

Alaska Antidegradation Workgroup, August 1-2, 2012

Summary of Meeting #5

The following notes include comments to the Alaska Department of Environmental Conservation (ADEC) from the Alaska Antidegradation Workgroup. These comments were developed during the August 1-2, 2012 Workgroup meeting and may be refined in future meeting summaries. ADEC is reviewing the comments and has made no decisions on the issues the comments address. Each issue discussed is listed below, along with the key questions and relevant discussion. Draft Workgroup recommendations are listed in the draft Workgroup report.

DAY ONE, August 1, 2012

Meeting #4 Summary Revisions

See final Meeting #4 Summary on DEC's website

http://dec.alaska.gov/water/wqsar/Antidegradation/Workgroup_notebook.html

Baseline Water Quality Information Proposal (revised)

http://dec.alaska.gov/water/wqsar/Antidegradation/docs/Workgroup_notebook/ref2.3.pdf

Workgroup Member Questions/Comments:

1. In the Baseline Water Quality (BWQ) proposal, Point 1's list of bullets is not inclusive. Point 2 is intended to provide flexibility to DEC.
2. Keep the BWQ proposal text under Issue #2 in the Workgroup's report, but also say that it applies to other parts of permitting to the extent applicable.
3. The Workgroup's report should reflect the Workgroup's discussion on requiring less data for smaller projects with lesser impacts and being more stringent on larger projects. Note that the group agreed to defer to DEC expertise in determining the level of risk, extent of information needed, and definition of "persistent"
4. The Workgroup does not intend for DEC to consider all Point 2 factors, just those that the applicant raises in an application.
5. The BWQ proposal Points 1 and 2 should be separated from the discussion on downgrading waters to Tier 1. Waters must not be downgraded to Tier 1 based on data from a "representative water".

Draft Workgroup Report, dated 7/26/2012

Workgroup Member Questions/Comments:

1. The Executive Summary should be a brief summary of the key Workgroup recommendations.
2. Appendix B is not useful.
3. Need to highlight the workgroup decisions in the discussion section via a text box or some other form that helps to highlight final actions.

Public Comments on Day One Morning Discussion:

Be sure to include in the Workgroup's report discussion of topics that were considered but ultimately dismissed.

Issue #6: Application of Tiers – 2nd discussion

Workgroup Member Questions/Comments:

1. The Workgroup refined text of Issue #6 recommendations included in the Workgroup's report, but did not generate any new recommendations.
2. The Workgroup agreed that creating a new antidegradation tier for wetlands should not be a recommendation. DEC has other mechanisms that they may use to deal with the wide variety of wetlands in Alaska.

Issue #7: Significant and/or de minimis degradation – 2nd discussion

Workgroup member questions/comments:

1. Any increased load over permitted amounts will trigger a Tier 2 antidegradation review.
2. Most of the very small dischargers that would fall under a de minimis exception will be handled under General Permits (GPs).
3. DEC should have discretion on the level of detail to require for a Tier 2 antidegradation review depending on the risk of the discharge. Factors DEC should consider when determining the level of detail in a Tier 2 review could include the size of the facility, volume of the discharge, duration of the discharge, whether the discharge is temporary vs. permanent, size of the receiving water, toxicity of the discharge, uses of the waterbody, timing of the discharge (e.g., seasonality), whether the facility is major or non-major, and assimilative capacity of the waterbody.

Comparison of Issue #1-3 Questions and Workgroup Recommendations

http://dec.alaska.gov/water/wqsar/Antidegradation/docs/Workgroup_notebook/1.8.pdf

Workgroup member questions/comments:

1. The definition of expanded discharges (Issue 1, #3a) should be broadened to include Federal Energy Regulatory Commission (FERC) and to address parameters such as pH, that do not have loads.
2. As long as the existing discharge does not change in regards to quality or quantity, a Tier 2 antidegradation review is not required provided that:
 - a) No permit was previously required for an existing discharge or
 - b) A permit application was submitted but no permit was issued.
3. A Tier 2 antidegradation review is required if a permit was required for an existing discharge but an application was not submitted. Furthermore, these previous non-permitted amounts would not be part of the baseline. Use of assimilative capacity would be prioritized based on application date.

NOTE: One Workgroup member disagreed and felt that Tier 2 antidegradation reviews should be required for new or increased discharges only.
4. The Workgroup defers to DEC to address statistical analyses, water quality exceedances, and seasonal variations when determining BWQ.
5. One Workgroup member has received feedback that creating a Board to vet Tier 3 nominations may be more cumbersome than just requiring that DEC consult with other agencies.

6. DEC should screen nominations to make sure the applications for Tier 3 status are complete before passing them on to a Board for consideration.
7. The Board assembled to consider Tier 3 nominations should convene only every few years (e.g., during the triennial review).

Public Comments on Day One Afternoon Discussion:

One commenter disagreed with the Workgroup recommendation that no Tier 2 review be required for permits that were previously not required. The permit is new; therefore, you must go through the analysis. If not, there are too many assumptions about what the discharge was previously, what it will be discharged in the future, and whether or not there is a difference between historic and projected conditions.

Available dilution for a proposed discharge should not be a factor and should not come into play.

Keep the Tier 3 nomination process simple. DEC should determine application completeness and other agencies should be consulted while reviewing nominations. There should be a deadline for responding to nominations. The Triennial Review period makes sense for dealing with nominations. Do not make the process political. It should be based on science. The legislature should delegate authority to the Commissioner of DEC to approve or disapprove nominations.

There are groups not represented on the Workgroup that feel that a de minimis exception is needed. The universe of permits that were not required previously but may be in the future is huge, especially considering that the Municipal Separate Storm Sewer Systems (MS4) size threshold is going to drop.

Resource agencies should be on a Board vetting Tier 3 nominations. However, the Department of Transportation does not feel the need to be on such a Board.

DAY TWO, August 2, 2012

Comparison of Issue #3 Questions and Workgroup Recommendations, continued

Workgroup member questions/comments:

1. Some Workgroup members feel that the legislature should be the final decider in approving Tier 3 nominations because it is such an important policy decision for the state. Other members prefer that the legislature designate DEC or an agency Board as the deciding authority. NOTE—Legislation for a board or other antideg. authority actions will require legislative action to take place. This includes funding of the ONRW process
2. The Workgroup would like to see ample opportunities for public comment included in the Tier 3 nomination review process. Public comment should be solicited before nominations are reviewed by an agency Board. Public notice should include broad outreach to affected parties and comments should be received in writing.
3. The Workgroup edited text addressing Tier 3 nomination application criteria included in the Workgroup's report.
4. The Workgroup requested that DEC create a new list of criteria that separates the information required by the nominator and the information the Board will consider in reviewing the nomination.

5. DEC should revise the Tier 3 nomination application criteria, making clear which elements are required and which are recommended but not required.
6. The Workgroup asked that DEC contact DOT and DCCED to check on their interest in participating on a Board vetting Tier 3 nominations.
7. The Workgroup would like the Tier 3 nomination discussions in the Workgroup's report to more accurately reflect their discussions and to capture all concerns.

ACTION ITEM #1 - DEC will revise the Tier 3 nomination application criteria, making clear which elements are required and which are recommended but not required. DEC will also separate the information required by the nominator and the information the Board will collect from state agencies in considering and reviewing a nomination.

Comparison of Issue #4-5 Questions and Workgroup Recommendations

Workgroup member questions/comments:

1. The Workgroup refined Issue #4 and #5 text included in the Workgroup's report, but did not generate any new recommendations.
2. All uses of "socioeconomic" in the Workgroup report should be revised to "social or economic".
3. There was a recommendation to define "most effective and reasonable" as equivalent to "practicable"
4. The Workgroup agreed not to prioritize the list of alternatives that DEC should consider for proposed discharges.
5. One member wanted to eliminate the "process changes" alternative as it could be prescriptive and end up with DEC dictating how a facility operates its plant.

Public Comments on Day Two Morning Discussion:

One commenter feels there should be a time limit for DEC to respond to an alternatives analysis.

One commenter likened the Tier 3 nomination process to the Lands Unsuitable for Mining Petition process for surface coal mining. Initial application screening is performed by DNR. There are public hearings and the final decision is made by the Commissioner of DNR. It is an important policy decision, like Tier 3 nominations, but the agency is equipped to make the decision and the public feels the process is manageable.

Comparison of Issue #6-7 Questions and Workgroup Recommendations

The Workgroup refined Issue #6 and #7 text included in the Workgroup's report, but did not generate any new recommendations.

Draft Workgroup Report, dated 7/26/2012

ACTION ITEM #2 - DEC/Tt will clarify discussions in the Workgroup report to include all options that were discussed but rejected and the rationale. Recommendations that were removed during editing or were considered but not adopted should also be included in the discussion sections.

ACTION ITEM #3 - DEC/Tt will revise the recommendations sections of the Workgroup report to look different/stand out from other sections, possibly putting recommendations in a table or shaded box.

ACTION ITEM #4 - DEC will provide the next draft Workgroup report to Workgroup members in both clean and redline-strikeout versions.

ACTION ITEM #5 - Workgroup members will edit the next draft Workgroup report using track changes and comments to explain substantive edits.

ACTION ITEM #6 - DEC will add a discussion of existing uses to the October meeting agenda.

ACTION ITEM #7 - DEC/Tt will develop a strawman for how existing uses should be determined.

ACTION ITEM #8 - Bill Beckwith will review and comment on DEC's draft existing uses procedures.

ACTION ITEM #9 - Bill Beckwith will identify any elements required for antidegradation implementation that haven't already been discussed by the Workgroup.

Public Comments on Day Two Afternoon Discussion: NONE