UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

September 25, 2013

Ref: 8EPR-EP

Lindsay Patterson
Division of Water Quality
Wyoming Department of Environmental Quality
Herschler Building 4W
122 W. 25th, 4th Floor
Cheyenne, WY 82002

Dear Ms. Patterson:

The U.S. Environmental Protection Agency (EPA) has reviewed the Wyoming Department of Environmental Quality's (WDEQ) August 6, 2013 public notice of the Draft Categorical Use Attainability Analysis for Recreation and supporting documentation. The draft UAA uses Geographic Information System (GIS) data to identify streams with insufficient flow to attain a primary contact recreation use. [1] In general, the EPA's preliminary thinking is that WDEQ's approach would be consistent with 40 CFR § 131.10(g)(2). We appreciate the efforts of WDEQ to address our comments throughout the three years of dialogue about this project.

The EPA regulations at 40 CFR part 131 interprets and implements Clean Water Act (CWA) section 101(a)(2) and 303(c)(2)(A) to require that the uses specified in section 101(a)(2) of the CWA, which includes "recreation in and on the water," are presumed attainable unless a state or tribe affirmatively demonstrates through a UAA that the use is not attainable as provided by one of the six factors at 40 CFR § 131.10(g).[2] To support an attainability decision under 131.10(g), the EPA's suggested approach is for states to also consider a suite of factors, such as actual use, existing water quality, water quality potential, access, recreational facilities, location, safety considerations, and physical conditions.[3] In Wyoming, currently all waters of the state are designated for primary contact during the summer recreation season (May 1 through September 30) unless a site-specific UAA was completed and the use change to secondary contact recreation was approved by the EPA. The scope of the Draft Categorical UAA for Recreation is limited to low flow streams (mean annual flow < 6 cubic feet/second). Lakes, reservoirs, and ponds are not included in the UAA and remain designated for primary contact recreation. In addition, no full recreational use removals are proposed. Where the GIS data layers representing flow, populated places, schools, campgrounds, and recreation areas indicate a stream cannot attain primary contact recreation, the state is proposing to adopt secondary contact recreation. The practical effect of changing the designated use from primary to secondary contact recreation is that the applicable *E. coli*

[1] Protects humans from gastrointestinal illness where there is the potential for ingestion or immersion. See *Wyoming Water Quality Rules and Regulations*, Chapter 1, Section 2.
[2] See 63 Fed. Reg. 36742, 36749 (July 7, 1998) and 78 Fed. Reg. 54518, 54522 (September 4, 2013).
[3] See 63 Fed. Reg. 36742, 36756 (July 7, 1998).

criterion changes from a geometric mean of 126 organisms per 100 milliliters to a geometric mean of 630 organisms per 100 milliliters during the summer recreation season.

Our understanding is that following the close of the current comment period (September 30, 2013), WDEQ will make revisions based on comments received and provide another public comment period. The EPA is particularly interested in seeing the public feedback on pools within the low flow streams addressed by the UAA that are used for or would support primary contact recreation. Our understanding is that WDEQ proposed primary and secondary use designations based on the best information available to the state, but feedback from people that live near the streams at issue is critical in making the right environmental decision. We anticipate that some parties may take issue with the conservatism of the model, and we want to emphasize that such conservatism was a key factor in the EPA supporting this innovative approach, both in terms of the flow methodology and the buffer zones around populated areas and areas where children may be present.

Primary contact recreation typically includes activities where ingestion is likely and there is a high degree of bodily contact with the water, including swimming, bathing, wading and water play by children. Children may be more exposed and/or more sensitive to pathogens in recreational waters. Children exhibit behaviors that increase their exposure to environmental contaminants, and the immature immune systems of children can also leave them particularly vulnerable to the effects of environmental agents. Therefore, the EPA supports WDEQ's use of a buffer system that appropriately protects this vulnerable population.

As WDEQ acknowledges in the UAA, recreational uses change over time. This is one reason why it is important the public remain engaged after WDEQ completes its public process for this UAA. Pursuant to the *Wyoming Water Quality Rules and Regulations*, Chapter 1, Sections 33 and 34, "any person at any time" may petition WDEQ for a designated use change and we encourage parties to work closely with WDEQ to ensure sufficient data are collected and submitted.

In summary, the EPA's preliminary thinking is that WDEQ's draft approach for identifying streams with insufficient flow to support a primary contact recreation use would be consistent with 40 CFR § 131.10(g)(2). The EPA will consider the public comments and the final submission of the state prior to making a final decision under CWA § 303(c). If you have any questions, please call Tonya Fish on my staff at (303) 312-6832.

Sincerely,

Sandra Spence, Chief
Water Quality Unit

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