facilities have incurred costs to implement.</p>	
Air Quality			WYDEQ/AQD Recommendation
<p>Regional Haze Rule/Protection of Visibility</p> <p>(82 FR 3078 - Rule) (81 FR 44608 – Guidance)</p>	<p><u>Rule</u></p> <p>Proposed: May 4, 2016 Finalized: January 10, 2017</p> <p><u>Guidance</u></p> <p>Draft Proposed: June 30, 2016 Not Yet Finalized</p>	<p>EPA finalized changes to the protection of visibility requirements for Class I areas, often referred to as regional haze (RH) requirements, in State Plans. The regional haze rule contained some provisions WYDEQ would like retained:</p> <ul style="list-style-type: none"> • Progress reports are no longer required to be SIP revisions • Uniform rate of progress line begins on December 31, 2004. • Most impaired days changed to mean most <i>anthropogenically</i> impaired. • Allows states to account for prescribed fires and wildfires. • Extends the next State Plan deadline from 2018 to 2021. • Requires a public comment period of 30 days rather than 60. • Reschedules due dates for progress reports. • EPA clarified 309 provisions. <p>WYDEQ also identified portions of the rule that made the rule unnecessarily complicated, more burdensome, and shifted authority away from the state:</p> <ul style="list-style-type: none"> • States must use IMPROVE data from 6 months prior 	<p>Modify/re-work</p>

		<p>to the progress report due date rather than 12.</p> <ul style="list-style-type: none"> • Allows Federal Land Managers to make certifications, requiring states to revise its plan. • Rule now requires an illogical analytical sequence when determining long-term impacts. • Adjustments for international impacts must be done by the state then approved by the EPA Administrator. • Smoke management program assessment must include a statement about ecosystem health. • FLM consultation must now take place at least 120 days prior to any public hearing or other comment opportunity. 	
<p>Landfills</p> <p>40 CFR 60 Subparts XXX Performance Standards (80 FR 59332)</p> <p>40 CFR 60 Subpart Cf Emission Guidelines (80 FR 59276)</p>	<p>Finalized: August 29, 2016</p>	<p>The rulemaking lowered emission limits for requiring a gas collection and control system from 50 metric tons to 34 metric tons of non-methane organic compounds (one component of landfill gas). The rules apply to all landfills that have accepted waste since 1987 and that were constructed on or before July 17, 2014, including landfills previously subject to 40 CFR 60 Subparts Cc and WWW. This has the potential to be duplicative and confusing for regulated sources in Wyoming.</p>	Re-work/pepeal
<p>40 CFR part 51, Appendix W (82 FR 5182)</p>	<p>Finalized: January 17, 2017</p> <p>Effective: May 22, 2017</p>	<p>Appendix W allows for a tiered approach for addressing ozone from proposed projects: a literature review of how a project may affect ozone or the use of photochemical grid modeling. A literature review relies on past photochemical grid models that have been run to demonstrate that a projects emissions would not adversely affect ozone. This literature review does not provide any significant value over the use of photochemical grid modeling as few models have</p>	Modify/re-work

		<p>been run on a single source basis. In addition, photochemical grid modeling is a very specialized skill set of which there are only a few stakeholders capable of running these complex models and there are currently no models that replicate wintertime ozone formation. The WYDEQ requests that this rule be revised, as it may require single source photochemical grid modeling which places a significant burden on applicants with limited resources on determining compliance with the ozone standard.</p>	
<p>40 CFR Part 58, Appendix A (81 FR 17280)</p>	<p>Finalized: March 28, 2016</p>	<p>WYDEQ requests a review of 40 CFR Part 58 Appendix A (Appendix A) requirements. The latest revisions to Part 58, published March 28, 2016, include an extension of the applicability of Appendix A to industrial monitors, compelling these monitors to follow all Part 58 requirements if their data are to be compared to the NAAQS (Appendix A, 1.1). The revisions to certain sections of Appendix A, like Quality Management Plan (QMP) requirements, QAPP requirements, Technical System Audit (TSA) requirements, and independent auditing, are creating undue economic and resource burdens on industrial sources, WYDEQ, and EPA Region 8 though EPA's narrow interpretation that the EPA Regional Administrator and/or Regional staff must complete oversight and approval activities. The WYDEQ respectfully requests a review and possible revision to the Appendix A language to assure that States may be delegated the authority to perform quality oversight on industrial monitors operated in that state</p>	<p>Modify/re-work</p>
<p>Exceptional Events Rule</p>	<p>Finalized:</p>	<p>WYDEQ respectfully requests a review of the</p>	<p>Modify/re-work</p>

October 3,
2016

(81 FR 68216)

Litigated Regulations

Solid Waste

<p>“Exceptional Events Rule” in 40 CFR Part 50.14. Changes published October 3, 2016 include many attempts to “streamline” the Rule. However, the narrowing of the scope of applicability to only data points being used in regulatory determinations severely limits a state’s ability to exclude uncontrollable natural and exceptional events from the data record. While the ability exists to demonstrate significance to the Regional Administrator for a review of an event, this practice is untested and guidance does not exist on making such demonstrations. Many State, Local, and Tribal agencies may not be in a position of facing non-attainment but still believe that exceptional event-affected exceedances should be taken out of the data record for other reasons such as use in future modeling, etc.</p>	
<p>WYDEQ believes there are a number of regulations currently being litigated that meet the criteria for modification, repeal, or replacement as per Executive Order 13777. The Carbon Pollution Standards for new and modified electric generating units has already been selected for review and WYDEQ supports the decision to review it. WYDEQ also believes that the Mercury and Air Toxics Standards, as with the Clean Power Plan, should be reviewed. Given air quality primacy and regulatory concerns related to the recent Bureau of Land Management (BLM) rule addressing venting and flaring on BLM managed land, WYDEQ supports the decision to review the rule.</p>	<p>Re-work/repeal</p>
<p style="text-align: right;">WYDEQ/SHWD Recommendation</p>	

Coal Combustion Residuals 40 C.F.R. 257	Proposed: June 21, 2010 Final: July 26, 2016
Used Cathode Ray Tubes (CRTs) 40 C.F.R. 261.4(a)(22)	Final: May 19, 1980
Hazardous Waste Generator Rule 40 C.F.R. 262.10(g)(2)	Final: November 28, 2016
UST State Program Approval 40 C.F.R. 281	Final: July 2015
UST State Program Approval 40 C.F.R. 281 Policy	Final: May 2008
Land Quality OSMRE Blasting 80 FR 9256 https://www.regulations.gov/document?D=OSM-2014-0003-0123	Final decision re: petition for rulemaking published 2/20/2015.

<p>EPA developed rules to establish location standards and operating criteria for coal ash surface impoundments and landfills. Wyoming is already regulating these facilities and does not believe these standards are necessary.</p>	<p>Re-work</p>
<p>CRTs are difficult to dispose of due to the regulation under RCRA Subtitle C and therefore accumulate at rural landfills. Wyoming would recommend relaxing disposal standards for CRTs to allow disposal at municipal solid waste landfills.</p>	<p>Re-work</p>
<p>Under this rule, even a minor violation could result in a facility being subject to multiple permit violations and very large penalties. Wyoming believes this to be unnecessarily burdensome on operators.</p>	<p>Re-work</p>
<p>EPA developed regulations governing the process by which States obtain primacy of the Underground Storage Tank Program. This process is unduly burdensome and many states are frustrated with the prolonged process.</p>	<p>Re-work</p>
<p>States expend considerable resources pursuing State Program Approval. Current policy prohibits states from charging their time spent pursuing program approval to the EPA LUST prevention grant.</p>	<p>Re-work</p>
	<p>WYDEQ/LQD Recommendation</p>
<p>Wyoming regulates blasting activity through air and land quality permitting under state primacy and does not feel the rulemaking is necessary.</p>	<p>Rescind</p>

	Draft rules yet to be published.		
<p>OSMRE-EPA Coal Combustion Residuals 72 FR 12026 https://www.osmre.gov/programs/TDT/ccrs.shtm</p>	<p>Advanced notice of proposed rulemaking published 3/14/2007. Draft rules yet to be published.</p>	<p>Proposed rulemaking for disposal of coal combustion residuals in mine fills. Wyoming is already regulating these facilities and does not believe these standards are necessary.</p>	<p>Rescind</p>
<p>EPA CERCLA 108(b) 82 FR 3388 https://www.gpo.gov/fdsys/pkg/FR-2017-01-11/pdf/2016-30047.pdf</p>	<p>EPA Administrator signed proposed rule 12/1/2016. Public comment on proposed rules begins 1/11 and comment extended to 7/11/2017</p>	<p>Conflicts with existing CERCLA and UMTRCA rules. Exemption of uranium producers would resolve concern.</p>	<p>Withdraw and rework</p>
<p>EPA 40 CFR 192 80 FR 4156 https://www.epa.gov/radiation/40-cfr-part-192-2015-proposed-rulemaking-and-background-documents</p>	<p>On 1/3/2017 the EPA signed proposed rules</p>	<p>New ground water protection standards at facilities that extract uranium using the ISR process. EPA did not consult with states. Draft. Final rule contained excessive monitoring</p>	<p>Withdraw and rework</p>

EPA 40 CFR 61 Subpart W

79 FR 25388

<https://www.epa.gov/radiation/subpart-w-rulemaking-activity-documents>

comment period ends 7/18/2017	requirements.	
Waiting for rule publication date	NESHAP Subpart W is a radon emission standard for operating uranium mill tailings. EPA did not consult with states during rule making. The final rule contains excessive monitoring requirements. Final rule was signed 12/20/2016.	Withdraw and re-work