

## **Department of Environmental Conservation Stakeholder Workgroup Evaluation of Implementation Issues for Antidegradation Policy**

### **Roles, Responsibilities, and Ground Rules for Workgroup**

#### **Purpose**

This project is intended to provide information and recommendations that will assist the Alaska Department of Environmental Conservation (DEC) Division of Water in developing implementation methods for the state's water quality antidegradation policy (18 AAC 70.015).

#### **Participants**

Participants in the process include members of an invited workgroup, representing various stakeholders; staff from DEC and EPA; staff from Tetra Tech, DEC's contractor assisting the process; and interested public attendees at the various workgroup meetings.

#### **Outcomes**

As noted in the purpose statement above, DEC is seeking information and recommendations from workgroup members for development of the antidegradation policy implementation methods. DEC realizes that many different interests will be represented, and that it might not be possible to come up with consensus recommendations. So while there is a goal to achieve consensus, there is also recognition that some recommendations might be accompanied by diverging viewpoints from the various workgroup members' constituencies. Regardless of the degree of consensus attained, all information and recommendations will be of value to DEC in the process.

#### **Participant Roles**

*Workgroup Members* – will represent their own and the viewpoints of their constituencies and participate in the process by

- 1) attending the meetings and conference calls;
- 2) reviewing in a timely manner the workgroup notebooks and other materials circulated by DEC and Tetra Tech;
- 3) engaging each other in productive dialogue during the issue discussions; and
- 4) considering the “real world” aspects of implementing workgroup recommendations, working toward consensus recommendations where possible, and ensuring considerate inclusion of diverging views in the event that consensus does not emerge.

*DEC and EPA Staff* – will attend the meetings and conference calls in an informational capacity to provide background, perspectives, and factual data on current DEC and EPA policies, agency resources, capacity to implement various recommendations, perceived statutory and regulatory requirements, and other contextual information that helps the workgroup identify viable recommendations.

*Tetra Tech Staff* – will provide neutral, goals-focused support for the outcomes identified above. Staff will make presentations and be a technical resource to the workgroup, providing other states examples and lessons learned. Staff may facilitate some or parts of some meetings. Staff will develop the workgroup notebooks, develop and disseminate background information, facilitate the meetings and

conference calls, enforce ground rules, provide minutes, prepare agendas and meeting packets, ensure effective use of time, and fulfill DEC's contractual requirements for supporting the project.

*General Public Meeting Attendees* - will observe meetings and conference calls, allowing the workgroup members and DEC staff to address the various topics on the agenda. Meeting attendees may provide public comment at the end of each workgroup meeting on issues addressed during the meeting. Those wishing to comment should indicate their intention on the sign in list. Public comments will not be taken during conference calls that are primarily informational. The public can also sign up for the antidegradation list serve to be kept informed of meetings information and material including agendas.

### **Ground Rules for Meetings and Conference Calls**

The ground rules for the workgroup meetings and conference calls are simple, and designed to help the process forward in a considerate, productive manner:

1. Treat each other, the organizations represented on the workgroup, and the workgroup itself with respect and consideration at all times – put any personal differences aside.
2. Work as team players and share all relevant information. Express fundamental interests rather than fixed positions. Be honest, and tactful. Avoid surprises. Encourage candid, frank discussions.
3. Ask if you do not understand.
4. Openly express any disagreement or concern you have with all workgroup members.
5. Offer mutually beneficial solutions. Actively strive to see the other's point of view.
6. Share information discussed in the meetings with only the organizations/constituents that you may represent, and relay to the workgroup the opinions of these constituents as appropriate.
7. Speak one at a time in meetings, as recognized by the facilitator.
8. Acknowledge that everyone will participate, and no one will dominate.
9. Agree that it is okay to disagree and disagree without being disagreeable.
10. Support and actively engage in the workgroup decision process.
11. Do your homework! Read and review materials provided; be familiar with discussion topics.
12. Stick to the topics on the meeting agenda; be concise and not repetitive.
13. Make every attempt to attend all meetings. In the event that a primary workgroup member is unable to attend, that member is responsible for notifying DEC about alternative arrangements.

### **Workgroup Process**

Workgroup members will participate in the meetings and conference calls, and provide input for development of recommendations to DEC. Members will not be paid for their time, travel, or other expenses. Meetings and calls will be public noticed and open to the public. Relevant materials (e.g., agendas, minutes, notebook items, handouts) will be posted to the DEC antidegradation web site. The following objectives will drive the overall workgroup process during the execution of this effort:

- Workgroup members will have a thorough understanding of key concepts and terminology for antidegradation policy, regulations and implementation methods based on DEC's antidegradation policy found at 18 AAC 70.015, DEC's interim Antidegradation Implementation Methods, and guidance from EPA and other states.
- The workgroup will be organized, moderated, on topic, and on schedule. The workgroup will be guided in a transparent process and open to the public.
- The workgroup will provide recommendations to DEC about how the state should implement the antidegradation policy for use by DEC in preparing draft regulations legislation (if necessary).

The workgroup will strive for consensus, meaning decisions that people can live with – rather than decisions they might enthusiastically support. Where consensus is not possible, recommendations from the group will be characterized as much as possible in terms of level of support, applicability, consistency with statutes and regulations, and other criteria, to inform future DEC discussions.

### **Issues to be Addressed by Workgroup**

The following issues and questions will be addressed by the workgroup. The list of issues and questions are subject to change as the workgroup proceeds through its deliberations. For each issue, the workgroup will develop options for state implementation; evaluate pros and cons for the options; and, where possible, develop recommendations.

#### **Issue #1: What triggers an antidegradation review?**

- Only new and increased discharge permit and certification reviews?
- How does this apply to general permits? 404 wetland permit certifications? Stormwater BMPs?
- Other CWA decisions, e.g., impaired water listing, TMDLs?
- Should reissued permits require antidegradation analysis if the analysis was not performed for previous permit versions, if there is no change to the discharge?

#### **Issue #2: What information is needed to determine baseline water quality?**

- How much information is needed to make the determination and what level of statistical analysis will be performed?
- How is seasonal variation in water quality addressed?
- How can costs be minimized?

#### **Issue #3: How are Outstanding National Resource Waters (ONRW) or Tier 3 waters designated?**

- What process should be used to nominate, evaluate, and designate an ONRW?
- Who is responsible for each of these steps and the final decision?
- How should the state determine when a waterbody has exceptional ecological or recreational significance?
- What protections apply to ONRWs? Should existing permitted discharges be grandfathered?
- Should Alaska adopt an intermediate level of protection, i.e., Outstanding State Resource Waters (OSRW) or Tier 2.5?

#### **Issue #4: Tier 2 analysis: How should DEC evaluate the economic/social benefits of a project?**

- What information is readily available and what factors should be considered?
- What level of information should be required of applicants?
- When and how should DEC consider other point and non-point source discharges to the waterbody?
- What level of review and documentation is needed?
- Should it vary based on potential risk (of a discharge) to the waterbody?

#### **Issue #5: Tier 2 analysis: What level of alternatives analysis is necessary?**

- When do alternatives go beyond the “highest statutory and regulatory requirements”?
- How can economic and technical feasibility of alternatives be considered?
- Can other documents (Environmental Impact Statements, etc.) meet the need?

#### **Issue #6: How are waters ranked as Tier 1 and Tier 2?**

- Parameter-by-parameter or waterbody as a whole? By designated use?

**Issue #7: Should DEC define significant and/or de minimis degradation?**

- Should the level of antidegradation review and documentation be tiered to the level of potential degradation?
- Can assimilative capacity be calculated and used to determine de minimis degradation?
- What about cumulative degradation from multiple discharges?
- Presumptive compliance – should certain projects be exempt from analysis?