



ADEQ 2017 Triennial Review Antidegradation and Effluent Dependent Waters Workgroup

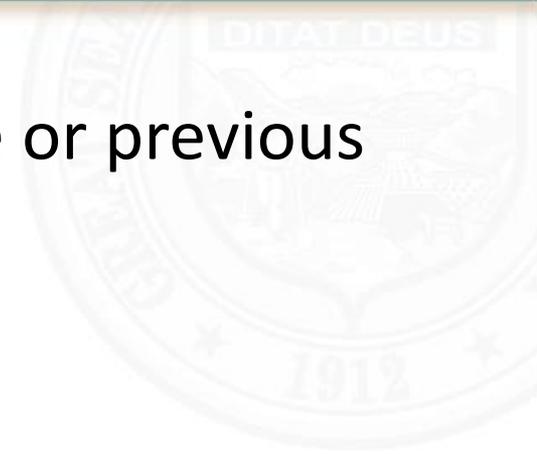
Meeting #2

December 13, 2017

ADEQ Phoenix Office

3pm – 4pm Room 5100B

- Questions about membership, scope or previous meeting
- Discussion of Topics 1, 2, and 3
- Workgroup timeline



Is the current Antidegradation Rule consistent with Federal Clean Water Act. If not, what changes should be made to correct the inconsistencies.

- EPA 2011 Antidegradation IP Review:
 - Overall “Arizona has developed clear and detailed implementation methods and provided specific direction in performing antidegradation reviews for general permits”
 - ADEQ should perform AD reviews for stormwater permits and distinguish requirements for MS4 vs CGP/MSGP permits
 - Additional training needed for permit writers

Comments Received:

- Except for the permit public comment provisions, which are part of other ADEQ rules, the antideg rule has no explicit opportunity for community or stakeholder input to ADEQ’s antidegradation decision making process.
- EPA approved the state antidegradation rules after the last “full” triennial review (2008/09), during which the rule was significantly modified in a manner intended to be consistent with EPA guidance. The only significant change since that time in terms of requirements for state antidegradation programs is the modification of 40 CFR 131.12 in 2015. However, none of the 2015 changes to 40 CFR 131.12 would seem to require changes to the Arizona rule, which is significantly more comprehensive and detailed than that found in many states.

ADEQ is proposing that Baseline Characterization section (R18-11-107.01 (B)(3)(c)) be renumbered to R18-11-107.01 (B)(2) with the subsequent sections being renumbered. Do work group members anticipate any adverse impacts or risks associated with this change?

- **Comments Received:**

- What is rationale for change?
- How would ADEQ (or a prospective permittee) determine what flow conditions represent baseline conditions that must be characterized? Normal, low or high flows (or all of them)?
- The most obvious impact this change might make is that permits up for renewal that do not involve new or expanded discharge might be required to supply updated baseline water quality data. Also, a person who's discharge is deemed not to degrade under the criteria in the current subsection 2 would also have to provide baseline data. Are these ADEQ's intent?

- **Rationale:**

- Currently the Baseline Characterization is discussed under 107.01(B)(3) Antidegradation Review which discusses what occurs when significant degradation may occur. However, BC must be established before any potential degradation can be determined. The change is meant to correspond to the actual process that would be followed in a Tier 2 review

ADEQ is proposing that the temporary impacts to OAWs language found in R18-11-107.01 (C)(4) be moved to its own section (5) and clarify that the temporary impacts cannot be “regularly occurring”. Do work group members anticipate any adverse impacts or risks associated with this change?

- C. Tier 3 antidegradation protection.
1. Tier 3 antidegradation protection applies only to an OAW listed in R18-11-112(G).
 2. A new or expanded point-source discharge directly to an OAW is prohibited.
 3. A person seeking authorization for a regulated discharge to a tributary to, or upstream of, an OAW shall demonstrate in a permit application or in other documentation submitted to the Department that the regulated discharge will not degrade existing water quality in the downstream OAW.
 4. A discharge regulated under a § 404 permit that may affect existing water quality of an OAW requires an individual § 401 water quality certification to ensure that existing water quality is maintained and protected ~~and any water quality impacts are temporary. Temporary water quality impacts are those impacts that occur for a period of six months or less.~~
 5. Any water quality impacts to OAWs must be temporary. Temporary water quality impacts are those impacts that occur for a period of six months or less and are not reoccurring.

■ Comments Received:

- It appears that this proposed change authorizes temporary impacts to OAWs in instances beyond activities that require 401 reviews of 404 permits. As the rule reads now, it narrowly allows temporary impacts for 404 permits but does not allow any degradation in any other instances of regulated discharge. What other activities does ADEQ see the need to allow under this change? Also, is there a way to be more explicit about what temporary impacts are allowable by listing them, such as maintenance activities, initial construction, facility start-up?
- I don't follow the rationale for this change since the current language is limited to temporary impacts associated with 404 permitting. If temporary impacts are separated from 404 permits and cannot be "regularly occurring" the rule could be interpreted to read that only one 404 permit could be obtained for an OAW since temporary impacts from additional 404 permitting could be considered as regularly occurring.
- EPA approved the state antidegradation rules after the last "full" triennial review (2008/09), during which the rule was significantly modified in a manner intended to be consistent with EPA guidance. The only significant change since that time in terms of requirements for state antidegradation programs is the modification of 40 CFR 131.12 in 2015. However, none of the 2015 changes to 40 CFR 131.12 would seem to require changes to the Arizona rule, which is significantly more comprehensive and detailed than that found in many states.
- To assess whether impacts of even a temporary nature are occurring in an OAW requires a good understanding of current baseline conditions in the OAW.
- If moved to a new paragraph 5, the language needs to include something tying it to impacts from a 404-permitted discharge (as is the case with paragraph 4, where the provision currently resides). For example, "Any water quality impacts to OAWs from a discharge regulated under a 404 permit must be temporary . . ."
- There is a difference between the language in the redline ("not reoccurring") and in the e-mail (cannot be "regularly occurring"). The latter is preferable, as the former could potentially be construed as prohibiting more than one 404 permit from ever being issued that has any effect whatsoever on a particular OAW.

- Thursday, December 21st 2-3:30pm, Topics #3 and 4
- ADEQ proposing to add an additional meeting in January to summarize previous meetings and provide for additional discussion
- Final meeting in late January or early February to review the workgroup report