



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 15 2016

REPLY TO THE ATTENTION OF:
WQ-16J

Dear Honorable Leader:

I am inviting you to consult with the U.S. Environmental Protection Agency as we review a submittal from the Minnesota Pollution Control Agency (MPCA) of revisions to the State of Minnesota's antidegradation rules. We are inviting you to consult with us through a conference call (to be held on January 12, 2017) and/or through submittal of written comments (to be postmarked by January 13, 2017) as further described below.

In addition, MPCA has adopted revisions to the state's water quality standard (WQS) variance rules. EPA is currently in the process of determining whether these variance rules are subject to EPA review and approval or disapproval under CWA section 303(c). Regardless of whether the rules require EPA review, any individual WQS variances would require EPA review and approval. At this time, we are also inviting you to consult with us on the state's variance rules through the methods described below.

EPA's 2011 Policy on Consultation and Coordination with Indian Tribes (<http://www.epa.gov/tribal/consultation/consult-policy.html>) sets forth EPA's intent to consult on a government-to-government basis with tribes when EPA actions may affect tribal interests. Before reaching a final decision on this submittal, I am inviting consultation so that we may consider tribal interests that may be affected by the proposed action. Summaries of the variance and antidegradation rules are enclosed.

I am offering the following two avenues for tribes to provide input:

Conference call: My staff and I have scheduled a group consultation conference call at 3:00 pm to 4:00 pm Central Time on Thursday, January 12, 2017. During the call, we will summarize the state's proposed rules, answer any questions and obtain tribal input. If you or your representatives would like to participate in the group conference call or you want to schedule a separate private call, please have your staff inform Aaron Johnson of my staff by January 5, 2017. Mr. Johnson may be reached at (312) 886-6845 or johnson.aaronk@epa.gov.

Written comments: Comments/concerns may be provided in writing if postmarked by January 13, 2017. If you or your representatives are not able to attend the group conference call for a summary of the state's revised water quality standards rules,

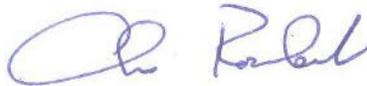
consider reviewing the material available on the MPCA website using the link found in the enclosure. Written comments may be submitted to me by postal mail at:

Chris Korleski
Director, Water Division
U.S. EPA, Region 5 (W-15J)
77 W. Jackson Blvd.
Chicago, IL 60604

The MPCA adopted the amended variance rules on October 17, 2016 and the antidegradation rules were adopted on November 14, 2016. MPCA is in the process of submitting the rules to EPA Region 5 for review and approval or disapproval under CWA section 303(c). Once an official submission has been received, EPA has 60 days to approve or 90 days to disapprove the new WQS. If we do not hear from you or your designated consultation representative(s) by January 13, 2017, we will conclude that you do not wish to engage in consultation and we will move forward with a final decision on Minnesota's rules.

Thank you for consideration of this matter. If you would like to talk to me directly about these consultation opportunities, feel free to call me at (312) 353-2147.

Sincerely,



Chris Korleski
Director, Water Division

Enclosures

cc: John Linc Stine, Commissioner, MPCA
Mary H. Lynn, Rule Coordinator, MPCA
Carol Nankivel, Rule Coordinator, MPCA

Summary of Minnesota Pollution Control Agency's Submission of Amended Rules for Water Quality Standards Variances

Overview

As defined at 40 CFR 131.3(o), a water quality standards (WQS) variance is “a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the variance.” To be eligible for a variance, the applicant must demonstrate that attainment of the specified use and criterion is not feasible during the term of the variance. If granted, a WQS variance does not remove the underlying use and criterion but allows the state to set the effluent limit in the applicant's NPDES permit at the highest attainable condition (HAC) instead of at the limit necessary to achieve the WQS. As a condition of the variance, the permittee must implement either feasible pollutant control technology or, if no additional feasible pollutant control technology is available, a Pollutant Minimization Program.

Because of new and revised state WQS and improved analytical methods, the Minnesota Pollution Control Agency (MPCA) expects that the number of WQS variance requests it receives will increase in future years. In anticipation of this increase, Minnesota conducted a stakeholder engagement project to evaluate the variance process. Based on this evaluation, MPCA developed the adopted rules to clarify the process by which WQS variances are granted and provide greater consistency with federal variance regulations. In addition, the adopted rules increase consistency between the variance rules found in different rule chapters. Some of the major provisions of the adopted rules are as follows:

- To be eligible for a variance, an applicant must demonstrate that attaining the WQS is infeasible based on one of six justifications included in the rule.
- If a variance is granted, the permit must include an interim effluent limit that represents the currently achieved treatment conditions and that can be no less stringent than that achieved under the previous permit. The permit must also include a schedule of compliance activities to move toward attainment of the underlying WQS.
- Before a variance may be granted, MPCA must provide an opportunity for public participation, including at least one meeting that meets the requirements at 40 CFR 25.5.

The full description of the revised variance rules can be found in the following document:

Statement of Need and Reasonableness: Proposed Amendments to Rules Governing Water Quality Variances, Minnesota Rule Chapters 7050, 7052, and 7053. Revisor No. RD4136

This and other documents can be accessed from the MPCA website at:

<https://www.pca.state.mn.us/water/amended-rules-water-quality-variances>

These adopted rules do not create or authorize any new WQS variances but only establish the procedures and requirements that applicants and the state must follow before a WQS variance may be granted. Any individual WQS variances must be submitted to EPA for review and

approval and any WQS variance generated under these rules that affect tribal interests would require tribal consultation during EPA's review process for that variance.

Status

The MPCA adopted the amended variance rules on October 17, 2016 and is currently in the process of submitting the rules to EPA. EPA is currently in the process of determining whether the rules require EPA review and approval or disapproval under CWA section 303(c). If EPA determines that the rules are subject to EPA review and approval or disapproval, EPA would have 60 days to approve or 90 days to disapprove the new WQS. At this point, EPA is reaching out to potentially impacted tribes to identify concerns and determine whether the proposal may impact tribal interests.

Summary of Minnesota Pollution Control Agency's Submission of Amended Antidegradation Rules

Overview

In addition to designated uses and water quality criteria, antidegradation represents one of the three core components of water quality standards (WQS). Federal regulations require states to develop and adopt an antidegradation policy to protect and maintain the levels of water quality already attained and also to develop methods for implementing the antidegradation policy. At a minimum, state antidegradation policies must be consistent with federal antidegradation regulations at 40 CFR 131.12, which establishes three levels of protection (commonly referred to as tiers). Within the Great Lakes basin, state antidegradation policies must also be consistent with the Water Quality Guidance for the Great Lakes System at 40 CFR 132, Appendix E. As established at 40 CFR 131.12, the three levels of protection that states must provide are:

- Tier 1 – Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
- Tier 2 – Where the quality of the waters exceeds levels necessary to support aquatic life and recreation uses, that quality shall be maintained unless the state finds that allowing a lowering of water quality is necessary to accommodate important economic or social development in the area in which the waters are located.
- Tier 3 – Where high quality waters constitute an outstanding national resource, that water shall be protected and maintained.

Minnesota last revised its antidegradation rules that are applicable statewide in 1988. The Minnesota Pollution Control Agency (MPCA) determined that these rules needed to be updated to increase consistency with federal guidance published since 1988 and to address permitting activities that had not been prevalent in 1988. In these adopted rules, MPCA repealed and replaced the antidegradation rules found in Minn. R. ch. 7050 (applicable to all waters of the state) and made minor revisions to antidegradation rules found in Minn R. ch. 7052 (applicable to waters in the Lake Superior basin). Some of the major changes made by the rule revisions are as follows:

- The significance test for Tier 2 reviews was removed. The existing rules had included an exemption from Tier 2 review for any activity that would increase the daily discharge rate by less than 200,000 gallons and increase the concentration of a pollutant less than 1% over that attained by January 1, 1988. This provision was inconsistent with federal guidance, which specifies that any significance test should be based on assimilative capacity and should include a cumulative cap. The revised rules do not include any significance test for Tier 2 reviews.
- The revised rules include an antidegradation policy and implementation procedures for activities such as municipal separate storm sewer systems, general permits and physical modifications (including the use of compensatory mitigation) that had not been considered in the existing rules.
- For a Tier 2 review, the revised rules change the standard for allowing a lowering of water quality from a requirement that the lowering be found to be “acceptable” to a

requirement that the lowering be found to be “necessary.” The revised Tier 2 review is more consistent with federal regulations.

- The revised rules include implementation procedures to clarify the requirements for permittees and the criteria by which the state will evaluate a permittee’s antidegradation assessment.

The full description of the revised antidegradation rules can be found in the following document:

Statement of Need and Reasonableness in the Matter of Proposed Revisions of Minnesota Rules ch. 7050, Relating to Nondegradation and minor supporting changes to Minnesota Rules chs. 7052 and 7001. Revisor No. RD4030

This and other documents can be accessed from the MPCA website at:

<https://www.pca.state.mn.us/water/nondegradation-rulemaking>

Status

The MPCA adopted the amended antidegradation rules on November 14, 2016. MPCA is in the process of submitting the rules to EPA Region 5 for review and approval or disapproval under CWA section 303(c). Once an official submission has been received, EPA has 60 days to approve or 90 days to disapprove the new WQS. At this point, EPA is reaching out to potentially impacted tribes to identify concerns and determine whether the proposal may impact tribal interests.