SD Department of Environment and Natural Resources

Antidegradation Implementation Procedures

October 1998

I. INTRODUCTION

This document outlines the antidegradation procedures and methods to be followed by the Department of Environment and Natural Resources (DENR) in implementing the state antidegradation policy found at §74:51:01:34.

This document is intended to be used as guidance to DENR in determining antidegradation requirements for applicable regulated activities. It is not a regulation. In certain situations based on site-specific information, it may be necessary to deviate from this guidance to accommodate the site-specific conditions.

Implementation of state antidegradation requirements through this guidance promotes the maintenance and protection of surface water quality. As explained later in this document, all "waters of the state" are provided one of three different levels, or tiers, of antidegradation protection. The level of protection that is provided to a specific segment depends upon a number of factors that are discussed in this guidance. The three levels of protection discussed in this guidance are:

- Tier 1 Waters - These are waterbodies where, at a minimum, the existing in-stream uses and the level of water quality necessary to protect those uses must be maintained. This tier classification applies to all waterbodies in the state. To provide this protection, all permitted discharges to these waterbodies must meet the minimum requirements prescribed by the water quality standards regulations (ARSD 74:51:01).

- Tier 2 Waters – These are waterbodies where the existing water quality is better than the minimum standards established in the state's surface water quality standard regulations. The Water Management Board or department secretary may allow permitted discharges to Tier 2 Waters with water quality limits based on the water quality standards of the waterbody if it is necessary to accommodate important economic or social development.

- Tier 3 Waters – These are waters that require the most protective antidegradation requirements. In order to receive this classification, the Water Management Board has to have designated these waterbodies as Outstanding State Resource Waters (OSRW). In accordance with this guidance, degradation of the waterbodies water quality is not allowed for OSRW waters. Permitted discharges would be allowed, however, typically those permits would contain water quality limits based on the ambient water quality conditions rather than the water quality standards assigned to the waterbody.

The department will use this guidance to determine antidegradation requirements for applicable regulated activities covered by ARSD Chapter 74:51:01.

This guidance defines common key terms and contains the procedures to be followed in completing an antidegradation review. A copy of the antidegradation worksheet used by DENR to document review findings is also attached.

II. DEFINITIONS

Antidegradation of Water Quality Review is the procedure identified in this guidance to determine the state's antidegradation requirements.

Assimilative capacity is the amount of pollution a waterbody may accommodate without causing the concentration of any particular pollutant to be greater than the water quality standard for that pollutant. The assimilative capacity of a waterbody is typically used as the basis for determining effluent limits that are included in the proposed surface water discharge permit. The permit limits are determined by a wasteload allocation.

Designated beneficial use means those beneficial uses specified in chapters 74:51:02 and 74:51:03 for each water body or segment whether or not they are being attained.

Existing beneficial use means those uses actually attained in surface waters of the state whether or not they are so designated.

Trading means establishing upstream controls to compensate for new or increased downstream sources, resulting in maintained or improved water quality at all points, at all times, and for all parameters. Trading may involve point sources, non-point sources or a combination of point and non-point sources.

III. THE ANTIDEGRADATION REVIEW PROCESS

In accordance with this guidance and the antidegradation policy established in ARSD Chapter 74:51:01, the secretary will conduct a review of regulated activities involving new or increased discharges of pollution. The specifics of the review will depend upon the water body segment that will be affected, the tier classification of the water body segment, and the extent to which existing water quality would be degraded by the discharge from the permitted source. However, it is important to note that at no time can the secretary allow degradation in the stream below the minimum level required by the water quality standard or impair any existing or designated beneficial use.

An antidegradation review is subdivided into two activities:

1. A preliminary review to identify the level of review required under the antidegradation requirements in ARSD Chapter 74:51:01 and to determine if the applicable regulated activity is exempt from the antidegradation review process; and,
2. The *formal* antidegradation review that involves intergovernmental coordination, public notice, and opportunity for public comment and a hearing.

The "antidegradation of water quality review" required by §§74:51:01:35, 74:51:01:36, 74:51:01:37, 74:51:01:37.01 and 74:51:01:38 refers to the *formal* antidegradation review process described in this guidance (referenced in item #2 above). However, through adoption of the water quality standards regulations, the board has exempted specific actions from the formal review process. This list of exemptions essentially identifies waters that receive tier 1 protection and is discussed in more detail in Part IV of this guidance.

The antidegradation review process allows the secretary to determine whether authorizing the proposed regulated activity would be consistent with state antidegradation requirements.

When a formal antidegradation review is required by ARSD Chapter 74:51:01, a preliminary decision on whether to allow degradation is made by the secretary. The secretary then provides the determination to the permit applicant, other interested governmental agencies, other interested parties, and provides a public notice as required by the water quality standards regulations. The public notice allows for public comment and opportunity for any interested party to request a hearing on the antidegradation review and the secretary's decision. To request a hearing, a petition in accordance with §74:50:02 contesting the secretary's decision has to be filed with DENR. Once the petition is filed, the department will schedule a contested case hearing before the Water Management Board. If the secretary's decision is not contested, that decision becomes the final determination on the review.

The substance and basis of the final decision by the secretary or board are documented in the administrative record. The procedures to be followed by the secretary in reaching a preliminary decision on the antidegradation review are described in detail below.

PART IV. Antidegradation Procedures for Tier 1 Waterbodies

A. Waters Qualifying for Tier 1 Protection

Under this guidance, all waters are subject to Tier 1 protection. In general, waterbodies that receive only Tier 1 protection are those waterbodies that have been exempted from the antidegradation review process in ARSD 74:51:01:35 or those waterbodies where the ambient water quality is at or greater than the allowable levels established by the water quality standard regulations.

B. Protection Afforded Tier 1 Waters

The state antidegradation policy established in ARSD Chapter 74:51:01 requires: (1) protection of existing uses, and (2) protection of the water quality necessary to maintain and protect existing uses.

C. Requirements to Ensure Water Quality to Maintain and Protect Tier 1 Waters

(1) Confirm that Designated Uses Address Existing Uses

Prior to authorizing an activity that discharges to a waterbody with Tier 1 protection, the secretary shall ensure that the resulting water quality in the receiving water will be sufficient to protect existing uses. The secretary shall determine whether the water body currently supports, or has supported since March 27, 1973, an existing use that has more stringent water quality requirements than the current designated uses. Where the current designated uses appropriately reflect the existing uses, the water quality requirements will be presumed to also fully protect existing uses.

(2) Require Water Quality Necessary to Protect Existing Uses

Where the secretary determines that the water body currently supports, or has supported an existing use that has more stringent water quality requirements than the currently designated uses, the secretary shall identify the level of water quality necessary to protect the existing uses of the waterbody. For example, where a proposed activity will result in the discharge of a substance for which sufficient data to derive appropriate criteria are available (e.g. § 304(a) criteria are available), but numeric criteria have not been adopted by the State, the secretary will develop effluent limitations that will protect the existing use.

(3) Trading

If applicable, where the receiving water is a Tier 1 waterbody, the applicant may implement or finance upstream controls of point or non-point sources sufficient to offset the water quality effects of the proposed activity. By implementing trading, the applicant may be able to create assimilative capacity in a stream. The DENR will document the basis for trade through a Total Maximum Daily Load (TMDL) pursuant to CWA § 303(d) requirements. See definition of trading in Part II.

(4) Additional Information Requirements

The applicant may be required to provide monitoring data or other information about the affected water body to help determine whether the proposed activity will provide the level of water quality necessary to protect existing uses. The information that will be required in a given situation will be identified on a case-by-case basis.

V. TIER 2 PROCEDURES

A. Antidegradation Procedures for Tier 2 Waterbodies

Tier 2 waterbodies are those where the existing water quality is better than the minimum standards established in the state's surface water quality standard regulations. The Water Management Board or department secretary may allow permitted discharges to Tier 2 waters with water quality limits based on the water quality standards of the waterbody if it is necessary to accommodate important economic or social development.

As a result of the antidegradation review for a Tier 2 waterbody, there are several potential outcomes of the review. Those outcomes are as follows:

(a) The review determines that degradation of water quality in the Tier 2 water should not be allowed. This would require the permitted discharge to meet effluent limits that would not cause any change in water quality in the receiving water or find other alternatives to discharging to the waterbody;
(b) The review determines that the discharge will cause an insignificant change in water quality in the receiving stream. The agency can proceed with issuance of the permit with appropriate conditions to ensure water quality standards are met;
(c) The review determines, with public input, that the permitted discharge should be allowed to discharge effluent at concentrations determined through a TMDL based on the upstream ambient water quality and the water quality standard of the receiving stream; or,
(d) The review determines that the discharge can be allowed, but results in discharge effluent limits that will not utilize all of the available assimilative capacity, consistent with the applicant's alternatives analysis and a finding that using all of the assimilative capacity is not necessary.

(1) Qualification Factors

In general, waters with ambient water quality that is better than the water quality standards assigned to that water body to ensure protection of the fishable/swimmable uses assigned to the water body are considered Tier 2 waters. The factors that may be considered include the following:

(a) Existing aquatic life uses;
(b) Existing recreational uses; and
(c) Existing baseline water quality.

(2) Criteria Excursions

Tier 2 water review procedures may be applied even where the water quality standard for some pollutants is not always being met in the water body. Where excursions occur for one or more pollutants, the department will decide if it is a Tier 2 water body based on the factors identified above and in consideration of any additional available information.

(3) Information Requirements

The applicant may be required to provide monitoring data or other information about the affected water body to help determine the applicability of Tier 2 requirements. The information that will be required in a given situation will be identified on a case-by-case basis. Such information may include recent ambient chemical, physical, or biological monitoring data sufficient to characterize the existing uses.

(4) Characterizing Ambient Water Quality

The secretary will use the same procedure that is used in determining ambient water quality when developing total maximum daily loads. This method involves evaluating the ambient water quality data available for the stream and choosing either the 50th or 80th percentile to represent the ambient conditions.

B. Determination of Significant Degradation

(1) Overview

When applicable, the secretary will determine whether the proposed regulated activity will cause significant degradation of the stream. The factors to be addressed in judging significance are identified in paragraph (2) below.

(2) Significance Factors

The secretary will determine the likelihood that a proposed regulated activity will cause significant degradation for all water quality parameters that may be affected by the proposed activity. This decision will be made on a parameter-by-parameter basis. The secretary will identify and eliminate from further review *only* those proposed regulated activities that present insignificant threats to water quality. For these activities, the antidegradation review has been completed and the process to issue the applicable permit may proceed. Proposed applicable regulated activities that may result in significant *degradation* are subject to Tier 2 requirements. Proposed applicable regulated activities that meet **any** of the criteria listed below will be considered *insignificant* and are not required to undergo further review:

(a) where the change in water quality will only be temporary;
(b) where the change in water quality for any parameter for which there are only narrative water quality standards will not adversely impact any existing or designated use;
(c) where the volume of the proposed discharge is small compared to the flow of the receiving stream such that the ratio of the average stream flow to the discharged flow is expected to be greater than 50:1;
(d) where the increase in concentration of pollutants in the stream at the critical low flow is expected to be less than 20% of the assimilative capacity of the stream segment; **or**,
(e) Where discharges change the existing instream water quality less than one standard deviation of the mean instream water quality for that parameter. This criterion may be used only where the secretary has determined available data are sufficient to establish long term ambient water quality trends, establish recent ambient water quality trends, or consider other statistically relevant factors.

The intent of the significance test is to establish a de minimis test and to eliminate from further review proposed activities that will result in minor changes in water quality.

(3) Trading

The secretary may conclude that a proposed activity will not cause *significant* degradation based upon the specifics of any upstream trading that has been agreed to by the project applicant. The secretary will document the basis for the trade through a TMDL pursuant to CWA § 303(d) requirements.

(4) Information Requirements

The applicant will be required to provide representative monitoring data or other information about the affected water body and the proposed activity to help determine the significance of the proposed degradation for specific parameters. The information required in a given situation will be identified on a case-by-case basis. Because these procedures establish a fairly low threshold of significance, in many cases a large database will not be necessary to determine if the proposed activity will result in significant degradation. The information required may include recent ambient chemical, physical, or biological monitoring data sufficient to characterize, during the appropriate critical condition(s), the existing background water quality of the segment. State TMDL procedures for characterizing existing water quality and projecting future water quality will be the basis for identifying needed information and interpreting available data.

(5) Determine Significance of Proposed Activity

If the secretary determines that an activity will not pose significant degradation for any parameter, no further antidegradation requirements shall apply; however, such activities must still meet all technology and water quality based limitations. Applicable regulated activities that have been determined to cause *significant* degradation are subject to the requirements described in Sections C. Determination of Socio-Economic Importance and D. Evaluation of Alternatives to Significant Lowering of Water Quality.

Activities involving a discharge of dredged or fill materials that are considered to have more than minor adverse affects on the aquatic environment are regulated by individual CWA § 404 permits. The decision making process relative to the 404 permitting program is contained in the 404(b)(1) guidelines (40 CFR Part 230). Prior to issuing a permit under the 404(b)(1) guidelines, the Corps of Engineers must: (1) make a determination that the proposed activity discharges are unavoidable (i.e. necessary); (2) examine alternatives to the proposed activity and authorize only the least damaging practicable alternative; and (3) require mitigation for all impacts associated with the activity. A 404(b)(1) finding document is produced as a result of this procedure and is the basis for the permit decision. Public participation is provided for in the process. Because the 404(b)(1) guidelines contains an alternatives analysis, the secretary will not require development of a separate alternatives analysis for the antidegradation review. The

department will use the analysis in the 404(b)(1) finding document in completing its antidegradation review and 401 certification.

C. Evaluation of Socio-Economic Importance

(1) Role of the Applicant

The applicant is required to demonstrate the social and economic importance of the proposed activity. The factors to be addressed in such a demonstration may include, but are not limited to, the following:

(a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);
(b) increased production;
(c) improved community tax base;
(d) housing;
(e) correction of an environmental or public health problem; and,
(f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

(2) Role of the Secretary

The secretary will assist and advise the applicant on preparing the necessary documentation to demonstrate social and economic importance. The secretary will make the social and economic information available for review during the intergovernmental coordination and the public participation process.

(3) Mitigation

The applicant may voluntarily submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., in-stream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the secretary or the Board to authorize proposed activities that would otherwise not be authorized.

(4) Role of Public

Because the socio-economic importance of a proposed activity is a question best addressed by local interests, the secretary will make the social and economic information available to the public for review and comment. If any interested person does not agree

that the project's social and economic importance justifies degradation to the waterbody, the interested person may file a petition with the secretary and request a hearing on the secretary's recommendation.

(5) Determination of Socio-Economic Importance

Based upon comments and information received during the public comment period and testimony presented at the contested case hearing, the Water Management Board will make the decision on the social and economic importance of the proposed surface water discharge.

D. Evaluation of Alternatives to Significant Lowering of Water Quality

(1) Role of the Applicant

The applicant is expected to prepare an evaluation to determine whether there are non-degrading or less-degrading alternatives. The evaluation shall provide substantive information pertaining to the costs and environmental impacts associated with the following alternatives:

(a) pollution prevention measures (for surface water discharge permits, completing a pollution prevention audit will be considered an acceptable evaluation of pollution prevention alternatives);
(b) reduction in scale of the project;
(c) water recycle or reuse;
(d) process changes;
(e) innovative treatment technology;
(f) advanced treatment technology;
(g) seasonal or controlled discharge options to avoid critical water quality periods;
(h) improved operation and maintenance of existing treatment systems;
(i) alternative discharge locations and alternate receiving waters; and
(j) other appropriate alternatives.

(2) Role of the Secretary

The secretary will review the applicant's alternatives to avoid or limit degradation to ensure all items required in this guidance have been addressed. The secretary will make the applicant's evaluation of alternatives available to all interested persons during the public comment period for review and comment.

(3) Role of the Public

If any interested person believes that the applicant has other available alternatives to avoid degradation to the waterbody, the interested person may file a petition with the secretary and request a hearing.

(4) Determination of Acceptable Alternatives

Based upon comments and information received during the public comment period and testimony presented at the contested case hearing, the Water Management Board will make the decision on whether there are more acceptable alternatives to allowing the degradation to occur.

E. Ensure Implementation of State-Required Point Source Controls

Where there are existing regulated point sources or non-point sources located in the area, the secretary will assure that compliance with required controls has been or will be achieved prior to authorizing the proposed activity. The secretary may conclude that such compliance has not been assured where there are unresolved compliance problems involving the same parameter within the area that would be influenced by the proposed activity (e.g., where existing point sources are violating their CWA § 402 permit limits or where existing, required best management practices are improperly applied or maintained). However, the existence of compliance schedules which will address unresolved compliance problems will be taken into consideration. In other words, required controls on existing regulated sources need not be finally achieved prior to authorizing a proposed activity provided there is reasonable assurance of future compliance.

VI. Antidegradation Procedures for Tier 3 Waterbodies

A. Waters Qualifying for OSRW Protection

(1) Qualification Criteria

Water body segments will be subject to tier 3 protection requirements only when the Water Management Board, through the state rule-making procedures, has assigned an OSRW designation. The factors to be considered in determining whether to assign an OSRW designation may include the following:

(a) Location (e.g., on federal lands such as National Parks or refuges),
(b) Other special designations (e.g., wild and scenic river),
(c) Existing water quality (e.g., pristine or naturally occurring),
(d) Ecological value (e.g., presence of endangered species),
(e) Recreational or aesthetic value, and
(f) Other factors that indicate outstanding ecological or recreational value.

(2) Public Nomination

The public may nominate any state water to be designated as an OSRW by following the petition requirements outlined in SDCL 1-26-13. The petition or nomination shall be submitted to the following address:

Water Management Board
C/o Secretary

Department of Environment and Natural Resources
523 East Capitol
Pierre SD 57501

The petition should explain why an OSRW designation is warranted based on one or more of the factors identified above. The petition must also include all data and evidence to support the designation of an OSRW.

B. Discharges to OSRW's

(1) No Change in Water Quality Allowed

Permitted discharges to OSRW segments are not explicitly prohibited. However, the secretary cannot allow any degradation, estimated through appropriate modeling techniques, of ambient water quality in the OSRW segment.

For direct CWA § 402 permitted discharges to the OSRW, effluent limits for substances in the new or increased portion of the discharge will be set equal to the mean ambient levels of these substances immediately upstream of the discharge site. For discharges that discharge upstream from the OSRW, the secretary will establish effluent limits based on appropriate techniques and best professional judgement to ensure that the ambient water quality in the OSRW is not degraded in accordance with this guidance. Mean ambient levels will be determined based on an adequate number of representative samples sufficient to characterize the current ambient quality and its variability. Where appropriate, the secretary may require a specified level of follow-up ambient monitoring.

Based on appropriate techniques and best professional judgement, the secretary will determine whether an applicable regulated activity has any effect on the water quality in an OSRW. Factors that the secretary will consider are:

(a) Percent change in ambient concentrations of selected pollutants predicted at the appropriate critical low-flow condition(s),
(b) Percent change in pollutant loadings (i.e., the new or expanded loadings compared to total existing loadings to the segment),
(c) Percent reduction in available assimilative capacity,
(d) Nature, persistence, and potential effects of the pollutant,
(e) Potential for cumulative effects, and
(f) Degree of confidence in the various components of any modeling techniques utilized (e.g., degree of confidence associated with the predicted effluent variability).

(2) Trading

New or expanded permitted discharges may be allowed where the applicant agrees to implement or finance upstream controls of point or non-point sources sufficient to offset the water quality effects of the proposed activity. Where such trading occurs, tier 3

requirements will be considered satisfied when the applicant can show that water quality at all points within the study area will be either maintained or improved. The secretary will document the basis for a trade through a TMDL developed pursuant to CWA § 303(d) requirements.

(3) Information Requirements

The applicant will be required to provide information sufficient to evaluate the potential effects of the proposed activity on the OSRW segment. The secretary will identify the information that will be required on a case-by-case basis.

C. Temporary and Limited Effects

The secretary may authorize a permitted discharge that will result in only a temporary and limited effect on OSRW water quality. The decision regarding whether effects will be temporary and limited will be made on a case-by-case basis. As general guidance, CWA § 402 general permits, CWA § 404 nationwide and general permits, or activities with durations less than one month and resulting in less than a 5% change in ambient concentration will be deemed to have a temporary and limited effect. Decisions on individual proposed activities may be based on the following factors:

(a) Length of time during which water quality will be lowered,
(b) Percent change in ambient concentrations of pollutants of concern,
(c) Pollutants affected,
(d) Likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments), and
(e) Potential for any residual long-term influences on existing uses.

PART VII. DOCUMENTATION, PUBLIC REVIEW, AND INTERGOVERNMENTAL COORDINATION PROCEDURES

A. Documentation of Antidegradation Review Findings

(1) Antidegradation Documentation:

The secretary will document the findings and recommendations of each antidegradation review completed. The secretary will make this information part of the applicable regulated activity file.

B. Public Review Procedures

(1) Follow State Requirements

The antidegradation requirements are subject to public participation requirements found at § 74:52:05. However, a separate public notice for the permit and antidegradation review is not required. The secretary's determination may be included in the public notice for the proposed permit.

(2) Content of Public Notice

In preparing a public notice, the secretary will include the following items:

(a) Outline the basis of the secretary's determination, including the preliminary finding regarding whether to authorize the proposed regulated activity;
(b) Specify the public comment period;
(c) Provide notice of the availability of the antidegradation review worksheet; and
(d) Include a reference to the state antidegradation policy.

C. Intergovernmental Coordination Procedure

At a minimum, the secretary will provide copies of the antidegradation review determination and the public notice to appropriate state and federal government agencies. These agencies must provide comments in the same public comment period provided other interested parties and the general public.

D. Contested Case Hearing

Anyone may request a contested case hearing on the secretary's determination. A petition must be filed with the secretary by the deadline specified on the public notice. If a petition is filed, a contested case hearing will be scheduled before the Water Management Board. The secretary will provide further notice on the time and date of this contested case hearing to all interested parties. Based on the testimony presented at the hearing, the board will make a final determination on the secretary's decision. Any decision made by the board is subject to judicial appeal. If the secretary does not receive a petition within the specified deadline, the secretary's decision is final.

Nettie H. Myers

Nettie H. Myers, Secretary
Department of Environment and Natural Resources

ANTIDEGRADATION REVIEW WORKSHEET

Permit Type: _____ Applicant: _____
Date Received: _____ Permit #: _____
County: _____ Legal Description: _____
Receiving stream: _____ Classification: 1 2 3 4 5 6 7 8 9 10 11
If the discharge affects a downstream waterbody with a higher use classification, list its name and uses: _____ 1 2 3 4 5 6 7 8 9 10 11

APPLICABILITY

1. Is the permit or the stream segment exempt from the antidegradation review process under ARSD 74:51:01? Yes __ No __ If no, go to question #2. If yes, check those reasons why the review is not required:

___ Existing facility covered under a surface water discharge permit is operating at or below design flows and pollutant loadings;

___ *Existing effluent quality from a surface water discharge permitted facility is in compliance with all discharge permit limits;

___ *Existing surface water discharge permittee was discharging to the current stream segment prior to March 27, 1973, and the quality and quantity of the discharge has not degraded the water quality of that segment as it existed on March 27, 1973;

___ *The existing surface water discharge permittee, with DENR approval, has upgraded or built new wastewater treatment facilities between March 27, 1973, and July 1, 1988;

___ The existing surface water discharge permittee discharges to a receiving water assigned only the beneficial uses of (9) and (10); the discharge is not expected to contain toxic pollutants in concentrations that may cause an impact to the receiving stream; and DENR has documented that the stream cannot attain a higher use classification. This exemption does not apply to discharges that may cause impacts to downstream segments that are of higher quality;

___ Receiving water meets Tier 1 waters criteria. Any permitted discharge must meet water quality standards;

___ The permitted discharge will be authorized by a Section 404 Corps of Engineers Permit, will undergo a similar review process in the issuance of that permit, and will be issued a 401 certification by the department, indicating compliance with the state's antidegradation provisions; or

___ Other:_____

_____

_____

*An antidegradation review is not required where the proposal is to maintain or improve the existing effluent levels and conditions. Proposals for increased effluent levels, in these categories of activities are subject to review.

No further review required.

FORMAL REVIEW

2. Is the stream segment classified as an OSRW? Yes __ No __ If no, go to question #3. **If yes, no change in water quality allowed. No further review required.**

3. Will there be an insignificant change in water quality? Yes __ No __ If no, go to question #4. **If yes, no further review required. List reason why discharge is insignificant**

[ ] Only temporary change in water quality will result from the discharge;
[ ] Resulting change in water quality from the discharge will only affect a water quality parameter that is only regulated by a narrative standard and the discharge will not adversely impact the stream's beneficial uses;
[ ] Volume of the proposed discharge is small compared to the flow in the stream. The ratio of the average stream flow to discharge flow is greater than 50:1;
[ ] The increase in pollutant loading at critical low flow is expected to be less than 20% of the stream's assimilative capacity;
[ ] The resulting change in water quality from the discharge is less than one standard deviation of the mean concentration of the ambient water quality; or
[ ] Other: _____

4. Are existing, regulated point or nonpoint sources located in the area in compliance with required controls or has a compliance schedule been established for these sources? Yes __ No __ If no, establish an appropriate compliance schedule prior to approving, as proposed, the activity under review.

5. Based on available information, are there existing uses that are better than the currently designated uses? Yes __ No __ If yes, use protection of the higher existing use(s) as the basis for antidegradation decision-making and arrange to upgrade the currently designated use(s).

6. Will existing uses be fully maintained and protected? Yes __ No __ If no, recommend denial of the activity as proposed.

PERMIT APPLICATION

7. Has the applicant submitted all information listed in the antidegradation implementation procedure? Yes ___ No ___ If no, why not? _____
_____
_____

PUBLIC NOTICE AND OPPORTUNITY FOR HEARING

8. Has the application been properly public noticed? Yes ___ No ___ Date notice occurred in paper:_____. Paper notice appeared in: _____

9. Has anyone petitioned the department for a public hearing on the application? Yes __ No ___ **If no, no further review required. Proceed with writing permit based on outcome of antidegradation review. If yes, schedule time before the Water Management Board for public hearing on application.**
Date and time of hearing: _____
Location of hearing: _____

10. Did the Board of Water Management approve the application? Yes ___ No ___ Attach a copy of the board minutes to this worksheet.

ANTIDEGRADATION REVIEW SUMMARY

11. The outcome of the review is:

[ ] A formal antidegradation review was not required for reasons stated in this worksheet. Any permitted discharge must ensure water quality standards will not be violated.

[ ] The review has determined that degradation of water quality should not be allowed. Any permitted discharge would have to meet effluent limits or conditions that would not result in any degradation estimated through appropriate modeling techniques based on ambient water quality in the receiving stream, or pursue an alternative to discharging to the waterbody.

[ ] The review has determined that the discharge will cause an insignificant change in water quality in the receiving stream. The appropriate agency may proceed with permit issuance with the appropriate conditions to ensure water quality standards are met.

[ ] The review has determined, with public input, that the permitted discharge is allowed to discharge effluent at concentrations determined through a total maximum daily load (TMDL). The TMDL will determine the appropriate effluent limits based on the upstream ambient water quality and the water quality standard(s) of the receiving stream.

[ ] The review has determined that the discharge is allowed. However, the full assimilative capacity of the receiving stream cannot be used in developing the permit effluent limits or conditions. In this case, a TMDL must be completed based on the upstream ambient water quality and the assimilative capacity allowed by the antidegradation review.

[ ] Other: _____

_____

_____

_____

12. Describe any other requirements to implement antidegradation or any special conditions that are required as a result of this antidegradation review:

_____

_____

_____

_____

_____

_____ _____

Reviewer Date

_____ _____

Program Supervisor or Team Leader Date

34A-2-7. Policy established by board. The board shall establish policy for prevention, control and abatement of new or existing pollution of the waters of the state.

Source: SL 1973, ch 280, § 4 (1); SDCL Supp, § 46-25-29.

34A-2-8. Administration by secretary — Employment of personnel. The secretary of water and natural resources shall administer this chapter. The secretary, in accordance with policies established by the board and pursuant to laws governing state employees, may hire personnel necessary to carry out the provisions of this chapter and the rules and orders of the board.

Source: SL 1973, ch 280, § 5; SDCL Supp, § 46-25-30; SL 1986, ch 295, § 8.

Cross-References.
Employment of personnel by state departments, Chapter 3-6A.

Travel expenses and allowances for state employees, §§ 3-9-1 to 3-9-[illegible].

34A-2-9. Superseded.

Commission Note.
This section, preserving previously adopted standards and rules, is superseded by § 1-26A-2, which requires republication of administrative rules.

Opinions of Attorney General.
Classification of public waters of state, Report 49-50, p. 190.

34A-2-10. Classification of waters. The water management board shall establish and modify the classification of all waters in accordance with their present and future beneficial uses.

Source: SL 1973, ch 280, § 4 (2); SDCL Supp, § 46-25-32; SL 1978, ch 260, § 1.

34A-2-11. Water quality standards — Factors considered — Objectives — Violation. The water management board shall formulate and issue standards of water quality and classification of water according to its beneficial uses. The board shall consider environmental, technical, social, economic, present use, persons adversely affected, natural background waters in relationship to the contaminants and pollutants contained therein and existing degradation and the irretrievable man-induced conditions heretofore placed on those waters. Such standards of quality shall be such as to protect the public health and welfare and the use of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes and agricultural, industrial, and other legitimate uses in accordance with the Federal Water Pollution Control Act as amended to January 1, 1988. A violation of standards promulgated pursuant to this section is subject to § 34A-2-75.

Source: SDC Supp 1960, § 61.0145 as enacted by SL 1966, ch 260, § 1; 1967, ch 340; SDCL, § 46-25-7; SL 1973, ch 280, § 4 (3); SDCL Supp, § 46-25-33; SL 1978, ch 260, § 2; 1986, ch 295, § 9; 1988, ch 285, § 1A; 1992, ch 158, § 16B.

Cross-References.

Boats to be equipped to prevent pollution, § 42-8-39.

Fishing waters, protection against refuse and chemicals, §§ 41-13-1, 41-13-2.

Municipal discharge of sewage into streams, § 9-48-4.

Rules and regulations, adoption by state agencies, §§ 1-26-4 to 1-26-14.

Federal References.

Federal Water Pollution Control Act, 33 U.S.C. § 1151 et seq.

Environmental Impact Statement.

This section does not require the making of a formal environmental impact statement. In re South Dakota Water Management Board Approving Water Permit No. 1791-2 (1984) 351 NW 2d 9.

Opinions of Attorney General.

Authority of committee on water pollution to adopt and enforce water quality standards, Report 1937-38, p. 743; 1965-66, pp. 268, 335; 1967-68, 296.

DECISIONS UNDER FORMER LAW

Authority of Board of Health.

Under the predecessor of § 34-1-16, the former state board of health, in the exercise of its regulatory power concerning preservation and protection of the public health, the disposal of sewerage and the pollution of streams and other waters, had the administrative authority to establish standards for the accomplishment of these objectives by requiring submission of plans and specifications showing compliance with such standards. City of Bristol v. Horter (1950) 73 SD 398, 43 NW 2d 543.

34A-2-11.1. Presumption favoring existing quality standards. For the purpose of §§ 34A-2-10 and 34A-2-11, existing valid water quality standards shall be presumed to be in accordance with such sections and the presumption shall be rebuttable.

Source: SL 1978, ch 260, § 3.

34A-2-12. Regulation of public water supplies, swimming places and bulk water haulers — Violation. The board of water management shall pursuant to chapter 1-26 adopt rules regulating public water supplies, public swimming places and bulk water haulers. The provisions of this section do not invalidate any rules of any agency existing prior to July 1, 1974. A violation of rules promulgated pursuant to this section is subject to § 34A-2-75.

Source: SL 1974, ch 245, § 10; SDCL Supp, § 46-25-33.1; SL 1985, ch 283, § 24; 1992, ch 158, § 16C.

Cross-References.

Limitation on stringency of certain rules, § 1-40-4.1.

Rules and regulations, procedure for adoption, §§ 1-26-4 to 1-26-14.

Opinions of Attorney General.

Authority of department of environmental protection to regulate bulk water haulers, public water supplies (excluding fluoridation) and public swimming places, Opinion No. 75-95.

34A-2-14. Pretreatment standards for industrial users of inadequate public treatment works — Violation. The board shall promulgate rules pursuant to chapter 1-26 governing pretreatment standards to be applied against industrial users of publicly owned treatment works for the introduction of pollutants into publicly owned treatment works which interfere with, pass through, or otherwise are incompatible with such treatment works. A violation of rules promulgated pursuant to this section is subject to § 34A-2-75.

Source: SL 1974, ch 287, § 1; SDCL Supp, § 46-25-34.1; SL 1988, ch 285, § 2; 1992, ch 158, § 17A.

Cross-References.
Limitation on stringency of certain rules, § 1-40-4.1.
Rules and regulations, procedure for adoption, §§ 1-26-4 to 1-26-14.

34A-2-15. Violation of pretreatment standards for industrial user unlawful — Implementations of provisions of Federal Water Pollution Control Act. Any industrial user of publicly owned treatment works who violates pretreatment standards is subject to § 34A-2-75. The secretary or the owner of a publicly owned treatment works shall implement all provisions of section 307 of the Federal Water Pollution Control Act as amended to January 1, 1992, including issuing pretreatment industrial user permits to significant industrial users in accordance with §§ 34A-2-35 and 34A-2-36.

Source: SL 1974, ch 287, § 2; SDCL Supp, § 46-25-34.2; SL 1988, ch 285, § 3; 1992, ch 158, § 18; 1992, ch 254, § 53.

Federal References.
Federal Water Pollution Control Act, 33 U.S.C. § 1[illegible]

34A-2-16. Enforcement of pretreatment standards for industrial users. The secretary and owners of publicly owned treatment works may enforce pretreatment standards for pollutants introduced into its publicly owned treatment works, pursuant to the compliance and enforcement procedures of this chapter, by industrial users of such treatment works.

Source: SL 1974, ch 287, § 3; SDCL Supp, § 46-25-34.3; SL 1988, ch 285, § 4.

34A-2-17. Periodic review of classification and standards. The board shall review from time to time, at intervals of not more than three years, established classification of waters, water quality standards, and effluent standards.

Source: SL 1973, ch 280, § 4 (5); SDCL Supp, § 46-25-35.

34A-2-18. Procedure for establishment of classification, standards or rules. Before waters are classified or standards established or modified, or rules made, revoked or modified, the board shall all follow the procedures established by chapter 1-26.

Source: SDC Supp 1960, § 61.0145 as enacted by SL 1966, ch 260, § 1; 1967, ch 340; SDCL § 46-25-8; SL 1973, ch 280, § 10; SDCL Supp § 46-25-36.

34A-2-19. Violation of effluent standards prohibited. Repealed by SL 1992, ch 158, § 19.

34A-2-20. Establishment of waste treatment requirements. The board shall establish minimum requirements for the treatment of wastes.

Source: SL 1973, ch 280, § 4 (11); SDCL Supp. § 46-25-38.

34A-2-21. Causing pollution of waters prohibited — Placement of wastes — Violation. No person may cause pollution of any waters of the state, or place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state. A violation of this section is subject to § 34A-2-75 and may be abated as a public nuisance.

Source: SL 1890, ch 119, §§ 1, 2; RPenC 1903, §§ 446, 447; RC 1919, §§ 3971, 3972; SL 1935, ch 174, § 14; SDC 1939, §§ 13.1506, 61.9901; SDCL, § 46-25-17; SL 1973, ch 280, § 8 (1); SDCL Supp. § 46-25-39; SL 1977, ch 190, § 635; 1984, ch 243, § 3; 1992, ch 158, § 20.

Cross References.
Bore, waste treatment requirements for kitchen and toilet facilities, § 42-8-39.
Penalties for classified misdemeanors, § 22-6-2.

34A-2-22. Reduction of existing water quality by discharge of waste prohibited — Violation as nuisance. No person may discharge any wastes into any waters of the state which reduce the quality of such waters below the water quality level existing on March 27, 1973. A violation of this section is subject to § 34A-2-75 and may be abated as a public nuisance.

Source: SL 1973, ch 280, § 8 (2); SDCL Supp, § 46-25-40; SL 1977, ch 190, § 636; 1984, ch 243, § 4; 1992, ch 158, § 21.

Cross References.
Penalties for classified misdemeanors, § 22-6-2.

34A-2-23. Violation as public nuisance. Repealed by SL 1992, ch 158, § 22.

34A-2-24. Discharge of wastes allowed w en economic or social necessity found — Exception. Notwithstand g § 34A-2-22, discharge of wastes into waters of the state which reduce th quality of such waters below the water quality level existing on March 27, 1 73, will be allowed when and if it is affirmatively demonstrated to the bo d and the board finds by a majority vote of its members, after a public h aring on such request, that there may be a discharge, which discharge wil not result in the violation of applicable water standards, which discharge is f und justifiable as a result of necessary economic or social development. The board may not allow a discharge if the discharge results in a violation of the existing water standards.

Source: SDC 1939, § 61.0109 as added by SL 1947, ch 416; 1955, ch 430, § 1; SDC Supp 1960, § 61.0145; repealed by omission from SL 1966, ch 260, § 1; re-enacted by SL 1967, ch 340; SDC § 46-25-6; SL 1973, ch 280, § 8 (2); SDCL Supp, § 46-25-42; SL 1988, ch 285, § 4A.

34A-2-25. Technology considered in dete ining economic justification for waste. In determining the justificati for economic development under § 34A-2-24, the board shall consider and equire in its decision, technology reasonably available for all discharge nto that segment of state waters affected by the decision, which will resul in further progress toward the goal of eliminating the discharge of all w ste.

Source: SL 1973, ch 280, § 8 (2); SDCL Supp. § 46-25-43; SL 1988, ch 285, § 5.

34A-2-26. Biennial review of decisions to allow discharge waste. A decision issued pursuant to § 34A-2-24 shall be eviewed at least every two years.

Source: SL 1973, ch 280, § 8 (2); SDCL Supp. § 46-25-44; SL 1988, ch 285, § 6.

34A-2-27. Construction permits required or activities discharging wastes into water — Violation. No person may rry on any of the following activities without a valid construction permit f m the water management board for the disposal of all wastes which are, or ay be, discharged thereby into the ground waters of the state, nor may any person carry on any of the following activities without approval of plans and specifications from the secretary of the department pursuant to § 34A-2-29 r the disposal of all wastes which are, or may be, discharged thereby into rface waters of the state.

(1) The construction, installation, modificat n or operation of any disposal system or part thereof, or any ex nsion or addition thereto;
(2) The increase in volume or strength of y wastes in excess of the permissive discharge specified under a existing permit;
(3) The construction, installation, or operation of any industrial, commercial, or other establishment, or any exten on or modification thereof or addition thereto, the operation of which would cause an increase in

34A-2-92.1. Lake protection projects — Defi tion of terms. Repealed by SL 1986, ch 291, § 22.

34A-2-92.2. Eligibility and priority of lakes f protection -- Criteria considered. Repealed by SL 1986, ch 291, § 23

34A-2-92.3. Percentage of cost covered by ake protection grants. Repealed by SL 1986, ch 291, § 24.

34A-2-92.4. Conservation district pollution c ntrol plan required for lake protection grant. Repealed by SL 1986, c 291, § 25.

34A-2-93. Rules for administration of chapt — Hearings - Initiation of court actions. The board shall:

(1) Make rules for the administration of thi chapter;
(2) Hold any hearings necessary for the pro r administration of this chapter;
(3) Initiate actions in court for the enforcem nt of this chapter.

Source: SL 1971, ch 209, § 5; SDCL Supp. § 46-25-22; SL 1973, ch 280, § 4 (8) to (10); 1973, ch 281, § 4; SDCL Supp. § 46-25-107.

34A-2-94. Public availability of records a information obtained under chapter — Exception to protect trade se ets. Any record, reports, or information obtained under this chapter shall, i the case of effluent data, be related to any applicable effluent limitations, p treatment, or new source performance standards, and shall be available to t public, excep that upon a showing satisfactory to the secretary by any pe on that record, information, or particular part thereof (other than effluen data, permit applications and permits) to which the secretary has access u der this chapter, if made public would divulge methods or processes entit d to protection as trade secrets of such person, the secretary shall consid r such record, report, or information, or particular portion thereof, confi ential, except that such record, report or information may be disclosed to o er officers, employees, or authorized representatives of the state or federal g vernment concerned with carrying out this chapter, or when relevant, in y proceeding under this chapter.

Source: SL 1973, ch 280, § 13; SDCL Supp. § 46-25-108; SL 1988, ch 285, § 36.