

**VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

ANTI-DEGRADATION RULE STAKEHOLDER PROCESS

Issue Paper 1: Introduction to Anti-Degradation

The Vermont Department of Environmental Conservation is committed to developing a rule to guide implementation of the Anti-degradation Policy in Section 1-03 of Vermont's Water Quality Standards. The Policy establishes three levels or tiers of protection for Vermont's waters:

Tier 1 - Protection and maintenance of existing uses and water quality supporting those uses.

Tier 2 - Where the quality of water is better than the applicable water quality standards, water quality must be maintained at the existing high quality unless it is necessary to accommodate important social or economic considerations. If such a decision is made, existing uses must still be fully protected and water quality may not be lowered below applicable standards.

Tier 3 – This is the highest level of protection for waters specifically identified as very high quality. These water bodies are designated as Outstanding Resource Waters (ORWs).

The new anti-degradation implementation rule will have long lasting impacts on the protection and management of Vermont's waters and will guide the Department's decision-making in order to ensure efficient, predictable and consistent permitting actions. The rule will affect owners and operators of all applicable discharges/activities that impact Vermont waters and the citizens of Vermont who will be affected by those discharges/activities. The rule will apply to the review of applications for coverage under the Department's permitting programs that affect surface waters.

The Department has initiated a stakeholder process in order to thoroughly investigate this issue in an open, public forum. The Department will consider all stakeholder comments in the development of the implementation rule.

What is Anti-degradation?

Section 303 (Title 33 of United States Code [U.S.C.] 1313) of the Clean Water Act (CWA) requires states to adopt water quality standards for waters of the U.S. within their applicable jurisdictions. Water quality standards must include, at a minimum: 1) designated uses for all waterbodies within their jurisdiction, 2) water quality criteria necessary to protect the most sensitive of the uses, and 3) anti-degradation provisions.

The initial federal anti-degradation policy was established on February 8, 1968, by the Secretary of the U.S. Department of the Interior. The policy was included in the U.S. Environment Protection Agency's (EPA) water quality regulation 40 CFR 130.17, 40 FR55340-41, November

28, 1975. States are required to adopt anti-degradation policies and implementation procedures that at a minimum reflect federal anti-degradation policy identified in 40 CFR 131.12. These requirements provide a mechanism for states to implement the objective of the CWA (Section 101 (a)) to “maintain the chemical, physical and biological integrity of the nation’s waters.” This is generally accomplished by establishing procedures by which states review regulated activities that have the potential to lower water quality.

Federal regulations (40 CFR 131.12) specify three levels, or tiers, of protection (see Figure 1). The tier 1 level is for the protection of existing uses. An existing use means a use which has actually occurred on or after November 28, 1975, in or on waters, whether or not the use is included in the standard for classification of the waters, and whether or not the use is presently occurring.

Tier 2 protection applies to waters where the quality of the water is better than the applicable water quality standards. In this situation a lowering of water quality is only allowed if it is necessary to support important economic or social development. The finding of necessity to lower water quality must involve public participation and intergovernmental cooperation. This level of protection also requires assurance that the highest statutory and regulatory requirements for point sources and best management practices (BMPs) for non-point sources are achieved.

Tier 3 protection is for waters specifically recognized as having exceptional value, and for which the water quality must be maintained and protected. In Vermont, tier 3 waters are designated as Outstanding Resource Waters (ORWs). There are four ORWs in Vermont, including the mainstem of the Battenkill from its headwaters to the NY state border; the North Branch of Ball Mountain Brook (“Pikes Falls”) between the confluence of Kidder Brook and a point 4000 feet downstream; the Poultney River from the Poultney/Fair Haven line downstream to Lake Champlain; and the “Great Falls” of the Ompompanoosuc River.

Why Develop and an Anti-Degradation Implementation Rule?

High water quality is an important public resource and one that requires effective mechanisms that allow for sound decision making for its protection and use. There have been changes to the state and federal regulatory structure for water protection and to the technical understanding of water quality protection since the Vermont Anti-Degradation Policy was included in the Vermont Water Quality Standards. This rule development provides an opportunity to thoroughly investigate current issues associated with anti-degradation of waters.

Stakeholder Input

The goal of the stakeholder process is to engage in dialogue and explore ways in which anti-degradation can be used as an effective tool to protect Vermont’s surface waters. Stakeholders represent a wide range of interests and therefore provide valuable perspectives on how anti-degradation may best serve Vermont’s people and environment. Stakeholder meetings will begin in January 2010. A total of five meetings will be held; one approximately every three weeks. Topics to be discussed include: activities to which anti-degradation applies; application of anti-degradation requirements to NPDES-permitted stormwater discharges; and topics related

to the protection of high quality waters (tier 2). Specific topics related to the protection of high quality waters will include alternatives analysis, public participation, assessment of potential impacts to receiving waters and the anti-degradation review process.

These topics and related issues will be presented in the form of Issue Papers. Topic specific papers will be issued prior to each scheduled stakeholder meeting. These papers will be available on DEC's website. Information regarding the anti-degradation rulemaking is located at http://www.vtwaterquality.org/htm/wq_antidegradation.htm. Additional resources that will be helpful in gaining a more in depth understanding of anti-degradation are provided below.

Contacts

For additional information regarding the stakeholder or rulemaking process contact Christy Witters at (802) 241-4582 or Christy.witters@state.vt.us.

References and Resources

40 CFR § 131.12, Antidegradation policy

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=5f8457547303397bd1842475d8848118&rgn=div5&view=text&node=40:21.0.1.1.18&idno=40#40:21.0.1.1.18.2.16.3>

Chapter 4, Antidegradation, Water Quality Handbook, Second Edition, 1994

www.epa.gov/waterscience/standards/handbook/chapter04.html

Vermont Water Quality Standards, Vt. Code R. 12 004 052, 2008

<http://www.nrb.state.vt.us/wrp/publications/wqs.pdf>

Figure 1. Tiers of anti-degradation protection as specified in 40 CFR §131.12.

