

**Compilation of Comments on Issue Paper #3  
Tier 2 Protection of High Quality Waters**

**General Comments relating to Tier 2 Protection of High Quality Waters**

**General Comments**

- There is no middle ground.
- Impaired or high quality waters.
- Should be a watershed approach.
- No baseline data.
- Those who have been doing monitoring are penalized for their work.
- Should define relative to biological condition.
- Should be defined more by biotic community and by use.
- Impaired waters should be subject to nondegradation review because impairments are parameter specific and a water can become impaired for additional parameters. Another consideration is that Federal rule requires that a discharge or activity can not contribute to an existing impairment.

**1. Questions or comments about the discussion presented in Issue Paper #3 of “What are high quality waters”**

- High should be 20% better than impaired water.
- Looks like all water that has been monitored will be impaired or high quality water.
- Do local governments and watersheds get to have input into classification?
- List??
- What are the watershed expectations that are reasonable?
- There are going to be too many waters that the water quality is not known. They should not all be high quality waters. Deal with the ORVW's, use the TMDL process for impaired waters, and use the watershed to determined waters that are already determined to be high quality and let the others go.

**2. Which approach to high quality water protection is more desirable (parameter by parameter vs. waterbody by waterbody)?**

- It would be very messy to have multiple parameter variability-impaired for some parameters and high quality for others.
- Is dependent on years of WQ monitoring data – this would affect nondeg like it does TMDLS.
- P by P is more quantitative and straight forward but, what about cross dependencies where high levels in one area can make biology more susceptible to other pollutants than reflected in WQ stds?
- Facility trips “non-deg review?”

- Waterbody to waterbody – 2 lake parameter for all (shallow or deep) appears to be one size fits all.
- Waterbody/waterbody – with established context.
- Waterbody.
- The simplest.
- Waterbody within watershed approach for a pollutant parameter.
- Watershed multiparameter.
- The problem I see w/parameter by parameter is that wouldn't virtually every waterbody be considered high quality for some parameter?
- Waterbody by waterbody.
- Use biological indicator or recreation or drinking water.
- Waterbody x waterbody for similar water bodies (maybe) at least for biota.
- P by P
- Parameter by parameter allows for a focus on land uses and BMPs to provide protection but waterbody by water body is more holistic and can include all land uses that together cover degradation. Run into jurisdictional issues with a watershed approach.
- Depends on if parameters are connected to each other = TSS + P + Hg (example)
- Parameter by parameter.
- Not sure, but this should be thought through more.
- Parameter by parameter – is better except under a rare case.
- I think it should be a combination of approaches .....just as a use support determinations/impairment is done for a given reach by a combination of water chemistry, biological/habitat information – the same could be done with Tier 2 Protection determinations for given waterbodies using all information including water chemistry (parameter).

### **Why is that choice preferred?**

- Water body by water body.
- Makes more sense. Watershed based process in greater MN have county water plans.
- Local governments and watersheds should require and implement this.
- A more integrated approach, more comprehensive.
- No, waterbody is impaired for everything. Therefore, every waterbody would be high quality for something (if parameter-to-parameter). This is not manageable. From a management standpoint, should manage a waterbody as TMDL or non-deg, not both.
- Both have complexities.
- Integrates all agency and multi agency programs, permits, rules and resources.
- Yes. Use county plans for their high quality waters and watershed. Plans for urban high quality waters, let the others go.
- It will be confusing if most streams are considered high quality for NH<sub>4</sub> and DO, but impaired for NPS. Could go to the waterbody or watershed designations as high quality.
- There aren't standard for a large # of pollutants.
- It is more quantifiable and enforceable.

- Simplicity of approach. I do not understand the waterbody by waterbody approach well enough to judge it.

**Are there other approaches to high quality water protection that should be considered?**

- I hope so.
- Based by state then modified through 103B and 103D process.
- Can monitoring data be coordinated across the state, especially in relation to TMDL monitoring/evaluation.
- Reference condition baseline.
- It's more complicated than either/or. Can we create a system that isn't too complicated, and yet considers the actual use of the water, and the tiered set standards for that use? In other words, if could be impaired for something that doesn't impact the designated use, then it would still be considered high quality.
- Don't make this process so complex and so expensive or it won't get done!
- Designate watersheds.
- Drinking water w/o treatment? Or fishable/swimable.
- More biology.
- More testing.
- Unknown
- Educate public.
- Stronger zoning locally-set backs.

**3. When making a determination of high water quality, what are the advantages and disadvantages to making that determination:**

- Non-deg program should be sure to take advantage of existing monitoring and identification of impaired waters.
- Given adequate assessment data, any waterbody is by default high-quality for a given parameter if it is not Tier 3 (ONVW) or listed as impaired for that parameter. Where there is inadequate information on receiving water quality for any water quality parameter potentially lowered by the proposal under review, water quality status must be assessed prior to any findings by the state regarding allowable lowering of water quality or that water quality will not be lowered. In a situation where few of MN's waters are fully assessed, reliance on a high quality designation conferred only if the water is fully assessed is unworkable.
- A determination of the high quality protection status should be done as part of the overall monitoring and assessment program that the state already implements. In this case however, all information about a waterbody including the water chemistry parameters could be utilized to say why it is of high quality.... Similar criteria for assessing the data could be used....instead of stating why the water reach is impaired or supporting, the assessment would state would say why it is of high quality. This could include information for example collected by MN DNR about endangered species, and other descriptive information of the richness of river/lake/wetlands in terms of fish/invertebrate/plant/mollusk/birds species. These would all point to known places of high quality.

**a) prior to nondeg review**

- Discharges would be known
- Can result in reduced reg. if water quality improves over time putting into tier 2 from 1.
- Resource intensive.
- Adv. – get ahead of managing all waters statewide.
- a), b), Who is going to do and fund all of these reviews?
- Would have to do it all.
- Adv. Usually voluntary, hence desired change.
- Way prior to review can help with the planning stage in identifying appropriate BMPs (instead of changing them late in the game).
- Always know ahead of time what you are getting into.
- Yes

**b) at the time of nondeg review**

- Preferred
- Very late in process to possibly make any changes.
- Could lose additional protection if other uses degraded WQ to lower to tier 1.
- Will bias be introduced by a stakeholder.
- Disadvantage – Reactive to issues, no big picture and proactivity.
- Use review as a management tool rather than a regulatory requirement.
- Can do on a case by case basis.
- Disadv. Usually mandatory, no desire for change.
- Not good.

**c) Which of the above approaches is most desirable? Are there other approaches that should be considered?**

- Would only address resources w/WQ monitoring data – unfair approach.
- Combine such that waters can only move up and inc. protection wrt nondeg.
- The problem w/both is dealing w/climactic changes bringing changes in water but, not making allowances for change from pollutant discharges shortchanges nondeg. goals.
- I don't think every lake or stream that is not impaired, should be high quality –use a % better than standards.
- Need triggering process & tiered approach to review process.
- Identify general designation in rule then modify by 103B/103D.
- When possible, use existing water quality data from other monitoring. Don't duplicate efforts.
- According to the One Water approach of rotating 8-digit HUC assessments, designate water bodies within the HUC as impaired or unimpaired, and if unimpaired, which is considered high quality?
- At the time most people and groups need to be pushed.
- One time statewide inventory to classify ORVW, (sooner than later).
- prior to non deg review is more protective.
- There may be an advantage to piggyback on the existing Integrated Assessment process for efficiency, but if so the assessment process as it works now is more suited

to determine whether or not a waterbody is impaired. The assessment process would need to be modified and guidance and methodology would need to be developed in order to make determinations of high water quality. This may also require more staff resources.

-Overall, an approach that integrates our monitoring, assessment, and permitting programs would be most beneficial so that monitoring and assessment activities are timed to produce data/information that are the most useful for making permitting decisions.

#### **4. How can narrative standards be used in nondeg review?**

- Should be starting point, but no decision point.
- Not appropriate.
- w/invasives – no introduction
- w/endangered can they be translated to numeric?
- Yes, however the concern is with agency interpretation of the “narrative”.
- My water quality standards (for the impaired water program) already do use narrative standards.
- Dates are confusing – one says 1988 for nondeg in MS4 NPDES permit and today we heard November 28, 1975. Which is correct?
- Quite difficult to develop translators – should be developed in advance.
- Too idealistic – difficult to enforce, call me a pessimist, but I don’t believe they will work.
- For calcareous fens, a point system has been established to designate them as an ORVW that is based on plant type (not chemistry); perhaps this could be used to assess nondeg in some way.
- IBI etc., can have problems - not measured, always some subjectivity. - ----

Knowledgeable professionals have different opinions.

- I doubt this is great except may be BMPs. required.

-Impaired waters should not be subject to nondegradation requirements. It will be difficult

-Agree with MPCA’s statement that, to date, nondegradation reviews have not considered narrative standards and we believe this problem must be addressed immediately. The MPCA could develop guidance that provides numeric interpretation of its narrative nutrient standard for rivers to be used until such time as numeric water quality standards are adopted—paralleling the process used prior to adoption of numeric eutrophication standards for lakes and reservoirs. Regarding biological narratives, the state is already using IBIs to determine impairment/support status. This information needs to be imported into A-D review. Any future development of TALU standards is likely to mesh well with this general approach, based as it is upon taxa presence and abundance—defined, measurable markers.

#### **5. Do you believe that impaired waters are subject to nondegradation requirements? Under what circumstances?**

- Huh!
- No – TMDL process to rectify.
- Yes, always

- Fecal coliform impairments – natural? Wild life? If not manmade, no- should not be listed.
  - The assumption should be that the impaired waters designation reflect nondeg or at least the classification. The TMDL and the action plan are achieving the desired outcome for water quality.
  - Yes, Clean Water Act has. There are two items “joined” where waters fall into one category or the other. Aren’t impaired waters are subject to non-deg at time of delisting?
  - No because they are already degraded-perhaps they come under nondeg when delisted.
  - Depends on parameters- an impaired water for Hg can be high quality for IBI.
  - If you use the parameter approach doesn’t it almost automatically do this? That doesn’t mean it is the best way to do things.
  - NO!!
  - Could be a stream unimpaired for DO, not impaired for turbidity, and a proposed BOD discharge subjected to nondeg review.
  - Yes, parameter by parameter means that some will be met while others will need work.
  - No – leave them in the “restore” bucket otherwise you’ll never keep TMDL and nondeg straight.
  - The connection between nondeg and TMDL needs to be very clean and non-duplicative
  - Yes
  - Yes, this could result in a no-growth and a solution must be found.
  - Yes, how can you remediate/restore in impaired water without addressing nondegradation?
  - Waterbody by waterbody approach?
  - In most situations, except where common sense applies – zero diss. O2 – but listed for Hg.
  - Impaired waters will be subject to Tier 2 antidegradation review if they have high water quality with regard to pollutants for which they are not impaired. The State cannot simply eliminate all impaired waters from Tier 2 review – to do so would be in direct violation of the federal regulation. Many of the State’s most pristine and high quality waters, for example, are impaired by atmospheric mercury deposition.
- Yes ...All waters.....They would be subject if certain parameters were above the standard ...also in a situation where the existing use was going to be lost...

**6. Additional questions that should be asked regarding the protection of high quality waters or thoughts that were not addressed above.**

- Need to allow watersheds and LGU to designate and manage waterbodies.
- How can we integrate all agencies?
- What limited parameters can be used as nondeg incentives (instead of all toxic pollutants)?
- Is volume really something that needs to be assessed as part of nondeg?

- How is Lake Superior classified? How are local (county zoning and planning) authorities going to be educated and enforce/apply these rules?
- What about drinking water use? I think the existing use of surface waters needs to be evaluated...on the books certain surface waters 2Bd and 2A have the use class Class 1B of Domestic Consumption and the Safe Drinking Water Act MCLs apply. There is never an assessment of these waters for this use and because it is an important use, this should be done for nondegradation review or in the regular assessment process.....