



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 for General NPDES Permits
Date: May 2, 2018

In 2013, EPA reviewed DEQ's Antidegradation Policy Implementation IMD. EPA determined that DEQ procedures for implementing its antidegradation policy in general permits was inconsistent with federal antidegradation rules at 40 CFR §131.12. Specifically, the EPA raised the following issues:

- The IMD contains no guidelines for an existing use review in general permits.
- General permits have the same limits for water quality limited waters, high quality waters and outstanding resource waters, even though no lowering of water quality is allowed in ORWs or water quality limited waters.
- The IMD considers the absence of significant degradation as being no degradation, rather than applying a cumulative cap to insignificant degradation and calling for a full High Quality Water review when the cumulative cap would be exceeded.

This memorandum provides procedures to address these comments.

Procedures for protecting existing uses in general NPDES permits

General permit writers should include the following statement in the antidegradation portion of the permit evaluation report or fact sheet under a heading for "Existing Use Protection":

"The effluent limits in this permit are designed to protect the most sensitive beneficial uses of Oregon waters. Therefore, in waters where existing uses are more sensitive than the uses specifically designated for the waterbody, the permit limits and requirements will protect the more sensitive existing beneficial uses."

Rationale

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

Designated uses in Oregon generally apply broadly throughout the state and include fish and aquatic life, fishing, wildlife, boating, hunting and wildlife, and water contact recreation, among others. In general, most uses and applicable criteria apply statewide.

However, DEQ also has aquatic life use subcategories that are protected by a range of criteria for temperature and dissolved oxygen. Criteria for pH and total dissolved solids vary by basin throughout the state.

In individual permits, the permit writer may become aware of information indicating that existing uses may differ from designated uses, such as waters now accessible to salmon or steelhead because migration barriers have been removed. In this case, more stringent limits may become necessary to protect the new or restored existing uses. However, because general permits typically apply to all waterbodies across the state or a basin, the permit limits are designed to ensure that the most sensitive beneficial uses are protected. As a result, even if existing uses have not been designated for a specific waterbody (for example, a stream is available for spawning due to restoration and DEQ hasn't updated its beneficial use map accordingly), the limits in the general permit have been established to protect the most sensitive designated uses, such as the most sensitive salmonid uses and shellfish harvesting, that have been designated anywhere within the scope of the general permit.

Procedures for water quality limited waters

Under federal and state antidegradation rules, DEQ may not allow further degradation of water quality limited waters. As a result, DEQ may not assign new permit coverage under a general permit for discharges to water quality limited waters if the discharge will add pollutants at concentrations that do not meet standards in the effluent at the point of discharge. For example, if the water body is limited for ammonia, the facility may not discharge waters in excess of the applicable ammonia standard, but may discharge other pollutants, as long as the procedures below for allowing new or increased discharges to high quality waters are followed. State rules provide an exception if a TMDL has been established for the pollutant in question and DEQ can assign reserve capacity to the proposed discharge.

General permit writers should include the following language in general permits:

“Under federal and state antidegradation rules, DEQ may not allow further degradation of water quality limited waters. As a result, DEQ will not assign coverage under this permit for a new or increased discharge to water quality limited waters, unless at least one of the following is true:

- The pollutants in the discharge are unrelated to those for which the receiving water is limited; or
- The effluent is required to meet water quality standards for the limited pollutant at the point of discharge and thus will not cause or contribute to an exceedance of applicable water quality standards; or
- A TMDL has been established with wasteload allocations, load allocations and reserve capacity, there is sufficient reserve capacity to assimilate the increased load and compliance plans have been established for any discharges to the waterbody that are not meeting wasteload allocations.”

Procedures for High Quality Waters

The following procedures apply to those pollutants associated with the general permit for which there is assimilative capacity available to allocate in the receiving waters.

Oregon's antidegradation policy requires an in-depth antidegradation review if new or increased loads will result in more than a *de minimis* lowering of water quality in any receiving water. A *de minimis* lowering of water quality is defined as one that would cumulatively result in lowering the assimilative capacity of the water body by 10% or less. Any lowering of water quality for certain bioaccumulative pollutants is subject to antidegradation review; however, discharges of such pollutants is not covered by general permits and are not addressed in this memorandum.

DEQ cannot predict how many entities will apply for coverage under a general permit and will therefore use an adaptive approach. If DEQ finds that there are multiple new applicants for coverage that would cumulatively result in greater than a *de minimis* lowering of water quality within a HUC 8 assessment unit, DEQ will do one of the following:

- Conduct a full antidegradation analysis to determine if such a lowering of water quality is justified under federal and state antidegradation policy;
- Impose more stringent permit limits to ensure that water quality in receiving waters is maintained.
- Require applicants to apply for an individual permit if their discharge would result in more than a *de minimis* lowering of water quality.

In the antidegradation section for the general permit evaluation report or fact sheet, permit writers should include the following language:

“Sources that were covered under the previous permit for this activity are subject to the same or more stringent limits under this permit. As a result, continuation of coverage under the general permit will not result in a lowering of water quality and thus will not degrade high quality waters.

“New or increased discharges that lower water quality are subject to in-depth antidegradation reviews required under OAR 340-041-0004(6). However, discharges authorized under this permit generally add a small pollutant load, resulting in a *de minimis* lowering of water quality. If DEQ finds that permittees obtaining coverage under this permit may cumulatively result in greater than a *de minimis* lowering of water quality in any location, DEQ will either: 1) conduct a full antidegradation analysis to determine if the Department can make the findings under OAR 340-041-0004(9)(a); 2) establish more stringent limits to ensure that there is no lowering of water quality; or 3) require individual permits that will result in no lowering of water quality or incorporate a full antidegradation analysis.”

Procedures for outstanding resource waters

Antidegradation provisions require that existing water quality and water quality values be protected in outstanding resource waters. A list of ORWs is contained under OAR 340-041-0004(8)(d). Currently, the only ORWs are the North Fork Smith River and its tributaries and associated wetlands within the South Coast Basin. Specific requirements for ORWs are included in the appropriate rule for basin-specific water quality standards (e.g., South Coast Basin standards (340-041-0305) for the North Fork Smith River). DEQ may not assign any new NPDES permit coverage or increased loads under any existing permits. The policy for the NF Smith River prohibits any new activities that would degrade water quality in outstanding resource waters. Moreover, no new or increased loads are allowed in upstream waters such that they would degrade water quality in designated ORWs.

Fact sheets and evaluation reports for general permits should state that permit coverage will not be assigned for discharges to outstanding resource waters listed under OAR 340-041-0004(8) or upstream waters if the discharge would result in a lowering of water quality in the ORW.