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The Effect of Ohio's Antidegradation Rule on Processing Solid Waste Permits and Construction and Demolition Debris Licenses

This fact sheet is designed to help solid waste facility applicants understand Ohio's antidegradation rule as it pertains to applications for solid waste facilities and other director's actions, including permit alterations and Ohio Revised Code (OAC) rule 3745-27-13 authorizations. Ohio EPA's Division of Solid and Infectious Waste Management (DSIWM) and Division of Surface Water (DSW) has determined that the antidegradation rule may apply to applicants pursuing a permit-to-install (PTI) for solid waste facilities. It contains recommendations to help solid waste applicants understand and potentially expedite the permit review process.

Antidegradation

The antidegradation rule, effective October 1, 1996, pertains to:

- 1) A new facility requesting to modify stream habitat or increase pollutants discharged (e.g., sedimentation pond); or
- 2) An existing facility requesting to increase

pollutants discharged.

The antidegradation rule may require a more extensive evaluation of potential environmental, social and economic impacts associated with proposed activities. It also may require an applicant to submit a non-degradation alternative, a minimal degradation alternative, and a preferred design alternative to the proposed activity. The rule requires an expanded public notification process, and also may provide other public involvement opportunities.

Permit-to-Install

Anyone wishing to construct a solid waste disposal facility and/or wastewater treatment or collection system must obtain a permit-to-install from Ohio EPA. The PTI outlines technical and design requirements facility construction.

National Pollutant Discharge Elimination System Permit

Anyone wishing to discharge wastewater from a point source (such as a pipe) into a

body of water first must obtain a National Pollutant Discharge Elimination System (NPDES) permit from Ohio EPA. The NPDES permit states how much of any pollutant can be discharged.

401 Certification

Anyone wishing to discharge dredged or fill material into waters of the U.S., regardless of whether on private or public property, must obtain a Section 404 permit from the U.S. Army Corps of Engineers and a Section 401 water quality certification from Ohio EPA.

Q. How do I know if the antidegradation rule applies to my application?

A. The antidegradation rule applies to all new or increased discharges from wastewater treatment facilities and may apply to other discharges/activities in certain circumstances. Section 3745-1-05(B) of the OAC details specific applicability criteria. This rule applies to any PTI that would result in the

installation of a disposal system or wastewater treatment works for discharging into waters of the state. Examples include landfills, scrap tire monofills, moncells, transfer facilities, Class I compost facilities and other situations that are subject to Section 401 of the federal Clean Water Act (CWA).

For construction and demolition debris (C&DD) facilities, the antidegradation rule would apply only in instances where the facility would require an NPDES permit, or other situations, such as impacts to wetlands or streams that are subject to section 401 of the CWA.

For solid waste facilities, the design of sedimentation pond(s) is included in the PTI application. Since a sedimentation pond is a wastewater treatment works, approval of the solid waste PTI constitutes approval to install a wastewater treatment works.

Q. What additional information must be submitted if my solid waste PTI application is subject to the

antidegradation rule?

A. You must complete an *Antidegradation Addendum* in addition to the PTI and NPDES permit applications if the activity may increase the level of pollutants being discharged.

Section (B)(1) outlines seven categories of projects covered by the antidegradation rule which would require you and the Agency to comply with additional provisions of the rule. These seven categories are further outlined in DSW's guidance document, *Antidegradation Information, Part B Applicability*.

Public Involvement

If the antidegradation rule applies to an application or activity, Ohio EPA is required to fulfill certain public notification and involvement activities. Such responsibilities include providing a legal notice announcing receipt of the applications, and holding public hearings in certain instances.

All projects that require an NPDES permit, a Section 401 certification, and a Solid Waste PTI should have all applications submitted simultaneously to avoid processing delays and to allow coordination of the public involvement process required for each application. It is prudent to time the

submittal of the NPDES permit and 404/401 applications early in the DSIWM review process, before a preliminary decision on the solid waste permit is issued.

If the preliminary decision results in the issuance of a draft permit, it will allow for a joint public hearing. The DSIWM and DSW permit reviewers will coordinate with the applicant to ensure that the NPDES application is complete and that the proposed facility design is consistent with the proposed NPDES. Should the design of the facility or any sedimentation pond(s) change significantly after the joint hearing is held, it may require the Agency to start the public involvement process all over.

Q. What happens to my solid waste PTI currently under review by DSIWM if it doesn't need an NPDES permit or Section 401 certification?

A. DSIWM would need concurrence from DSW that there are no antidegradation or Section 401 issues that would affect PTI issuance. Upon receiving district office DSW concurrence, DSIWM would complete its review and then forward a recommendation to approve or deny the application to the director.

Q. What happens if

my permit application currently under review has received an NPDES permit and Section 401 water quality certification in the past?

A. You must confirm that nothing in the applicability section of the antidegradation rule (OAC 3745-1-05(B)(1)) applies to your application. This must be evaluated even if an NPDES permit or Section 401 certification has previously been approved by Ohio EPA.

For any proposal that may result in an increase in pollutants discharged or for which there might be activity taking place within a stream bed, the permit review process may be subject to the procedures outlined in the antidegradation rule. Upon initial review of the application, Ohio EPA may contact the applicant and request submittal of an NPDES permit application and *Antidegradation Addendum* for further determination of the applicability of the antidegradation rule to their permit or request.

Q. What happens if my permit currently under review by DSIWM, does need an NPDES and/or Section 401 water quality certification and has never had a previous

permit or certification?

A. You will be required to submit documentation and information outlined in OAC 3745-1-05(B)(2) as appropriate. The *Antidegradation Addendum* provides the structure to complete these application requirements. Ohio EPA also is required to fulfill certain public notification and involvement responsibilities. These requirements are listed in OAC 3745-1-05(C)(3).

You should review exclusions and waivers (part D of the antidegradation rule) to determine whether any exclusions and/or waivers may apply. Although there are specific exclusions and waivers from certain provisions of the rule, it requires an antidegradation review for all new or increased discharges from wastewater treatment facilities and for all Section 401 reviews.

DSIWM cannot forward to the director any permits or other recommendations that are subject to the antidegradation rule until:

- 1) All the public involvement and other appropriate requirements have been fulfilled; and
- 2) All other recommendations for other required permits and authorizations have either been issued or are being forwarded to the

director, concurrently with DSIWM recommendation.

Q. Can antidegradation issues be a basis for denial of a permit?

A. Yes. It can be a reason for denial if the rule is not properly addressed or the antidegradation review indicates:

- 1) The antidegradation information is not submitted as part of the NPDES permit.
- 2) The applicant submitted the information, but impacts to surface waters are determined to be too great or unjustified.
- 3) The alternatives analysis reveals that the project is unapprovable because other more acceptable alternatives exist.

Q. Is a C&DD license application subject to the antidegradation rule?

A. No. The C&DD license is not an action that requires review under OAC 3745-1-05(B)(1)(b). Therefore, submittal of an annual license application for a C&DD facility does not trigger the need to submit antidegradation information.

However, a license that proposes a new sedimentation pond or an increase in the level of

pollutants discharged from an existing sedimentation pond may require the submittal of an NPDES permit or a Chapter 6111 permit to install application, and these applications would be subject to the antidegradation rule.

Issuance of a C&DD license does not relieve the owner/licensee from the duty to comply with all applicable requirements related to discharges to surface waters from the facility.

Coordination

Information regarding the status of a specific NPDES permit application or whether antidegradation requirements apply to a specific proposal can be obtained by contacting DSW at the appropriate district office.

For More Information

Visit Ohio EPA’s web site:
<http://www.epa.state.oh.us>

DSW’s web page provides an overview of programs and activities, and information and guidance documents on antidegradation.

DSIWM’s web page provides a “What’s New” section, program information and fact sheets.

Call Ohio EPA’s Division of Surface Water:
(614) 644-2001

Order the following guidance documents:

Antidegradation Addendum

Antidegradation Information, Part B Applicability

A Guide to Ohio EPA’s New Antidegradation Rule

Fact Sheets:

Ohio EPA’s Surface Water Permit-to-Install Process

Ohio EPA’s Wastewater Discharge Permit Process

Ohio Wetlands

Water Quality Standards

Section 404 Permits

Section 401 Water Quality Certifications

Call Ohio EPA’s Division of Solid and Infectious Waste Management:
(614) 644-2621

Order the following guidance documents:

Solid Waste H.B. 391 Applicant Public Meetings

Applicant’s Meeting Checklist

Fact Sheets:

Ohio EPA’s Solid Waste Permit-to-Install Process

Ohio EPA’s Solid Waste Landfill Permitting Requirements

Ohio EPA’s New Standards for New Solid Waste Landfills

Becoming Involved in Ohio EPA’s Solid Waste Permitting Process

Managing Ohio’s Solid Waste: Reduction, Recycling & Disposal

Solid Waste Transfer Facilities