



# Antidegradation

Alaska Department of Environmental Conservation  
Division of Water

**Alaska Forum on the Environment**  
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# Antidegradation

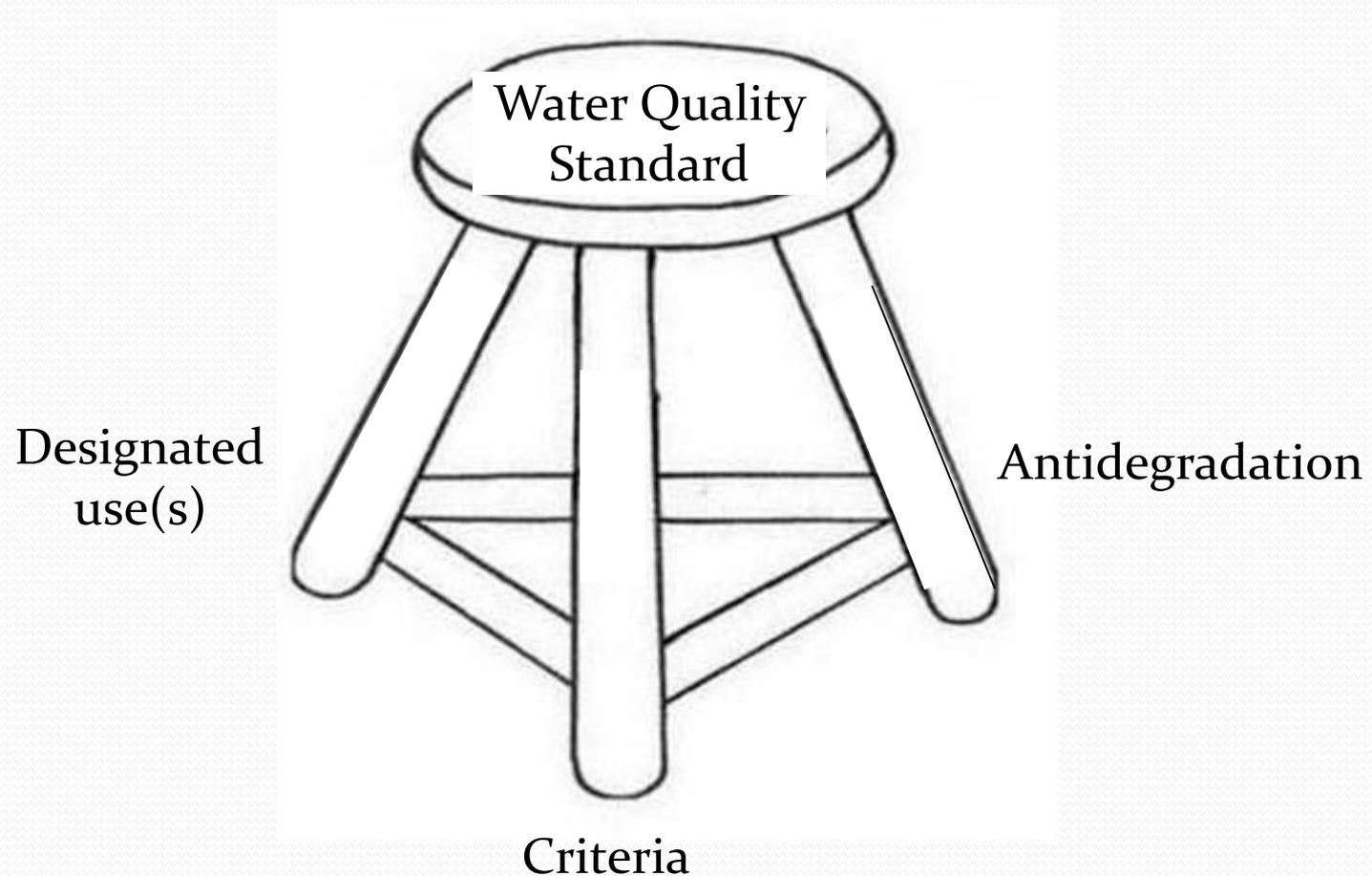
- Overview:
  - Clean Water Act and Antidegradation
  - Review of Proposed Regulations
  - Public Participation

# Clean Water Act

- Passed by U.S. Congress in 1972 to address water pollution issues
- Each state must develop Water Quality Standards



# Clean Water Act and Water Quality Standards



# Policy & Implementation Methods

- Clean Water Act – 40 CFR 131.12
  - Antidegradation Policy
  - Antidegradation Implementation Methods
- DEC
  - Antidegradation Policy - 18 AAC 70.015, adopted in 1997
  - Interim Implementation Procedures (2010)
  - Draft Antidegradation Implementation Regulations public noticed on January 13, 2014

# What is Antidegradation?

## **Antidegradation:**

A process for determining whether (if) and to what extent (how much) the quality of water can be lowered towards water quality criteria.

# Where is Antidegradation Required?

## Antidegradation Policy – 40 CFR 131.12

Establishes 3 levels of protection:

- Tier 1 - Existing use protection
  - Water whose quality is at or above criteria
  - Minimum level of protection for all water
- Tier 2 – High Quality Water
  - Water whose quality is better than criteria
  - Fishable/swimmable and existing uses must be maintained
- Tier 3 – Outstanding National Resource Water (ONRW)
  - Water that is considered of exceptional significance
  - Highest level of protection

# What Does Antidegradation Do?

## **Alaska Antidegradation Policy – 18 AAC 70.015**

Only allows for the lowering of water quality (degradation) towards water quality criteria if you can ensure that...

- Existing uses and the water quality necessary are maintained and protected (Tier 1)
- Lowering of water quality in high quality water is necessary and is for important social or economic development (Tier 2)
- ONRW water quality is maintained and protected (Tier 3)

# 2012 Antidegradation Workgroup

- Role:
  - Advisory in nature and to inform regulation process
  - Representing a variety of interests
    - State agency representatives – DEC, DNR, DF&G
    - EPA Region 10 water quality standards staff
    - Industry and consulting
    - Others – e.g. NANA Corporation, Nature Conservancy
- Outcomes:
  - Minutes and products produced as a result of the meetings are publicly available via DEC website
  - January 24, 2013 Final Workgroup Report
  - <http://dec.alaska.gov/water/wqsar/Antidegradation/antidegworkshop.html>

# Current Status

- DOW drafted regulations based in part on workgroup recommendations, DOW staff review, and EPA informal review and comments
- Draft Regulations were public noticed on January 13, 2014
- Comment period includes three hearings (Juneau, Anchorage, Fairbanks)
- Comment period closes March 17, 2014, 4:30 pm

# Proposed Water Quality Standards Regulations

- 18 AAC 70.016 – New section
  - a) General Provisions
  - b) Tier 1 - Analysis and Findings
  - c) Tier 2 – Analysis and Findings
  - d) Tier 3 – Analysis and Findings
  - e) General Permits
- 18 AAC 70.017 – New section
  - Tier 3 ONRW Nomination and Designation

# Proposed Antidegradation Regulations

- 18 AAC 70.016(a) General Provisions
  - applies to a water of the United States in Alaska
  - Antidegradation analysis and finding are required for actions or discharges under
    - the Alaska Pollutant Discharge Elimination System (APDES) Program under 18 AAC 83
    - Clean Water Act 401 certifications of 404 permits

# Proposed Antidegradation Regulations

- 18 AAC 70.016(a) General Provisions - Continued
  - Antidegradation analysis and findings are not required for:
    - Restoration activities
    - Emergency response activities; long term lowering of water quality would need to be addressed by the responsible party
    - 401 certifications where the department has waived certification
    - Revisions to 18 AAC 70 Water Quality Standards

# Proposed Antidegradation Regulations

- 18 AAC 70.016(a) General Provisions - Continued
  - Antidegradation analysis and findings are Tier specific
    - Tier 1 & Tier 2 – on a pollutant or parameter basis
    - Tier 3 – on a statutorily designated water or segment
  - Antidegradation analysis is subject to public participation and intergovernmental review

# Proposed Antidegradation Regulations

- 18 AAC 70.016(a) General Provisions - Continued
  - Applicant shall submit sufficient information to complete the antidegradation analysis
  - Applicant may submit sufficient and credible baseline water quality information for department tier level determination

# Proposed Antidegradation Regulations

- 18 AAC 70.016(b) Tier 1 analysis of existing use protection
  - The department will conduct a Tier 1 analysis for all applicable actions or discharges
  - CWA 404(b)(1) finding of no significant degradation fulfills antidegradation requirement for dredge or fill material

# Proposed Antidegradation Regulations

- 18 AAC 70.016(b) Tier 1 - Continued
  - The applicant shall submit sufficient information
  - Tier 1 is the highest protection level when
    - the receiving water is listed as impaired – CWA 303(d)
    - the department determines Tier 1 for the receiving water based on CWA 305(b) information
    - the department has issued a prior Tier 1 finding

# Proposed Antidegradation Regulations

- 18 AAC 70.016(b) Tier 1 - Continued
  - The department will not authorize an action or discharge unless it finds that
    - Existing uses and water quality necessary for protection have been identified
    - Existing uses will be maintained and protected
    - Water quality will not be lowered where a pollutant or parameter is already at or failing criteria

# Proposed Antidegradation Regulations

- 18 AAC 70.016(c) Tier 2 analysis of high quality water
  - Tier 2 applies when a pollutant or parameter is better than the applicable water quality criteria
  - Tier 2 is presumed as the highest protection level for all water unless
    - the receiving water is listed as impaired – CWA 303(d)
    - the department determines Tier 1 for the receiving water based on CWA 305(b) information
    - available evidence is provided for a department Tier 1 finding
    - the water is statutorily designated Tier 3

# Proposed Antidegradation Regulations

- 18 AAC 70.016(c) Tier 2 Continued
  - Tier 2 analysis and findings are not required for a de minimis action or discharge
    - pollutant or parameter in proposed discharge will not increase more than five percent over the existing level
    - the proposed discharge will not cumulatively decrease the available assimilative capacity by more than five percent
    - de minimis does not apply to Tier 3 water

# Proposed Antidegradation Regulations

- 18 AAC 70.016(c) Tier 2 Continued
  - The department will conduct a Tier 2 analysis when reviewing
    - a permit for a proposed new or expanded discharge
    - a permit for an existing discharge that did not previously require authorization and is proposing to expand
    - a permit for an existing discharge that did previously require a permit but has not been issued
    - an expired permit that had not been administratively extended
    - a permit for a previously terminated discharge seeking reauthorization

# Proposed Antidegradation Regulations

- 18 AAC 70.016(c) Tier 2 Continued
  - Tier 2 analysis are not required for
    - a reissued permit that is not expanding
    - a permit for an existing discharge that did not previously require authorization and is not proposing to expand
    - a reissued administratively continued permit that is not proposing to expand

# Proposed Antidegradation Regulations

- 18 AAC 70.016(c) Tier 2 - Continued
  - The applicant shall submit sufficient information
    - Standard applicant information (from general section)
    - Alternatives Analysis
    - Social Importance Analysis OR
    - Economic Importance Analysis

# Proposed Antidegradation Regulations

- 18 AAC 70.016(c) Tier 2 - Continued
  - Alternatives analysis
    - description and analysis of a range of practicable alternatives from no degradation to proposed alternative for the discharge
    - evaluation of cost effectiveness for practicable alternatives
    - identification of receiving water quality and ancillary impacts
    - identification of least degrading practicable alternative
  - “practicable” means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes;

# Proposed Antidegradation Regulations

- 18 AAC 70.016(c) Tier 2 - Continued
  - Social importance analysis
    - identifying all affected communities in the area where the receiving water for the proposed discharge is located
    - demonstrates important social development in one or more areas
      - Community services
      - Public health/safety
      - Infrastructure
      - Education/Training
      - Cultural amenities



Courtesy:  
Eklutna Water  
Treatment  
Plant. 25

# Proposed Antidegradation Regulations

- 18 AAC 70.016(c) Tier 2 - Continued
  - Economic importance analysis
    - identifying all affected communities in the area where the receiving water for the proposed discharge is located
    - demonstrates important economic development in one or more areas
      - Employment/jobs/salary impacts
      - Tax base impacts
      - Expanded lease and royalties
      - Commercial activities
      - Resource or transportation network access

# Proposed Antidegradation Regulations

- 18 AAC 70.016(c) Tier 2 - Continued
  - The department will not authorize an action or discharge unless it finds that
    - Water quality meets applicable criteria
    - All Tier 1 findings are met
    - All point source and non-point source discharges to the receiving water meet antidegradation policy requirements
    - Alternatives analysis demonstrates the lowering of water quality is necessary
    - Social or Economic Importance analysis demonstrates that the lowering of water quality accommodates important development

# Proposed Antidegradation Regulations

- 18 AAC 70.016(d) Tier 3 analysis of Outstanding National Resource Water (ONRW)
  - Tier 3 applies to a statutorily designated water or segment
  - The department will conduct a Tier 3 analysis for
    - All proposed new or expanded discharges to a Tier 3 water
    - All proposed new or expanded discharges to a water that is tributary to a Tier 3 water

# Proposed Antidegradation Regulations

- 18 AAC 70.016(d) Tier 3 Continued
  - The applicant shall submit sufficient information
    - Baseline water quality information
    - Standard applicant information
    - Information on the proposed or expanded discharge
    - Information on the effect of the new or expanded discharge on the Tier 3 water quality
  - A new zone of deposit or mixing zone is prohibited in a Tier 3 water

# Proposed Antidegradation Regulations

- 18 AAC 70.016(d) Tier 3 Continued
  - The department will not authorize an action or discharge unless it finds that
    - The lowering of water quality is temporary and limited
    - No lowering of water quality will occur when offsets to the proposed degradation are proposed
    - Nonpoint sources to the Tier 3 water are using department required best management practices
    - No new zones of deposit or mixing zones are proposed

# Proposed Antidegradation Regulations

- 18 AAC 70.016(e) General Permits
  - The department will apply the antidegradation policy and implementation methods at the time the general permit is issued; the department will
    - Obtain the necessary information
    - Make antidegradation findings
    - Request information from applicants who may discharge under the general permit, if necessary

# Proposed Antidegradation Regulations

- 18 AAC 70.017 Tier 3 Outstanding National Resource Water (ONRW)
  - Tier 3 water shall be designated in statute

# Proposed Antidegradation Regulations

- 18 AAC 70.017 Tier 3 Continued
  - Eligible water criteria
    - Exceptional characteristics relative to other state water
    - Relatively pristine condition, absent of human degradation
    - Exceptional ecological, economic or recreational significance
    - Exceptional or rare example regardless of water quality
  - Any water or segment which meets one or more of the criteria may be nominated by any resident of Alaska

# Proposed Antidegradation Regulations

- 18 AAC 70.017 Tier 3 Continued
  - Nomination information
    - Name, description, geographic location
    - Boundaries, including maps
    - Adjacent land ownership information
    - Rational to support exceptional characteristic criteria
    - Explanation of why existing protection is insufficient
    - Other available evidence, including information on existing uses, water quality data and other technical data or records

# Proposed Antidegradation Regulations

- 18 AAC 70.017 Tier 3 Continued
  - Additional supporting information, as available
    - Additional information on affected landowners, stakeholders or communities
    - Economic or social information, including available natural resources, special land use designations, transportation corridors, subsistence use and users
    - Documentation of public out reach and level of support
    - Documentation of local government support

# Proposed Antidegradation Regulations

- 18 AAC 70.017 Tier 3 Continued
  - The department will perform a completeness review of submitted nominations annually
    - Request additional information, if necessary

# Proposed Antidegradation Regulations

- 18 AAC 70.017 Tier 3 Continued
  - Every three years the department will
    - Prioritize the submitted nominations
    - Public notice and accept comment on the proposed prioritization of nominations
    - After public comment finalize the prioritized nominations
    - Consult and request input from other agencies as applicable on the priority nominations
    - Provide a sixty (60) day public period on the priority nominations
    - After public comment, evaluate all available evidence
    - Issue a joint report to the Governor's Office and Legislature for possible legislative action and statutory designation

# Now What?

- Public comment accepted through March 17, 2014
- Information Workshops (4:00-5:00 pm) immediately followed by public hearings (5:00-7:00 pm)
- Three scheduled workshops/public hearings
  - Juneau: February 10, DEC Main Conference Room
  - Anchorage: February 12, Atwood Building Room 602
  - Fairbanks: February 18, DEC Conference Rooms B & C

# Staying Involved

- **Website:**

<http://dec.alaska.gov/water/wqsar/Antidegradation>

- **Antidegradation List Serve:**

<http://list.state.ak.us/soalists/DEC.Water.Quality.Antidegradation/jl.htm>

- **Water Quality Standards List Serve:**

[http://list.state.ak.us/soalists/DEC\\_WaterQualityStandard/jl.htm](http://list.state.ak.us/soalists/DEC_WaterQualityStandard/jl.htm)

- **Wastewater Discharge (APDES) List Serve:**

[http://dec.alaska.gov/water/npdes/npdes\\_email\\_list.htm](http://dec.alaska.gov/water/npdes/npdes_email_list.htm)

## Contact Information

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# Thank you for your time

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