

Antidegradation Final Implementing Methods Work Plan December 2011

Background

The federal Clean Water Act requires states to have an anti-degradation policy and implementation procedures. This requirement is primarily designed to require states to look carefully during the wastewater discharge permitting process at the advantages and disadvantages of authorizing a new discharge of pollutants that will lower the quality of a water body of the state. Among other factors, states are to look at: (1) water quality degradation from both point and nonpoint (storm water and melt water runoff) sources of pollution, (2) whether there are cost effective alternatives to a new or increased discharge, and (3) what social and economic benefit to the state would be necessary to justify any degradation. States must include a process for nomination and designation of Outstanding National Resource Waters (ONRW or “tier 3”), which allows special protections for these designated water bodies.

Alaska’s current anti-degradation policy, adopted in 1996, is found in the Water Quality Standards regulations at 18 AAC 70. As for the required implementing methods, DEC adopted interim methods in July 2010, but has yet to develop and adopt final implementing procedures.

Purpose

This document sets out DEC’s plan for developing final procedures for implementing the state’s antidegradation policy. It discusses actions to date, as well as those planned for the future.

Actions to Date

DEC contracted with Tetra Tech, Inc. to produce an October 6, 2008 report, titled “Evaluation of Options for Antidegradation Implementation Guidance.” The report presents Alaska’s antidegradation policy and how other States implement their policies. It describes the major elements of implementation procedures and includes options for Alaska’s implementation procedures. The report is available on the DEC website at

http://dec.alaska.gov/water/wqsar/wqs/pdfs/Antidegradation_tetrattech_final.pdf

DEC hosted a public workshop on antidegradation issues in December 2009 that included presentations by attorneys, the Environmental Protection Agency, an environmental interest group, and other states that have significant experience implementing antidegradation policies and in defending against legal challenges to their policies and implementation procedures.

DEC adopted “Interim Antidegradation Implementation Methods” in July 2010. A copy can be found at

http://dec.alaska.gov/water/wqsar/Antidegradation/docs/P&P-Interim_Antidegradation_Implementation_Methods.pdf

Future Actions

DEC plans additional work including finishing final implementation procedures. In contrast to the interim methods issued as agency guidelines, DEC expects the final implementation procedures to involve at a minimum regulatory rulemaking and, perhaps, legislation. Additionally, under the interim methods, persons may nominate water bodies for “Tier 3” status. Tier 3, or outstanding national resource waters, are entitled to the highest level of protection under the antidegradation policy because they are special for reasons such as being in a state or national park, or being of exceptional recreational or ecological significance. See 18 AAC 70.015(a)(3). The process for making Tier 3 designations is an important part of the antidegradation implementation procedures. Any Tier 3 nominations received will be handled in accordance with the process prescribed by the final implementation procedures.

Workgroup Concept

DEC will establish a workgroup of representatives of key interests. The work group will be advisory in nature, providing DEC with various perspectives and informing the department’s development of draft implementation procedures for public notice and comment. The objective is to seek overall efficiency and a better final product through early involvement of stakeholders.

Workgroup Process (Phase 1)

The workgroup effort will focus on the first phase of a two-phase development process. Phase 1 consists of a work group developing and recommending a preferred approach. Phase 2 consists of DEC drafting regulations that will go through the formal rulemaking process and, perhaps, legislative processes necessary to enact the approach.

The workgroup effort will be supported by a contractor that will provide research and other assistance, and ultimately prepare draft and final reports describing preferred implementation procedures for Alaska. Public notice will be provided for workgroup meetings and the meetings will be open to the public. Subcommittees may be formed to address specific issues.

Antidegradation implementation procedures usually contain two separate components: guidance for ranking lower quality, higher quality and outstanding national resource waters; and guidance for when and how to do an antidegradation analysis as part of permitting. These two components may be considered independently.

The general sequence of tasks to be addressed includes:

- Task 1.a Review alternative approaches
- Task 1.b Compare and evaluate options Task 1.c. -- Identify preferred elements for Alaska
- Task 1.d Assemble elements into a preferred conceptual approach
- Task 1.e Prepare draft and final reports describing the preferred approach
- Task 1.f Parse conceptual approach into regulatory and statutory elements

Phase 1 is anticipated to be completed by the end of calendar year 2012. Meetings will be held in Anchorage. DEC envisions a series of meetings, bi-monthly for up to 12 months. Participants will not be compensated.

Each meeting will produce identified “action items” for DEC staff. A meeting summary and identified actions items will be posted to the DEC website and e-mailed to a mailing list of interested parties maintained by DEC.

Rulemaking and Legislation (Phase 2)

Once a preferred approach has been decided upon rulemaking will be required. Depending on the approach selected, legislation may also be needed.

- Task 2.a Draft regulations and (if needed) legislation
- Task 2.b Rulemaking and (if needed) legislative processes

Phase 2 is anticipated to be completed by mid 2013.