

# Anti-Degradation Meeting #5 – Draft Rule Framework

May 25<sup>th</sup>, 2010 – Skylight Conference Room, Waterbury, VT

## Draft Rule Framework (PowerPoint presentation by Pete LaFlamme)

- **Challenges for Change**
  - Mark Lucas – Legislative change allows new administration to review the proposed rule and either accept it or propose changes.
  
- **2x-204: Review of Individual Applications and General Permit Applications**
  - Bill Bartlett – General permits apply to a wide range of streams. How will you apply anti-deg to a wide range of receiving waters?
    - Pete LaFlamme – The general permit references the BMP manual which directs the applicant to do a site specific review. In order to be eligible for the general permit, you have to meet the level of protection set out in the Stormwater Management Manual. The adoption of the manual (which is a rulemaking process) is where the haggling over level of protection required takes place.
    - Bill Bartlett – So the manual will be written to meet anti-deg?
    - Pete LaFlamme – Yes, that is the concept. This would apply to other programs like wetlands permits; I just chose stormwater as an example.
  
- **2x-502: Determination of Lowering of Water Quality - Category 2**
  - Bill Bartlett – Are there BMPs for encroachment and wetlands? Or are you saying that the analysis must follow the statutes?
    - Alan Quackenbush – It is true there aren't BMPs, but there is an analysis spelled out in the Wetland Rules.
    - Ann Whitely – I was confused by the term BMP, because there are programs that don't have BMPs. Perhaps you should use a different term, or have a separate section for these discharges that don't have BMPs.
    - Kim Greenwood – So, you are using BMPs to mean statutory requirements?
      - Pete LaFlamme – We can clear the wording up in the actual rule. We are using the term BMP to juxtapose permit terms and conditions of the non-steady state discharge programs to load based requirements that would be spelled out for Category 1. "Performance Standards" is an alternative term.
  
- **Determination of Lowering of Water Quality**
  - Activity specific factors for determining if there is a limited reduction in water quality in high quality waters
    - For Activities in Wetlands (Alan Quackenbush): As part of the Wetland Permit (or CUD) and the 401 water quality certification, we look at the surface water and ground water protection function of the wetlands in question, and the potential impact of the project to this function. The erosion control and storm water storage functions are also directly relevant to maintenance of water quality.
  - Ellen Weitzler – Is it your intent to look at activities that would affect minimum flows?

- Pete LaFlamme– Yes, in category 1.
  - Ellen Weitzler – Would you look at groundwater flows?
  - Pete LaFlamme – We have looked at shallow groundwater flows within the zone of influence.
  - Ann Whitely – The Agency is currently working on a separate rule that would regulate large groundwater withdrawal projects that would affect surface waters.
  - Kim Greenwood – That rule requires compliance with the water quality standards, so that would fall under Anti-Deg?
  - Ann Whitely – Both rules are trying to spell out what “compliance with the water quality standards” means in different contexts.
- **2x-504 Socio-Economic Justification Analysis**
  - Harriet King - Are you going to try to define what “substantial” and “widespread” mean?
    - Pete LaFlamme– No. It is a decision of the Secretary. There is no magic formula to balance dollars with water quality.
    - Harriet King - But were do you ever have a widespread effect in Vermont? Is it a situation that we will ever encounter?
    - Bill Bartlett – The words have been in the policy for years and we assume that the Agency has been implementing them.
    - Pete LaFlamme – The terms are not new but we are moving into a different realm and trying to apply it to smaller and smaller projects.
  - Tim Follensbee - For projects that trigger Act 248 or 250, will the Socio-Economic Justification (SEJ) have to be gone through for each permitting process, or for the project as a whole?
    - Pete LaFlamme– The analysis should be similar for all permit process. The decision and processes are independent, but the information can be reused.
    - Ann Whitely– Act 250 criteria are nested within Act 248. Any project (like a hydro dam) will require info to be developed up front for a SEJ. The information will then carry through to the other permit processes.
    - Pete LaFlamme – I understand that you don’t want to get the NPDES permit approved, and then have your stream alteration permit denied. Within ANR we try to coordinate the review. The coordination with Act 250 and Act 248 is a bit clunky.
    - Mark Lucas – Generally, if you go to Act 250 permit with your NPDES and stream alteration permits, there is a presumption that the project are compliant with the standards, but I can’t say that Act 250 won’t ever impose requirements beyond what has already been approved.
- **2x-601 Protection of Very High Quality Waters (presented by Neil Kamman)**
  - Mark Lucas– We would have to amend the standards to include tier 2.5 and I think the panel would be amenable. We have water typing sitting on the sidelines. The panel is looking at maybe working on water typing and basin planning while we are waiting to do anti-degradation. Very High Quality Waters (VHQW) are basically B1.
    - Neil Kamman – They are type B1 for ecological criteria.
    - Harriet King - Don’t you have a problem on an application by application basis that the applicant won’t know what to do?
    - Pete LaFlamme– Yes, especially when we first begin to implement.



- Ann Whitely – I think it is helpful to have draft for the stake holders before we begin into rulemaking. I think that the legislature is expecting to have a draft rule handed to them in January.