

## Proposed Antidegradation Rule and Implementation Changes

### A. General

Topic	Current Approach	Proposed Approach
1. Name change from “nondegradation” to “antidegradation”.	Use of the term “nondegradation”.	<p>Use of the term “antidegradation”.</p> <p>As applied to protecting water quality under the Clean Water Act and federal regulations, Minnesota’s use of the term “nondegradation” is equivalent to the federal term “antidegradation”. The terms refer to both a policy and a regulatory process for the preservation of existing uses, preventing unnecessary degradation of high water quality, and protecting and maintaining specific waterbodies with outstanding characteristics.</p> <p>The term “nondegradation” implies a static situation, where lowering of water quality is prohibited or where it is nonexistent. “Antidegradation” better reflects the intent of antidegradation policy, especially as it refers to the protection of high water quality (Tier 2 protection). Tier 2 protection is not a prohibition of development, but rather a decision process where lowering of high water quality is allowed only where there is a demonstrated need to do so for important social or economic development in the area where the waters are located. It is a decision process.</p>

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		To avoid unnecessary confusion and to better reflect the intent the federal term, “nondegradation” will be changed to “antidegradation”.
<p>2. Applicability</p> <p>To which activities, pollutants (or forms of water pollution) and waters does antidegradation policy apply? By what means is antidegradation implemented?</p>	<p>Rule language provides for protection from point and nonpoint sources of pollution.</p> <p>Implementation procedures in rule and guidance were developed primarily to address wastewater treatment discharges.</p> <p>Not explicit as to which waters and to which pollutants or forms of pollution nondegradation applies.</p>	<p>Antidegradation policy applies to any activity and any pollutant or cause of water pollution with the potential to degrade waters of the state. This policy applies to point and nonpoint sources, whether or not the activities are regulated through the Clean Water Act.</p> <p>Antidegradation is implemented where there is independent regulatory authority. The primary mechanism for implementation is the issuance and enforcement of control documents.</p> <p>Antidegradation implementation procedures for wastewater treatment discharges will be revised and new procedures will be developed for other regulated activities (e.g., NPDES-permitted storm water activities, 401 Certifications).</p>
<p>3. Consistency with federal policy language found at §40 CFR 131.12</p>	<p>Current policy provides for protection of:</p> <ul style="list-style-type: none"> <li>existing beneficial uses (Tier 1 protection);</li> <li>water quality conditions that are better than applicable water quality standards (Tier 2 protection); and</li> <li>Outstanding Resource Value Waters, ORVWs (Three categories:</li> </ul>	<p>The revised policy language will be similar to existing language, but will provide improved consistency with policy language found at §40 CFR 131.12.</p> <p>Changes to the current language will include justification for the lowering of high water quality to be based on <u>necessity</u></p>

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	<p>Prohibited, where new or expanded discharges are not allowed;            Restricted, where new or expanded discharges are only allowed where this is not a prudent or feasible alternative, and; Unlisted, where new or expanded discharges are prohibited or stringently controlled to preserve the characteristics of the ORVW).</p>	<p>for important economic or social development, rather than a determination of whether a lowering of water quality is <u>acceptable</u>. Policy language will also include the requirement for public participation and intergovernmental cooperation any decision to lower high water quality.</p>
4. Revised rule format	<p>Antidegradation provisions in Minn. R. 7050 are found in two parts: Minn. R. 7050.0180 (Nondegradation for Outstanding Resource Value Waters) and Minn. R. 7050.0185 (Nondegradation for All Waters). Many of the implementation procedures are directed toward activities with controlled, continuous flow discharges (e.g., wastewater treatment).</p>	<p>The revised rule will include a general policy statement, which reflects federal regulations at §40 CFR 131.12, followed by separate implementation procedures based on type of activity. For example, implementation procedures for controlled flow discharges (e.g. wastewater treatment discharges) would be different from implementation procedures for precipitation-driven discharges (e.g. NPDES-permitted stormwater discharges).</p>

## B. Protecting existing uses – Tier 1 protection

Topic	Current Approach	Proposed Approach
5. Applicability	<p>For all waters, existing beneficial uses and the water quality necessary to protect the existing uses must be maintained and protected.</p> <p>Existing uses are not well defined.</p>	<p>Same as current approach, but clarify. The protection of existing uses applies to all waters, whether they are impaired, are of high quality, or are designated as an ORVW.</p>

		Use the definition of existing uses found at §40 CFR 131.3(e): “Existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.”
6. Tier 1 implementation procedures	Not provided.	<p>Tier 1 review is required when:</p> <ul style="list-style-type: none"> <li>· conducting Tier 2 reviews through the issuance of control documents</li> <li>· developing TMDLs</li> <li>· granting variances</li> <li>· conducting use attainability analyses</li> <li>· establishment of mixing zones</li> </ul>

### C. Protecting high water quality – Tier 2 protection

Topic	Current Approach	Proposed Approach
7. Applicability	Minn. R. 7050.0185 (Nondegradation for All Waters) protects “all waters” from degradation resulting from point and nonpoint sources. The current rule explicitly refers to protecting water quality conditions that are better than the applicable water quality.	<p>Similar to current approach, that all high water quality requires Tier 2 protection. High water quality is that quality that is better than the criterion supporting the applicable designated use. The revised rule will continue to use a parameter-by-parameter approach to identify high water quality. Where water quality data is not available, it will be assumed that a given water body is of high quality for any parameter until proven otherwise.</p> <p>Tier 2 review is not required for activities or actions impacting impaired water quality. However, antidegradation still</p>

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		<p>applies in that existing uses must be maintained and any proposed activity must not contribute to the impairment (see Tier 1 implementation procedures).</p> <p>Tier 2 protection requires that designated uses be protected. Any lowering of water quality through the antidegradation review process may not cause impairment of a designated use.</p> <p>Tier 2 review is not required where an activity does not result in increased net permitted loadings of parameters of concern (POCs, see Topic 8) and does not result in a lowering of high water quality.</p>
8. Tier 2 implementation procedures – Determining parameters of concern (POCs)	The concept of parameters of concern is not utilized in the current rule.	<p>Parameters of concern are pollutants or causes of water pollution that diminish the physical, chemical or biological condition of the receiving water which can reasonably be expected in, or result from, the discharge, and for which an antidegradation review is conducted.</p> <p>Revised antidegradation provisions will emphasize alternatives analysis early in facility or activity planning processes. Identification of POCs is necessary so that the analysis and selection of prevention and treatment alternatives address those parameters of most concern. Parameters of concern specific to regulated activities will also be identified in the control documents allowing discharges from those activities.</p>

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		<p>Examples of POCs to be considered for various activities include:</p> <ul style="list-style-type: none"> <li>· Municipal wastewater treatment discharges: <ul style="list-style-type: none"> <li>○ total phosphorus (TP)</li> <li>○ total suspended solids (TSS)</li> <li>○ carbonaceous biochemical oxygen demand (CBOD)</li> <li>○ unionized- ammonia</li> <li>○ bacteria</li> <li>○ temperature, when impacting cold-water streams</li> </ul> </li> <li>· Industrial wastewater treatment discharges: <ul style="list-style-type: none"> <li>○ TP</li> <li>○ TSS</li> <li>○ CBOD</li> <li>○ chemical oxygen demand (COD)</li> <li>○ temperature, when impacting cold-water streams</li> </ul> </li> <li>· Municipal storm water discharges: <ul style="list-style-type: none"> <li>○ TP</li> <li>○ TSS</li> <li>○ Volume</li> <li>○ temperature (when impacting cold-water streams)</li> <li>○ bacteria</li> </ul> </li> <li>· Industrial stormwater discharges - Facilities with either or both of the following: 1) activities for which there is a narrative description associating it with industrial stormwater, and/or 2) activities</li> </ul>

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		<p>with a primary Standard Industrial Classification (SIC) code that is included at 40 CFR 122.26(b)(14).</p> <ul style="list-style-type: none"> <li>○ Sector-specific pollutants associated with the specific type of industrial activity will be identified.</li> <li>· Construction stormwater discharges: <ul style="list-style-type: none"> <li>○ TP</li> <li>○ TSS</li> <li>○ Volume</li> </ul> </li> </ul> <p>The Agency may require additional parameters to be reviewed based on the discharge-specific and/or site-specific nature of a given discharge. Procedures for identifying POCs will likely be in guidance to allow for flexibility in addressing the diversity of situations for which antidegradation review will be required. When determining which POCs should be addressed in the review, the potential impacts of the parameters need to be considered. Impacts may be evaluated in terms of:</p> <ul style="list-style-type: none"> <li>· Toxicity</li> <li>· Long-term chronic effects</li> <li>· Carcinogenetic or mutagenic effects</li> <li>· Persistency in the water column or sediments (conservative vs. non-conservative)</li> <li>· Bioaccumulation</li> <li>· Effects on reproduction or other</li> </ul>

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		<p>population changes</p> <ul style="list-style-type: none"> <li>· Effects on habitat</li> <li>· Synergistic or additive effects</li> <li>· Duration, frequency and magnitude</li> <li>· Bioavailability</li> <li>· Surrogate measures, where there is a strong correlation between the surrogate and the parameter of concern</li> <li>· Condition of the receiving water (e.g., amount of remaining available assimilative capacity). Available assimilative capacity is the difference between the water quality criterion of a pollutant parameter and the ambient water quality for that pollutant parameter where it is better than the criterion.</li> </ul>
<p>9. Tier 2 implementation procedures – Tier 2 review triggers</p>	<p>Reviews are required for significant new or expanded discharges. Significant discharges are those:</p> <ol style="list-style-type: none"> <li>1) where there is a new or expanded discharge greater than 200,000 gallons per day (other than to a class 7 water), or</li> <li>2) where there is an increase of a toxic pollutant greater than 1% over baseline quality.</li> </ol> <p>Significant discharges include those resulting from incremental expansions.</p> <p>New or expanded discharges that are less</p>	<p>A Tier 2 review is required when the issuance or reissuance of a control document has the potential for a net increase in permitted loading to a water of the state. A “net increase” means an increase beyond that allowed as of the effective date. The effective date is one of the following:</p> <ol style="list-style-type: none"> <li>i. Jan. 1, 1988, the date upon which rules were adopted to prevent unnecessary degradation of high water</li> </ol>



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	<p>than 200,000 gallons per day or where an increase in toxic loading is less than 1% over baseline quality are considered insignificant, or <i>de minimis</i>, and are not required to undergo Tier 2 review.</p> <p>A new discharge is one that was not in existence before the Jan. 1, 1988 (effective date). An expanded discharge is one that changes in volume, quality, location, or any other manner after Jan. 1, 1988, such that an increased loading of one or more pollutants results. The Agency compares the loading that would result from the proposed expanded discharge with the loading allowed by the Agency on the effective date.</p> <p>The baseline quality is the quality consistently attained by the effective date.</p>	<p>quality;</p> <ul style="list-style-type: none"> <li>ii. where a Tier 2 review has been conducted after Jan. 1, 1988, and an increase in loading allowed through that review, the effective date is the date of permit issuance granting the increased loading; or</li> <li>iii. where regulatory control for an activity or class of activities is authorized after adoption of this rule, the effective date is the date upon which that control is implemented.</li> </ul> <p>There will not be allowances for <i>de minimis</i> discharges – discharges which fall below a significance threshold. All applications for increases in permitted loading will be required to undergo an initial review which entails an alternatives analysis and ensures that existing and designated uses are maintained. The alternatives analysis investigates prudent and feasible pollution prevention and treatment alternatives that will avoid, minimize or mitigate impacts to the receiving water. See Topic 12 for alternatives analysis details.</p>

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		<p>If non-degrading alternatives are not available and the proposed loadings will exceed that allowed as of the effective date, the applicant will need to undergo full Tier 2 review. This entails the identification of prudent and feasible least degrading alternatives and an analysis of the importance of social and economic development resulting from the proposed activity. Where feasible, the extent of the impacts to the receiving water needs to be understood in order for the Agency to make a determination on whether the activity is important. It will be the applicant's responsibility to provide information to the Agency on the existing water quality and the impacts of the discharge to the receiving water.</p> <p>Note: Discharges to high water quality allowed under the existing rule that were not considered significant (and thus did not undergo Tier 2 review) will not need to undergo review until an application for increased loading is made through permit renewal. A Tier 2 review will be required if the applicant requests loading beyond that allowed as of the effective date.</p>
10. Tier 2 implementation procedures – Exemptions to Tier 2 review	Other than discharges that are not considered significant, the current rule does not specify exemptions to Tier 2 reviews. (See Topic 9 for how current rule defines significant.)	<p>The revised rule will require review of any activity which lowers water quality beyond that allowed as of the effective date. There will, however, be specific exemptions:</p> <ol style="list-style-type: none"> <li>1. Changes in loadings of any POC within the existing capacity and</li> </ol>

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	<p>Rule guidance does provide a recommendation that activities involving non-bioaccumulative toxic pollutants subject to Minn. R. 7050 be exempt from review when criteria listed in Minn. R. 7052.0310, subpart 7, are met. These criteria include:</p> <ol style="list-style-type: none"> <li>1. Actions or activities resulting in short-term, as in weeks or months, temporary lowering of water quality;</li> <li>2. Bypasses that are not prohibited by §40 CFR 122.41(m);</li> <li>3. Response actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, Minnesota Statutes, chapter 115B or 115C, or similar federal authorities undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminants which may pose an imminent danger to the public health or welfare.</li> </ol>	<p>processes, and that are allowed by the existing applicable control document. These changes include, but are not limited to normal operational variability and changes in intake water pollutants.</p> <ol style="list-style-type: none"> <li>2. New effluent limits based on improved monitoring data or new water quality criteria or values that are not a result of changes in pollutant loading.</li> <li>3. Short term, temporary (i.e., weeks or months) lowering of water quality. Applications for temporary degradation will be considered on a case-by-case basis, and approval of any application must be protective of existing uses and limit water quality changes to the shortest possible time. The expectation is that after the activity causing the water quality degradation has ended water quality will return to the previous levels.</li> <li>4. Bypasses that are not prohibited at §40 CFR 122.41(m).</li> <li>5. Response actions pursuant to the comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or similar Federal, State or Tribal authorities, undertaken to alleviate a release into the environment or hazardous substances, pollutants or</li> </ol>

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		<p>contaminants which may pose an imminent danger to public health or welfare.</p> <p>6. Non-contact cooling water without additives returned to the same waterbody, OR with total residual oxidant (TRO) when treated to remove any residual TRO.</p> <p>7. Thermal discharges approved by CWA Sec 316(a) demonstration.</p>
<p>11. Tier 2 implementation procedures – Establishment of baseline conditions</p> <p>The establishment of baseline conditions is necessary to determine if a review is triggered and to establish a benchmark from which degradation may be measured.</p>	<p>The baseline quality is the quality consistently attained by the effective date. For All Waters the effective date is Jan. 1, 1988.</p> <p>The determination of baseline quality is required when determining if a discharge is significant in terms of increased toxic pollutant loading. A discharge is significant where the toxic pollutant loading rate is greater than one percent over baseline quality.</p> <p>Baselines are adjusted to reflect improvements in water quality when loading to a water body is eliminated or significantly reduced. If no data are available to determine baseline quality, or the data collected after the effective date are of better quality, then data collected after the effective date are used in determining baseline quality.</p> <p>The quality of reference or representative</p>	<p>Baselines may be expressed in one of several ways depending upon if the discharge is a new or expanding discharge, the type of discharge activity and information available to make baseline determinations.</p> <p>1. <u>Baseline permitted loading.</u> This baseline will be used in the determination of whether a review is required for existing regulated discharges. It is the loading allowed as of the effective date as described in Topic 9 (Tier 2 review triggers).</p> <p>2. <u>Existing Water Quality (EWQ).</u> This is the condition of the receiving water as of the date upon which an application is made to increase loading and thus lower water quality. This baseline will be used for new discharges and expanding discharges requesting additional loading beyond that allowed as of the effective date.</p>

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	water bodies may be used to establish baseline quality when data from the receiving water are not available.	<p>The establishment of EWQ may be done using several approaches (ranked by preferred approach):</p> <ol style="list-style-type: none"> <li>i. Existing (previously-gathered) monitoring data from the receiving water.</li> <li>ii. Collect monitoring data from the receiving water prior to application.</li> <li>iii. Comparison to representative receiving waters.</li> </ol> <p>3. <u>Land use and water quality management practices.</u></p> <p>An alternative baseline may be used where permitted loading is not explicitly expressed in permit conditions, projected loadings are difficult to accurately estimate through modeling, or the establishment of EWQ is impractical and/or will not provide meaningful information. This baseline may be used for some regulated storm water discharges lacking effluent limits and effluent monitoring requirements, and where there may be multiple discharges and multiple receiving waters. Tier 2 review in this case is triggered when there is the potential for changes in land use and/or water quality management practices within the regulated watershed that would have a negative impact water quality.</p>
12. Tier 2 implementation procedures – Alternatives analysis	For significant discharges a determination is made of whether additional control measures can reasonably be taken to	The revised rule will place much greater emphasis on the alternatives analysis.

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	minimize the impact of the discharge.	<p>The alternatives analysis will be a multi-step process where an investigation is made of prudent and feasible alternatives that will avoid, minimize or mitigate the impacts through pollution prevention and/or treatment. If there are no non-degrading alternatives, the applicant will evaluate minimally-degrading alternatives and/or mitigation technique alternatives.</p> <p>The use of the term “prudent and feasible” is used in the context of the alternatives analysis because it is a familiar standard currently used to test if discharges to Restricted ORVWs may be avoided. “Feasible” means an alternative that can be implemented with existing technology and in a manner that meets good engineering standards. An alternative is not feasible if the technology involved is experimental or unproven, or cannot be implemented with sound engineering. An alternative is “prudent” if it is better for the environment than what was originally proposed, and does not have unusual or extraordinary social or economic costs.</p> <p>The Agency will provide guidance on alternatives the applicants should consider, though the applicant is not limited to these alternatives. On a case-specific basis, the Agency may require the applicant to investigate alternatives not specified in guidance. The guidance will group pollutants by category (e.g., solids,</p>

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		<p>dissolved, nutrients, pathogens, etc.) and suggest treatment alternatives to remove those categories of pollutants.</p> <p>Where a non-degrading alternative is not available, the applicant must identify the least degrading prudent and feasible alternative and provide justification for the proposed activity based on important social or economic development (see Topic 13).</p>
<p>13. Tier 2 implementation procedures – Justification for important social or economic development</p>	<p>High water quality must be maintained and protected unless lowering of water quality is “acceptable”. As stated in Topic 12, in its decision of whether additional control measures can reasonably be taken to minimize impacts, the Agency considers the importance of economic and social development impacts.</p> <p>“Economic or social development” means jobs, taxes, recreational opportunities, and other impacts on the public at large that will result from a new or expanded discharge.</p>	<p>Where non-degrading alternatives are not available, and thus water quality will be lowered, the applicant will be required to provide information to justify the lowering of water quality for social or economic development in the area where the waters are located. This information will need to be reasonable, meaning that estimation methods for net positive and negative impacts need to be adequately explained and the conclusions need to be supported by information readily accessible for the Agency’s review.</p> <p>The Agency will use information provided by both the applicant and through the public participation and intergovernmental cooperation process in its decision. In its determination the agency will compare:</p> <ul style="list-style-type: none"> <li>• An estimate of the net positive social, economic and environmental changes to be</li> </ul>

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		<p>realized through the proposed activity, including but not limited to the number and types of new jobs developed and the tax revenues generated.</p> <ul style="list-style-type: none"> <li>• An estimate of the net negative social, economic and environmental changes of the proposed activity, including but not limited to lost or lowered recreation, tourism, or other commercial opportunities, impacts on aquatic organisms, aquatic habitat and wildlife, loss of assimilative capacity for future industry and development, increased water treatment costs or reduced downstream property values.</li> </ul> <p>When water quality will be lowered as a result of a proposed activity, the projected quality of the receiving water must be assessed in order for the Agency to make a determination of whether the net positive changes of the proposed project outweigh the maintenance of high water quality. Where adequate assessment information is not available but is reasonably attainable, it will be the responsibility of the applicant for its provision.</p> <p>Ultimately the Agency will make a determination of whether and to what extent the lowering of water quality is</p>



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		important for social or economic development. Determinations will be made on a case-by-case basis using best professional judgment, and considering comments received through the public participation and intergovernmental cooperation requirement of the revised rule (see Topic 14).
<p>14. Tier 2 implementation procedures – Public participation and intergovernmental cooperation</p> <p>The public participation and intergovernmental cooperation requirement in the Tier 2 review process provides a way to receive input regarding activities that have the potential to lower water quality through increases in permitted loading. This process will allow the public and interested government agencies the opportunity to comment on the alternatives analysis and the demonstration of importance for social or economic development.</p>	<p>Public participation occurs when a draft permit is issued. The agency provides notice and an opportunity for public hearing in accordance with the permit requirements found in Minn. R. 7001.</p> <p>There are no provisions in Minn. R. 7050.0185 for intergovernmental cooperation.</p>	<p>Information regarding the alternatives analysis, and where required, the demonstration of importance will be made available for comment. Where possible, opportunity for comments will be provided early in the planning process. For example, comments could be solicited during the facility planning stage for waste water treatment operations requiring individual permits. This may be achieved through the public hearing requirement found in Minn. R. chapter 7077.0272. Opportunity for comment is provided when the draft permit is noticed, following procedures outlined in Minn. R. chapter 7001.0110.</p> <p>When an application to lower high water quality is received the Agency will notify other governmental agencies affected by the proposed activity and provide information on how to submit comments. The MPCA will develop and maintain lists of other agencies wishing to be contacted for specific types of activities. List may include the Environmental Protection Agency, U.S. Fish and Wildlife Service,</p>

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		U.S. Army Corps of Engineers, Minnesota Board of Water and Soil Management, and Minnesota Departments of Agriculture, Health and Natural Resources.

## D. Protection of Outstanding Resource Value Waters (ORVWs)

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15. Applicability – Determining the level of protection required for ORVWs.	<p>Outstanding Resource Value Waters are waters of the state with high water quality, wilderness characteristics, unique scientific or ecological significance, exceptional recreational value, or other special qualities which warrant stringent protection from pollution.</p> <p>Minnesota has three categories of ORVWs; Prohibited, Restricted and Unlisted. Waters in the Prohibited category, which are designated in subparts 3-5 of Minn. R. 7050.0180, are the most pristine or sensitive ORVWs. These waters are analogous to the federal ONRWs which require Tier 3 protection, meaning that new or expanded discharges are prohibited.</p> <p>New or expanded discharges to Restricted ORVWs (designated in subparts 6, 6a, and 6b of Minn. R. 7050.0180) are not allowed unless an applicant can demonstrate there is not a prudent or feasible alternative to the discharge.</p>	<p>Designations of current ORVWs will remain the same. Likewise, the same three categories of ORVWs (Prohibited, Restricted and Unlisted) will be maintained.</p> <p>The revised antidegradation provisions will clarify that where Restricted and Unlisted ORVWs are of high quality, any proposed application to lower water quality requires a Tier 2 review. Where water quality is allowed to be lowered, the special attributes or characteristics that make the waterbody an Unlisted-ORVW or Restricted-ORVW will be maintained (not be degraded).</p> <p>Minnesota's current rules addressing upstream activities needs clarification. Minn. R. 7050.0180, subpart 9 (Impacts from upstream discharges) states that "(t)he agency shall require new or expanded discharges to waters that flow into outstanding resource value waters be controlled so as to assure no deterioration in the quality of the downstream</p>

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	<p>Prohibited and Restricted ORVWs are designated through rulemaking.</p> <p>Unlisted ORVWs include waters that possess unique or highly-valued characteristics of an ORVW. Having this category allows the Agency flexibility to provide ORVW protection to waters between rulemaking designations. New or expanded discharges to Unlisted ORVWs are prohibited or stringently controlled to preserve the existing high quality or the special characteristics that make the water an ORVW.</p> <p>A new discharge is one that was not in existence on the date on which the ORVW was designated. An expanded discharge is one where the discharge “changes in volume, quality, location, or any other manner after the date on which the Outstanding Resource Value Waters was designated, such that an increased loading of one or more pollutants results” (Subp. 2).</p> <p>The Agency requires that new or expanded discharges to waters that flow into ORVWs be controlled so as to assure no deterioration in the quality of the downstream ORVW (Subp. 9).</p>	<p>outstanding resource value water.” Assurance of “no deterioration” of downstream Prohibited ORVWs is reasonable, but does not work well for Restricted or Unlisted ORVWs, where lowering of water quality may be permitted. The revised rule will require that activities that have the potential to impact downstream ORVWs must not degrade the exceptional high quality, or the other characteristics, that make the downstream water an ORVW.</p> <p>It is not anticipated that additional ORVWs will be designated as a result of this rulemaking.</p>
16. Implementation – Allowance for temporary discharges	See Topic 10 for explanation on currently practices for temporary discharges.	The revised rule will allow for temporary (weeks, months) lowering of water quality.

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		<p>Applications for temporary degradation will be considered on a case-by-case basis, be protective of existing uses, limit water quality changes to the shortest possible time, consider non- and minimally-degrading alternatives, and require public participation.</p> <p>The expectation is that after the activity causing the water quality degradation has ended water quality will return to the previous levels.</p> <p>Missouri's recently-adopted rule is a good example of what Minnesota is likely to adopt. The rule defines temporary degradation as it applied to Tier 3 protection as:</p> <p>“Degradation that is non-permanent and the effects can be regarded as insignificant following a review of the a) length of time during which water quality will be lowered, b) percent change in ambient conditions, c) parameters affected, d) likelihood for long term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments), e) degree to which achieving the applicable Water Quality Standards (WQS) during the proposed activity may be at risk, and f) potential for any residual long-term influences on existing uses.”</p>

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17. Implementation – Designating ORVWs	Designating a water body as an ORVW requires a rulemaking change to Minn. R. ch. 7050. Historically waters that have been assigned an ORVW designation have some prior state or federal designation or recognition as to their exceptional recreational, cultural, aesthetic, or scientific value. Before identifying and establishing additional outstanding resource value waters the Agency provides an opportunity for public hearings.	Designation process will remain the same as in the current approach.

### **E. Applying antidegradation to general permits**

Topic	Current Approach	Proposed Approach
18. Applicability	General permits are permits issued to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.  The current rule and guidance is not explicit that antidegradation applies to general permits.	Antidegradation is applicable to any activity that has the potential to lower water quality. Antidegradation provisions are enforceable where there is independent regulatory authority over a given activity. The issuance of a control document, such as a general permit, provides a mechanism by which antidegradation may be implemented and enforced.
19. General permit implementation – Review process	Not explicit.	The objective of antidegradation review for general permits is, as with individual permits, to protect and maintain existing uses and outstanding water resources, and to prevent unnecessary degradation of high water quality.  Tier 2 review for activities covered under general permits will be a multi-step

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		<p>process:</p> <p><u>Step 1. Conduct an analysis of prudent and feasible non-degrading alternatives at time of general permit development.</u> (See Topic 12 for definition of “prudent and feasible”.)</p> <p>Selected prudent and feasible non-degrading alternatives are incorporated into general permit conditions as Tier 2 antidegradation requirements. Examples of alternatives may include performance standards, design standards or evidence-based mandatory control measures.</p> <p>Parameters of concern (POCs) will also be identified for each general permit. Some general permits may include subsets POCs related to specific activities covered under the same general permit (e.g., sectors within the Industrial Stormwater Multi-Sector General Permit).</p> <p>There will be an opportunity for public participation and intergovernmental cooperation through comments on the selection of POCs and prudent and feasible non-degradation alternatives in the process of general permit development and issuance.</p> <p><u>Step 2. Verification that antidegradation Tier 2 requirements will be met.</u></p> <p>Individual applicants seeking coverage under a general permit must, through the</p>

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		<p>application process, verify that Tier 2 antidegradation requirements will be met.</p> <p>Where it is not prudent or feasible to meet the Tier 2 antidegradation requirements, the applicant may be given the opportunity to suggest control measures not specified in the general permit that will allow for no net increase in loading. If prudent and feasible non-degrading alternatives control measures are not available, either through the antidegradation requirements or through the applicant's suggestions, an individual Tier 2 review will be required. The individual review, which occurs under procedures defined in the general permit, will require an analysis of the importance of the social or economic development and the anticipated water quality degradation resulting from the activity. The public and interested government agencies will have the opportunity to comment on individual actions covered under general permits that result in an increase in loading.</p> <p><u>Step 3. Implement an adaptive management process to ensure the effectiveness of permit conditions.</u></p> <p>The rule will require that an assessment process be included in each permit to gather necessary information to determine the extent to which the permit provides for the maintenance of water quality. This information will be used to adjust antidegradation requirements to ensure the</p>

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		<p data-bbox="1350 180 1734 212">maintenance of water quality.</p> <p data-bbox="1350 253 1913 756">Permit condition compliance may be accomplished through different means depending on the activity and characteristics of the discharge. For example, discharge monitoring reports (DMRs) may be used for wastewater treatment discharges. Permits for storm water activities may require the applicant to monitor the efficiencies of treatment BMPs (benchmark monitoring), ambient water quality and/or validate that treatment BMPs are designed, constructed and maintained to protect existing water quality.</p>