

Surface Water Quality – Proposed Rulemaking

Proposed Revisions for Water Quality Standards

Antidegradation Rule (OAC 3745-1-05)

Important Notice: This rulemaking consists of three of the changes that were already made available for review in another draft rule package, specifically the antidegradation rulemaking (www.epa.ohio.gov/dsw/rules/draft_antidegradation_oct08.aspx). That rule package is part of four interrelated rule packages (water quality standards, 401 water quality certification, antidegradation, and stream mitigation).

Because of delays in moving forward with interested party review of the four interrelated rule packages and a commitment made to the Environmental Review Appeals Commission (ERAC), Ohio EPA has decided to proceed with targeted changes to the antidegradation rule in a separate stand alone rulemaking. This separate stand alone rulemaking will proceed through the rulemaking process ahead of the remainder of the of the rule changes identified as part of the 5-year review.

What is Antidegradation?

Simply put, the antidegradation rule establishes a procedure to determine that a discharge is necessary before authorizing it. The antidegradation rule is required by the Clean Water Act and must be part of the State's Water Quality Standards. It is a concept that aligns with the underlying goal of the Clean Water Act that all point source discharges of pollutants to surface waters should eventually be eliminated and that we keep clean waters clean.

In practical terms, antidegradation refers to provisions that must be followed before authorizing any increased activity on a water body that may result in a lowering of water quality, including an increase in the discharge of a regulated pollutant, or activities that may significantly alter the physical habitat.

The antidegradation rule, along with water quality criteria and beneficial use designations, provides the overall structure of the water quality standards program. The antidegradation rule must protect the existing use of the water body, and only allow a lowering of water quality when it is necessary to support important social and economic development.

The state's antidegradation rule establishes procedures and requirements to ensure that the concepts outlined by the federal regulations are met. These requirements include public participation activities, intergovernmental coordination, determination of important social and economic development, an alternatives analysis and greater protection for exceptional quality streams.

Currently Ohio has two antidegradation rules within its water quality standards to support this program. Ohio Administrative Code (OAC) 3745-1-05 outlines the overall requirements for all appropriate activities on all waters while OAC 3745-1-54 outlines additional provisions to be implemented when evaluating projects relating to impacts to wetlands.

Why is the rule under review?

The revisions to this rule are a small subset of the larger draft rule package made available for interested party review in October 2008.

The Agency is moving forward in the rulemaking process with these revisions because they are time-sensitive.

What amendments are proposed?

Proposed rule changes consist of:

- Paragraph (B)(2)(b) - Clarification of rule applicability exemptions for existing sources discharging to waters of the state;
- Paragraphs (C)(6)(a) and (C)(6)(c) - Clarification on the allocation of the reserve portion of a water body's pollutant assimilative capacity for outstanding state waters and superior high quality waters; and
- Paragraph (E)(4) - Clarification of petition procedures for revising set aside percentages of a water body's pollutant assimilative capacity.

What makes these changes time-sensitive?

The proposed revisions are the result of a Joint Stipulation and Settlement Agreement over an appeal before ERAC of the 2003 antidegradation rulemaking. A status report on the Settlement Agreement includes a target of August 2010 for proposing the antidegradation rule amendments to the Joint Committee on Agency Rule Review (JCARR).

Are there changes from the July draft rule?

There are no changes from the July draft rule.

Who will be regulated by this rule?

Applicability of the rule will not differ from the current version of the rule. The rule changes clarify and update rule requirements. In general, any project that proposes to increase the discharge of a regulated pollutant above levels currently authorized through a permit, or any activity that proposes to significantly alter the physical habitat of the water body is subject to an antidegradation review.

What additional information is the Agency seeking?

The Agency wants to hear from interested stakeholders (public, local officials, and National Pollutant Discharge Elimination System (NPDES) permit holders) who may be impacted by these rule revisions. General comments and specific factual information are welcome.

How are the amendments formatted in the proposed rule?

Text being considered for deletion is struck through; new text being considered is underlined.

What is the rulemaking schedule?

A public hearing is scheduled at 2:00 p.m. on November 10, 2010 in conference room D of the Ohio EPA Central Office, located in the Lazarus Government Center at 50 West Town Street, Suite 700, in Columbus, Ohio. The purpose of the public hearing is to give interested persons the opportunity to present oral or written comments on the proposed rules. At the close of the public comment period, the Agency will review the comments, make any necessary changes to the rule, and then adopt the rule. This is roughly a two-month process from the close of the comment period. A response to comments document will be prepared and sent to everyone who comments on the proposed rule. A final rule could be adopted by this winter.

How can I comment on the proposed revisions?

Make oral comments or submit written comments at the public hearing on November 10, 2010 or send comments in one of the following ways:

By email: dsw_rulecomments@epa.state.oh.us

By fax: (614) 644-2745

By postal mail:

Rule Coordinator
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Comments on the proposed rule must be received no later than November 10, 2010.

How can I get a copy of the proposed rule or more information?

Go to the Division of Surface Water's website at www.epa.ohio.gov/dsw/Home.aspx.

For more information about the proposed rule, please contact:

Mark Stump
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