



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

OFFICE OF  
WATER

DEC 10 1985

MEMORANDUM

SUBJECT: Antidegradation Policy

FROM: Martha G. Prothro, Director *Martha Prothro*  
Permits Division (EN-336)

TO: Patrick J. Godsil, Chief  
Compliance Branch, Region VIII

In your memorandum of November 1, 1985, you requested our concurrence on Region VIII's interpretation and application of the antidegradation provision of the water quality standards regulation. We agree that the approach adopted by Region VIII correctly implements the requirements of the antidegradation policy.

Any one or a combination of several activities may trigger an antidegradation analysis. Such activities may include, for example, a water quality standards review, the establishment of new or revised wasteload allocations, issuance or reissuance of NPDES permits, the demonstration of need for advanced treatment, or a request by a private or public agency or an individual for a special study of the water body. The need for an antidegradation analysis is determined on a case by case basis.

It may well be true that in the past antidegradation requirements have not been fully complied with in all cases. Recently there has been increased attention focused on antidegradation. The issues confronting Region VIII and your response to them illustrate this fact. In another situation, Region V has objected to several permits to be issued by Wisconsin for, among other reasons, a failure to satisfy antidegradation requirements. In addition, both the House and Senate versions of the legislation to reauthorize the Clean Water Act include a provision addressing antidegradation.

In relation to the proposed antidegradation provision in the CWA amendments, my staff recently drafted a discussion of the antidegradation requirements that must be factored into a wasteload allocation revision. This was prepared in response to a

question from the staff of the Senate committee considering the CWA reauthorization bill. For your information, I have attached the relevant portions of that response.

If you have any other questions concerning implementation of the antidegradation regulation, particularly as it relates to the permitting process, please contact Craig Jakubowics of my staff. Craig can be reached at FTS 426-4793.

Attachments

cc: Rebecca Hanmer  
Ed Johnson  
Patrick Tobin  
Colburn Cherney

## EXAMPLE: APPLICATION OF ANTIDegradation REQUIREMENTS

Several steps would be involved where a State desires to revise a wasteload allocation (WLA) to reflect new information or to make it seasonal. First is the process by which WLAs are established. The technical requirements, assemblage of data and showings to support the revision would have to be met.

In the process of revising a WLA, the antidegradation policy, as well as the use/criteria part of the WQS regulation, must be applied by the State. Application of the policy would be as follows:

- (1) In high quality waters constituting an outstanding natural resource, a revised WLA resulting in degraded water would not be allowed. Water Quality Standards Regulations (WQS) §131.12(a)(3).
- (2) In high quality waters not constituting an outstanding natural resource (i.e., where the quality of the water is greater than is necessary to support "fishable/swimmable"), a revised WLA resulting in degraded water would be governed by the following requirements:
  - o full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process (i.e., opportunity for public comment and hearing);
  - o a demonstration that allowing lower water quality is necessary to accommodate important economic or social development in the area the waters are located;
  - o a showing that water quality will be maintained adequate to fully support existing uses; and
  - o there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost effective and reasonable BMPs for nonpoint sources. WQS §131.12(a)(2).
- (3) In other than high quality waters or in high quality waters where the quality of waters equals that necessary to support fishable/swimmable, the existing use must be fully maintained. The WQS and the WLA regulations do not require public participation or intergovernmental coordination or meeting any other test (i.e., important economic or social development) as discussed in (2). WQS §131.12(a)(1).

Section 130.7 of the Water Quality Management (WQM) regulation requires States to submit WLAs to EPA for review and approval. Approved WLAs are incorporated into the State's WQM plan. The WQM process is subject to the public participation requirements of 40 CFR Part 25. However, there is no explicit requirement for public notice or a hearing at this time. If EPA disapproves the State's WLA, it is EPA's responsibility to establish the WLA and satisfy public participation requirements.

EPA's WQS regulation requires States to conduct a use attainability analysis in two specific cases: (1) where a State designates or has designated uses not specified in §101(a)(2) of the Act, and (2) when the State wishes to remove a designated use specified in §101(a)(2) as a goal of the Act, or to adopt sub-categories of uses specified in §101(a)(2). Therefore, a change in water quality per se, regardless of how it occurs, does not trigger a use attainability analysis. (Note: By definition, a use attainability analysis includes a water body survey and assessment, a wasteload allocation and an economic analysis, if appropriate. However, it should be noted that in program implementation definitional distinctions often get blurred. In this case, everyday usage of the term "use attainability analysis" covers any study or analysis done on any aspect of determining appropriate uses.) EPA does recommend, however, that a full use attainability analysis or one of its components be done wherever advanced treatment (AT) decisions may be involved, significant changes in wasteload allocations are expected or in any other situation where site information is needed to assure meeting the goals of the Act. (See, Questions and Answers on: Anti-degradation, August 1985, Q.#23).

In a water body not yet achieving the §101(a)(2) goals, where water quality improvements may result in a use better than the designated use being achieved, the State needs a way to determine if such better use is being achieved. In the case of a water body achieving the §101(a)(2) goals, the State also needs a way to determine whether the water quality has improved to a level greater than is necessary to support fishable/swimmable. A water body survey and assessment fulfills these roles. Such a study is not a specific requirement spelled out in a regulation. However, it is implicitly required in order to satisfy the WQS regulations' antidegradation policy (§131.12) and mandatory use upgrading requirement (§131.10(i)). Where it is established that water quality exceeds that necessary to protect the §101(a)(2) goals, no special survey or analysis is required since the uses reflect the §101(a)(2) goals and the antidegradation policy in this situation requires the higher water quality to be maintained unless necessary to accommodate important economic or social development.

Once the WLA revision is completed, the permits must incorporate the discharge limitations based on this revision. During the permit process there is a period for public comment on the draft permit and also the opportunity to request a hearing on the permit. It is the role of the permitting authority, whether EPA or an approved NPDES State, to provide for this public input in the permitting process.

If a permit is being renewed, reissued or modified to include less stringent limitations based on the revised WLA, the same antidegradation analysis applied during the WLA stage would apply during the permitting stage. It would be reasonable to allow the showing made during the WLA stage to satisfy the antidegradation showing at the permit stage. Once this test has been satisfied, backsliding in the form of less stringent permit limitations would be allowed based on a revised WLA.

This discussion represents in theory how all the steps in the process would work. In practice, however, the WLA and permit processes are often done concurrently. Although a public hearing is not required, if it is held, it may be conducted for both the WLA (and antidegradation concerns) and the permit at one time (e.g., in conjunction with the permit issuance). However, if this is done, the public must be fully informed of the separate activities that are being considered at the same hearing.