



March 2002

Proposed Antidegradation Rules (OAC 3745-1-05, 3745-1-50 and 3745-1-54)

What is antidegradation?

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 is required by the Clean Water Act and federal regulations. Antidegradation must be part of any state's water quality standards program. The antidegradation rule, along with water quality criteria and beneficial use designations, provides the overall structure of this 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. Simply put, the antidegradation rule establishes a procedure to determine that a discharge is necessary before authorizing it.

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, a determination of important social and economic development, an alternatives analysis and greater protection for exceptional quality streams.

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 propose revisions to the antidegradation rules?

The current substantive version of Ohio's antidegradation rule program (OAC 3745-1-05) became effective in October 1996. That rule revision was developed due to a legislative mandate imposed upon Ohio EPA through the Ohio Revised Code Section 6111.12 in July 1993. Implementation of this revised rule resulted in significant modifications to the permitting programs within the Division of Surface Water. Through operating experience, it has become necessary to revise the rule to clarify implementation and improve efficiency in issuing documents under the provisions of the rule.

The wetland antidegradation rule (OAC 3745-1-54) became effective May, 1998 as part of the overall wetland water quality standards. Revisions to this rule are being proposed to create a single rule that applies to all section 401 water quality certifications—those applicable to wetlands as well as streams and lakes—giving a single rule to consider in this program area. Also, in July 2001, the legislature

adopted legislation (Sub. H.B. 231) concerning the review and issuance of wetland permits for isolated wetlands. The proposed revisions to the wetland antidegradation rule creates a parallel process applicable to non-isolated wetlands, or jurisdictional waters, such that similar projects are evaluated similarly based upon true environmental significance.

Who will be covered by the proposed antidegradation rules?

Applicability of the revised rules will not significantly differ from the current versions. The rule revisions clarify and improve efficiency of the overall process. 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 is the rule-making schedule?

A public hearing is scheduled at the Ohio EPA Central Office, 122 South Front Street, Columbus on Wednesday, May 1, 2002. The public hearing will begin at 3:00 p.m., adjourn when commenters complete their statements, reconvene at 7:00 p.m. and end when commenters complete their statements. The purpose of the public hearing is to give interested persons the opportunity to present oral or written comments on the proposed antidegradation rules.

The public comment period

Proposed Antidegradation Rules (OAC 3745-1-05, 3745-1-50 and 3745-1-54)

closes on Thursday, May 9, 2002. After the close of the public comment period, the Agency will review the comments, make any necessary changes to the rules and then adopt the rules. This is roughly a two-month process from the close of the comment period. A responsiveness summary will be prepared and sent to everyone who comments on the rules.

What did the draft antidegradation rule revisions include when sent out to interested party review?

Most draft revisions to the antidegradation rules are intended to clarify and improve efficiency in issuing documents under the provisions of the rules. Some of the more significant revisions include:

OAC 3745-1-05

1. *Applicability.* Though general applicability of the rule is not recommended to be changed significantly, there are a number of changes to clarify this paragraph of the rule to better define which projects are covered and how they may be addressed. Some specific program areas include evaluating projects in communities with combined sewers, “new sources” vs. “existing sources” and industrial production increases within capacity of facility.

2. *Public Participation.* Revisions will both streamline and enhance the public involvement process. An informational fact sheet on projects will be forwarded to interested parties in lieu of the public notice of the receipt of the application. This fact sheet will

better define the review process and the project proposal. In addition, most public hearings will be held at the draft permit stage of the process rather than at the application, providing more meaningful information to the public at this stage of the permit review.

3. *Alternatives Analysis.* All projects, even de minimis activities, will be subject to an alternatives analysis to determine if the discharge proposed is necessary. This minimal alternatives analysis will require that every project determine if central or regional treatment alternatives are available to accommodate the discharge. The more significant projects will still be required to complete the more detailed alternatives analysis defined by the existing rule.

4. *General Permits.* The process for issuing permits in this program area will be better defined. The antidegradation review will take place when the general permit is developed and issued, not when coverage under the permit is requested.

5. *Exceptional Quality Waters.* The higher quality waters acknowledged by the rule (Outstanding National Resource Waters, State Resource Waters and Superior High Quality Waters) will be categorized through this rule-making effort. Each stream segment, for which Ohio EPA has information, meeting the exceptional characteristics of these stream categories will be listed in tables in the rule and will be subject to the added protections outlined for these categories, including pollutant set asides, prohibitive discharges, credit

projects and mandatory public hearings. Though the list is not present in the current version of the draft rules, a list entitled “List of Stream and River Segments Recommended for SHQW and SRW Antidegradation Tiers by Waterbody Name” is available on the Division of Surface Water website referenced at the end of this fact sheet along with the rest of the draft rules.

6. *Unique Parameters.* For regulated pollutant discharges, the existing rule focuses on the load associated with the proposed activity to determine the processes and requirements to follow. However, there are a number of regulated pollutants that do not exhibit a traditional pollutant load on the environment (e.g., temperature, toxicity, bacteria). Therefore, revisions that define how these unique parameters will be evaluated are being recommended.

OAC 3745-1-54

All references to section 401 water quality certification reviews in OAC 3745-1-05 were removed and placed in OAC 3745-1-54 to give a single rule applicable to section 401 water quality certification reviews—wetlands and streams and lakes. This was also done to reflect recent changes to review requirements for isolated wetlands to provide for similar reviews for similar projects.

1. *Applicability and Applications.* Specificity was added to this rule to state that the provisions of the rule apply to all section 401 water quality certifications, including those for section 404 nationwide or general permits. Projects meeting the

Proposed Antidegradation Rules (OAC 3745-1-05, 3745-1-50 and 3745-1-54)

eligibility requirements to be covered by a section 404 nationwide or general permit, as authorized through a section 401 water quality certification, are not subject to review. Detail is also provided as to what is to be included in an application for a section 401 water quality certification.

2. *Public Participation.* Public participation and intergovernmental coordination procedures were added to this rule. These procedures reflect those established in OAC 3745-1-05 which are appropriate for any antidegradation project. An informational fact sheet will be established for the more environmentally significant wetland projects and will be forwarded to interested parties. This fact sheet will better define the review process and the project proposal.

3. *Two levels of Review for 401 Certifications.* The present antidegradation rule does not offer the potential for a reduced review for section 401 water quality certification projects that would result in lesser impacts to waters of the state. Two levels of review are recommended for wetland related projects. The lesser review will streamline reviews of less environmentally significant projects—primarily those that may previously have been granted coverage under a nationwide permit. The more significant projects will be required to possess a demonstrated public need, where applicable, and accommodate important social and economic development. These levels of review are reflective of those established by the legislature in Sub. H.B. 231.

What changes were made to the draft rules as a result of interested party comments?

OAC 3745-1-05

1. *Candidate streams included.* The draft rules were accompanied by a list of candidate streams to be categorized as State Resource Waters and Superior High Quality waters. These streams have been incorporated into tables within the text of the rules.

2. *E. coli design standard.* As a result of U.S. EPA initiatives the agency included a design standard in the minimum treatment technology (BADCT) for sanitary wastewaters for *E. Coli* bacteria.

3. *Net increase definition and applicability modification.* The definition of a “net increase” was modified in conjunction with minor modifications to the applicability section of the rule to better clarify intent.

4. *No “on-ramp”.* The “on-ramp”, or statement allowing the Director to request more information or require a project that meets the de minimis standard to undergo a detailed social/economic review was removed. This ability is already at the disposal of the Director in other program issues.

OAC 3745-1-54

1. *Minimum thresholds.* Clarification was added to the rule to address projects that are small and fall under previously identified thresholds contained in the draft rules for a level 2 wetland review. Projects below those thresholds will be subject to a nationwide permit in many cases, but in situations where

the conditions to those permits do not dictate such, those projects will be subject to an individual section 401 certification and a level 2 review.

How can I comment on the proposed rules?

Comments on the proposed antidegradation rule revisions can be made orally on May 1, 2002 at the public hearing or in writing no later than May 9, 2002.

Written comments may be given to the public hearing presiding officer or sent to Mark Stump at Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049. Phone: (614) 644-2028. Fax: (614) 644-2745. E-mail: mark.stump@epa.state.oh.us.

To get copies of the proposed antidegradation rules:

Contact Mark Stump at the address or phone number above. E-mail: mark.stump@epa.state.oh.us.

The proposed antidegradation rules are also available on the Division of Surface Water website <http://www.epa.state.oh.us/dsw>.

For more information:

Contact Mark Stump at the address above.