

# **Governor's Report on the Capacity Development Program**

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**Submitted by**

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**CONTENTS**

**CONTENTS** ..... 1  
**EXECUTIVE SUMMARY** .....2  
  
**DETAILED REPORT**.....3  
    **Report Purpose** .....3  
    **Background** .....3  
    **Capacity Development Program** .....4  
    **Capacity Development Program Successes** .....5  
    **Efficacy of the Wyoming Capacity Development Strategy**.....6  
    **Conclusions and Outlook**.....7

**EXECUTIVE SUMMARY**

The 1996 Safe Drinking Water Act amendments require the Department of Environmental Quality to provide this report to Wyoming Governor Matt Mead by September 30, 2014. Otherwise, Wyoming would realize a 20% reduction, or an estimated \$1.5M, of the 2012 Drinking Water State Revolving Fund federal capitalization grant.

The 1996 Safe Drinking Water Act amendments established new programs and requirements. Capacity development was one of the new activities. Capacity development is a process that examines a water supply's technical, financial and managerial capabilities. States that failed to comply with capacity development requirements would realize reductions to their Drinking Water State Revolving Fund capitalization grants.

Wyoming met, and continues to meet, all of the 1996 Safe Drinking Water Act mandatory requirements. This included developing a Capacity Development Program. Using public participation, the Wyoming Department of Environmental Quality Capacity Development Program started its efforts with a committee representing communities, districts, extractive mineral industries, technical assistance providers, water system operators and state and federal agencies. This committee drafted the capacity development self assessment documents and provided advice and comments during rulemaking.

Wyoming Water Quality Rules and Regulations Chapter 22, Capacity Development Standards for Public Water Supplies became effective on August 11, 1999. The Wyoming Capacity Development Program is fully implemented. During the past 15 years, one hundred and ninety six drinking water systems have performed Capacity Development self assessments. The remaining systems will perform self assessments when they seek Wyoming Water Quality Rules and Regulations Chapter 3 construction permits or Drinking Water State Revolving Fund loans.

Through training and outreach efforts, the Department of Environmental Quality enjoys a new level of trust with the drinking water regulated community. Mayors, board members and public officials now regularly contact Department of Environmental Quality staff to discuss their systems' issues and concerns. The Wyoming Association of Rural Water Systems, Wyoming Water Pollution Control Association, Wyoming Association of Municipalities, Casper College and Midwest Assistance Program have all been instrumental in providing valuable training to Wyoming's drinking water systems personnel.

The Department of Environmental Quality is pleased to submit this report to Governor Matt Mead. The Department of Environmental Quality is making this report available to the public. Interested parties may obtain a copy of this report by calling the Department of Environmental Quality at 307-777-6371. Copies may also be viewed and downloaded from the Department's webpage at <http://deq.state.wy.us/wqd/www/Capdev/index.asp>

## **DETAILED REPORT**

### **Report Purpose**

Section 1420 (c) (3) of the 1996 Safe Drinking Water Act amendments require that *not later than two years after the date on which a State first adopts a capacity development strategy, ... and every three years thereafter, the head of the State agency ... shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial and financial capacity of public water systems in the State.* The Wyoming Department of Environmental Quality has prepared this report addresses this requirement.

### **Background**

Capacity development is a federal requirement tied to the Safe Drinking Water Act Revolving Loan Fund, more commonly known as the Drinking Water State Revolving Fund. Capacity is a term coined at the federal level to describe capabilities. Drinking water capacity development comprises three overlapping areas: technical, financial and managerial.

Part of Wyoming's Drinking Water State Revolving Fund program's enabling legislation, Wyoming State Statutes 35-11-302 (a) (x), granted the Department of Environmental Quality Water Quality Division administrator authority to develop standards for the determination of capacity development. During the summer of 1998, the Department of Environmental Quality invited representatives from communities, districts, extractive mineral industries, technical assistance providers, water systems and state and federal agencies to participate in and to become part of the Capacity Development Committee. The Water Quality Division administrator directed this committee to develop and draft a self assessment tailored to Wyoming's public water supplies' needs. The administrator requested the committee to provide their suggestions, concerns and visions regarding how Wyoming Water Quality Rules and Regulations should govern the Capacity Development Program. Using suggestions and drafts developed by the Capacity Development Committee, the Department of Environmental Quality finalized capacity development self assessment materials and draft rules in an extensive public participation and outreach effort.

On August 11, 1999 Wyoming adopted Water Quality Rules and Regulations Chapter 22, Capacity Development Standards for Public Water Supplies. This new rule required new and modified community and nontransient noncommunity water systems to perform self evaluations that examine their technical, financial and managerial capabilities. Community water systems include towns, cities and water districts where at least 25 of the same consumers live year round. Nontransient noncommunity systems include factories, schools and mines where at least 25 of the same consumers do not live, but spend more than 6 months a year at the facilities serving water. There are approximately 389 of these systems in Wyoming, 318 community water systems

licenses and 98 nontransient noncommunity water systems.<sup>1</sup> Although transient water supplies are not subject to capacity development requirements, the Department of Environmental Quality encourages all public water supplies to perform a capacity development self assessment. Transient systems include campgrounds, rest stops and restaurants where at least 25 different consumers are present for at least 6 months a year. Wyoming has approximately 389 transient water systems.

Wyoming Water Quality Rules and Regulations Chapter 22 provides the standards these public water supplies must meet to demonstrate capacity development. To demonstrate capacity development public water supplies must 1) have Wyoming Department of Environmental Quality certified chief and backup operators, 2) complete self assessments of their systems' operations, 3) develop corrective action plans and implementation schedules if the self assessments identify deficiencies, 4) provide plans to assure sufficient financial resources if the self assessments identify financial deficiencies, and 5) demonstrate compliance with Wyoming Water Quality Rules and Regulations Chapter 3 construction permitting requirements and Chapter 12 design standards for public water supplies. The Department of Environmental Quality's goal is to assist systems to demonstrate capacity development. In the few instances where systems could not adequately demonstrate capacity development, the Department of Environmental Quality worked with those systems to secure funding for capital improvements, to establish compliance schedules for operators and to invite technical assistance providers to contact and visit systems.

In addition to mandating a Capacity Development Program, the 1996 Safe Drinking Water Act amendments also required each state to establish a capacity development strategy. This strategy details how a state will assist public water supplies attain capacity development. If a state failed to develop a strategy, it would realize recurring and increasing reductions of Drinking Water State Revolving Fund grant awards. The United States Environmental Protection Agency approved Wyoming's Capacity Development Strategy on October 10, 2000. The Wyoming Department of Environmental Quality is submitting this report to Wyoming Governor Matt Mead to meet the ongoing capacity development reporting requirements established in the 1996 Safe Drinking Water Act amendments.

### **Capacity Development Program**

As detailed in the Capacity Development Strategy, Wyoming uses regulatory requirements and technical assistance to help systems develop and maintain capacity development. The State of Wyoming continues to assist public water systems to attain and maintain sound technical, financial and managerial capabilities. Wyoming public water supplies receive technical assistance in many ways. Wyoming's technical assistance providers regularly provide training courses and conferences. State agencies continue efforts to provide technical assistance, managerial guidance and much needed funding.

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<sup>1</sup> The number and type of public water supplies vary from month to month. USEPA activates and de-activates systems based upon the number of consumers and the duration of service.

The Wyoming Water Development Office evaluates drinking water systems with various studies. These studies lead to well-planned capital improvement projects. These projects add to systems' technical capacities. The Water Development Office also promotes and develops partnerships among multiple drinking water systems. These partnerships encourage and create regional systems. These regional systems benefit from combined resources and economies of scale. Financial and managerial capabilities are increased with regional systems. The Water Development Office also provides managerial, contractual and financial guidance to their project recipients.

The Office of State Lands and Investments helps systems with financial capacity. As the administrative agency of the State Loan and Investment Board, the Office of State Lands and Investments oversees a number of grant and loan programs. These include both the Clean and Drinking Water State Revolving Funds, the Mineral Royalty Grant program and the Joint Powers Act loan program. All of these programs fund capital improvements, which include drinking water system projects. These programs provide much needed financial assistance to systems struggling to attain or maintain financial capacity.

The Department of Environmental Quality also provides technical advice and interpretations on treatment methods and regulatory issues. Department staff regularly interact with drinking water system personnel and owners on construction permitting, operator certification and Safe Drinking Water Act compliance issues.

The Department of Environmental Quality works with outside organizations to provide technical assistance to drinking water systems. The Wyoming Association of Rural Water Systems, the Wyoming Water Quality and Pollution Control Association, Casper College Environmental Training Center, Water Connections and the Midwest Assistance Program all partner with the state to provide technical training to water system personnel. These technical assistance providers give operators training through conferences, meetings, class sessions and site visits.

#### **Capacity Development Program Successes**

Wyoming's Capacity Development Strategy focuses on working with systems to identify and correct existing problems and forego foreseeable problems. Wyoming believes this approach is more successful than relying solely on enforcement actions to correct deficiencies. Although enforcement is required, pro-active and voluntary measures can and do work. The Department of Environmental Quality believes this approach is valid and proper, having enjoyed particular success in the operator certification program. Properly trained and licensed operators are a key element of capacity development.

The Department of Environmental Quality administers Wyoming's Operator Certification Program. Currently the program licenses and tracks 2,075 active water treatment and distribution operators. Wyoming regularly foregoes contentious, and often counterproductive, enforcement proceedings and uses cooperatively established compliance schedules for drinking water systems.

As prescribed in the Wyoming Environmental Quality Act, the Department of Environmental Quality uses conference and conciliation to resolve violations whenever possible. Drinking water systems often struggle to attract and retain the required qualified personnel to operate their facilities. The Department of Environmental Quality is well aware of this fact. Through the Capacity Development and Operator Certification programs, the Department of Environmental Quality has ongoing negotiations and compliance schedules with those Wyoming's public water supplies that struggle with operator certification requirements. These mutually negotiated schedules help systems achieve compliance without enforcement actions. These compliance schedules usually require operators to attend additional training and achieve higher certification levels for chief and backup operators. Properly trained operators, often the largest expense systems realize, are fundamental to successful public water supplies' operations.

The Wyoming Association of Municipalities and the Wyoming Association of Rural Water Systems are prime partners in Wyoming's capacity development efforts. These organizations are well-versed in the area of education and training of managers, local decision makers and operating personnel. The Associations regularly provide training to their members on a variety of governmental functions.

#### **Efficacy of the Wyoming Capacity Development Strategy**

The purposes of the Capacity Development Program are to prevent problems and to help systems attain and preserve long-term Safe Drinking Water Act compliance and public health protection. The Department of Environmental Quality is tracking the effectiveness of the Capacity Development Program. The department has created a database which records systems' assessments, sanitary survey recommendations and compliance histories. Currently, 197 public water supplies have submitted capacity development self assessments.

Currently 190 of 416 community and nontransient noncommunity water systems have performed self assessments, or 45.7 percent of all these systems. Only community and nontransient noncommunity water systems seeking a Wyoming Water Quality Rules and Regulations Chapter 3 construction permit and/or a Drinking Water State Revolving Fund loan are required to perform self assessments and demonstrate capacity development.

Transient water systems are not required to demonstrate capacity development under any circumstances. But with encouragement from the Department of Environmental Quality, seven (7) of Wyoming's 389 transient water systems have completed capacity development self assessments. Like all public water systems, transient systems also face new Safe Drinking Water Act requirements. Drinking water personnel often express concerns that they are overwhelmed by the new Safe Drinking Water Act requirements. Although only 1.8 percent of Wyoming's transient system have completed capacity development self assessments, the Capacity Development Program is voluntarily reaching systems that are specifically exempt from the Capacity Development Program requirements.

The United States Environmental Protection Agency's most recent Enforcement Targeting Tool summary lists seven (7) Wyoming public water supplies with a score of eleven (11) or more. The

United States Environmental Protection Agency prioritizes enforcement with scores of eleven (11) or higher. Five (5) of these systems have previously demonstrated capacity development. This means that 192 of the 197 (97.5 percent) systems that have submitted Capacity Development self assessments avoided the Enforcement Targeting Tool trigger score of 11 points or more. Comparing that to the remaining system reveals the following; 607 of the remaining 609 systems, or 99.7 percent, also avoided the Enforcement Targeting Tool trigger. Both of these rates are extremely high.

### **Conclusions and Outlook**

The 1996 Safe Drinking Water Act amendments created a number of new regulatory requirements and programs; these include Operator Certification, Drinking Water State Revolving Fund and Capacity Development. The Department of Environmental Quality faced many federal challenges and deadlines to implement these programs and requirements to meet the needs of Wyoming public water supplies.

The 54th Wyoming Legislature granted the Department of Environmental Quality Water Quality Division administrator the authority to write rules for the determination of capacity development capabilities. The Department of Environmental Quality has created and is implementing a Capacity Development Program that seeks to help public water systems take a good hard look at their operations. The program relies on a mixture of regulatory, voluntary and incentive-based tools to achieve the desired results. The Wyoming Capacity Development Program promotes pro-active compliance, rather than punitive power wielding. The Capacity Development Program enjoys improved relationships with its regulated community. Both regulator and regulated are now openly discussing problems that exist and seeking alternate approaches to correct potential problems before they materialize. Wyoming's capacity development efforts will continue to enjoy success as the developing partnership among state and federal agencies, technical assistance providers, communities and operators continues to grow.

#### **Contacts:**

Persons interested in more information about this report and the Capacity Development Program may contact Brian Mark at (307) 777-6371, FAX (307) 777-5973, or [brian.mark@wyo.gov](mailto:brian.mark@wyo.gov)

Information may also be obtained from the Department of Environmental Quality website <http://deq.state.wy.us/wqd/www/Capdev.htm>