



Antidegradation Policy Implementation Guidance

Presentation to the NMWQCC

By

New Mexico Environment Department

Surface Water Quality Bureau

December 14, 2004



Purpose

- Request WQCC action today to approve SWQB's proposed "Antidegradation Policy Implementation Procedure" for incorporation as a new Appendix A in the New Mexico Continuing Planning Process (CPP) document
- Today's proposal affects only the antidegradation policy implementation procedure in the CPP, it does not amend the policy in the WQS



Background

- Federal regulations at 40 CFR 131.6 define minimum components for water quality standards:
 1. Use designations ...;
 2. Methods used & analyses conducted ...;
 3. Water quality criteria to protect uses ...; and
 4. An Antidegradation policy consistent with 40 CFR 131.12



Background

- 40 CFR 131.12 requires in addition [to the policy] that the methods for implementation of the policy be identified
- States are required to adopt a CPP (CWA Sect. 303(e))
- NM Water Quality Act requires WQCC to:
...develop a CPP (NMWQA 74-6-4.B)
- Amendments to a State's CPP must be reviewed and approved by the USEPA



Background

- Public participation requirements to amend the CPP have been adopted by the WQCC in the Statewide Water Quality Management Plan
 - (Work Element 11)
 - Updates require:
 - Placement of proposed update on WQCC agenda & discussion of the topic at the WQCC meeting
 - Minimum 30-day public comment period (optional)
 - Procedures were followed for this proposal



History

- WQCC has had an antidegradation policy in the surface water quality standards for many years
- The current implementation for the policy is in the WQCC's 1998 Continuing Planning Process (CPP) document
- EPA reviewed procedure in conjunction with the WQS in 2001
 - Problem with a circular reference to the WQS
 - Procedures were inadequate
 - EPA required the problem be fixed



Policy Implications

- The Policy is very important in permitting decisions, particularly regarding new discharges under National Pollutant Discharge Elimination System (NPDES) permits.
- Directs decisions on allowing additional degradation to water quality from permitted discharges.
 - Additional degradation may not be allowed
 - May affect new dischargers or existing dischargers who wish to increase their discharge



Timeline

- 2001 - SWQB developed a preliminary draft & submitted to EPA for comment
 - No National Guidance from EPA
 - EPA Region 4 & 8 have issued regional guidance
 - EPA Region 6 has not issued regional guidance
 - Some guidance in EPA Water Quality Standards Handbook
- January 2002 – a West Virginia lawsuit challenges EPA’s approval of W. Virginia’s antidegradation implementation procedures
 - Ohio Valley Environmental Coalition v. USEPA
 - Significant issues and procedures being contemplated by New Mexico were at question



Timeline

- August 2003 - US District Court issued its opinion re: Ohio Valley v. EPA
- November 2003 - SWQB completed a public draft implementation procedure that addressed the Ohio Valley v. EPA issues
- A 60 day public comment period was opened at the Nov. 12, 2003 WQCC Regular Public Meeting



Public Participation

- SWQB created an Internet web page to promote public accessibility and understanding
 - A copy of the web page is attached
 - The web page was updated as the process continued
- Notice was published on the website and several newspapers
 - Albuquerque Journal, Farmington Daily Times, Raton Range, Roswell Record, & Santa Fe New Mexican



Public Participation

- Public notice was also mailed to individuals on the SWQB mailing list
- Public comment period closed January 12, 2004
- SWQB received written comments from:
 - USEPA Region 6
 - Amigos Bravos
 - City of Santa Fe
 - Dairy Producers of NM
 - Los Alamos National Lab
 - San Juan Water Comm.
- Public comments were posted on the web page



Response

- SWQB prepared a detailed written response to comments and final proposal with amendments based upon comments
 - (Copies in Commissioners' Packets for today's meeting)
 - Many improvements based on public comment
- Announced availability of documents at WQCC November 9, 2004 Regular Public Meeting
 - Posted documents on website
 - E-mail notification to parties who commented



Policy Summary

- Antidegradation Policy is a “tiered” approach
 - Tier 1 – protect existing uses ...
 - Tier 2 – where water quality is better than level necessary to support uses, degradation is not allowed unless a determination is made that lowering water quality is necessary to accommodate important economic and social development ...
 - Tier 3 – no degradation allowed in Outstanding National Resource Waters (ONRWs) designated by WQCC



Implementation Issues / Summary

- Court's opinion regarding W. Virginia's implementation procedure
- Definition of Tiers
 - Pollutant-by-pollutant approach
- Scope of review, balance of review effort with water quality protection
 - Prevent undue delays, costs and permit backlogs while assuring proper consideration of antidegradation concerns and issues
 - Off ramps for de minimis discharges
 - Should they be allowed (yes)
 - How are they defined
 - How to assure cumulative impacts are considered / addressed
 - Calculation of “assimilative capacity”



Implementation Issues / Summary

- Determine and specify what information is necessary to make a decision
 - Procedure defines what information must be submitted
- Public Notice/Participation
 - How the public will be notified / involved in process
- Interpretation of information and decision making
 - Outline basis for decision making
 - Spreadsheet developed and incorporated for complicated calculations regarding assimilative capacity
- Appeals



Experience

- During development of the Implementation Procedures SWQB “test drove” the draft while reviewing NPDES permits
 - 4 categories of results:
 - Many permits reviewed were renewals that did not propose to increase their discharge, therefore review was not very involved
 - One WWTP (Santa Rosa), did a full Antidegradation review for a proposed increase in discharge, ultimately no increase in discharge was allowed
 - A few permittees voluntarily elected to maintain current effluent limitations (i.e., no increase in the allowable amount of pollutants)
 - One permit applicant elected to find an alternate means handle there wastewater and terminated their application to discharge to a surface water



Logistics

- 3 Documents in Commissioner's Packets
 - NMED-SWQB written response to public comments
 - Excerpt from main body of CPP with amendment on page 28
 - Breaks circular reference to WQS and directs reader to the new Appendix containing the implementation procedure
 - New Appendix A (the Implementation Procedure) to be attached to the CPP



New Mexico Environment Department
SURFACE WATER QUALITY BUREAU

Office of the Secretary Administrative Services Environmental Protection Field Operations Water + Waste



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2003-2004 UPDATE TO THE STATE OF NEW MEXICO CONTINUING PLANNING PROCESS

Section 303(e) of the federal [Clean Water Act](#) (33 U.S.C. 1251 et seq) requires that each state establish and maintain a continuing planning process. [Section 74-6-4.B](#) of the New Mexico [Water Quality Act](#) (NMSA 1978) states the New Mexico [Water Quality Control Commission](#) "shall adopt a comprehensive water quality management program and develop a **continuing planning process**" [emphasis added].

The current version of the State of New Mexico [Continuing Planning Process](#) (CPP) was adopted by the Water Quality Control Commission in July 1998.

On November 12, 2003, the [New Mexico Environment Department](#) Surface Water Quality Bureau presented to the WQCC a public discussion draft of a proposed revision to the CPP. On the same date, the Surface Water Quality Bureau published a [public notice](#) of a 60-day public comment period in several newspapers (*Albuquerque Journal*, *Farmington Daily Times*, *Raton Range*, *Roswell Record*, and *Santa Fe New Mexican*) and on the Environment Department website advertising the availability of the discussion draft and inviting comment. Notice was also sent to individuals on the Surface Water Quality Bureau's mailing list. Under the Clean Water Act, the U.S. [Environmental Protection Agency](#) (EPA) is required to review each state's CPP. Therefore, a copy of the discussion draft was also transmitted to the EPA for comment.

The purpose of the 2003 - 2004 proposed revision to the CPP is to establish [implementation procedures for the antidegradation policy](#) in the New Mexico water quality standards. States are also required under the federal Clean Water Act to adopt water quality standards in order to protect water quality and to forward the objectives of the Act to restore and maintain the chemical, physical and biological integrity of the Nation's waters. The Commission under authority of the New Mexico Water Quality Act has adopted [Water Quality Standards for Interstate and Intrastate Surface Waters](#) (20.6.4 NMAC) for the State of New Mexico. A required element of the water quality standards is the [Antidegradation Policy](#). The Commission's policy is found at 20.6.4.8.A NMAC. The water quality standards at 20.6.4.8.E. describe implementation of the policy and state: "[These] implementation activities are supplemented by detailed antidegradation review procedures developed under the state's continuing

CPP Review:

- ◆ [2004 Proposed Revision to CPP](#)
- ◆ [Final Draft Implementation Guidance](#)
- ◆ [Response to Public Comment](#)
- ◆ [Public Comments Received:](#)
 - ◆ [Amigos Bravos Comments](#)
 - ◆ [City of Santa Fe Comments](#)
 - ◆ [Dairy Producers Comments](#)
 - ◆ [EPA Comments](#)
 - ◆ [LANL Comments](#)
 - ◆ [San Juan Water Comments](#)
- ◆ [Nov. 12, 2003 Draft Implementation Procedure](#)
- ◆ [Nov. 12, 2003 Public Notice](#)
- ◆ [1998 CPP](#)
- ◆ [Clean Water Act](#)



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planning process." The purpose of the modification to the CPP is to establish these antidegradation review procedures.

The public comment period closed on January 12, 2004. The Surface Water Quality Bureau received comments from the [EPA](#), [Amigos Bravos](#), [City of Santa Fe](#), [Dairy Producers of New Mexico](#), [Los Alamos National Laboratory](#), and the [San Juan Water Commission](#). These comments are currently under review by the Surface Water Quality Bureau for incorporation into the proposal as appropriate. A final proposal will be submitted to the WQCC for review and approval at the [November 9, 2004 public meeting](#).

On Nov 8, 2004, the SWQB posted 3 documents to the website:

- ◆ [The first document](#) is a proposed minor revision to the main body of the CPP document. The only change in the main portion of the document is on page 28 and is necessary to direct the reader to the new [Appendix A](#) of the CPP, which is the Antidegradation Policy Implementation Procedure. SWQB recognizes that other portions of this document are in need of revision. These changes will be made in a future effort including public participation. The only change that was proposed, as part of this public process was the inclusion of the Antidegradation Policy Implementation Procedure.
- ◆ [The second document](#) is the Final Draft of the Antidegradation Policy Implementation Procedure that will be incorporated as Appendix A of the main document. The public review draft of the Procedure was made available to the public on November 12, 2003. The Final Draft incorporates changes made to the [November 12, 2003 draft](#) based upon comments received from the public.
- ◆ [The third document](#) is the Department's detailed response to comments received from the public.

Program



**New Mexico
Environment
Department**

PO Box 26110
1190 St Francis Dr
Suite #N4050
Santa Fe, New Mex
USA 87502

Tel. (505) 827-28

Toll-Free (800) 2

6157

Fax. (505) 827-28

Fax.

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