

Alaska Antidegradation Workgroup, March 14-15, 2012 Summary of Meeting#2

The following notes include recommendations to the Alaska Department of Environmental Conservation (ADEC) from the Alaska Antidegradation Workgroup. These recommendations were formed during the March 14-15, 2012 workgroup meeting and may change in future meeting summaries. ADEC has made no decisions on the issues addressed in these recommendations. Each issue addressed is listed below, along with the key questions, relevant discussion, and Workgroup recommendations.

DAY ONE, March 14, 2012

Meeting #1 Summary Revisions

See final Meeting #1 Summary on DEC website

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

Introduction of Five Elements of Tier 2 Antidegradation Analysis

Michelle summarized the five elements of a Tier 2 analysis:

- A. Review of Social and Economic Importance
- B. Compliance with Water Quality Criteria and Whole Effluent Toxicity Limits
- C. Protection of Existing Uses
- D. Alternatives Analysis for Pollution Prevention, Control and Treatment
- E. Review of Treatment Requirements and Best Management Practices

Workgroup questions/comments

1. Need more discussion on mixing zones in regards to antidegradation analysis and review.
2. Can a Tier 2 waterbody become a Tier 1 waterbody. Put into the parking lot for future discussion.

TO PARKING LOT: What makes an antidegradation analysis simple vs. complex? NPDES vs. APDES permit, potential legal challenge, multiple discharges vs. one discharge, etc.

3. What information should the facility provide in terms of antidegradation review and what should DEC provide? Should the permittee prepare the draft antidegradation analysis or should DEC do the analysis (based on applicant information)?
4. How should DEC consider antidegradation analysis for a general permit when the waterbodies involved could be in very different parts of the state?

2nd Workgroup Review of Issue #1: Activities that Require Antidegradation Reviews

Workgroup questions/comments

1. If a new applicant files an NOI under an existing GP, and that new NOI complies with the permit conditions, is an antidegradation analysis required?
2. Is it necessary for DEC to consider defining the number of dischargers/sites, or total discharge flow in GPs, above which an antidegradation review would be required?
3. What level of detail is required for a Tier 2 antidegradation review?
4. DEC should perhaps consider a de minimus threshold (e.g., 10% cumulative cap on assimilative capacity) to determine whether an antidegradation review is needed for a new or expanded discharge. Evaluate Idaho's approach as a model.

5. Does antidegradation apply to any federal activity or license, e.g., any 401 certification including FERC or wastewater discharges not permitted under APDES?

ACTION ITEM 1: Cam Leonard to explore the scope of 401 certifications (applicability to non-CWA permits?) and what should require antidegradation review?

ACTION ITEM 2: Cam Leonard to explore whether or not a DEC antidegradation review of filled wetlands is required by State law. It may be that the 404(b)(1) analyses are sufficient.

Workgroup recommendations for Issue #1 have been added to draft Antidegradation Workgroup Report
See DEC webpage at <http://dec.alaska.gov/water/wqsar/Antidegradation/index.html>.

2nd Workgroup Review of Issue #2: Baseline Water Quality (BWQ)

Workgroup questions/comments

1. How much information on existing uses is needed to characterize BWQ?
2. Larger dischargers already collect BWQ data for many purposes. Smaller dischargers may need guidance on when and how much BWQ data to collect.
3. Would like to see some form of structure that puts sideboards on the types of conditions that would require BWQ data where such data does not exist.

ACTION ITEM 3: Ron Wolfe will put together an example of such language for the workgroup to consider.

4. May not need to put BWQ guidance in regulation because the need for, and the extent of, BWQ data may be very site-specific.
5. Tribes are a good source of BWQ data because they have access to a lot of federal funds.
6. The Alaska Forum for the Environment is a good venue to explore collaborations regarding monitoring data.
7. Need to step up ambient monitoring efforts, including biological information
8. May be necessary to collect BWQ only during the times or conditions that are a potential issue for a given parameter (e.g., DO during critical summer months).
9. If the water is fishable/swimmable most of the time, just do a Tier 2 analysis.

End of Day One Public Comments:

1. Consider giving small villages allowances to devote more resources to improving wastewater treatment. Please allow public comment directly after an issue is discussed rather than just at the end of the day.
2. There should be a regulation regarding BWQ data requirements. If we are to assume that all waters are Tier 2, it should also be in regulation.
3. DEC should have some reasonableness test for the burden being placed on an applicant. Focus on scale of potential impact and need for the action. DEC should increase this workgroup's visibility.
4. Consider when to ask for an antidegradation analysis for an NOI; analyses should be unusual or we are diluting the GP approach.
5. Consider incorporating life cycle analysis when looking at cumulative effects. Reach out to tribal governments for data.
6. Public notification is lacking, as is tribal representation.

DAY TWO, March 15, 2012

Comments on “Recommendations for Issues 1 and 2”

Workgroup recommendations have been added to draft Antidegradation Workgroup Report

See DEC webpage at <http://dec.alaska.gov/water/wqsar/Antidegradation/index.html>.

ACTION ITEM 4: Eric Fjeldstad and Amy MacKenzie to pull together a one-pager on assimilative capacity.

TO PARKING LOT: Antidegradation requirements for unpermitted activities should be revisited.

ACTION ITEM 5: Cam Leonard and Eric Fjeldstad to explore when EPA would allow the 404(b)(1) to be used alone for DEC’s antidegradation analysis.

ACTION ITEM 6: Randy Hagenstein to consult outside of the workgroup as to whether groundwater should be subject to antidegradation review.

ACTION ITEM 7: All workgroup members to review Ron Wolfe’s handout on BWQ.

Issue #3: Outstanding National Resource Waters (ONRW)

Workgroup questions/comments

1. Is there information available on what the ONRW review/approval process has cost other States?
2. We should be of the mindset that there could be a lot of ONRW nominations.

Public Comments on Day Two Morning Discussion:

1. Agree that DEC should have rebuttable presumption for BWQ data and default Tier. DEC should provide broad considerations in determining how much data will be required.
2. Consider the amount of public land in Alaska and the uses of water by villages. If talking about the presence of federally listed (threatened and endangered) species as a possible criterion for ONRW, that is too vast. Could be duplicating existing federal protections for listed species.
3. Agrees with using 404(b)(1) analyses when possible instead of creating a duplicative process. Do not use presence of listed species as ONRW criteria because Section 7 is already in place. Suggests calling ONRW “Tier 3”.
4. Would like to work with DEC to know what they would like to see in monitoring reports.

Issue #3: Outstanding National Resource Waters (ONRW), continued

Workgroup questions/comments

1. Options for the ONRW nomination:
 - Public, legislators or federal/state agencies can nominate waters.
 - Member of the public or DEC could submit a nomination to a legislator; legislature could then appropriate funding to DEC to review nomination.
2. Options for information required to submit a nomination
 - Information that could be required for a nomination: maps, hydrological information, biological data, water quality data, and land use maps.
3. Options for vetting nomination
 - DEC could review nominations during the triennial review, every 3 years. Consider restricting the window for nominations based on funding and staffing abilities.

- An appointed body could vet a nomination. How would an appointed board get its members (governor-appointed, agency-appointed)?
- 4. Options for final approval of land/water designations.
 - Governor, legislature, DEC, other state agency or an appointed board that approves/disapproves the nominations.
 - Can decisions regarding an ONRW be reviewed or appealed, or are they discretionary? Is a public hearing process required? Un-designating an ONRW?
- 5. Considerations for Tier 2.5:
 - No federal criteria exist for Tier 2.5.
 - Instead of using Tier 2.5, why not strengthen Tier 2?
 - What are some examples of allowed development in Tier 2.5?
 - An appointed board could determine if a nominated water is Tier 3, 2.5, or 2.
 - Can the public nominate a Tier 2.5 instead of a Tier 3? Nomination submittals for Tier 2.5 and Tier 3 could be the same.
- 6. What would qualify as “exceptional recreational or ecological significance” for a Tier 3 designation water in Alaska?
 - Range too vast to use as categorical designation - anadromous salmon, habitat of federally-listed threatened and endangered species, waters within national parks or refuges (especially at the downstream ends at deltas)
 - Economic impact – mining adjacent to Wild and Scenic River corridors, communities in all federally designated wilderness, logging near Karst systems
 - “Unique” must be in terms of Alaska, not the U.S. as a whole - large aggregations of fish or wildlife dependent on the waterbody, Blue ribbon sport waters, Class 5 rapids, waters important for subsistence, habitat of species of concern that have narrow ranges or reliance on specific areas or waters
 - Geologic features? - Hot springs, thermal systems. The nomination must be water-centric.

ACTION ITEM 8: Tetra Tech to take workgroup’s draft list of ONRW-eligible waters and turn into criteria.

ACTION ITEM 9: DEC/Tetra Tech to draw up what could be included in an ONRW nomination and the ONRW eligibility criteria.

Public Comments on Day Two Afternoon Discussion:

1. There should be broader stakeholder communication concurrent with the workgroup process before DEC writes its regulations.
2. DEC must define Tier 2.5 explicitly – i.e., what can and cannot be done in those waters.
3. May try to run video of meeting on public access television. Emails should be sent from DEC to all federally-recognized tribes about meetings and teleconferences. Letters should be sent to City and Village Councils. Must inform rural communities of this workgroup process. All workgroup meetings should be streamed on the Internet and allow instant messaging during public comment periods.
4. We need some biological metrics to evaluate what our actions are actually doing.