

## Anti-Degradation Pre-Rulemaking Meeting #3 – Application of Anti-Degradation to State and Federal Permitting Programs

March 9, 2010 – Skylight Conference Room, Waterbury, VT

### Antidegradation Concepts (Powerpoint presentation by Mary Borg)

- Andrew Gifford – When you talk about general and individual permits, does and individual permit apply to an individual project or an individual area, such as stormwater or wetlands?
  - Mary Borg – An individual permit is for a project.
- Bill Bartlett – How are existing uses protected in general permits?
  - Pete LaFlamme – The Vermont Water Quality Standards (WQS) are protective of designated uses, which protect the existing uses as well. General permits are mostly used with BMP driven permits.
  - Mary Borg – General permits also have a section which requires the applicant to do due diligence in terms of threatened or endangered species.
  - Bill Bartlett – Confusion on how existing uses can be protected in a general permit
  - Mary Borg – Read the Washington EPA approval document. EPA approves the use of general permits to satisfy anti-degradation requirements. It also allows individual projects to be called out based on presence of existing use.
  - Ann Whitely- There is no requirement to do a site specific evaluation for each project to identify all existing uses, but if info becomes available that there is an existing use outside the scope of the designated uses, that needs to be incorporated in the next permit cycle.
  - Bill Bartlett – There is an opportunity to identify existing uses based on local knowledge in the first round permit cycle for a new discharge.
  - Kim Greenwood – doesn't support EPA's presumption that General Permit BMPs satisfy anti-deg
  - Mary Borg – In the Washington approval, EPA recognizes that manuals in a BMP driven permit program need to be periodically reviewed.
  - Pete LaFlamme- In precipitation driven permits, the range of conditions are continuously varying so it is hard to develop a direct correlation between development and the level of degradation. The BMP manual approach is a socio-economic evaluation which is done once, up front. Anti-deg is hard to evaluate with precipitation driven permits on a site by site basis.
  - Kim Greenwood – This approach may work, but it will depend on where the bar is set by the BMP manual.
  - Bill Bartlett – That approach will only work if the BMP manual is written to meet anti-deg a certain percentage of the time. The BMP manual needs to be as successful at implementing anti-deg as a site by site evaluation would be for 95% of the projects. That might result in regulatory overkill for some projects. I feel your emphasis is on the socio-economic portion, whereas I think we need to ensure water quality is met. I am not conceptually opposed to the idea that compliance with the manual equals compliance with anti-degradation, but I am not sure that the manual is adequate (specifically in the case of phosphorus).

### **Stormwater Permitting** (Powerpoint presentation by Padraic Monks)

- Andrew Gifford – Are you expecting that there will be more stringent BMPs for high quality waters?
  - Padraic Monks – It is an option to consider. Another option would be to require a higher level of protection everywhere.
- Bill Bartlett – I am not opposed to higher protection anywhere, but the basis of the higher standards need to be meeting anti-degradation.
- Bill Bartlett – Taking the assumption that effluent monitoring is expensive and difficult, you could charge every permittee a fee to create a pot of money to either to do monitoring or do research on better BMPs
- Mark Lucas – This sounds like a water quality trading program.
- Padraic Monks – We have looked at impact fees over the year, but at the end of the day fee increases need legislative approval. Cost is not the only concern related to effluent monitoring, but how it is used to evaluate the effect on the ASCAP of the stream.
- Ellen Weitzler – Is there an NOI for individual projects/discharge that are covered under the MS4 that would be subject to public process?
  - Padraic Monks – Municipalities do administer construction and post construction stormwater ordinances which would be subject to their own public process.
  - Mary Borg – Projects that create new impervious > 1 acre need a state permit which has a public notice period.
- Jeff Nelson - Do you have any information that new projects built in accordance with the manual are failing to meet WQS?
  - Padraic Monks – No.
- Gina Campoli – Has ANR done an evaluation of what it would cost to do individual monitoring, evaluation, etc for each project rather than taking the General Permit/BMP approach?
  - Padraic Monks – The consultants probably can speak better on the subject, but I would guess it would add thousands of dollars and a lot of time to do the proper monitoring. I think the admin burden of evaluating that data would be crippling to the section.
  - Ann Whitely – A lot of monitoring needs to be obtained during a specific season, so that could add a year of lead time to a project.
- Jon Groveman – Anti-Deg is based on ASCAP, and if we use a manual, how do we evaluate how much ASCAP is consumed and what the cumulative impact of the individual projects are?
  - Pete LaFlamme – Cumulative impacts are difficult to assess. We look to see if there is a proxy like percent impervious that can be used to assess the watershed as a whole. However, the relationship is complicated by the fact that the jurisdictional impervious is treated.
- Gina Campoli – How do you assess ASCAP without modeling? Do you have ideas on how to assess this?
  - Pete/Padraic – We are looking nationally, but there are no silver bullets.
- Mark Lucas – What is “significant” reduction?
  - Mary Borg - The terms will need to be defined in the permit.

### **River Management Program** (Powerpoint Presentation by Mike Kline)

- Andrew Gifford – Is the moving of the stream away from equilibrium what we are trying to avoid?
  - Mike Kline - It is definitely what we are looking at, but there are many things (stormwater, gravel mining, etc) that can affect it.

- Ann Whitely – One way of protect the river is through the Water Corridor easement program – allowing the river to have places to run free and adjust. We need to look at choke points along the river, not just tradeoffs above and below an impact or anywhere within the river.
- Kari Dolan – We are looking at corridor protection as a credit in the storm water manual rewrite.
- Bill Bartlett– Existing use protection should be flagged more prominently in your slide. Cumulative impacts also need to be called out in the discussion.
- Mike Kline – We do geomorphic assessments on watershed scale, so we do have some idea of where the system may respond to stress. The difficulty is in modeling the system, which we aren't able to do real time.
- Mike Kline– There are many things outside of our control (land development) that can affect the stream stability.
  - Bill Bartlett– ANR has at least the theoretical ability to control all those factors.
- Mike Kline – We are often faced with conflicts in protecting different structures. Protecting a structure at one point along the stream may increase the risk to a downstream structure.
- Mike Kline – FEH zoning program is big part of our anti-deg implementation.
- Bill Bartlett – 401 permits can be a more powerful tool for anti-deg than ANR has used it yet.
- Kevin Geiger - Can you deny a 401 in the event where an undersized culvert is blown out and going to be replaced?
  - Mike Kline – We can deny that and have done so. Unfortunately, FEMA tends to be geared towards replacing structures in kind, rather than doing improvement projects.
- Kevin Geiger – I would think that there are systems already in disequilibrium where projects can not be allowed to put additional stress on the system.
  - Mike Kline– In those cases we tend to require that any projects must improve the situation.
- Mark Lucas – Our jurisdiction doesn't apply to replacing structures in kind. We have to be wary of jurisdictional creep because there will be a backlash.

#### **Wetlands** (Powerpoint presentation by Alan Quackenbush)

- Bill Bartlett – (In relation to the fact that the WQS do not apply where there is no standing water and therefore, antideg does not apply to all wetlands) WQS do apply to wetlands where there is standing water, even seasonally.
  - Alan Quackenbush – Yes.
- Ann Whitely – The Tier 1 criteria of anti-degradation is the only part that applies to wetlands, which gets to the protection of function and uses.
- Mark Lucas– I agree. It is difficult to apply sediment or pH criteria to a wetland.
- Bill Bartlett – There are things called wetlands that people boat or fish in, so I don't think we should ignore other uses.
  - Ann Whitely – This would be taken into account during a tier 1 existing use analysis.
- Mark Lucas – “No net loss” can be used as a surrogate for anti-degradation in wetlands.

#### **Shoreland Encroachment Permit** (Powerpoint presentation by Susan Warren)

- Kevin Geiger - Can you deny the applicant a permit for the shore stabilization or modify the permit to require that they leave a buffer?
  - Susan Warren – We don't even have jurisdiction over rocks above the water level, but we have tried to encourage lake friendly stabilization practices.
  - Mark Lucas – Act 250 does require shoreline buffers, but it doesn't apply to most shoreline development.

- Neil Kaimann– People who own shoreline development are generally surprised to learn that they have a negative effect on water quality.

**Wastewater** (Presentation by Ann Whitely) *\*There was no PowerPoint for this portion of meeting\**

- Direct Discharge
  - Anti-Deg was written for wastewater, which is why it doesn't fit with most other programs.
  - All water in the state is presumed to be high quality
  - Tier 2 is triggered when a new or increased discharge occurs. There hasn't been a new increased discharge for years because increased loads are coupled with increased treatment at the plant. People don't want to deal with doing an SEJ so they "hold to load".
  - Very few new discharges. The new systems that are going in are usually doing so to fix impairments (Cabot plant to reduce coliform in the stream).
- Indirect (eg. really big septic system) *\*A hand-out was distributed explaining how "No Significant Alteration to Aquatic Biota" (NSAAB) is applied to indirect discharge projects. See handout attached\**
  - Agency position on indirect discharge is new discharges must meet WQS and meet NSAAB.
  - NSAAB is an evaluation of existing biotic community compared with what it would be as a result of the indirect discharge. We have not seen any degradation of biota from discharges that have applied NSAAB.
  - Existing indirect discharges (pre 1986) are not subject to NSAAB and this is where we see problems.
  - Anti-degradation has not been applied to indirect discharges because the NSAAB standard is very strict and meets the test of anti-degradation.
  - If there is a water quality problem (the onus is on ANR to determine that) then we can go back and get them to fix it.
    - Marie Levesque Caduto – What happens when indirect discharges are built in class A waters (referring to a project in Stratton)?
      - Ann – Indirect discharges are not allowed in class A waters. The Stratton project got around it by doing smaller systems on individual lots, which are below the regulatory threshold. This is not the best approach for water quality protection, but we would have to fix the statute.
    - Bill Bartlett – NSAAB does not apply to all indirect discharge, only those for sewage.
    - Bill Bartlett – The assumption that all waters are assumed to be high quality is not written into the policy.
      - Pete LaFlamme – Yes, but it is how we implement the water quality standards. Either a water is on the 303(d) list because it is impaired, or it is not.
    - Jon Groveman – VNRC has changed our position on indirect discharges. Alternatives analysis should not be required for indirect discharges. Our paper should be available in the next couple of weeks.
    - Jeff Nelson – Some of the non-sewage indirect discharges are now covered under other permits (MSGP).

- Ellen Weitzler – Do you have a water withdrawal permit and are you allowing water withdrawals that go below 7Q10?
  - Mike Kline– water withdrawals that trigger 404 have to undergo an analysis.
- Ellen Weitzler – in the context of wastewater treatment, are you considering the amount of water that has been withdrawn in the discharge amount?
  - Pete – the amount of water discharged is so small that the impact to flow is insignificant.