

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

ANTI-DEGRADATION RULE STAKEHOLDER PROCESS

Issue Paper 2: Existing Uses, Designated Uses and High Quality Waters

The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's Waters. To that end, states are required to develop and adopt anti-degradation policies and implementation procedures that are, at a minimum, consistent with the federal anti-degradation policy. The federal anti-degradation policy describes an approach in which there are three levels or tiers of protection. The objectives of Tier 1 and Tier 2 protection are the focus of this issue paper. Tier 1 requires the protection and maintenance of existing uses and water quality supporting those uses. Tier 2 requires that water bodies where the quality of water is better than the applicable water quality standards be maintained at that existing high quality unless it is necessary to accommodate important social or economic considerations.

Existing Uses

Existing uses represent the floor of water quality protection and are those uses of the waters that have been designated by the Secretary and have actually occurred on or after November 28, 1975, in or on waters, whether or not the use is presently occurring. Existing uses of waters, and the level of water quality necessary to protect those existing uses, must be maintained and protected. Pursuant to the Vermont Water Quality Standards, a determination of what constitutes an existing use of particular water is made either during the basin planning process or on a case-by-case basis during consideration of an application. Once an existing use is designated by the Secretary, that use cannot be eliminated.

Designated Uses

Designated use means any use that is specified in the management objectives for each class of water in the Vermont Water Quality Standards. The designated uses specified in the Vermont Water Quality Standards for all high quality waters, including both Class A and B waters, are Aquatic Biota, Wildlife, and Aquatic Habitat; Aesthetics; Public water supply; Irrigation of crops and other agricultural uses; Swimming and other primary contact recreation; and Boating, fishing and other recreational uses. Federal statute requires that these designated uses be "achieved and protected" in all high quality waters. To meet this objective, the Vermont Water Quality Standards establish water quality criteria that detail levels necessary to support these uses.

High Quality Waters

High quality waters are those waters whose quality meets or exceeds minimum water quality criterion for the water. All Vermont waters are high quality waters. High quality waters are classified as either A or B. Such waters shall be managed to maintain and protect the higher water quality and minimize risk to existing and designated uses. The Agency must maintain and protect high quality waters in a manner that ensures that minimum standards will continue to be achieved and allow a lowering of water quality only when the Secretary determines that the adverse economic or social impacts on the people of the state resulting from the maintenance of the higher quality waters would be substantial and widespread and these adverse impacts would exceed the environmental, economic, social and other benefits of maintaining the higher quality water. (VWQS Section 1-03).

How are High Quality Waters identified?

Federal regulation does not include specific guidelines for identifying high quality waters. Two basic approaches to how protection is applied to high quality waters are 1) a pollutant-by-pollutant approach, and 2) a waterbody-by-waterbody approach.

Using a pollutant-by-pollutant approach, a state determines whether water quality for a given parameter for a specific waterbody is better than the applicable criterion. Any showing that water quality for a given parameter is better than the applicable criterion is subject to anti-degradation review, regardless of whether the water quality for other parameters are above standards or not. A waterbody may thus be considered of high quality for one parameter that is better than the applicable standard, yet be impaired for another parameter.