



# Colorado Wastewater Utility Council

*Serving Colorado's Water Quality and Treatment Needs*

January 30, 2009

Mr. Steven H. Gunderson, Director  
Water Quality Control Division  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

RE: Comments on the Colorado Antidegradation Process

Dear Mr. Gunderson:

The Colorado Wastewater Utility Council (CWWUC) appreciates the opportunity to submit the following comments on Colorado's antidegradation process. CWWUC is a nonprofit organization whose mission is to professionally and responsibly promote environmental protection by supporting legislation and regulations which achieve well-defined environmental benefits while maintaining local flexibility. Membership is open to any municipal or quasi-municipal agency in Colorado engaged in the operation of any collection, treatment or disposal of wastewater. Our members are regulated entities that operate in accordance with the Colorado Discharge Permit System (CDPS), and must comply with associated antidegradation review requirements.

Last year, the Water Quality Control Division (WQCD) initiated discussions regarding the antidegradation review process. On December 2, 2008, WQCD held a meeting with interested stakeholders, during which we reviewed implementation of the current guidance in the permitting process and brainstormed possible revisions to the guidance to streamline the process and to address concerns regarding the guidance as well as the process and criteria for determining whether a water body is reviewable. To help frame the discussion, WQCD proposed these questions:

- What can be changed to clarify the process for determining "baseline" water quality from which to assess when a new or increased discharge would be "significant," particularly where pre-2000 data do not exist?
- What constitutes a "new or increased discharge" that would trigger an antidegradation review?
- What information is necessary to support an alternatives analysis and how will that information be evaluated to determine whether degradation of existing water quality is appropriate?
- What should be done to address the concerns about the process and criteria for determining whether a water body should have its use protected status removed?

We support and applaud WQCD's goal of reducing unnecessary time and expense associated with the antidegradation process, while ensuring that existing uses and high quality waters are maintained and protected. To that end, we have prepared issue papers on each of these topics, which are enclosed with this letter. Each issue paper identifies our concerns with the current process, and provides our recommendations for revising and clarifying the process with a focus on efficient and effective use of resources. Each paper also provides supporting documentation and analysis.

The balance of this letter provides our general perspectives on the antidegradation process, including the proper scope of the program and appropriate implementation that balances the environmental protection provided by antidegradation with the need for permitting efficiency and certainty. Properly conceived, the antidegradation review process should be a special type of protection that is applied to actions that could significantly lower water quality on streams that are truly high quality, rather than a pervasive requirement added on to all other permitting and program requirements. Antidegradation goes beyond protection of the uses that is afforded through routine procedures associated with discharge permit issuance and renewals. Antidegradation protects the assimilative capacity that is better than necessary to protect the use. There are many mechanisms under the Clean Water Act and EPA's regulations that serve to protect water quality, and ensure that limits do not "backslide." Both new and existing discharges are currently subjected to requirements to utilize the best wastewater treatment technology. In particular, categorical industries and other significant industrial users are subject to pretreatment effluent guidelines which require them to treat pollutants to nationally set effluent limits as well as local limits that will protect each individual POTW to aid in meeting the CDPS permit standards and the receiving stream. Also, several other mechanisms are available, including water-quality-based effluent limitations under CWA § 301(b)(1)(C) and total maximum daily loads (TMDLs), to make sure that water quality standards are achieved and maintained.

The goal of antidegradation is to avoid reckless consumption of assimilative capacity when existing quality is far better than that quality required as the maximum allowable concentration defined by the water quality standards. That assimilative capacity is not defined by the Water Quality Control Commission's setting of a water quality standard. Only through a WQCD "public review process" is there any opportunity to consider the components of antidegradation, including the economic costs of maintaining or reducing the current good quality; the indirect impacts of more restrictive treatment; the unintended consequences of further treatment choices; and the trade-offs that might be made between providing further wastewater treatment and use of the assimilative capacity. Few dischargers have attempted this "public review process." It has been expensive, uncertain, and time consuming, and has raised concerns about ability to comply with stringent antidegradation-based limits. Most dischargers seek to avoid that process for now, by limiting themselves to current effluent concentrations. How long this practice can last remains to be seen. Definitions of current effluent concentrations range from current explicit water quality-based effluent limits to much lower implicit limits for those parameters with no reasonable potential to violate water quality standards. Those lower limits, however, may be based on insufficient data, and the basis for these low concentration

parameters has not been scrutinized in the past. The risk of violating these lower existing discharge effluent limits seems high.

The antidegradation program should be implemented with several key outcomes in mind. First, it should be easy to understand and transparent to the regulated community and other interested parties. Second, it should focus on new or increased discharges that will significantly lower water quality. Continuation of existing discharges and minor changes do not warrant the resources needed for antidegradation review. Meaningful antidegradation analysis of alternatives to mitigate probable increases occurs best when design capacity expansion provides a real opportunity to evaluate alternative treatment methods. Finally, there should be certainty in the process, including the potential outcomes and time needed to complete antidegradation review.

Antidegradation review can be time-consuming and expensive. Also, it can introduce a substantial element of uncertainty into planning, concerning both how long the process will take and what the outcome will be. For these reasons, the rule should contain an applicability provision that uses a clear trigger of only conducting antidegradation review when a discharger is requesting a new or increased discharge that requires a new or modified NPDES permit. The request of an existing discharger must be to expand its treatment capacity. Site application reviews that result in determination that a plant upgrade is required should be the trigger and should be conducted prior to permit renewals. Furthermore, it is important to ensure that the review process focuses on more significant projects, rather than small projects that have little or no impact on pollutant loadings in waters. This focus makes sense for the simple reason that antidegradation applies to water bodies that have water quality better than standards. The antidegradation program never allows any increases that would violate those standards, so there is no risk that increases will cause unsafe water quality.

There are some projects, with significant new or increased discharges, for which a full antidegradation review will be necessary. However, it is important that this process be designed to ensure that worthwhile projects are not unnecessarily discouraged, impeded or even halted. That would have profound effects on business and municipal planning, with adverse impacts on economic growth and on society generally, with little or no benefit to water quality. To avoid that result, the rules need to establish a clear, step-wise process for antidegradation review that all stakeholders can understand and participate in at appropriate times. The criteria that the agency will use to decide if a project passes review need to be clearly spelled out, but should not be so rigid as to preclude consideration of case-specific factors. In the review process, due deference needs to be given to determinations made by local authorities concerning the social and economic benefits that would result from the proposed projects. Perhaps most importantly, the process needs to have timelines built in, so the review takes place within a reasonable timeframe that will allow proposing entities to make plans without enduring enormous uncertainty.

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We appreciate your consideration of our recommendations, and we look forward to working with you to improve the antidegradation process. We agree that the process can and should be streamlined to reduce workload and preserve resources. We intend to address these issues, as appropriate, in our recommendations for issues and proposals at the issues formulation hearing that will kick off the Triennial Review process later this year. In the meantime, please let us know if you have any questions or would like to have further discussions about this submittal.

Sincerely,

*Original Signed By*

Paul Grundemann, Chairman

cc: Mr. Dave Akers, Water Pollution Control Program Manager  
Mr. Richard Parachini, Watershed Program Manager