

# ANTIDegradation SUMMARY

*Presented to the  
West Virginia Surface Mine Drainage Task Force Symposium  
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## Current Federal Regulations

Current Federal Regulations 40 CFR 131 require antidegradation policy/implementation methods.

## Current State Regulations

§46-1-4 is West Virginia's antidegradation policy. It requires:

- ◆ Protection of existing water uses.
- ◆ Maintenance of high quality waters, unless it is determined that lowering quality is necessary to accommodate important economic and social development.
- ◆ No reduction in ambient water quality for Waters of Special Concern, including:
  - Federally designated rivers under the "Wild and Scenic Rivers Act,"
  - All naturally reproducing trout streams,
  - All streams and other water bodies in state and national forests and recreation areas, and
  - National rivers.
- ◆ Outstanding National Resource Waters, including streams and rivers within the boundaries of Wilderness Areas, shall be maintained and protected and improved where necessary.

## Status

Under threat of litigation by environmental groups, an antidegradation stakeholder process was formed to develop implementation regulations. Coal industry does not (directly) have a representative in the stakeholder process. Stakeholders are not in consensus, but are continuing the process. An implementation policy was developed outside the stakeholder process. It was significantly more stringent than surrounding states and federal requirements. The West Virginia

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Division of Environmental Protection (WVDEP) pulled pending implementation policy in November 1999. The West Virginia Manufacturers Association (WVMA) has developed draft alternative antidegradation implementation procedures. It is the intent of the Stakeholder Group to present a report to the West Virginia legislature by April 2000. The report will indicate where consensus has been reached; in those areas where consensus was not reached, language will revert to the original proposed language.

EPA is also in the process of promulgating revised antidegradation regulations.

### **Implications**

Between current state regulations, draft antidegradation implementation procedures proposed by WVMA, and proposed EPA revised regulations, one can probably expect:

- ◆ Permit limits may need to be on a mass basis, instead of concentration basis.
- ◆ If a new discharger or if proposing greater than 20 percent increase in loadings above current permit limits into a non-attainment water (i.e., 303(d) stream) where a Total Maximum Daily Load (TMDL) has not been established and permits adjusted to reflect the TMDL, then must have 1.5/1 offsets (EPA proposed regulations).
- ◆ Water quality based permit limits in lieu of technology based permit limits for other dischargers (not within the bullet above) to non-attainment waters.
- ◆ For waters with remaining assimilative capacity (exceptions below), only allowed less than 10 percent decrease in assimilative capacity (with minimum public notice) at maximum permitted flow (non-precipitation event) and 7Q10 conditions. If greater than or equal to 10 percent, must provide:
  - Evaluation of alternatives, includes costs.
  - Social and economic activity summary.
  - Possibly other information including land use, additional sampling.
  - Public notice.
- ◆ No permanent discharges allowed which would lower water quality in Waters of Special Concern or Outstanding National Resource Waters.
- ◆ No (or limited) general permits for discharges to non-attainment waters; will have to get an individual permit.
- ◆ No (or limited) general permits for discharges to Waters of Special Concern and Outstanding National Resource Water.
- ◆ Trading between permits allowed.

*Note: While the above implications are severe, the original implementation policy language, much of which may still become regulation, is significantly more severe, particularly with respect to definitions of "significant degradation," not allowing for "cost effective and reasonable" when evaluating alternatives, not allowing exemptions for discharges with pH greater than 9.0, not allowing exemptions for chemicals added to treat acid mine drainage, etc.*

### **Recommendations for Action**

- ◆ Combine efforts of West Virginia Mining & Reclamation Association with the West Virginia Coal Association to review the WVMA proposed language and make modifications as necessary. Then meet with the WVMA to present and discuss our proposed changes. Work in concert with Forestry Association, Poultry Producers, Quarry Group, Oil & Gas Associations, and WVMA to present unified industry position. Limited discussions have been held to date and are encouraging.
- ◆ Support continuation of the stakeholder process.
- ◆ Coordinate with National Mining Association to track Environmental Protection Agency proposed regulations.
- ◆ Participate aggressively to insure language satisfactory to the coal industry, including such issues as:
  - Definition of "significant degradation."
  - Language regarding precipitation induced discharges.
  - Exemptions for discharges with pH greater than 9.0.
  - Trading allowed between permits in different watersheds.
  - Offsets allowed between different watersheds.
  - Add language regarding compensation to those who have economic value "taken" by regulations.
  - Add language that assesses economic impact by comparing dollars of proposed investment versus money lost due to degradation.
- ◆ Evaluate Antidegradation Requirements for Selected Other States.
  - North Carolina
  - Indiana
  - Kentucky
  - Pennsylvania
  - Ohio

### **Conclusion**

The implementation of Antidegradation Regulations have the opportunity to be more far-reaching and severe than other provisions of the Clean Water Act we have seen to date.