

POTPOURRI
Department of Environmental Quality
Office of the Secretary
Legal Division

Notice of Public Hearing
Substantive Changes to Proposed Rule WQ085
Minor Revisions to Water Quality Standards Antidegradation Language
(LAC 33:IX.1119) (Log #WQ085S)
(1212Pot1)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department is seeking to incorporate substantive changes to the proposed amendments to various regulations, LAC 33:IX.1119 (Log #WQ085S), which were originally noticed as WQ085 in the July 20, 2012 issue of the *Louisiana Register*. (1212Pot1)

The department has made substantive changes to address comments received during the public comment period of proposed rule WQ085. The regulation now states that additional implementation procedures may be incorporated into the Water Quality Management Plan after appropriate public participation and intergovernmental coordination. Additionally, the regulation has been changed to clarify that the antidegradation policy applies to both activities and discharges. Finally, language has been included to address increased wastewater discharges and to clarify permit requirements.

A ~~strikeout~~/underline/~~shaded~~ version of the proposed rule that distinguishes original proposed language from substantively changed language is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

A public hearing on the substantive changes will be held on January 29, 2013, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the substantive changes. Persons commenting should reference this proposed regulation by WQ085S. Such comments must be received no later than January 29, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-4068 or by e-mail to deidra.johnson@la.gov. The comment period for the substantive changes ends on the same date as the public hearing. Copies of these substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ085S. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These substantive changes are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

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Executive Counsel

**TITLE 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality**

Subpart 1. Water Pollution Control

Chapter 11. Surface Water Quality Standards

§1105. Definitions

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Degradation—a lowering of water quality, as demonstrated by data analysis, water quality models, or other scientifically defensible method.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 26:2545 (November 2000), LR 29:557 (April 2003), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:456 (March 2007), LR 33:827 (May 2007), LR 35:445 (March 2009), LR 38:**.

§1109. Policy

Water quality standards policies concerned with the protection and enhancement of water quality in the state are discussed in this Section. Policy statements on antidegradation, water use, water body exception categories, compliance schedules and variances, short-term activity authorization, errors, severability, revisions to standards, and sample collection and analytical procedures are described.

A. Antidegradation Policy

1. State policy is that all waters of the state, including interstate, intrastate, and coastal waters, and any portions thereof, whose existing quality exceeds the specifications of the approved water quality standards or otherwise supports an unusual abundance and diversity

of fish and wildlife resources, such as waters of national and state parks and refuges, will be maintained at their existing high quality. After completion of appropriate analysis and public participation processes (as outlined in the Water Quality Management Plan and the Continuing Planning Process), ~~the~~ state may choose to allow lower water quality in waters that exceed the standards to accommodate justifiable economic and/or social development in the areas in which the waters are located, but not to the extent of violating the established water quality standards. ~~Appropriate use attainability analyses will be required before any lowering of water quality will be allowed.~~ No such changes, however, will be allowed if they impair~~interfere with or become injurious to~~ the existing water uses. No lowering of water quality will be allowed in waters where standards for the designated water uses are not currently being attained.

2. The administrative authority will not approve any wastewater discharge or certify any activity for federal permit that would impair ~~water quality or the existing uses~~ of state waters. Waste discharges must comply with applicable state and federal laws for the attainment of water quality goals. Any new, existing, or expanded point source or nonpoint source discharging into state waters, including any land clearing which is the subject of a federal permit application, will be required to provide the necessary level of waste treatment to protect state waters as determined by the administrative authority. Further, the highest statutory and regulatory requirements shall be achieved for all existing point sources and best management practices (BMPs) for nonpoint sources. Additionally, no degradation shall be allowed in high-quality waters designated as that constitute outstanding natural resources waters, as defined in LAC 33:IX.1111.A,~~such as waters in the Louisiana Natural and Scenic Rivers System~~ or waters of ecological significance identified as designated by the department. Those water bodies presently designated as outstanding natural resources waters are listed in LAC 33:IX.1123.

A.3. – J.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:966 (October 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2546 (November 2000), LR 29:557 (April 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:828 (May 2007), LR 38:**.

§1119. Implementation Plan for Antidegradation Policy

A. Summary and Purpose

1. As stated in LAC 33:IX.1109.A of these regulations, the Antidegradation Policy provides a legal framework for the basic maintenance and protection of all designated water uses. It also outlines methods that the state uses to protect state waters from water quality degradation and some of the state and federal rules and regulations that authorize them.

2. ...

B. Implementation of Louisiana's Water Quality Management Process

1. Procedures and methods by which the Antidegradation Policy is implemented are described in this Section ~~several documents produced under the Water Quality Management Plan (WQMP) Process ("The Water Quality Standards (WQS)," "The Water Quality Integrated Report," and "The Continuing Planning Process").~~ which These documents isare available from the department. Additional implementation procedures may be incorporated into the Water Quality Management Plan after appropriate public participation and intergovernmental coordination.

2. – 2.g. ...

C. Specific Implementation Procedures for the Antidegradation Policy. The antidegradation policy is implemented by ensuring that for all new or increased

~~discharges~~activities which may impact water quality and are permitted by the state, or for which there must be a permit on which the state comments, consideration is given to requirements of the policy. The basic principle of the policy is that water quality criteria specified in the standards shall not be exceeded and that designated uses will not be adversely impacted.

1. ...

2. If a new or increased~~such~~ activity will impact water quality by either a point or nonpoint source discharge of pollutants, the state shall ensure that the activity will not ~~impair~~~~interfere with or become injurious to~~ the existing uses. If water quality will be degraded, the state shall ensure that an analysis consistent with the Antidegradation Policy is completed, and the intergovernmental coordination and public participation provisions of the state's Continuing Planning Process are met.

3. ...

* * *

4. If a new or increased wastewater discharge or activity is proposed for an outstanding natural resource water body, ~~as defined by this Chapter,~~ the administrative authority shall not approve that discharge or activity if it will cause *degradation*, as defined in LAC 33:IX.1105, of these waters body. ~~For these purposes, *degradation* is defined as a statistically significant difference at the 90 percent confidence interval from existing physical, chemical, and biological conditions.~~ A facility identified by the administrative authority as having an unpermitted discharge will be required to apply for an LPDES permit in accordance with LAC 33:IX.2501.A. An existingThe unpermitted discharge may be permitted~~allowed~~ if the discharge existed before the designation as an outstanding natural resource water body. Additionally, an ~~e~~Existing unpermitted discharges of treated sanitary wastewater may also be permitted~~allowed~~ if

~~no reasonable alternative discharge location is available or if the discharge existed before the designation as an outstanding natural resource water body.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2548 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:831 (May 2007), LR 38:**.