

LOUISIANA'S COMING ANTIDegradation POLICY IMPLEMENTATION PROCEDURES

The Louisiana Department of Environmental Quality (LDEQ) is developing written procedures to implement Louisiana's antidegradation policy.¹ These implementation procedures will significantly affect the permitting of wastewater discharges under the Louisiana Pollutant Discharge Elimination System (LPDES) program, especially the permitting of new or expanded discharges.

The state antidegradation policy basically provides that state waters whose existing quality exceeds that specified in the applicable water quality standards shall be maintained at their existing high quality.² In other words, under the policy, if the ambient concentrations of pollutants in a bayou are much lower than necessary for the bayou to meet its

designated fishable/swimmable uses, the state must strive to keep the pollutant concentrations at this lower level when permitting wastewater discharges to the bayou.

The antidegradation implementation procedures being developed by LDEQ will set forth, in some detail, the means that LDEQ will employ to protect "high quality," or Tier 2,³ state waters when permitting wastewater discharges. Degradation of such waters will be allowed. That is, LDEQ will not be prohibited from permitting new and expanded discharges in Tier 2 waters. However, any resulting degradation of Tier 2 waters either must not be significant or, if significant, the social and economic benefits from the activity causing the discharge must outweigh the harm caused to the receiving water body. Permitting of discharges causing significant degradation of Tier 2 waters will be allowed only after a Tier 2 review, which is similar to an environmental assessment.⁴

1 See, LAC 33:IX.1109.A (antidegradation policy); LAC 33:IX.1119 (implementation plan for antidegradation policy); and 40 C.F.R. 131.12.

2 Pursuant to the Clean Water Act, LDEQ has evaluated each Louisiana surface water (river, lake, stream, etc.) and determined its "designated uses"; i.e., primary and secondary contact recreation (the so-called "fishable/swimmable uses), fish and wildlife propagation, drinking water supply, agriculture, etc. LDEQ likewise has developed "water quality standards"--numerical criteria or general policy statements--that LDEQ applies to each water body to ensure that its designated uses are met. LDEQ applies the water quality standards through the LPDES permitting process in three ways. First, through the normal LPDES permitting process, when the LDEQ permit writer compares a technology-based permit limit for a particular pollutant in a facility discharge to the water-quality based permit limit for such pollutant and includes the more stringent of these limits (the lower limit) in the LPDES permit. Second, by developing total maximum daily loads (TMDLs) and waste load allocations (WLAs) when a state water body fails to meet one or more of its designated uses and then incorporating such TMDLs/WLAs in LPDES permits that authorize discharges to the affected water body. Third, through the antidegradation policy when making LPDES permitting decisions.

3 Under the federal antidegradation protocol (which is generally being followed by the state), waters are divided into three tiers: (a) Tier 1, which are waters of sufficient quality to meet existing designated uses but whose quality is not such as to be considered "high quality"; (2) Tier 2, "high quality" waters; and (c) Tier 3, outstanding natural resource waters, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, in which no degradation is allowed.

4 See, e.g., La. R.S. 30:2018 and the "IT" questions as set forth by the Louisiana Supreme Court in *Save Ourselves, Inc. v. Louisiana Environmental Control Commission*, 452 So. 2d 1152 (La. 1984).

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When finalized by LDEQ, the new antidegradation policy implementation procedures will answer the following important questions:

- What are Tier 2 (high quality) waters?
- What discharges to Tier 2 waters constitute significant degradation (necessitating a Tier 2 review)?
- What is required for a Tier 2 review?⁵

LDEQ is working closely with interested members of the public, including environmentalists and the regulated community, as well as EPA Region 6, to address these questions in the new implementation

⁵ The Tier 2 review does not have to be the same as an environmental assessment or "IT" response.

procedures.⁶ As part of this effort, LDEQ intends to solicit additional input via a *Potpourri* notice in an upcoming Louisiana Register. If you believe that your facility will have new or expanded discharges (or you intend to change the receiving water body for your existing facility discharges), you should review the new draft implementation procedures carefully and comment thereon appropriately.



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⁶ EPA Region 6 also is preparing guidance on the development of antidegradation implementation procedures, which LDEQ will likely follow.



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