



Ohio Revised Code

Section 6111.12 Antidegradation policy applicable to surface waters of the state pursuant to applicable federal laws and regulations.

Effective: January 1, 2016

Legislation: House Bill 64 - 131st General Assembly

(A) The director of environmental protection shall establish an antidegradation policy applicable to surface waters of the state pursuant to applicable federal laws and regulations. The purpose of the policy shall be to maintain levels of water quality that are currently better than prescribed by applicable standards except in situations when a need to allow a lower level of water quality is demonstrated based on technical, social, and economic criteria. Not later than March 31, 1994, the director shall revise the existing antidegradation policy established in rules adopted under section 6111.041 of the Revised Code and revise any necessary implementation procedures to conform them to the following principles and any mandatory regulations adopted under the Federal Water Pollution Control Act:

(1) The use of existing effluent quality as a method of calculating antidegradation-based limits shall be imposed only to the extent that the use is explicitly required by federal law or regulation as the only means available to implement antidegradation.

(2) No degradation shall be allowed in waters for any pollutant that currently does not meet applicable standards. For all remaining waters, there shall be provisions requiring federal antidegradation requirements to be met and provisions ensuring that waters of exceptional recreational or ecological value are maintained as high quality resources for future generations. There shall be at least two categories of surface waters identified in the state for that purpose and for the purpose of establishing priorities for the administrative and technical resources expended on antidegradation reviews.

(3) Whenever current ambient water quality is determined to be of a higher quality than prescribed in the standards, on a pollutant-by-pollutant basis, and the water body lacks exceptional recreational or ecological value, the director may allocate to existing sources eighty per cent of the pollutant assimilative capacity as determined by appropriate total maximum daily load procedures without further antidegradation review. The permittee for any existing source may receive an effluent



limitation based on not more than one hundred per cent of the mass or concentration levels necessary to meet applicable water quality in the receiving water body as determined by appropriate total maximum daily load procedures, provided that there has been a satisfactory demonstration of the need to allow lower water quality based on technical, social, and economic criteria and the action is preceded by a public notice. Sources other than existing sources that result in ten per cent or greater change, that is, degradation, of ambient chemical water quality shall require a demonstration of technical, social, and economic need and shall be the subject of a public notice.

(4) Degradation of waters identified as possessing exceptional recreational or ecological value shall be determined through an analysis of the expected perceptible change in ambient concentrations of pollutant or alternatively through an analysis of the expected change in the biological condition of the water body. Either determination shall constitute a lowering of water quality and shall require an antidegradation review. The director shall establish, by rules adopted in accordance with Chapter 119. of the Revised Code, a definition of perceptible change that shall be applicable to those waters identified in rule as possessing exceptional recreational or ecological value. Antidegradation reviews shall be required for any activity resulting in a perceptible change in ambient chemical or biological quality on waters identified as possessing exceptional recreational or ecological value. Allowances shall be made for existing sources to retain their current permit limits with no requirement to demonstrate technical, social, and economic need.

(5) The director shall establish reasonable protocols for completing technical, social, and economic need demonstrations based on existing federal guidance and on input from the department of development, the regulated community, and the general public.

(B) Effluent limitations established by the director for any existing source in any permit issued under division (J) of section 6111.03 of the Revised Code prior to July 1, 1993, shall continue in effect unless the permit is modified by the director. A discharger seeking modification of antidegradation-based limitations that were based on existing quality of discharge when the permit was issued shall apply to the director for modification of the permit, consistent with rules adopted under division (A) of this section, not later than one hundred eighty days after July 1, 1993. If the permittee has filed such a timely application for modification, the director shall not pursue administrative or judicial enforcement actions for violations of antidegradation-based limitations based on the existing quality of effluent that occur after July 1, 1993.



(C) A historically channelized watercourse provides technical, social, and economic benefits. Therefore, with regard to a historically channelized watercourse, the director shall not require further antidegradation review during the review of an application for and the issuance or denial of a permit under this chapter or a water quality certification under section 401 of the Federal Water Pollution Control Act if the director finds, after public notice and opportunity for comment, and a public hearing if significant public interest is shown, that all of the following apply:

- (1) Work is necessary to restore or maintain a drainage or other improvement provided by a historically channelized watercourse.
- (2) The work is performed pursuant to section 940.06 of the Revised Code or a petition filed under section 6131.04 or 6133.02 of the Revised Code.
- (3) Without the work, flooding threatens public health and safety or may result in significant damage to public or private property.
- (4) The work will not result in the loss of designated or existing beneficial uses as those uses are described in rules adopted under section 6111.041 of the Revised Code.
- (5) The work will not harm or interfere with the protection of federal or state designated endangered or threatened species.
- (6) The historically channelized watercourse is not designated as coldwater habitat, exceptional warmwater habitat, or a state resource water in rules adopted under section 6111.041 of the Revised Code.
- (7) If information is available concerning resident fishery or macroinvertebrate communities, or both, in the historically channelized watercourse, the historically channelized watercourse does not support a particularly diverse or unique warmwater habitat as that term is defined in rules adopted under section 6111.041 of the Revised Code.
- (8) Plans for the work have been submitted to the applicable soil and water conservation district



organized under Chapter 940. of the Revised Code.

(9) A storm water runoff plan has been developed for the watershed prior to or during planning and design of the work and the work is consistent with the plan.

(D) As used in this section:

(1) "Existing sources" means any treatment works that were built and operational under the terms of an NPDES permit prior to July 1, 1993, but does not include expansions or upgrades of existing treatment works authorized in rules adopted under section 6111.03 of the Revised Code after that date.

(2) "Appropriate total maximum daily load procedures" means the procedures, policies, and guidelines used by the director prior to July 1, 1993, or subsequent revisions to those procedures established in rules adopted in accordance with Chapter 119. of the Revised Code.

(3) "Antidegradation review" means the consideration by the director of the technical, social, and economic need demonstration completed by any person requesting to lower water quality as provided in this section, including the public notice of the application and, at the discretion of the director, a public hearing on it.