

Revised Nondegradation Rulemaking Topics and Issues
May 15, 2009

Session Number	Major Topic	Issue & Issue Paper Number	Discussion Points
1	Introduction to Nondegradation	Introduction to nondegradation and the opportunity to improve how surface waters are protected. (Issue Paper #1)	1. This paper provides a brief overview and history of nondegradation. Important resource materials that will be referenced in stakeholder discussions are provided.
1	Applicability of Nondegradation	To which activities does nondegradation apply? (Issue Paper #2)	<p>1. How does nondegradation apply to the three levels or tiers of protection defined in federal regulations (40 FCR § 131.12)?</p> <p>2. What considerations are used to determine to which activities nondegradation applies and to which activities it is enforceable?</p> <p>3. What means are available to apply nondegradation to activities for which there are no clear regulatory controls?</p>
1	Protection of High Quality Waters	What is tier 2 protection of high quality waters? (Issue Paper #3)	<p>1. What are high quality waters?</p> <p>2. What standards may be used in the determination of high quality waters?</p> <p>3. What approaches are there for how high quality waters are protected?</p>
2	Protection of High Quality Waters	What triggers a nondegradation review of potential impacts to high quality waters? (Issue Paper #4)	<p>1. Should nondegradation review be triggered by a demonstrated projected lowering of water quality? Or, can projected lowering of water quality be inferred by types of specific activities?</p> <p>2. Should there be a <i>de minimis</i> or minimal threshold below which a nondegradation review is not required?</p> <p>3. Should there be different levels of nondegradation review that take into account the type of activity, type of pollutant, potential for degradation and/or type of receiving water?</p>

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2	Protection of High Quality Waters	Nondegradation Review: Alternatives analysis, social or economic justification, intergovernmental coordination and public participation. (Issue Paper #5)	<ol style="list-style-type: none"> 1. In deciding the necessity to lower water quality, how should feasible and reasonable alternatives be determined? 2. What factors should be considered in the determination of economic or social justification? 3. How should the intergovernmental cooperation and public participation requirements of federal regulations be met?
3	Assessment of Impacts on Receiving Waters	What are the best ways to describe impacts on receiving waters? (Issue Paper #6)	<ol style="list-style-type: none"> 1. What parameters should be considered? How should “pollutants of concern” be defined? 2. Should impacts for chemical parameters be addressed in terms of concentration or mass? 3. How should impacts be described when dealing with “unconventional” parameters (where the determination of concentration or mass loading is not possible or is impractical)? 4. How should pollutants for which there are no standards be considered? 5. How are antidegradation provisions and Total Maximum Daily Load (TMDL) programs related? 6. What considerations can be taken when assessing waters containing either invasive species, or those with threatened or endangered species?
3	Assessment of Impacts on Receiving Waters	How are baseline conditions used in the assessment of impacts on receiving waters? (Issue Paper #7)	<ol style="list-style-type: none"> 1. What is the baseline for protecting existing uses (tier 1 protection) as defined in 40 § CFR 131.12? 2. The baseline date for protecting “All-Waters” (tier 2 protection) in our current rule (Minn. R. 7050.0185) is January 1, 1988. Is having this specific date as a baseline the only or best option? 3. How should situations be addressed where there is inadequate water quality information to establish baseline conditions?

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3	Assessment of Impacts on Receiving Waters	How are baseline conditions used in the assessment of impacts on receiving waters? (Issue Paper #7), continued	4. How should the revised rule address situations where the quality of the receiving water has improved since the baseline was established?
4	Application of Nondegradation to NPDES-Permitted Stormwater Discharges	How should nondegradation be applied to NPDES-permitted stormwater activities? (Issue Paper #8)	<p>1. How do stormwater discharges, as a whole, differ from other NPDES-permitted discharges?</p> <p>2. As related to nondegradation, what are the unique aspects of each stormwater type?</p> <p>3. How can the site-specific nature of nondegradation be practically addressed in stormwater general permits where there are many individual applicants?</p> <p>4. Should there be some type of <i>de minimis</i> or threshold level below which a nondegradation demonstration is not required for NPDES-permitted stormwater activities?</p> <p>5. Should there be different levels or requirements of nondegradation demonstration and review for different receiving waters and activities?</p> <p>6. For nondegradation decision purposes, how should impacts of stormwater discharges be assessed?</p> <p>7. How should the public participation requirement of nondegradation be fulfilled for stormwater general permits?</p>
5	Assessment of Impacts on Receiving Waters	How should cumulative impacts be assessed? (Issue Paper #9)	<p>1. Cumulative impacts and antidegradation decisions</p> <p>2. EPA guidance</p> <p>3. Litigation related to antidegradation and cumulative impacts</p> <p>4. Minnesota's current rules</p> <p>5. Other states' approaches</p>

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5	Assessment of Impacts on Receiving Waters	How should cumulative impacts be assessed? (Issue Paper #9), continued	6. Measuring cumulative impacts 7. Responsibilities
5	Waters Requiring Special Protection (Tier 3 waters)	How should Outstanding Resource Value Waters (ORVWs) be protected? (Issue Paper #10)	1. Minnesota's current rule 2. Possible revisions to the current rule <ul style="list-style-type: none"> • Allowance for temporary changes in the water quality of ORVWs • Clarifying the distinction and relationship between the protection of high quality waters and Restricted ORVWs • Protecting ORVWs from "upstream" activities • Procedures by which ORVWs are designated • ORVWs and NPDES-permitted stormwater activities