

MEMORANDUM FROM
HENRY G. WILLIAMS, Commissioner
New York State
Department of Environmental Conservation

September 9, 1985

TO: Executive Staff, Division Directors, Regional Directors
FROM: Hank Williams 
RE: ORGANIZATION AND DELEGATION MEMORANDUM NO. 85- 40
Water Quality Antidegradation Policy

Purpose

This document presents the policy by which the Department of Environmental Conservation (DEC) protects water quality against degradation.

Background

The DEC has a responsibility and obligation under federal law through the Clean Water Act (33 USC §§1251 et seq) to establish and implement a policy which protects existing water quality from being degraded.

An antidegradation policy was originally adopted by the State on May 7, 1970 by the then Water Resources Commission, and was approved by the then Federal Water Quality Administration (FWQA), Department of the Interior, in March 1971. This same statement was filed with NYS's water quality standards under the Clean Water Act and, subsequently, the package was approved by the U.S. Environmental Protection Agency (EPA) on March 27, 1974. The powers and responsibilities of the Water Resources Commission were transferred to DEC in 1972.

DEC Antidegradation Policy

It is recognized that certain waters of New York State possess an existing quality which is better than the standards assigned thereto. The quality of these waters will be maintained unless the following provisions have been demonstrated to the satisfaction of the Commissioner of Environmental Conservation:

1. That allowing lower water quality is necessary to accommodate significant economic or social development in the affected areas; and
2. That water quality will be adequate to meet the existing usage of a waterbody when allowing a lowering of water quality.

Where waters are meeting higher uses or attaining quality higher than the current classification, the Department will use the SEQR process to assure that potential adverse environmental impacts are adequately mitigated and higher attained uses are protected.

In addition, the highest statutory and regulatory requirements for all new point sources and cost effective and reasonable best management practices for non-point source control shall be achieved; and the intergovernmental coordination and public participation provisions of New York's continuing planning process will be satisfied.

Water which does not meet the standards assigned thereto will be improved to meet such. The water uses and the level of water quality necessary to protect such uses shall be maintained and protected.

Implementation

The antidegradation policy is implemented through a series of general and special laws such as Article XIV of the State Constitution, enacted in 1894 for maintaining the Forest Preserve as forever wild; the Wild, Scenic, and Recreational Rivers System added to the Environmental Conservation Law in 1972 (Article 15, Title 27); Article 17, Title 17 of the Environmental Conservation Law which specifically prohibits discharges into certain named rivers, streams, and lakes; stream classifications AA Special and N where no discharges are allowed (6 NYCRR Parts 701-702); and the formation of Agricultural Districts to preserve land for agricultural use (Agriculture and Markets Law; Article 25-AA). The State Pollutant Discharge Elimination System (SPDES) permit process serves the intended function of preventing degradation. SPDES permits include technology based and water quality based effluent limits derived from the water quality standards embodied in 6 NYCRR Parts 701-702. Each stream classification (AA, A, B, C, D, SA, SB, SC, SD, I) described in 6 NYCRR Parts 701-702 has specific standards and numerical criteria assigned thereto. The achievement of those criteria and standards assures that the best usage of each waterbody is protected. Those waters protected for trout spawning purposes require compliance with extremely high water quality standards which prohibit degradation.

For those waters not afforded special legislative or regulatory protection and status, the antidegradation policy is implemented through a number of on-going regulatory activities. These include the State Pollutant Discharge Elimination System (SPDES) permit process, the classification of waters, ECL 17-0301, 6NYCRR 609, and the State Environmental Quality Review Act (SEQR), ECL, Article 8. Where waters are of a higher quality than standards presently assigned thereto, and a higher use of those waters is a presently attained use, these activities provide to protect waters against degradation as follows:

(a) SPDES - Water quality based effluent limitations derived for SPDES permits provide for the protection and maintenance of attained higher uses above those included in standards currently assigned to waters receiving the effluent discharge. Variations in numerical water quality criteria that are not significant and do not interfere with the attained higher use are permitted.

(b) Reclassification - Where waters are determined to have achieved higher uses than those assigned in present classifications, they will be reclassified (upgraded) to incorporate the attained higher uses. The State's ongoing monitoring, surveillance, and reclassification activities identify those waterbodies where water quality exceeds presently assigned criteria and where uses attained are higher than those provided by present classifications. Such waters will be proposed for reclassification in the State's triennial water quality standards review process. For example, fish propagation waters, class "C", could be upgraded for trout habitat, "C(T)", or trout spawning, "C(TS)".

(c) SEQR - This regulatory process introduces the consideration of environmental factors into the early stages of actions that are directly undertaken, funded, or approved by State agencies. The approval of a SPDES permit is an action subject to SEQR. If, through the SEQR process, it is determined that a proposed action may have a significant effect on the environment, then a draft Environmental Impact Statement (EIS) is prepared to explore ways to minimize adverse environmental effects or identify a potentially less damaging environmental alternative. This could involve the imposition of more stringent or different types of permit conditions.