

7050.0265 ANTIDEGRADATION STANDARDS WHEN CHANGES IN EXISTING WATER QUALITY ARE REASONABLY QUANTIFIABLE.

Subpart 1. **Scope.** This part applies to activities regulated by the following control documents:

- A. new, reissued, or modified individual NPDES wastewater permits;
- B. new, reissued, or modified individual NPDES storm water permits for industrial activities, as defined under part 7090.0080, subpart 6;
- C. new, reissued, or modified individual NPDES storm water permits for construction activities, as defined under part 7090.0080, subpart 4;
- D. section 401 certifications for new, reissued, or modified individual federal licenses and permits; and
- E. other control documents that authorize net increases in loading or other causes of degradation and where changes in existing water quality of individual surface waters can reasonably be quantified through antidegradation procedures.

Subp. 2. **Protecting existing uses.** The commissioner shall approve a proposed activity only when existing uses and the level of water quality necessary to protect existing uses are maintained and protected.

Subp. 3. **Compensatory mitigation.**

A. The commissioner shall allow compensatory mitigation as a means to preserve an existing use when there is a physical alteration to a surface water only when all of the following conditions are met:

- (1) prudent and feasible alternatives are not available to avoid or minimize adverse impacts to the surface water;
- (2) the mitigation is sufficient in quality and quantity to ensure replacement of the lost surface water;
- (3) the mitigation is accomplished by:
 - (a) restoring a previously impacted surface water of the same type, or other type if required by statute; or
 - (b) when restoring is not a prudent or feasible alternative, establishing or enhancing a surface water of the same type, or other type if required by statute;
- (4) the mitigation occurs within the same watershed, to the extent prudent and feasible; and
- (5) the mitigation is completed before or concurrent with the actual physical alteration, to the extent prudent and feasible.

B. For the purposes of subpart 2 and part 7050.0250, item A, existing uses are maintained and protected when regulated activities involving the physical alterations of surface waters are in compliance with item A.

C. When the physically altered surface water is of high quality, the commissioner shall ensure the requirements specified in subpart 5 are satisfied.

Subp. 4. **Protecting beneficial uses.** The commissioner shall not approve a proposed activity that would permanently preclude attainment of water quality standards.

Subp. 5. **Protecting surface waters of high quality.** Items A to D apply to surface waters the commissioner determines to be of high quality.

A. The commissioner shall not approve a proposed activity when the commissioner makes a finding that prudent and feasible prevention, treatment, or loading offset alternatives exist that would avoid degradation of existing high water quality. When the commissioner finds that prudent and feasible prevention, treatment, or loading offset alternatives are not available to avoid degradation, a proposed activity shall be approved only when the commissioner makes a finding that degradation will be prudently and feasibly minimized.

B. The commissioner shall approve a proposed activity only when the commissioner makes a finding that lower water quality resulting from the proposed activity is necessary to accommodate important economic or social changes in the geographic area in which degradation of existing high water quality is anticipated. The commissioner shall consider the following factors in determining the importance of economic or social changes:

(1) economic gains or losses attributable to the proposed activity, such as changes in the number and types of jobs, median household income, productivity, property values, and recreational, tourism, and other commercial opportunities;

(2) contribution to social services;

(3) prevention or remediation of environmental or public health threats;

(4) trade-offs between environmental media; and

(5) the value of the water resource, including:

(a) the extent to which the resources adversely impacted by the proposed activity are unique or rare within the locality, state, or nation;

(b) benefits associated with high water quality for uses such as ecosystem services and high water quality preservation for future generations to meet their own needs; and

(c) factors, such as aesthetics, that cannot be reasonably quantified; and

(6) other relevant environmental, social, and economic impacts of the proposed activity.

C. A proposed activity that would result in degradation of existing high water quality shall be approved only if the commissioner determines that issuance of the control document will achieve

compliance with all applicable state and federal surface water pollution control statutes and rules administered by the commissioner.

D. The commissioner shall provide an opportunity for intergovernmental coordination and public participation before allowing degradation of existing high water quality.

Subp. 6. **Protecting restricted outstanding resource value waters.** The commissioner shall restrict a proposed activity in order to preserve the existing water quality as necessary to maintain and protect the exceptional characteristics for which the restricted outstanding resource value waters identified under part 7050.0335, subparts 1 and 2, were designated.

Subp. 7. **Protecting prohibited outstanding resource value waters.** The commissioner shall prohibit a proposed activity that results in a net increase in loading or other causes of degradation to prohibited outstanding resource value waters identified under part 7050.0335, subparts 3 and 4.

Subp. 8. **Protecting against impairments associated with thermal discharges.** When there is potential for water quality impairment associated with thermal discharges, the commissioner's allowance for existing water quality degradation shall be consistent with section 316 of the Clean Water Act, United States Code, title 33, section 1326. When a variance is granted under section 316(a) of the Clean Water Act, United States Code, title 33, section 1326, antidegradation standards under this part still apply.

Statutory Authority: *MS s 115.03; 115.44*

History: *41 SR 545;*

Published Electronically: *November 20, 2017*