

Antidegradation Overview

The Federal Antidegradation Policy at 40 CFR 131.12

EPA Region 10, Standards and Assessment Section

The Federal Antidegradation Policy at 40 CFR 131.12

- Antidegradation is one of the three core components of Water Quality Standards:
 - Designated uses
 - Criteria to protect designated uses, and
 - Antidegradation requirements
- Antidegradation provides a framework for maintaining uses and levels of water quality that have already been attained, and for determining when and to what extent water quality may be lowered.
- Antidegradation provides protection that is in addition to designated uses and criteria. In no case does antidegradation provide a mechanism to lower water quality below what is necessary to protect designated uses and meet criteria.

The Federal Antidegradation Policy Origin

- The federal antidegradation policy at 40 CFR 131.12 was conceived as being consistent with the CWA section 101(a) objective to “restore and **maintain** the chemical, physical, and biological integrity of the Nation’s waters.”

40 CFR 131.12 (a): Antidegradation Policy

- States and authorized tribes must develop and adopt in a binding form (e.g. statute or regulation) an antidegradation policy that is, at a minimum, consistent with the federal policy and provides for:
 - Protection for **existing uses** for all waters of the U.S. in their jurisdiction (Tier 1);
 - Protection for **high quality waters** (i.e. where the quality of the waters exceeds levels necessary to support protection and propagation of fish, shellfish, and wildlife and recreation in and on the waters (Tier 2);
 - Protection for **Outstanding National Resource Waters** (ONRWs) identified by the state/tribe (Tier 3); and
 - Consistency with CWA section 316 where potential water quality impairment associated with a thermal discharge is involved.

The 3 “Tiers” of Protection



Existing Uses Protection: “Tier 1”

- 40 CFR 131.12 (a)(1): “Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.”

Existing uses are defined at 40 CFR 131.3(e) as...those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

- Tier 1 applies to all waters of the U.S. and applies to any discharge subject to the jurisdiction of the CWA, not just new or increased discharges that would lower water quality.

High Quality Waters Protection: “Tier 2”

- 40 CFR 131.12(a)(2): “Where the quality of the waters exceeds levels necessary to support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.”

“Tier 2” Goal

The goal of Tier 2 is to maintain and protect high quality waters/assimilative capacity and ensure wise use of assimilative capacity when it is allocated. Tier 2 review is a process for determining if a lowering of water quality is “necessary” by addressing two questions:

- Is there a practicable alternative that would prevent or lessen the proposed lowering of water quality? (Analysis of Alternatives)

“practicable” as defined at 40 CFR 131.3(n) means technologically possible, able to be put into practice, and economically viable.

- Would the activity that would lower water quality provide important economic or social development in the area where the waters are located? (Social - Economic Analysis)

“Tier 2” Review

- Identify water bodies that will be afforded Tier 2 protection using a Parameter-by-Parameter or Waterbody-by-Waterbody approach
- Is degradation “necessary”? (Analysis of Alternatives)
- Is the activity “important”? (Social - Economic Analysis)
- Intergovernmental Coordination and Public Participation
- Assure protection for Existing Uses
- Assure achievement of regulatory pollution control for point and nonpoint sources (i.e. other sources as well the proposed new or increased discharge)

Outstanding National Resource Waters (ONRW) Protection: “Tier 3”

- 40 CFR 131.12 (a)(3) “Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.”
- This is the most stringent Tier of protection. No degradation is allowed, except on a temporary and short-term basis (generally weeks or months, not years).
- Antidegradation policies must provide for a level of protection consistent with 40 CFR 131.12 (a)(3), but there is no requirement to assign such protection to any waters.
- ONRWs are identified by the state or authorized tribe.
- ONRWs typically include waters that are viewed as pristine, highly valued waters important to recreation or tourism, and/or waters that are important, unique, or sensitive ecologically.

40 CFR 131.12(b): Implementation Methods

- States and authorized tribes must develop methods for implementing their antidegradation policy that are, at a minimum, consistent with the state or tribes policy and with the federal antidegradation policy.
- An opportunity for public involvement during the development and any subsequent revisions of the implementation methods is necessary.
- The implementation methods must be made available to the public.
- The implementation methods can be adopted as binding (e.g. statute or regulation) or non-binding (i.e. guidance).

Special Topic: “Tier 2.5”

- Tier 2.5, is not part of the federal antidegradation policy, it is not a requirement and is not defined.
- Tier 2.5 is generally known as a level of protection more stringent than Tier 2, but less restrictive than Tier 3.
- Any such provision would need to be consistent with the federal policy, e.g. existing uses must be protected and any allowance for lowering of water quality beyond temporary and short-term would need to be consistent with Tier 2 requirements.