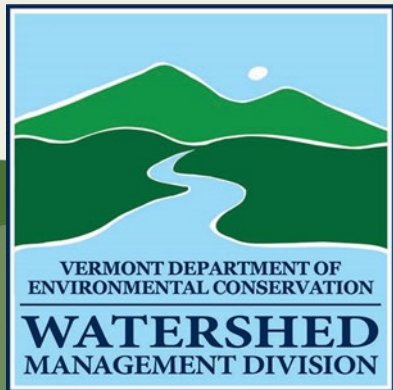


Proposed Antidegradation Implementation Rule

Public Comment Meeting
February 20, 2024



Rulemaking Process

- Interagency Committee on Administrative Rules
- Secretary of State
 - 30-day (minimum) public comment period and public comment meeting
 - Public comments accepted through February 27, 2024
- Legislative Committee on Administrative Rules
- File final rule with Secretary of State
- Rule adopted

Federal and State Authority

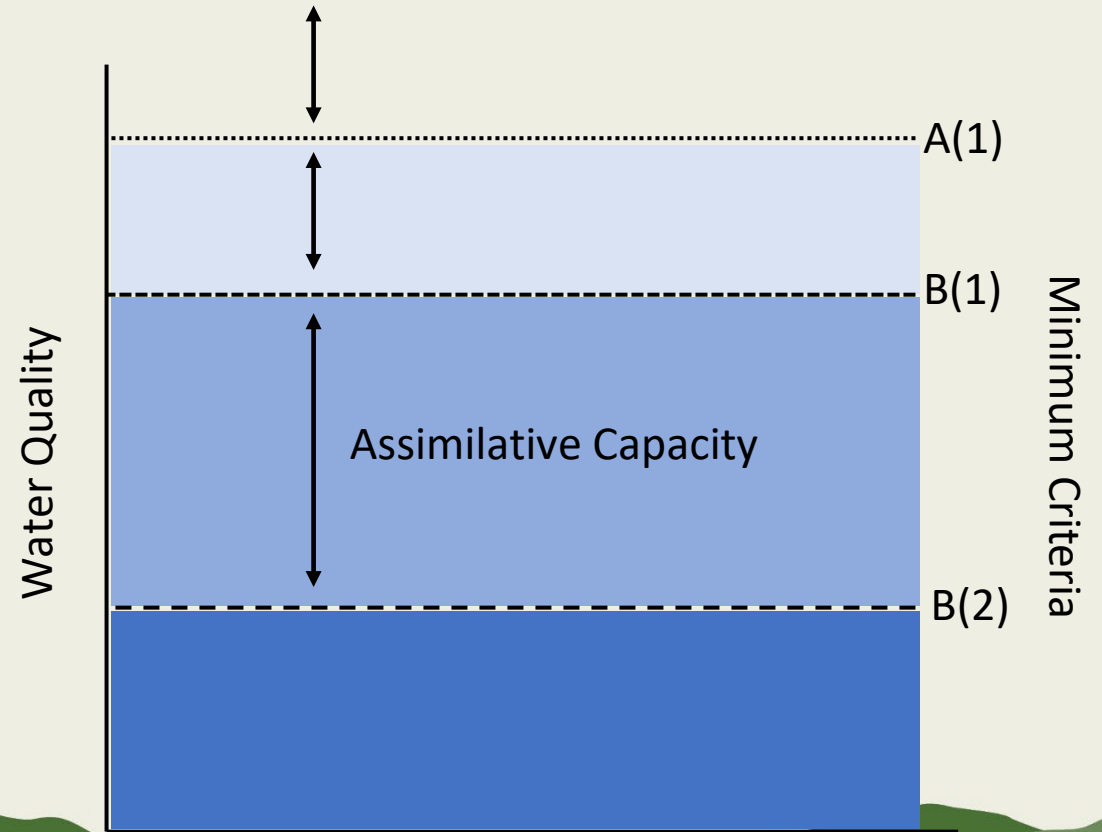
- Pursuant to 40 C.F.R. 131.12, a state must develop and adopt a statewide antidegradation policy and identify the methods for implementing the policy.
- Pursuant to 10 V.S.A. § 1251a, the Secretary of Natural Resources shall adopt by rule an implementation process for the antidegradation policy in the water quality standards of the State. The implementation process for the antidegradation policy shall be consistent with the State water quality policy established in section 1250 of this title, the Vermont Water Quality Standards, and any applicable requirements of the federal Clean Water Act. The Secretary of Natural Resources shall apply the antidegradation implementation policy to all new discharges that require a permit under this chapter.

What is Antidegradation?

- Limits any incremental water quality degradation unless it is necessary to avoid important, substantial adverse socioeconomic impacts to people of the state.
- Requires maintenance and protection of water quality to support uses.
- Implemented through permits for new or increased discharges that require compliance with the Vermont Water Quality Standards.
- Requires public notice.
- Mandated by the federal Clean Water Act and Vermont State Statute.

Antidegradation Policy

- To protect and maintain the water quality of Outstanding Resource Waters (Tier 3)
- To limit water quality degradation that results from permitted activities and ensure any water quality degradation that occurs is to avoid substantial adverse socioeconomic impacts (Tier 2)
- To ensure that existing uses are protected and maintained (Tier 1)

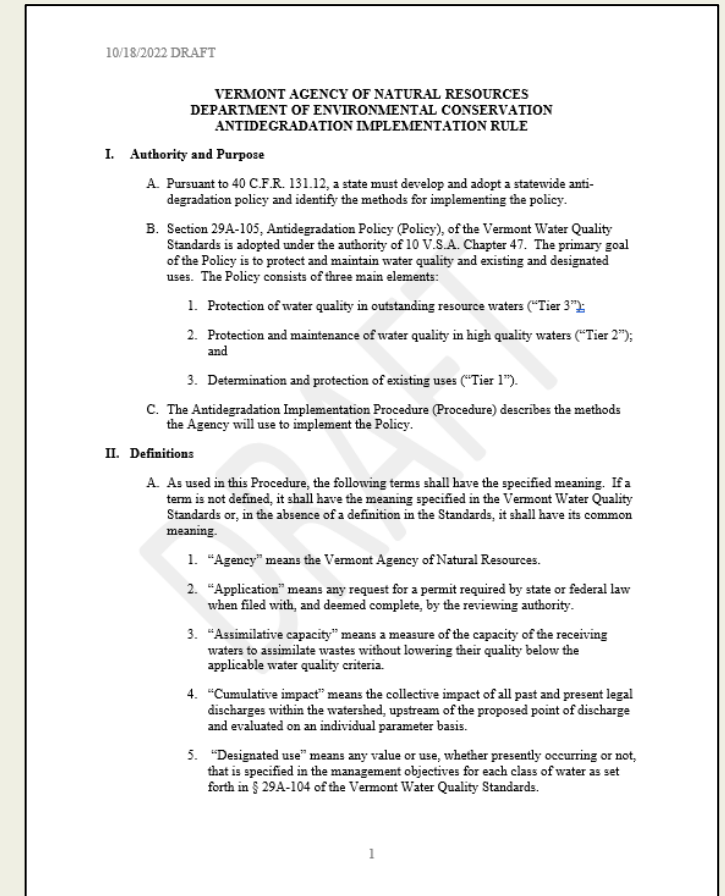


Stakeholder and Rulemaking Process

- Stakeholder group was convened in October 2021 to inform revisions to the existing Interim Anti-Degradation Implementation Procedure.
 - Jeff Nelson (VHB), Warren Coleman (MMR), Jenna Calvi (City of Burlington), Karen Horn (VLCT), Jon Groveman (VNRC), Mason Overstreet (CLF), Jared Carpenter (LCC)
- The stakeholder group met regularly through 2022 to discuss proposed revisions to the rule.
- The rule was filed late in 2022 and proceeded through the public comment period, but the Agency decided additional time was needed and did not file the rule with LCAR.
- The stakeholder group met again in October 2023.
- A few modifications were made to the rule based on public comments received, legislative testimony, and input from the stakeholder group.
- The rule was filed with ICAR in December 2023 and with the Secretary of State in January 2024.

Refinements to the 2010 Interim Antidegradation Implementation Procedure

- Eliminated redundancy (from 43 pages to 13).
- Corrected errors, inconsistencies, and omissions.
- Clarified the procedural steps in an antidegradation analysis.
- Clarified antidegradation implementation for permits that rely on best management practices (e.g., stormwater permits, wetland permits, etc.).
- Clarified factors to be considered in the socioeconomic justification.
- Integrated environmental justice policies and practices.
- Clarified protection of existing uses.



I. Authority and Purpose

- a. Pursuant to 40 C.F.R. 131.12 and 10 V.S.A. § 1251a, a state must develop and adopt a statewide antidegradation policy and identify the methods for implementing the policy.
- b. Section 29A-105, Antidegradation Policy (Policy), of the Vermont Water Quality Standards is adopted under the authority of 10 V.S.A. Chapter 47. The primary goal of the Policy is to protect and maintain water quality and existing and designated uses. The Policy consists of three main elements:
 1. Protection of water quality in outstanding resource waters (“Tier 3”);
 2. Protection and maintenance of water quality in high quality waters (“Tier 2”);
and
 3. Determination and protection of existing uses (“Tier 1”).
- c. The Antidegradation Implementation Rule (Rule) describes the methods the Agency will use to implement the Policy.

II. Definitions

- a. As used in this Rule, the following terms shall have the specified meaning. If a term is not defined, it shall have the meaning specified in the Vermont Water Quality Standards or, in the absence of a definition in the Standards, it shall have its common meaning.

III. Applicability

- a. The Secretary will apply this Rule during the review of applications for any permit for a new discharge in which compliance with the Standards is evaluated.
- b. Discharges that do not require a permit are not subject to this Rule.
- c. Activities authorized by the permits listed in Section III.c. on pages 3 and 4 are subject to review under this Rule.
- d. The permits listed in Section III.d. on page 4 are exempt from review under this Rule.
- e. Authorizations issued under a general permit subject to this Rule are exempt from subsequent review under this Rule unless the Secretary determines based on credible and relevant information and best professional judgment that the proposed activity, due to its potential impact, requires a site-specific Tier 2 analysis through the use of an individual permit.

IV. Information Required from Applicant

- a. The Secretary shall require the applicant to provide the necessary information to make a determination under this rule.
- b. When the Secretary determines there is insufficient information to make a determination under this rule and the applicant fails to provide the required information, the Secretary shall deny the application.
- c. All technical, scientific, social, and economic data and analyses provided to the Secretary shall be developed by qualified professionals.
- d. The Secretary may require an applicant to provide the information, as appropriate, listed in Section IV.d. on pages 4 and 5.
- e. In reviewing an application for a new discharge, the Secretary will utilize all credible and relevant information and the best professional judgment of Agency staff.

V. Public Participation Requirements

- a. The Secretary shall provide an opportunity for meaningful participation for all individuals in accordance with the applicable permit or rulemaking notice requirements and civil rights requirements.
- b. Public notice for the permit or rule, and the fact sheet, if applicable, shall include a statement that the permit or rule is consistent with the Policy and shall describe how the public can obtain materials used in the determination.
- c. The Secretary shall provide for intergovernmental coordination, including contacting local municipal governments, federal entities, or downstream States or Tribes that may be impacted by a change in water quality.

VI. Antidegradation Analysis

a. Tier 3 – Protection of Outstanding Resource Waters

1. For Outstanding Resource Waters designated for their specific exceptional natural, recreational, cultural, or scenic values, their existing water quality associated with the values for which they have been designated shall be maintained and protected.
2. The impact of the proposed discharge to an Outstanding Resource Water's existing water quality will be evaluated on a parameter-by-parameter basis necessary to protect the values for which the Outstanding Resource Water was designated.
3. The Secretary will evaluate applications for proposed discharges, and only those that meet the following criteria shall be eligible for permitting:
 - A. the proposed discharge will improve water quality or is necessary for the maintenance of current environmental conditions; or
 - B. the proposed discharge is temporary and it is expected that water quality in the receiving water will be equal to or better than that which existed prior to commencement of the discharge. In order to be considered temporary, the duration of the discharge must typically occur over a period of days or months, not years.
4. A discharge that results in no measurable reduction in the physical, chemical, or biological quality of the Outstanding Resource Water shall not be subject to review under Tier 3.

VI. Antidegradation Analysis (continued)

b. Tier 2 – Protection of High Quality Waters

1. Waters the existing quality of which exceeds any applicable water quality criteria provide important environmental, economic, social, and other benefits to the people of the State.
2. A limited reduction in the existing quality of high quality waters may be allowed only when the conditions listed in Section VI.b.2. on page 6 are met.
3. The Secretary shall evaluate alternatives to the proposed activity, including the location and method of discharge, that would have the least adverse impact on waters and wetlands of the State, and provided that any proposed alternative shall not have other significant adverse human health, safety, or environmental consequences.
4. In evaluating the impact of a proposed discharge, and considering the nature, persistence, and potential effects of pollutants contained within the discharge, the Secretary may determine that those projects resulting in the conditions listed in Section VI.b.4. on page 7 are not subject to Tier 2 analysis.

VI. Antidegradation Analysis (continued)

b. Tier 2 – Protection of High Quality Waters (continued)

5. Determination of Receiving Water Quality
6. Determination of Reduction of Receiving Water Quality Resulting from the Proposed Activity
7. Determination of Socioeconomic Impact
8. Determination of Allowable Reduction of Water Quality
9. For proposed activities that may discharge to waters of the state, the Secretary shall consider the effectiveness of best management practices or permitting criteria relative to their socioeconomic impacts and require the implementation of those best management practices that are cost-effective and reasonable. The permits listed on pages 11 and 12 shall require implementation of best management practices determined by the Secretary to be cost-effective and reasonable, and therefore projects that comply with the following permit requirements shall be presumed to meet the Tier 2 requirements unless credible and relevant project or site-specific information rebuts the presumption.

VI. Antidegradation Analysis (continued)

b. Tier 2 – Protection of High Quality Waters (continued)

10. For proposed activities that may discharge to waters where the Secretary determines water quality data meets or exceeds the minimum criteria for B(1) waters or to waters where the Secretary has received an administratively and technically complete petition to reclassify the water to B(1), the Secretary shall evaluate the impact of the proposed activity relative to the B(1) criteria.
11. For proposed activities that may discharge to waters classified as A(1); or to waters where the Secretary determines water quality data meets or exceeds the minimum criteria for A(1); or to waters where the Secretary has received an administratively and technically complete petition to reclassify to A(1); and when proposed activities would result in a measurable reduction in the physical, chemical, or biological quality of such waters due to their location, size, and scale, the Secretary shall require individual permit review and evaluate the proposed activity relative to the A(1) criteria.

VI. Antidegradation Analysis (continued)

c. Tier 1 – Protection of Existing Uses

1. The existing uses of waters, and the level of water quality necessary to protect those existing uses, shall be maintained and protected. Existing uses are a confirmation of the set of designated uses in the Standards regardless of the class of the water.
2. In making a determination of existing uses to be protected and maintained under the Policy, the Secretary shall consider the designated uses and at least the factors, as described in Section VI.a.2 on page 12.
3. In identifying existing uses, the Secretary will use the process described in Section VI.a.3 on pages 12 and 13.

VI. Antidegradation Analysis (continued)

- c. Tier 1 – Protection of Existing Uses (continued)
 - 4. Beginning on July 1, 2024, and biannually thereafter, the Secretary shall determine through the evaluation of existing water quality data the waters that meet or exceed the minimum criteria for a higher class for one or more designated uses.
 - 5. For waters where the Secretary determines water quality data meets or exceeds the minimum criteria for a higher class for one or more designated uses, or the Secretary has received an administratively and technically complete petition to reclassify waters, any permit issued by the Secretary must ensure the maintenance of water quality necessary to protect that existing use.
 - 6. On or before January 1, 2026, and upon each subsequent triennial rulemaking for the Vermont Water Quality Standards, the Secretary shall propose to reclassify waters as described in VI.c.5. for one or more designated uses.

Timeline and Next Steps

- Written comments accepted through February 27, 2024.
 - Email: Bethany.Sargent@vermont.gov
- Response to comments.
- Present proposed rule to Legislative Committee on Administrative Rules (LCAR).
- For more information, visit:
<https://dec.vermont.gov/watershed/tasc/antidegradation>

