



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MEMORANDUM

OFFICE OF
WATER

SUBJECT: Application of Antidegradation Policy to the
Niagara River

FROM: Martha G. Prothro, Director
Office of Water Regulations and Standards (WH-551)

TO: Richard L. Caspe, Director
Water Management Division, Region II

DWRS has reviewed, and discussed with OGC, your memorandum of June 28, 1989 concerning application of the New York antidegradation requirements to the proposed increase in loadings from the Niagara Falls Wastewater Treatment Plant.

Your memorandum takes the position that the antidegradation review procedures should apply to protect the water quality gains achieved to date. We agree with your interpretation that antidegradation plays a vital role in attaining Clean Water Act goals. The Clean Water Act clearly states that the objective of the Act is to "restore and maintain" the integrity of the Nation's water. The antidegradation regulatory provisions in 40 CFR 131.12 are a critical means of achieving this objective. Each of your points regarding application is addressed below.

Issue 1 - Is the Niagara River a High Quality Water?

Your memorandum requested clarification on whether, under the Federal policy, all parameters must be of better quality than the standards in order for a waterbody to be "high quality." We concur that all parameters do not need to be better quality than the State's ambient criteria for the water to be deemed a high quality water. We believe that it is best to apply antidegradation on a pollutant-by-pollutant basis. Otherwise, there is a potential for a large number of waters not to receive antidegradation protection which is important to attaining the goals of the Clean Water Act to restore and maintain the integrity of the Nation's waters. However, if a State has an official interpretation that differs from this interpretation, the Region should evaluate the State interpretation for conformance with the statutory and regulatory intent of the antidegradation policy. Recently, EPA has accepted an approach that does not use a strict pollutant-by-pollutant approach.

Issue 2 - How Is Antidegradation Review Triggered?

In response to your question regarding whether, under the Federal policy, antidegradation review procedures must be applied when a proposed permit limit is greater than the current loading, we provide the following outline of what actions trigger antidegradation review. Application of the antidegradation review is triggered by any action that would result in a lowering of water quality in a high quality water. No permit may be issued, without an antidegradation review, to a discharger to high quality waters with effluent limits greater than actual current loadings if such loadings will cause a lowering of water quality. In addition, any degradation to a quality poorer than the applicable water quality standards is prohibited. All permits issued under State authorized NPDES permit programs must ensure that all applicable water quality standards are attained and maintained.

Issue 3 - How May New York Be Required to Apply Its Antidegradation Policy?

To require that New York apply its antidegradation policy to the Niagara River Wastewater Treatment Plant permit, the Region will need to show that (1) the Niagara River is a high quality water within the meaning of the New York Antidegradation Policy and (2) the increased loadings from the plant will result in a lowering of water quality in the Niagara River. Should New York fail to apply its antidegradation policy when the Region has made the showing above, the Region would be justified in objecting to the permit.

The projected increases in loadings of toxic pollutants in the Niagara River probably will result in a lowering of water quality. New York's antidegradation policy, consistent with the Federal policy, is triggered by a lowering of water quality. To show that increased loadings from the plant will result in a lowering of water quality, we suggest the Region calculate the impact of the increased loadings on the Niagara River in order to document the lowering of water quality. The Region's objection to the permit would be strengthened if the Region compiles a record to support the Region's conclusion that the increased loadings proposed in the draft permit will lower ambient water quality.

If you have further questions please contact me or Bill Diamond at FTS 475-7301.

cc: C. Sutfin Region V
J. Elder EN-336
C. Schroer LE-132W