Water Quality Antidegradation and Implementation Conference

Alaska Department of Environmental Conservation
(ADEC) Division of Water & Tetra Tech, Inc.
Anchorage Alaska, December 2-3, 2009

Summary of Workshop Proceedings

Submitted to:

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Water Quality Standards
Division of Water
Juneau, Alaska 99801

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December 17, 2009

Executive Summary

On December 2-3, 2009, ADEC hosted a conference in Anchorage, Alaska, intended to inform policy makers, wastewater discharge permittees, permit writers, and interested public regarding options for antidegradation policy implementation procedures. Antidegradation policy is part of the Alaska Water Quality Standards in 18 AAC 70, which protects Alaska's waters from pollution. This conference was for informational purposes only and no regulations were proposed at the workshop. The following specific objectives were identified for the workshop:

1. Share information about US EPA antidegradation policy, the pros and cons of various state antidegradation and implementation approaches, lessons learned, and legal challenges and precedents; and
2. Provide a forum for stakeholders to discuss the implementation programs adopted by other states and approaches that might work best in Alaska.

The centerpiece of the workshop was presentations made by four invited speakers representing Minnesota, Kentucky, Oklahoma, and South Carolina, all of whom have dealt with antidegradation policies and implementation methods. In addition, presentations were made on behalf of five stakeholder interests: mining, timber, stormwater, oil and gas, and environmental organizations. The workshop included a breakout session in which participants, along with the invited speakers, discussed several important issues related to antidegradation and implementation, specifically in Alaska.

Some key points identified during the workshop included:

- Antidegradation policy is designed to do three things: (1) protect existing uses (i.e. Tier 1 protection); (2) protect water quality that exceeds what is necessary to support aquatic life and other uses (i.e., Tier 2 "high quality" waters), and (3) provide a mechanism to protect waters of exceptional significance (i.e. Tier 3 "Outstanding National Resource Waters").
- States use one of two basic approaches to assign tiers to waterbodies with respect to antidegradation and implementation: "parameter-by-parameter", which identifies quality tiers for each pollutant of concern; and, "waterbody by waterbody", which specifies which waterbodies will receive what type of protection under their assigned tier. Each approach has advantages and disadvantages.
- Some states have adopted a *de minimus* level of degradation in implementing antidegradation policy (which determines whether an antidegradation review is needed or not). Setting a *de minimus* degradation level requires assessment of baseline data and complex procedures to implement. Some states have found it more productive to establish alternative levels of antidegradation review rather than deal with whether each discharge is or is not *de minimus.* Categorical definitions of *de minimus* have been successfully challenged in federal court (e.g. *Kentucky Waterways Alliance et al. v. Johnson*, 6th Circuit).
- Some participants suggested that antidegradation and implementation procedures address antidegradation requirements when a general permit is developed and when it is implemented (i.e., applied to a specific activity).
- Because Alaska has so many waterbodies and a relative scarcity of existing water quality data, monitoring and establishing baseline conditions for antidegradation analyses will require a creative, integrated approach.
- The antidegradation review process should be open and transparent, with early involvement of stakeholders as well as a public participation opportunity at the end of the review, before

decisions are made. Information from local stakeholders is recognized as important to the process.

- Discussion at the conference indicated an interest in flexible approaches that would allow consideration of multiple, landscape-level activities that affect water quality in any future antidegradation program.
- Industry stakeholders need transparent, comprehensive implementation guidance so that there will be no surprises down the road and so that permittees can plan ahead with an understanding of the antidegradation process.

1.0 Introduction

Section 303 (Title 33 of United States Code [U.S.C.] 1313) of the Clean Water Act (CWA) requires states and authorized tribes to adopt water quality standards for waters of the United States within their applicable jurisdictions. Such water quality standards must include, at a minimum (1) designated uses for all waterbodies within their jurisdictions, (2) water quality criteria necessary to protect the most sensitive of the uses, and (3) antidegradation provisions consistent with the regulations at Title 40 of the *Code of Federal Regulations (*CFR) 131.12. Antidegradation is an important tool for states and authorized tribes to use in meeting the CWA's requirement that water -quality standards protect the public health or welfare, enhance the quality of water, and meet the objective of the Act to "restore and maintain the chemical, physical and biological integrity" of the nation's waters. EPA's regulation at 40 CFR 131.12 requires that states and authorized tribes adopt antidegradation policies and identify implementation methods to provide three levels of water quality protection: (1) maintenance and protection of existing water uses and the level of water quality (WQ) to protect those uses; (2) protection of high quality waters; and (3) protection of outstanding natural resource waters (ONRWs).

While implementation guidance and other information has been available for some time regarding designating uses, identifying existing and beneficial uses, and implementing water quality criteria in both NPDES permitting and other ambient water quality programs (i.e., 305[b] reporting, 303[d] impaired waters list, TMDLs), Alaska, like many States and Tribes, has not yet developed procedures for implementing the antidegradation policy in the state water quality standards.

In an effort to begin learning about antidegradation and implementation, ADEC contracted Tetra Tech, Inc. to research and produce a summary report evaluating antidegradation and implementation practices of several states across the U.S. spanning a range of alternative procedures. This research and evaluation were summarized in a report entitled: "Evaluation of Options for Antidegradation Implementation Guidance" (Tetra Tech, Inc., October 6, 2008).

To continue the educational process regarding antidegradation policies, ADEC hosted a 1.5 day conference in Anchorage, Alaska, which was intended to inform policy makers, wastewater discharge permittees, permit writers, and interested public regarding options for implementation procedures or methods. Antidegradation policy is part of the Alaska Water Quality Standards in 18 AAC 70, which protects Alaska's waters from pollution. This conference was designed for informational purposes only and no regulations were proposed at the workshop. The following specific objectives were identified for the workshop:

1. Share information about US EPA antidegradation policy, the pros and cons of various state antidegradation and implementation approaches, lessons learned, and legal challenges and precedents; and
2. Provide a forum for stakeholders to discuss the implementation programs adopted by other states and approaches that might work best in Alaska.

1.1 Workshop Format

The workshop was organized in four parts (see Appendix A for the agenda):

1. introductory material provided by ADEC, EPA, and Tetra Tech, Inc.;
2. presentations made by four invited speakers representing the states of Minnesota, Kentucky, Oklahoma, and South Carolina;
3. presentations made on behalf of five stakeholder interests: mining, timber, stormwater, oil and gas, and environmental organizations;
4. panel discussion with the state and stakeholder representatives; and
5. breakout session addressing three questions related to antidegradation:
    a. what tools or resources are available to determine existing (baseline) water quality, and what additional tools or resources might be needed?
    b. Should Alaska allow a certain level of "de minimis pollution" (i.e., use of available assimilative capacity) before requiring a full antidegradation review?
    c. How should Alaska specify what alternatives or options should be considered in determining
        - whether or not activities that would degrade water quality are "necessary,"
        - how should the state assess economic or social benefits in an antidegradation review,
        - what sort of analysis and documentation should be required, and who should conduct or produce it?

The following report summarizes issues, questions, and discussion resulting from the workshop, organized by the five agenda areas above.

2.0 Introductory Presentations

2.1 Jim Powell (ADEC, Water Quality Standards)

Jim Powell gave an overview of ADEC's water quality standards, the Department's websites for the water quality standards and related issues. He summarized the state antidegradation policy (which mirrors the federal policy) noting antidegradation is one of the 3 legs of the water quality standards program. He summarized the state policy regarding the three tiers of waters: Tier 1 or waters with the minimum water quality allowed (consistent with the "fishable swimmable" goals of the Clean Water Act); Tier 2, high quality waters; and Tier 3 or outstanding national resource waters (ONRWs). Mr. Powell indicated that ADEC has not identified Tier 3 waters as of yet. He summarized the five elements of antidegradation analysis including evaluation of economic and social development, water quality criteria, protecting existing uses, pollution prevention and best management practices (BMPs), and wastewater treatment.

2.2 Bill Beckwith (EPA Region 10)

Bill Beckwith summarized the federal antidegradation policy including some of the history of the current policy. He reiterated that antidegradation policy is designed to do three things: (1) protect existing uses; (2) protect water quality that exceeds that necessary to support aquatic life and other uses (i.e., Tier 2 waters), and (3) provide a mechanism to protect waters of exceptional significance (ONRWs or Tier 3 waters). Mr. Beckwith explained that all states are to identify

implementation methods for their antidegradation policy and he described some of the elements that should be included in the methods. He explained the components of alternatives analysis and the importance of considering non-degrading alternatives as part of an antidegradation review. His presentation stressed the importance of dealing with and protecting high quality or Tier 2 waters, as those waters are the ones most likely to be affected by potentially degrading activities or proposals. He noted that a state does not have to adopt ONRWs necessarily, according to EPA's policy, but they must have a mechanism in place whereby ONRWs could be adopted.

2.3 Jerry Diamond and Barry Tonning (Tetra Tech, Inc.)

Barry Tonning gave an overview of salient issues and challenges faced by states in developing implementation methods for their antidegradation policies. He also briefly summarized several recent litigation activities in relation to state antidegradation and implementation methods. Jerry Diamond summarized the highlights of Tetra Tech's report prepared for ADEC regarding different state approaches to antidegradation. He noted that the report considered only a few states and should not be considered exhaustive; however, the states evaluated represented a broad range of implementation methods and different issues regarding topics such as developing baseline, identifying and protecting Tier 2 waters, de minimus, and criteria for identifying ONRWs.

2.4 Cameron Leonard (ADEC)

Cameron Leonard noted that Alaska has an antidegradation policy, but hasn't identified methods for implementing the policy as of yet. He also noted that, while federal regulation requires states to have an antidegradation policy, they do not have specific guidance for states on how to implement antidegradation policy. He reported that some stakeholders have argued that ADEC cannot make antidegradation determinations until it issues its implementation guidance. The state disagrees and continues to conduct and document antidegradation analysis. Mr. Leonard gave some examples of cases in Alaska as well as from some other states in this regard. Mr. Leonard recognized that ADEC needs to develop its implementation guidance so as to hopefully avoid legal entanglements.

3.0 Invited State Presentations

The invited speakers discussed how states have been implementing their antidegradation policies. Two states – Minnesota and South Carolina – used the "parameter-by-parameter" approach, which entails calculating the degree of degradation by assessing the use of available assimilative capacity caused by new or expanded discharges to the receiving waterbody. Oklahoma and Kentucky use the "waterbody by waterbody" or designation approach, which specifies which waterbodies will receive what type of protection under the various tiers. It appeared that the waterbody-by-waterbody approach closely resembled the parameter-by-parameter approach in practice, after the protection tier designations were made, because the states still assessed degradation by reviewing increased pollutant loads on a parameter basis. The subsections below provide details on each state approach:

Oklahoma
Oklahoma uses the waterbody-by-waterbody approach, and lists which waters are considered "high quality," i.e., those to be protected from new sources of degradation unless an alternatives analysis and socioeconomic justification is developed. The state reportedly has sufficient water quality data to determine baseline water quality for conducting antidegradation reviews – it does not accept data collected by volunteers but will consider those collected by public agencies. There is no allowance for *de minimus* levels of pollution from regulated activities discharging into Tier 2 waters.

South Carolina
South Carolina adopted the parameter-by-parameter approach, and considers baseline water quality for Tier 3 ONRWs and Tier 2.5 Outstanding Resource Waters (state ORWs) to be existing water quality as characterized at the time of waterbody classification. The state lists specific discharge types that are banned for ONRWs and ORWs, but allows those discharges upstream of protected waters if modeling indicates there will be no measurable impact within the ONRW and ORW segments downstream. South Carolina has strict policies regarding water quality data collection, monitoring, and assessment, and conducts probabilistic sampling to determine overall trends. The state lists specific options – including land application of the effluent – to be considered for alternatives analyses, which must be considered and documented by dischargers. CWA Section 208 area waste planning is still conducted in the state. Specific economic and social factors to be considered when proposing to degrade Tier 2 waters are listed.

Minnesota
Minnesota, a state that was sued for failing to apply antidegradation requirements to MS4 stormwater permits, uses the parameter-by-parameter approach. The state is currently revising and strengthening its stormwater rules to reflect current EPA recommendations and recent lawsuit rulings. The state assumes a waterbody is Tier 2 water by default, including impaired waters. Minnesota is including increased flow as a potentially degrading parameter under the new rules, since it can affect aquatic habitat. Baseline water quality information is collected by multiple entities, including state entities and dischargers, in some cases. Minnesota specifies use of the USACE CWA Section 404 permit "avoidance/minimization/mitigation" hierarchy in conducting antidegradation review alternatives analyses. Reviews are applied to general permits when they are developed and when they are applied to specific activities subject to permit coverage. Minnesota will adjust baseline water quality upward if there are improvements in water quality.

Kentucky
Information on Kentucky's program was provided by the attorney that successfully sued the state for failing to implement its antidegradation policies in accordance with EPA provisions. Kentucky also places most waters in the Tier 2 category, but does so under a waterbody-by-waterbody framework. The state does not include impaired waters in Tier 2 unless they're impaired for mercury – this ensures that state lakes are protected. Kentucky has undertaken efforts to develop antidegradation requirements for general permits, including stormwater and other general permits. Discussions are ongoing regarding the use of a *de minimus* standard for minor discharges and how to deal with the incremental loss of assimilative capacity due to multiple activities that cumulatively consume available assimilative capacity for pollutants of

concern. According to the presenter, another issue is the protection of waterbody uses vs. compliance with numeric criteria only – i.e., there might be cases where uses are degraded significantly, but measurable changes in water quality criteria parameters might be minimal. The presenter stated in other cases, criteria limits might not adequately protect uses – this is more a uses/criteria issue than an antidegradation issue, but according to the presenter it does affect the antidegradation and implementation approach.

3.1 Discussion

Several issues were raised during the discussion period.

A. How does the regulatory agency make a decision regarding antidegradation?

Participants raised several issues related to allowing a *de minimus* level of degradation. One issue concerns the need to consider quantitative limits for pollutant measures. There was some discussion as to whether the *de minimus* threshold can not be less than what can be quantified accurately. A second issue raised is how should ADEC handle cumulative impacts using a *de minimus* approach? Over time, there can be difficulties keeping track of the incremental loss of assimilative capacity – and water body use support – as new discharges are added or expanded. Given the above concerns, some participants noted that it may not be worth the trouble of having a *de minimus* in implementing antidegradation policy, due to all the analysis related to decisions regarding whether or not a new or expanded activity would meet an adopted *de minimus* standard. Minnesota found that it's more productive evaluating alternatives than to deal with *de minimus* and whether an antidegradation review should take place or not.

B. Seasonal issues in Alaska

Alaska has strong seasonal components in terms of certain pollutants (e.g., TSS) due to ice break up in spring. Natural conditions can be an issue in terms of dealing with baseline water quality conditions and antidegradation policies.

C. Limited data in Alaska

It was noted that water quality data may not be available for many waters, not only for determining baseline and antidegradation, but also when writing NPDES permits. For example, the state has more than three million lakes, over 12,000 rivers and thousands of streams. It is physically impossible to collect sufficient data to characterize even a small portion of these waters, most of which (i.e., > 99%) are pristine.

One recommendation was for ADEC to more fully implement a probability-based monitoring program to get baseline data, focusing efforts around areas where a difference can be made (e.g., cities, permitted activities). While these data would not be particularly useful in conducting antidegradation reviews for specific water body segments, they could be used to track trends on a broad basis.

It was also noted that data from volunteer/citizen monitoring programs could be used if QA/QC is acceptable. Alaska has some active citizen monitoring groups which could be used for this purpose. Oklahoma noted that they don't use volunteer monitoring data sources for regulatory decision-making but encourages those programs for educational and general screening purposes, and to help promote good relationships with citizens.

A suggestion was made that the applicant should bear the burden of obtaining baseline water quality data if none exist. This is being done in some cases already in Alaska. The question was asked: How much data do you need to characterize baseline? Oklahoma suggested 5 years and 100 data points as a minimum. South Carolina indicated that you don't need water quality baseline data for certain alternatives; e.g., land application of effluent. Many noted that the quality of the data is as important as quantity. Some states require collection of 12 months of data to characterize baseline water quality. Other programs that collect water quality data may be able to assist ADEC in providing antidegradation baseline data and other information. For example, Oklahoma coordinates with several agencies regarding water quality standards issues and may use data collected by other state or federal agencies.

D. Short-term discharges and antidegradation

Short-term discharges may present an issue in terms of antidegradation and implementation, particularly with general permits (stormwater, construction, etc.). It was noted that BMPs in general permits may not support antidegradation requirements. Adaptive management approaches may be useful to tighten up BMP requirements in general permits so as to comply with antidegradation. It was suggested that antidegradation requirements may need to be addressed when the general permit is developed and when it is implemented (i.e., applied to a specific activity).

E. Social and Economic Benefit in antidegradation reviews

It was noted that the public process is a key aspect that serves as a check on the socioeconomic analysis and decision-making procedure in antidegradation reviews. Transparency and inclusiveness are generally viewed as effective methods for ensuring that any concerns are aired and addressed prior to approving activities that would degrade water quality.

If a project proponent can find a way to avoid having a discharge in the first place, then no antidegradation review process is needed, including the socioeconomic piece. Therefore, there needs to be a comprehensive alternatives analysis as part of the review process. For example, there may be non-discharge alternatives that are satisfactory. It was noted that rarely is the expanded discharge itself the activity; the discharge is a consequence of some other desired or needed activity. An expanded or new wastewater discharge might be one of many alternatives, some of which don't require a discharge (e.g., process changes that use less water, use of soil infiltration of wastewater effluent, etc.).

South Carolina found that Clean Water Act Section 208 area waste plans are useful for evaluating social and economic benefits because this process works at the local level and consolidates resources locally to deal with the proposed activity. Section 208 plans serve as a screening process before an antidegradation review ever comes to DHEC section.

F. Mixing zones and antidegradation

It was noted that mixing zone requirements under 18 AAC 70.240 must be met and that mixing zones are not specifically a part of the antidegradation policy. However, mixing zone information can be included in antidegradation and implementation methods. If a state has a *de minimus* policy, they may elect to have no mixing zone allowed for *de minimus* discharges. If a state does not have a *de minimus* policy, they may need to see how the mixing zone affects assimilative capacity inside and outside of the mixing zone.

G. Antidegradation and site-specific criteria

Site-specific criteria need to overcome many technical hurdles and requirements independent of antidegradation. It was noted that site-specific criteria are somewhat independent of antidegradation.

H. Industry versus municipal activities and antidegradation reviews

It was noted that there is the perception that expansion or new discharges associated with industry receive relatively minor antidegradation review as compared to other types of activities because the industrial activities are viewed as having sufficient sociological and economic beneficial to warrant some degradation of Tier 2 waters. However, there is still value in conducting the alternatives analysis because it may reveal non-discharge or other options that reduce or prevent degradation of the receiving waters.

4.0 Stakeholder Presentations and Panel Discussion

Stakeholders presenting during the conference provided information on their regulated activities, and noted the importance of clear rules that make sense and are applied equitably. Industries conducting regulated activities stated that they are already looking for ways to minimize the cost and environmental impacts of their operations, and are constantly seeking new technologies and methods for achieving better results in an efficient manner. There is a general sense that any new rules should be thoroughly discussed prior to adoption, to ensure that they don't just become an expensive "paper exercise." In addition, there was some interest in flexible approaches that would allow consideration of multiple, landscape-level activities that affect water quality in any future antidegradation program. For example, if an operation could show that foregoing an expensive treatment process (which would produce limited water quality improvements) in favor of other options (which would produce superior environmental results at a lesser cost) is feasible, it should be considered as part of the overall antidegradation review. This concept is somewhat similar to current discussions regarding water pollutant trading programs, whereby a discharger might be allowed to maintain higher pollutant concentrations in its effluent if it can effectively reduce pollutant loads elsewhere in the watershed.

During the subsequent discussion, it was noted that industry needs to have transparent, comprehensive implementation guidance so that there are no surprises down the road and so that permittees can plan ahead with an understanding of the antidegradation process.

5.0 Breakout Session

The following is a summary of the three breakout group discussions.

Breakout Group 1): What tools or resources do we have in Alaska to determine existing water quality, and what additional tools or resources might be needed? How much of the work should be done by public agencies, and how much should be done by the permittee?

Quite a few agencies and groups are collecting water quality data, but it's not centrally collected or easily available. Participants thought that there may be a need to look at a more efficient process, such as the anadromous fish database. The ACWA program, a coordinated effort among state programs, is also an example, as is the large mines program (DNR, DEC, Fish & Game, etc. participate). ADEC's 303d list data is also a possibility. All felt that QA/QC of data is needed – major facilities are required to do this now, but ADEC needs to ensure consistency. Who would fund the database and who would manage the data? Participants noted that the Anadromous Fish Catalogue is a good model. Collection could be done by permittees, as is the case now. Permitees already have QA/QC plans and data comes in as PDF reports, but ADEC doesn't have a way to manipulate and/or use it (e.g., vie Excel files, central database, etc.).

Various sources of data exist, but they are not easily integrated, manipulated, or used. Different agencies would need to discuss coordination in data collection and reporting. Alaska has lots of streams, with little development on most, so there is little impetus to collect data. Data collection is usually driven by proposed activities, such as mines, timber harvest, etc. A review tool for calculating natural conditions exists, but the approach requires at least 20 data points over 2 years to develop natural condition criteria.

In report out discussion ADEC noted that there are some new developments regarding data management. ADEC has spent 10 years trying to use STORET, but it's still very cumbersome. ADEC has developed a database called AWQMS, using a Region 8 format, and is now trying to populate it with current and future data collected or required by ADEC. ADEC will also consider data from NOAA, USGS, grantee data, targeted monitoring, probabilistic monitoring, and other available data when making decisions. Baseline assessments for antidegradation will eventually feed into and draw from this system. ADEC is working on it, but far behind most other states.

Breakout Group 2): Most states allow a certain level of "de minimis pollution" (i.e., use of available assimilative capacity) before requiring a full antidegradation review, complete with justification of economic and/or social benefits for activities that would degrade water quality. Should Alaska take a similar approach? What should the de minimis level be? What about multiple "de minimis" activities that cumulatively, over time, degrade water quality beyond the de minimis levels? How should they be handled?

The group discussed pros and cons of de minimis in antidegradation policy. The point was made that it takes resources to do antidegradation reviews, so it is important to focus on the important

decisions. ADEC does not want to conduct detailed analyses that do not have an environmental benefit. Also, the group recognized that it takes resources to develop a baseline and even calculate a *de minimis* level of degradation, whatever it is. Data is limited for most places in Alaska. You also need a waste load allocation and cumulative impact if *de minimis* levels can be established, due to multiple discharges that may be permitted in the same waterbody or watershed over time.

Region 8 has a requirement for alternatives analysis for some de minimis categories. Having a baseline doesn't get you "out" of anything – you still have to do a review. The group asked whether de minimis is worth fighting over. Should ADEC focus instead on adjusting the level of review, commensurate with the size/impact of the proposed activity? That would help to scale reviews in proportion to the proposed activity. The whole scope of the review could be similarly scaled, in proportion.

De minimis for general permits (GPs) may have value, by writing them such that the BMPs and conditions get to the de minimis level so you don't have to do an antidegradation analysis; e.g., using a BMP plan specified by activity, focused on like discharges to like environments. Some GPs also require some site-specific conditions (placer mining, etc.), but the conditions can still be established to capture them and manage them via a de minimis approach. Outliers not capable of meeting the GP conditions would be permitted via individual permits. Antidegradation actions would be done during permit development and permit application to a specific activity.

Breakout Group 3) (Note: this group addressed two related questions):

There is a lot of analytical work needed in assessing baseline water quality, determining potential water quality impacts from various regulated activities, reviewing alternative approaches, assessing economic and social benefits, and so on. Is there a way to organize these tasks among the various public and private sector parties involved, to build efficiency, expertise, and competency?

Some projects or activities will likely cause water quality to degrade, even down to water quality criteria limits. This is allowed under existing law, as long as there are important economic or social benefits resulting from this activity. How should we assess what sort of economic or social benefits are "important?" What sort of analysis and documentation should be required, and who should conduct or produce it? How should the public participation and intergovernmental review be handled?

The group felt that permittees should bear the burden of collecting data for antideg reviews. They should also develop the economic and social justification information. The group noted that there is no "cookbook" answer – no checklist; reviews are not that easy. The process should be open and transparent, with early involvement, public participation during the permitting process, and opportunity at the end of the process when decisions are made. Example: initially, the applicant provides justification for discharge through public notice via agency notification. Then the ADEC review proceeds. Additional public involvement would be based on the level of public interest and comments – lots of interest, lots of public involvement. Other entities could become

involved. For example, a conceptual "water board" or other group could consider the social and economic information. The water board should include local communities and nongovernmental groups, recognizing that the makeup of this board would be a mechanism for including stakeholders in the decisions. This approach would need representativeness to ensure credibility and a sense of true input and involvement.

A water board already exists in DNR's statutes but has not been used since the 1980s. There may be some concern about DNR sponsoring the water board. The previous (and now defunct) water board would need to be reorganized – a new board, representative of the citizens of the state, would be preferred.

Would such a board be adding another layer of review? Participants recognized that they need an entity that people trust . . . wouldn't ADEC serve this purpose? Yes, but would ADEC be okay with applying the economic and social justification principles and determining "important economic and social benefits?"

Right now, even though there are opportunities for public comment, participants asked how is that public comment received and applied. It sometimes feels like those comments are collected as matters of course and decisions aren't necessarily affected by the comments. Because these decisions have such a large local impact, there needs to be true local input in the decision making process. If the antidegradation review is going to reflect the views of the communities, communities need to be strongly involved. Social impacts often aren't considered equally with economic impacts. A new board could handle these types of issues and provide a venue for local input. The group didn't discuss whether the board would be statewide, or whether there would be several local boards. If it was a statewide board, there could be provisions for adding local community members when decisions affected their area.

South Carolina currently has such a model (208 watershed planning process) and their conference speaker noted that it does represent another layer in the process, but it is an important layer. Different boards are involved when issues affect their issues/area. This helps to bring the local input into the process. The public often believes these local boards more than the state agencies.

EPA noted that this is a lot like the intergovernmental review process that is required under antidegradation policy now. Information from local levels is recognized as important to the process.

6.0 Wrap-up

Several questions were discussed at this point in the workshop, which, in part, serves as a useful synopsis regarding antidegradation policy and where it applies.

Does antidegradation apply only to point sources?

It is clear that antidegradation applies to regulated activities requiring permits under the Clean Water Act, such as NPDES and Section 404 dredge and fill permits and to non point sources.

There needs to be a discharge or other permit in order for antidegradation policies to apply. Permits are generally applied to point source discharges effluents, stormwater, combined sewage overflows, non point source pollution, and areas where dredged or fill material will be placed into the waters of the U.S. Some states have elected to expand antidegradation rules to state regulated activities. For example, state issued timber harvest permits could be subject to such rules. ADEC's policy includes nonpoint sources as well so there may be situations where antidegradation could apply and regulate nonpoint sources as well. For example, prior to authorizing a discharge that would lower water quality in high quality water, Alaska antidegradation rules specify that "for nonpoint sources, all cost-effective and reasonable best management practices" be used.

Does antidegradation apply to groundwater?
Alaska protects groundwater for all uses and therefore, groundwater discharges are subject to Alaska's antidegradation policy as well.

What about tribal lands? How do ADEC's antidegradation policies affect tribal people?
In Alaska, there is very little actual tribal land (e.g., reservations) but rather land owned by tribal corporations, which are private entities. Since most tribal people in Alaska do not have tribal lands set aside, they fall under ADEC's antidegradation policies as well.

What characteristics would qualify as ONRW in Alaska?
This has yet to be determined. Clearly, Alaska has many pristine waters as well as national parks and other significant natural resources. A challenge will be to define what constitutes ONRWs in Alaska. EPA noted that while they do not require that states name ONRWs, federal law requires states to establish a process for doing so.