



Memorandum

From: Jennifer Wigal, Water Quality Program Manager
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To: DEQ Water Quality Permit Writers
Regarding: Addendum to Antidegradation IMD Clarifying Procedures When Allowing a Lowering of Water Quality
Date: May 2, 2018

Background

In 2013, EPA reviewed DEQ's Antidegradation Policy Implementation IMD. Among other findings, EPA determined that DEQ's procedures for implementing its antidegradation policy were inconsistent with federal antidegradation rules at 40 CFR §131.12(a)(2) that require a State, when allowing a lowering of water quality, "assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for nonpoint source control."

EPA noted in its review that this rule requires any compliance issues related to the pollutant for which there is a proposed lowering of water quality, be resolved or have some plan for resolution, such as a compliance schedule, before DEQ can authorize a lowering of water quality. In addition, EPA noted that this component of federal antidegradation rules does not require a state to establish BMPs for nonpoint sources where such BMP requirements do not exist.

Applicability

This procedure applies when DEQ is considering assignment of a new or expanded NPDES discharge that constitutes more than a *de minimis* lowering of water quality, as defined by the separate memorandum outlining "Procedures to determine if a new or increased load would be a *de minimis* lowering of water quality." The procedure does not apply to the authorized loadings for discharges that already have been assigned permit coverage as of the date of this memorandum, nor does it apply to subsequent new or expanded discharges that constitute a *de minimis* lowering of water quality.

Requirements for point sources

During the permit planning process, once it has been determined that the new or expanded discharge would constitute more than a *de minimis* lowering of water quality, as part of the antidegradation review, DEQ must determine if there are any compliance issues from existing dischargers that:

- affect water quality within the same assessment unit that would be affected by the proposed discharge; and
- are related to the parameter or parameters for which a new or increased discharge had been proposed.

For example, if the parameter for which water quality would be lowered is copper, DEQ must examine if other dischargers that affect the same assessment unit have had ongoing issues meeting permit limits for copper.

If any dischargers have such compliance issues for relevant parameters *and* DEQ has not entered into a formal agreement, such as a compliance schedule to address and improve these issues, DEQ may not allow additional lowering of water quality for the parameter or parameters in question. Once such an agreement is in place, DEQ may consider new loads for that parameter in conjunction with other findings required under OAR 340-041-0004(6) and (9)(a).

Procedures for non-point source control

Oregon has established programs for management of nonpoint pollution. Under these programs, forestry and agricultural operations implement BMPs and are subject to enforcement actions. Existing nonpoint source pollution control programs include the following:

- Forest Practices Act rules. The Oregon Department of Forestry has adopted administrative rules under the [Forest Practice Act](#) governing forest practice BMPs. Many BMPs are specifically designed for water protection¹. The stated purpose of these rules is “to protect, maintain and, where appropriate, improve the functions and values of streams, lakes, wetlands, and riparian management areas.”² ODF conducts audits to measure compliance with forest practices. Statewide, compliance rates were high in the most recent audit for rules related to water protection, including 98% for road construction and maintenance, 99% for vegetation retention and 98% compliance with operations along waters of the state (ODF, 2015). The Forest Practices Act has an adaptive management structure which allows rules to change when new science shows it to be necessary.
- Agricultural water quality management plans and rules. The [Oregon Department of Agriculture](#) oversees agricultural water quality management plans and rules to prevent and control water pollution from agricultural activities and soil erosion on rural lands. ODA and local advisory committees for each of 38 areas around the state develop and update plans with the assistance of the local soil and water conservation district. Plans are updated every two years and include control and prevention measures to protect water quality. ODA conducts a biennial review of each plan, which includes ratings for the percentage of stream miles with no, few,

¹ OAR 629-635-0000 through 629-660-0060

² OAR 629-635-0100(3)

or many resource concerns, as well as a compliance summary. DEQ provides recommendations in these reviews regarding measures that can be taken to improve plan implementation.

These programs either directly require (in the case of ODF rules) or result in the implementation of (in the case of ODA requirements) BMPs for non point-source control. The programs also contain adaptive management mechanisms to make program changes and further decrease nonpoint source pollution over time. Under the agricultural and forestry water quality management statutes and associated regulations, nonpoint sources that affect water quality under the oversight of ODA and ODF to properly implement such BMPs to protect water quality. During its antidegradation review, DEQ staff will ensure that an Agriculture Water Quality Management Plan is in place in the location of the discharge and that the plan addresses the pollutant of concern, if agricultural lands are likely to contribute the pollutant to the receiving water.

Language for Permit Evaluation Report.

Permit writers should include the following language in the permit evaluation report for any permit subject to a full anti-degradation review. This language states in part the findings required under OAR 340-041-0004(6) and (9)(a) for new or increased discharged loads to high quality waters.

“Federal antidegradation rules require that States, when allowing a lowering of water quality, provide assurance that the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for nonpoint source control are achieved. DEQ has evaluated point sources that affect water quality within the same assessment unit where water quality would be lowered by the discharge and has determined that the highest statutory and regulatory requirements are being achieved or the permitted sources have a formal agreement with DEQ to achieve those requirements.

“State rules and programs governing nonpoint source controls include Forest Practices Act rules administered by the Oregon Department of Forestry and Water Quality Management Area Plans administered by the Oregon Department of Agriculture. Administration of these programs and rules can ensure that cost-effective and reasonable BMPs are achieved. Under these programs, nonpoint sources that affect water quality within the same assessment unit where water quality would be lowered by the discharge are under the oversight of ODA and ODF to properly implement such BMPs.”