KANSAS ANTIDEGRADATION POLICY

Prepared by The Kansas Department of Health and Environment

Bureau of Water

August 6, 2001

Antidegradation Policy
State of Kansas
August 6, 2001

EPA's water quality standards regulations require States to adopt and implement an antidegradation policy containing the minimum requirements for such a policy. The antidegradation policy is a component of the Surface Water Quality Standards in the State's overall water quality program. [See K.A.R. 28-16-28c(a)]

The intent of the antidegradation policy is to limit discharges and other activities that will negatively impact water quality, impair designated uses, or threaten to impair designated uses of surface waters. The antidegradation policy provides a baseline level of protection relative to established water quality criteria to all classified surface waters, and a higher level of protection to those waterbodies recognized as unique ecologically, highly valued for its resources, or having high water quality.

The federal antidegradation guidance presents three tiers for maintaining and protecting water quality and designated uses:

1. The first tier (Tier 1) provides a "floor" which protects existing uses. Water quality must be preserved to protect and maintain those existing uses. Activities that would lower water quality below levels necessary to maintain existing uses are prohibited.

2. The second tier (Tier 2) provides protection to high quality waters where water quality exceeds the criteria associated with the assigned designated uses. Limited water quality degradation is allowed in high quality waters where the degradation is necessary to accommodate important social or economic development, but only if designated uses are still maintained and the highest statutory and regulatory requirements for all point sources of pollution and all cost effective and reasonable best management practices for nonpoint sources of pollution are achieved. Public participation is required before allowing a lowering of water quality.

3. The third tier (Tier 3) provides special protection for Outstanding Resource Waters, such as those waters in National and State Parks, wildlife refuges, outstanding fisheries, and other waters of unique recreational or ecological value. Although activities that may create temporary reductions in water quality are allowed, any activities that would permanently lower water quality of these surface waters is forbidden.

Kansas provides protection to classified surface waters equivalent to the three tiers listed above in the Outstanding National Resource Water (Tier 3) and General Purpose Water (Tier 1 or Tier 2) classifications described below. Additionally, Kansas provides a level of protection frequently referred to as Tier 2½, to waters classified as Exceptional State Waters, also described below.
During development of a new national pollutant discharge elimination system (NPDES) permit, or when considering an increase in treatment capacity or discharge volume, or the discharge of additional pollutants to an existing permit, the Department will determine effluent limitations to maintain both the

existing water quality conditions and also those necessary to maintain existing uses and achieve stream designated uses.

For Tier 2 waters, the Department will also evaluate potential nonpoint sources of pollution in the same surface water segment as the point source discharge. The evaluation will determine whether nonpoint sources have the potential to contribute the same pollutants to the surface water segment as the point source discharge. If potential exists, cost effective and reasonable best management practices (BMPs) will be identified for those nonpoint sources of pollution for which statutory or regulatory requirements require compliance with water quality standards (i.e. non-NPDES animal feeding operations, on-site wastewater treatment, etc.). Where the identified BMPs are not in place, the regulatory authority responsible for enforcement of the BMPs will be notified and a written schedule for implementation of the BMPs requested.

Current statutes and regulations addressing nonpoint source pollution include:

1. K.S.A. 2-2438a et seq. - addresses proper pesticide use. Note: discharge of pesticides from point sources is rare in Kansas. Since a discharge of a pesticide from a new or expanded point source into a Tier II water is requisite to initiate a antidegradation review, it is equally rare that a review will involve an evaluation of pesticide application.

2. K.A.R. 28-18-1 et seq. - addresses requirements for livestock production which have a potential to pollute.

3. K.A.R. 28-5-1 et seq. - addresses proper on-site wastewater treatment.

Outstanding National Resource Water

If the receiving surface water is classified as an Outstanding National Resource Water (ONRW), new or expanded discharges will not be allowed (Tier 3 waters).

Exceptional State Water

If the receiving surface water is classified as an Exceptional State Water, the permit limits derived must provide protection to existing uses and existing water quality (Tier 2 ½ waters). Designated uses must be protected and maintained once a designated use is realized. Permit limits for discharges to Exceptional State Waters will typically require maintenance of existing water quality. Existing water quality may be lowered only if the Department determines that there is an important social or economic need to lower existing water quality, as demonstrated through the guidelines provided in EPA's guidance document "Interim Economic Guidance for Water Quality Standards, March 1995" (EPA-823-b-95-002).

General Purpose Water

If the receiving surface water is classified as a General Purpose Water, the permit limits derived must provide protection of existing uses (Tier 1 and Tier 2 waters). Where existing water quality in General Purpose Waters exceeds water quality criteria set forth in the regulations, the existing water quality will

be maintained and protected (Tier 2 waters). Existing water quality may be lowered only if the Department determines that there is an important social or economic need to lower existing water quality, as demonstrated through the guidelines provided in EPA's guidance document "Interim Economic Guidance for Water Quality Standards, March 1995" (EPA-823-b-95-002).

However, if after satisfaction of public participation and intergovernmental coordination requirements, a determination is made by the Department, based on important economic and social development of the area, degradation of existing water quality conditions in exceptional state waters or general purpose waters is acceptable and will maintain existing and attained designated uses, the lower water quality will be allowed.

If a determination is made by the Department that a lowering of water quality is acceptable but will not preserve water quality conditions necessary to maintain designated uses, then KDHE may initiate a process for changing the designation as stated in K.A.R. 28-16-28d(c)(1).
However, pursuant to K.A.R. 28-16-28d(c)(1), existing uses may not be removed unless they are replaced by uses requiring more stringent criteria.

When measurable surface water quality degradation is considered, the following statement will be included in the permit public notice:

"This permit will allow a measurable increase in certain pollutant parameters above existing water quality, but not above concentrations necessary to maintain existing and designated uses (and if applicable ... and to protect designated critical habitat for threatened and endangered species)."

Public comment is invited during the permit public notice period for reconsideration or support of the Department action. In the event of significant public interest or concern, KDHE will conduct a public hearing on the proposed permitting action.

Certain activities, such as the construction, installation or maintenance of roads, bridges, pipelines, water intakes, dikes, levees or dams, may entail a temporary and localized lowering of surface water quality that would not, under normal circumstances, pose a significant long-term risk to the existing or designated uses of the impacted surface water. Such activities may be allowed by KDHE provided reasonable precautions (i.e., pollution control practices) are taken to minimize the impact of the activities on surface water quality.

Where an intentional or unintentional release of pollutants from a point source results in contamination or potential contamination of an alluvial aquifer that threatens to preclude attainment of the designated use of the alluvial aquifer or its associated surface water, the antidegradation provisions of the Kansas Surface Water Quality Standards shall apply.

Any new or expanded source of pollution subject to the interagency review provisions of the Kansas Environmental Coordination Act or Section 404 of the Federal Clean Water Act and requiring a permit, license, or certification from KDHE to discharge wastewater must undergo a formal certification review by KDHE. The certification will ensure that (1) the source of pollution will not violate any of the terms or conditions of the Kansas Surface Water Quality Standards or the Federal Clean Water Act and (2) all

applicable minimum standards of design and minimum pollution control practices are used to minimize the impact of the pollution source on surface water quality.

KDHE may allow a new or expanded source of thermal pollution to discharge into a classified surface water provided that (1) the source of thermal pollution meets all applicable technological effluent limitations and minimum standards of design, (2) the discharge will not violate any of the aquatic life support criteria of K.A.R. 28-16-28e(c)(2), and (3) any lowering of surface water quality resulting from the discharge is, in the judgement of the Director, necessary for the accommodation of important social and economic growth in the geographical vicinity of the discharge. KDHE will not allow any thermal pollution to discharge into any outstanding national resource water or to result in any harmful effects on populations of threatened or endangered species or critical habitat, as defined in the Federal Endangered Species Act (PL 93-205) as amended through October 7, 1988, or in K.S.A. 1991 Supp. 32-960 and K.A.R. 115-15-3.

Surface waters classified as Outstanding National Resource Waters are waters deemed, by the department or the public, to have high recreational or ecological value. These waters are generally located in national or state parks, federal or state game reserves, or are waters that are ecologically unique. KDHE classifies these waters as ONRWs to protect the extraordinary and uncommon nature of the ecosystems. KDHE acknowledges that there may be certain waters in the state that are deserving of this classification but have not yet been given the classification. KDHE encourages the public to take the opportunity to nominate waters it believes are deserving of the ONRW classification.

If the public believes there are certain waters that are deserving of reclassification, then the person(s) must contact KDHE in writing requesting the surface water be reclassified an ONRW. The request should state the exact location of the surface water and the resource, unique ecosystem, or special circumstances that justify the reclassification. KDHE will evaluate all available data and information to determine the chemical, physical, and biological integrity of the nominated surface water. Additional studies may be required before KDHE is able to determine if the surface water should be classified as an ONRW.

If KDHE concludes that a nominated surface water is deserving of the ONRW classification, then the public will have an opportunity to comment on the reclassification during a Public Notice period and, if enough interest or concern is raised, a public hearing will be conducted.