

Antidegradation



- What do the antidegradation regulations require?
- What are the levels of protection?
- What are the elements of a high quality water review?

Antidegradation Requirements (40 CFR 131.12)

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- ❖ **Authorized Tribes must develop and adopt an antidegradation policy to protect:**
 - ◆ Existing instream uses;
 - ◆ High quality waters (water quality that is better than the levels necessary to support propagation of fish, shellfish and wildlife, and recreation in and on the waters);
 - ◆ Outstanding National Resource Waters (ONRWs) designated by the Tribe; and
 - ◆ Waters where there is a potential impairment associated with a thermal discharge

Antidegradation Requirements (CFR 131.12) Con't

❖ Authorized Tribes must also identify antideg implementation methods

- ◆ Describe how the policy will be implemented on a case-by-case basis
- ◆ May be part of the Tribe's WQS, or referenced in the WQS and contained in another Tribal document

Tier 1 - Existing Uses

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- ❖ Existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected
 - ◆ Provides absolute “floor” of water quality

Tier 2- High Quality Waters

- ❖ Water quality better than “fishable/swimmable”
- ❖ Water quality may be lowered:
 - ◆ Only after intergovernmental coordination and public involvement, and if
 - ◆ Tribe finds lowering to be “necessary to accommodate important economic or social development”
- ❖ Existing uses must be protected
- ❖ Tribes must assure the highest statutory and regulatory requirements for point sources and cost-effective and reasonable BMPs for non-point sources are achieved

Two Ways to Identify High Quality Waters

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- ❖ **“Designational”/“Waterbody-by-Waterbody”**
 - ◆ Designate water bodies exhibiting certain high quality characteristics using biological, chemical and/or aesthetic data and information.
 - ▶ All pollutants/parameters do NOT need to be better quality than the Tribe's ambient criteria for the water to be deemed a high quality water.
 - ❖ **“Pollutant-by-Pollutant”/“Parameter-by-Parameter”**
 - ◆ Determine whether water quality is better than the criterion for each parameter using chemical or biological data.

Antidegradation Reviews for High Quality Waters

- ❖ The review generally applies to point source dischargers requesting a new or increased load
- ❖ Tribes make a determination to grant a request for new or increased loadings after public review and evaluation (usually through 401 Cert)
- ❖ Permittee must prove why the WQ lowering is necessary
 - ◆ Show why alternatives are not better than lowering
 - ◆ Explain the economic or social development and the benefits to the area that should not be foregone

Tier 3- Outstanding National Resource Waters (ONRWs)

- ❖ Waters constituting an outstanding resource
 - ◆ waters of exceptional cultural, recreational or ecological significance (waters in traditional/historic areas, parks, wildlife refuges, unique ecosystems)
 - ◆ Tribe identifies ONRWs
 - ◆ No degradation is allowed in ONRWs, except on a short term or temporary basis
 - ◆ Tribes must have provisions for protecting ONRWs, but there is NO requirement that Tribes designate waters as ONRWs