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In-Depth Webinar: Antidegradation *WQS Regulatory Revisions Final Rule*

Prepared by EPA Office of Water
Office of Science and Technology
October 13, 2015

Logistics

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Purpose and Disclaimer

- Provide in-depth information about the antidegradation requirements in EPA's Water Quality Standards Regulatory Revisions final rule.
- Provide an opportunity to ask clarifying questions about the antidegradation requirements in the final rule.
- This webinar does not:
 - Impose any binding requirements
 - Determine the obligations of the regulated community
 - Change or substitute for any statutory provision or regulation requirement
 - Represent, change or substitute for any Agency policy or guidance
 - Control in any case of conflict between this discussion and statute, regulation, policy or guidance

Outline

- What is antidegradation?
- Why update the federal antidegradation requirements in the WQS regulation?
- What sections are updated in the final rule?
 - Identification of High Quality Waters
 - Analysis of Alternatives
 - Antidegradation Implementation Methods

Antidegradation Background

Antidegradation allows states and authorized tribes to protect and maintain water quality.

- **Tier 1:** Existing in-stream uses for all waters of the United States.
- **Tier 2:** High quality waters (water quality that is better than the levels necessary to support the uses specified in section 101(a)(2) of the Act)
 - Requires **Tier 2 Review** prior to deciding to allow a lowering of water quality
- **Tier 3:** Outstanding National Resource Waters (ONRWs) designated by the state/authorized tribe

Why Update the Antidegradation Requirements?

- Enhance protection and maintenance of high quality waters
- Promote consistency in state and authorized tribal antidegradation implementation
- Strengthen the evaluation used to identify and manage high quality waters
- Increase transparency and opportunities for public involvement

Identification of High Quality Waters

Final Rule:

- Reaffirms both approaches for Tier 2 protection - either a parameter-by-parameter or a water body-by-water body basis
- For water body-by-water body basis, states/authorized tribes shall provide opportunity for public input on when they will provide Tier 2 protection and the factors considered
- States/authorized tribes must not exclude water bodies from Tier 2 protection solely because water quality does not exceed levels necessary to support all of the CWA section 101(a)(2) uses

Identification of High Quality Waters

131.12(a)(2)(i) - "The State may identify waters for the protections described in (a)(2) of this section on a parameter-by-parameter basis or on a water body-by-water body basis. ..."

Parameter-by-Parameter

At the time an entity proposes an activity that would lower water quality, the state/authorized tribe:

- Identifies parameters for which water quality is better than necessary to support the uses specified in CWA section 101(a)(2), and
- Provides Tier 2 review for any such parameters.

Water body-by-Water body

In advance of any proposed activity, the state/authorized tribe identifies waters that will receive Tier 2 protection by weighing a variety of factors. When an entity proposes an activity that would lower water quality, the state/authorized tribe:

- First determines if that water body is on the Tier 2 list, and
- If it is on the Tier 2 list, provides Tier 2 review for parameters for which water quality is better than necessary to support the uses specified in CWA section 101(a)(2).

Identification of High Quality Waters

131.12(a)(2)(i) - When using a water body-by-water body approach, state/authorized tribe “ ... shall provide an opportunity for public involvement in any decisions about whether [Tier 2 protections] will be afforded to a water body, and the factors considered when making those decisions. ...”

- The evaluation and factors must:
 - Consider the overall quality of the water
 - Factors must be rooted in the goals of the CWA, including the chemical, physical, and biological characteristics of a water body
- Public involvement could include the state/tribe:
 - Sharing Tier 2 lists during triennial review or during revision of antidegradation implementation methods,
 - Engaging the public at the time of drafting a permit that would allow a lowering of water quality, or
 - Using additional avenues, such as a petition process

Identification of High Quality Waters

131.12(a)(2)(i) - "... Further, the State shall not exclude a water body from the protections described in (a)(2) of this section solely because water quality does not exceed levels necessary to support all of the uses specified in section 101(a)(2) of the Act. ..."

- Where water quality is better than necessary to support all of the uses specified in CWA section 101(a)(2), states and authorized tribes must provide Tier 2 protection.
- Where water quality is not better than necessary to support all of the uses specified in CWA section 101(a)(2), the final rule does not require states and authorized tribes to provide Tier 2 protection for the water body.
- Where states/authorized tribes lack data and information on the water quality to make individual water body conclusions, EPA recommends providing all or a subset of waters with Tier 2 protection, by default.

Identification of High Quality Waters

- **Water Body A** is designated for the uses specified in CWA section 101(a)(2), the water quality exceeds levels necessary to support all of the uses specified in CWA section 101(a)(2), and it is not listed pursuant to CWA section 303(d).
 - State/authorized tribe must provide Tier 2 protection because water quality is better than necessary to support all of the uses specified in CWA section 101(a)(2).

- **Water Body B** is designated for the uses specified in CWA section 101(a)(2) and the water quality does not exceed levels to support all of the uses listed in CWA section 101(a)(2) because the water body is listed pursuant to CWA section 303(d) as impaired for methylmercury, which affects human health from the consumption of fish.
 - State/authorized tribe is not required to provide Tier 2 protection, but may choose to based on an overall assessment.
 - State/authorized tribe shall not exclude the water body from Tier 2 protection solely because of the impaired aquatic life use; however, the state/authorized tribe may consider excluding the water after conducting an overall assessment and receiving public input on the decision.

Questions?

- Please enter your questions in the 'Chat' box on the right side of your screen. We will respond to a few of those questions today.
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Antidegradation Question and Answer Session Webinar

Thursday, **October 15, 2015**, 1:00—2:00 PM Eastern

Analysis of Alternatives

Final Rule:

- Before allowing a lowering of high water quality, states/authorized tribes must find, after an analysis of alternatives, that such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located
- That analysis must evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity
- When an analysis identifies one or more such practicable alternatives, states/authorized tribes may only find that a lowering is necessary if one such alternative is selected for implementation

Analysis of Alternatives

131.12(a)(2)(ii) - "Before allowing any lowering of high water quality, pursuant to (a)(2) of this section, the State shall find, after an analysis of alternatives, that such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located. ..."

- Tier 2 review calls for the state/authorized tribe to investigate two questions:
 - (1) Whether allowing lower water quality is necessary to accomplish the proposed activity, through an analysis of alternatives, and
 - (2) whether the proposed activity that will result in lower water quality will accommodate important economic or social development, through a socio-economic analysis.
- States/authorized tribes may determine the order in which to complete the two aspects of the finding

Analysis of Alternatives

131.12(a)(2)(ii) - "... The analysis of alternatives shall evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity. ..."

- Alternatives could include no discharge, process changes, different treatment technologies, water recycling, land application, alternative discharge locations, etc., if such measures are practicable
 - Practicable "means technologically possible, able to be put into practice, and economically viable." (131.3(n))
- States/authorized tribes are ultimately responsible for making the decision to allow degradation, but may rely on an analysis developed by a third party when making those decisions.
- Analysis should document a level of detail to provide the public with the necessary information to understand how the state/authorized tribe made its decision.

Analysis of Alternatives

131.12(a)(2)(ii) - "... When the analysis of alternatives identifies one or more practicable alternatives, the State shall only find that a lowering is necessary if one such alternative is selected for implementation. ..."

- Identifying a range of practicable alternatives provides a basis to allow a lowering and how much lowering to authorize.
- State/authorized tribe may only authorize the lowering if one of the alternatives from the range is selected for implementation.
 - State/authorized tribe is not required to select the least degrading practicable alternative from the range.
 - State/authorized tribe may consider impacts of the alternatives within the range, such as cross-media impacts.
 - Requirement to select for implementation an alternative from the range applies even if the analysis identifies only one alternative.
 - Where the analysis results in choosing an alternative that avoids degradation, a state/authorized tribe need not make a finding.

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Antidegradation Implementation Methods

Final Rule:

- Antidegradation implementation methods (whether or not those methods are adopted into rule) must be consistent with state/authorized tribal antidegradation policy and federal requirements under 131.12(a)
- States/authorized tribes must provide opportunity for public involvement during development and revision of implementation methods, and to make the implementation methods publically available

Antidegradation Implementation Methods

131.12(b) - “The State shall develop methods for implementing the antidegradation policy that are, at a minimum, consistent with the State’s policy and with paragraph (a) of this section. ...”

- “Antidegradation implementation methods” refer to any additional documents and/or provisions in which a state/authorized tribe describes methods for implementing its antidegradation policy, whether or not the state or authorized tribe formally adopts the methods in regulation or other legally binding form.
 - States/authorized tribes are not required to adopt their methods in regulation or binding form.
 - If a state/authorized tribe chooses to adopt its implementation methods, EPA has the authority to determine whether those methods are consistent with the federal antidegradation requirements (i.e., approve or disapprove the methods as WQS).

Antidegradation Implementation Methods

131.12(b) - "... The State shall provide an opportunity for public involvement during the development and any subsequent revisions of the implementation methods, and shall make the methods available to the public."

- Public involvement may include:
 - More than one opportunity or event
 - Various mechanisms, including a public hearing, meeting, or workshop; or engaging the public via the Internet through webinars and website postings
 - If adopted into regulation or binding form, the state's/authorized tribes' public hearing (as required by 131.20(b)) will satisfy this requirement.

- Public availability may include:
 - Website posting
 - Adoption into regulation or other legally binding form

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