

**Alaska Antidegradation Workgroup, May 8-9, 2012**  
**Summary of Meeting #3** (for approval at June meeting)

The following notes include comments and recommendations to the Alaska Department of Environmental Conservation (ADEC) from the Alaska Antidegradation Workgroup. These comments were developed during the May 8-9, 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 addressed is listed below, along with the key questions and relevant discussion. For clarity, draft recommendations are listed in the draft workgroup report.

Comments in this meeting summary are intended to capture discussion of potential recommend and actions. Recommendations are captured in the draft workgroup report. Any edits to recommendations should be done in the draft Workgroup Report.

**DAY ONE, May 8, 2012**

**Review of Meeting 2 (March meeting) Action items**

*Workgroup member questions/comments -Issue #1 - What Triggers an Antidegradation Review :*

1. DEC should use the US Army Corps of Engineers (USACE) 404(b)(1) analysis as a major reference while conducting its own independent antidegradation analysis for projects permitted under section 404 of the Clean Water Act (CWA).

**ACTION ITEM 1:** Cam Leonard will look into the rigor of the Corps' 401(b)(1) socioeconomic analyses.

**ACTION ITEM 2:** Tetra Tech will research what other states do when they waive state certification of 404 permits, and what the effect of the waiver is on the antidegradation analysis.

**ACTION ITEM 3:** DEC will add Antidegradation Q&A from the Water Quality Standards Handbook to Workgroup Notebook.

**PARKING LOT:** Eric Fjelstad and Amy MacKenzie will address de minimis and assimilative capacity during the workgroup's Issue #7 discussions.

**ACTION ITEM 4:** Tetra Tech will revisit its 2008 report and update Amy's summary of states that use de minimis for antidegradation.

**Public Comments on Day One Morning Discussion:**

1. One public commenter said they did not receive any notices for this meeting from the antidegradation listserv.
2. Reissued permits require Tier 1 antidegradation analysis, but the analysis should not end there. DEC should look at whether the discharge has been affecting water quality to date. DEC should not be able to waive antidegradation analysis since it is a part of water quality standards. Antidegradation analyses must be done for CWA section 401 certifications.

## Draft Workgroup Report

**ACTION ITEM 5:** Tetra Tech will add line numbers to the draft workgroup report.

*Workgroup questions/comments on draft Workgroup Report, Issue #1 - What Triggers an Antidegradation Review :*

1. The majority of the workgroup feels that antidegradation analyses should be limited to waters of the U.S., i.e., surface waters only. A minority feel that antidegradation analyses should apply to groundwater, which may require different implementation methods since groundwater is not classified as “fishable swimmable” and would therefore not require a Tier 2 analysis.

## Issue #3: Outstanding National Resource Waters (ONRWs) – 2<sup>nd</sup> discussion

*Workgroup member questions/comments:*

1. Any member of the public can nominate an ONRW as long as there is a good set of criteria for what must be included in the nomination and state agencies are involved in vetting the nominations. One workgroup member thinks that only state agencies should nominate an ONRW.
2. Workgroup recommended legislative bill to clarify authority for designating ONRWs.
3. The state legislature should be involved in approving ONRWs, either through direct action on nominations that have been reviewed and forwarded by DEC or a multi-agency group, or by delegating decision-making authority to DEC or a multi-agency group through legislative action.
4. DEC should review and make recommendations on ONRW nominations only during the triennial review process.
5. The first step in vetting a nomination should be an application completeness review by DEC.
6. Should there be an application fee for ONRW nominations?
7. The vetting board should have discretion to turn down nominations without lawsuits or appeals. Make clear that there is no administrative or judicial review of the review group’s (i.e., DEC or a multi-agency group) recommendations.
8. Board to vet nominations should include DEC, DNR, DFG, DOT, and the state commerce/economic development agency.

**ACTION ITEM 6:** DNR will look into what types of land rights or ownership should be considered, e.g. mining claims, DOT road corridors.

## Public Comment on Day One Afternoon Discussion:

1. For proposed ONRWs, consider the biological uniqueness of the waterbody, e.g., McNeil River bears. The review group or board needs significant autonomy. Agency commissioners should appoint staff with the time to conduct a thorough review and the knowledge of environmental, economic, and social impacts affecting a potential ONRW designation. Consider having the USFWS and USACE submit a technical review anonymously, if possible, to provide comment. Consider deferring a public involvement process during the vetting of nominations; it could have undue influence. Keep political pressure off state employees. Schedule the public involvement process for the period when ONRW applications are being developed, and after they have been vetted/reviewed by the multi-agency group.
2. This workgroup is creating more hurdles for ONRW designation than exist for legally permitting activities that degrade the state’s waters. There is too much concern about receiving large numbers of

nominations. The workgroup needs to make clear how quickly nominations will get turned around. It is a bad idea for this to go to legislature. Have agency body make decisions. Take politics out of the process.

3. If DEC is going to protect uses, it needs to protect the tools to do so, e.g., adding fertilizer to improve nutrient availability for spawning fish, generating silt to break down dams, etc.

## **DAY TWO, May 9, 2012**

### **Meeting #2 Summary Revisions**

See final Meeting #2 Summary on DEC website

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

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

*Workgroup member questions/comments:*

1. The multi-agency group or board should do the vetting and provide its recommendations to the legislature for approval/disapproval.
2. The public should have a chance to comment before the board makes its final recommendations to the legislature.
3. Instead of the legislature, the appointed commissioners of the review board's agencies should approve/disapprove recommendations.
4. Note that there were no specific recommendations in favor of a Tier 2.5.

### **Issue #5: Requirements for Alternatives Analysis – 1st discussion**

*Workgroup member questions/comments:*

1. A workgroup member suggested using the term "practicable" when issuing technical requirements for the alternatives analysis – it is defined in regulation. Add a new definition to the implementation guidance that "most effective and reasonable" means "practicable." This would make it unnecessary to change the antidegradation policy language.
2. Consider life cycle costs, rather than just capital costs and initial operation and maintenance costs.
3. Consider cost-effectiveness rather than just cost alone.
4. Do not include a cost threshold (%) when defining the pollution control measures deemed to be the most practicable or the most effective and reasonable. Provide a list of possible alternatives and use the term "practicable" instead of "feasible" or "most effective and reasonable". Use the following list when considering and discussing the most practicable alternatives to the proposed discharge, in the order listed below:

*Consider all practicable alternatives, such as one or more of the following:*

1. Non-discharge approaches
2. Process changes
3. Wastewater treatment & reuse
4. Relocation of discharge
5. Seasonal discharges
6. New technologies

### **Public Comments of Day Two Morning Discussion:**

1. Need to use biometrics for alternatives analyses.

2. Give reasons for rejected ONRW nominations. Will DEC provide assistance to nominators in completing their submittals?
3. New technologies should not be disregarded; not all of them will be cutting edge.

#### **Issue # 4 Economic and Social Importance – 1<sup>st</sup> discussion**

**ACTION ITEM 7:** Tetra Tech will look for an example of how a state decides between socioeconomic and environmental impacts.

#### *Workgroup member questions/comments:*

Need to take advantage of intergovernmental reviews when working through the technical portions of the alternatives analysis. DEC can look to others in areas where DEC lacks expertise.

1. Applicant could just demonstrate economic importance alone (i.e., without considering “important” social development). DEC could judge “importance” based only on economic data.
2. Applicant should submit whatever economic and social data they wish, and DEC should reconcile all information in a non-arbitrary way.
3. DEC should not be doing full cost-benefit analyses. DEC must deal only with what’s in the record, not drill down to find more or hire economists, sociologists, etc. The workgroup listed the parameters that should be considered during the economic and social impact analyses:

#### *Examples of economic development include:*

1. Employment;
  - a. Salary impacts
  - b. Seasonality of jobs
2. Tax base impacts, expands leases and royalties;
3. Commercial activities;
4. Access to resources; or
5. Access to transportation network

#### *Examples of social development include:*

1. Access to community services;
2. Recreational opportunities;
3. Access to education and training; or
4. Public health and safety

#### **Public Comment of Day Two Afternoon Discussion:**

1. DEC should just be looking at the discharge and water quality, not broader issues affecting the overall community.
2. How many other states use a form rather than a more open narrative for summarizing the alternatives analysis and economic/social impact review, and is it working?

**ACTION ITEM 8:** Tetra Tech will explore if other states use an applicant form or request a narrative to collect economic and social development information.

**ACTION ITEM 9:** All Workgroup members should review the notebook materials for Issues 4, 5, and 6. Read Idaho’s factsheet on how dealt with socioeconomic analysis , as well as other states. Consider possible states to model.

**ACTION ITEM 10:** Tetra Tech will work on fleshing out draft workgroup report.

**ACTION ITEM 11:** DEC will provide materials to the workgroup well ahead of the June meeting.