

SYNOPSIS OF PROPOSED AMENDMENTS TO RULES AND REGULATIONS FOR WATER QUALITY CONTROL, CHAPTER 391-3-6

The proposed amendments revise **Rule 391-3-6-.03 Water Use Classifications and Water Quality Standards.**

Purpose of Amendment:

The rule is being amended to revise the State's antidegradation policy to better describe what requirements must be met before the State allows the discharge of pollutants into Tier 2 (high quality) waters. In addition, a Tier 2.5 designation is being added to protect Significant Natural Resource Waters. Finally, the requirements for Tier 3 waters (Outstanding National Resource Waters or ONRW) are being modified to allow for temporary or short-term changes in water quality, to update the attributes of waters considered for ONRW designation, to clarify that waters designated as ONRW will be included in the Rules, and to reword and renumber the requirements regarding new and expanding point source discharges upstream of and tributary to an ONRW.

The proposed rule amendments include the following revisions:

1. Rule 391-3-6-.03(2)(b) – To clarify that an antidegradation analysis is not conducted to set permit effluent limits; rather it is used to determine whether there is a reasonable alternative to a proposed new or expanded discharge. Permit effluent limitations must be developed pursuant to Rule 391-3-6-.06.
2. Rule 391-3-6-.03(2)(b)1. - To include the words "Tier 1".
3. Rule 391-3-6-.03(2)(b)2. - To include the words "Tier 2" and state that the public participation requirements are found in this Rule and the Water Quality Control Act.
4. Rule 391-3-6-.03(2)(b)2.(i) - To explain how to demonstrate that additional wastewater capacity is needed to accommodate important social or economic development. It states that a discharge is presumed to accommodate such development if it is specifically referenced in a regional water plan.
5. Rule 391-3-6-.03(2)(b)2.(ii) – To describe the alternatives that must be analyzed to determine if it is necessary to allow lower water quality to accommodate important social or economic development.
6. Rule 391-3-6-.03(2)(b)2.(iii) – To expressly allow an applicant to show that a discharge will not lower water quality and that, therefore, an antidegradation analysis is not needed.
7. Rule 391-3-6-.03(2)(b)2.(iv) – To allow the consideration of documented water quantity needs in the alternatives analysis.

8. Rule 391-3-6-.03(2)(b)2.(v) – To clarify that EPD may use information other than that provided by the applicant to make determinations regarding antidegradation.
9. Rule 391-3-6-.03(2)(b)3. - To add a Tier 2.5 to the State’s antidegradation policy. It provides more protection for waters that are designated as Significant Natural Resource Waters than is given to waters in Tier 2.
10. Rule 391-3-6-.03(2)(b)4. – To update the attributes of waters being considered for Outstanding National Resource Waters (ONRW) status to include those with aesthetic and historic significance, to clarify that waters designated as ONRW will be included in the Rules, and to include the words “Tier 3.”
11. Rule 391-3-6-.03(2)(b)4.(iii) - To allow EPD to approve activities that result in temporary or short-term changes in water quality in Tier 3 waters.
12. Rule 391-3-6-.03(2)(b)4.(iv) - To reword and renumber the requirements for new and expanding point source discharges that are upstream of or tributary to an ONRW.
13. Rule 391-3-6-.03(3)(j) – To define the term “not significantly lowering water quality”.
14. To correct formatting errors.

STATEMENT OF RATIONALE

Chapter 391-3-6-.03 of the Rules and Regulations for Water Quality Control establish, pursuant to O.C.G.A. Section 12-5-20, water quality standards for the State of Georgia. The Georgia Water Use Classifications and Water Quality Standards Rule is made up of three parts: designated uses; criteria (either numeric or narrative); and an antidegradation policy. The antidegradation policy describes what requirements must be met before the State allows a wastewater point source discharge of pollutants into surface waters.

The federal regulations require states to develop and adopt an antidegradation policy. The purpose of the antidegradation policy is to ensure that 1) at a minimum, the water quality necessary to support existing water uses is maintained, 2) high quality waters are maintained and protected unless lowering of water quality is needed to allow important economic or social development, and 3) water quality in water bodies with exceptional recreational or ecological significance is protected.

EPD's existing rule and procedures need revision because the rule lacks clarity and the implementation procedures are out of date. Clarity is needed to enable the public and the regulated community to know what the antidegradation policy is and to insure that the policy is implemented in an efficient and sound manner. The procedures need revision not only because they reference a rule that has been superseded, but because they do not consider important alternatives to discharging wastewater, like water conservation, and do not allow consideration of the advantages of returning flows to streams that experience water quantity shortages.

EPD is proposing to make revisions to its antidegradation policy as follows:

Rule 391-3-6-.03(2)(b) is revised to clarify that an antidegradation analysis is not conducted to set permit effluent limits; rather it is used to determine whether there is a reasonable alternative to a proposed new or expanded discharge. Permit effluent limitations must be developed pursuant to Rule 391-3-6-.06, "Waste Treatment and Permit Requirements" consistent with Sections 301, 302, and 402 of the Clean Water Act and 40 CFR 122.34, 122.44, and 123.25.

Also, for greater clarification, the tiers of protection are specifically named (e.g., Tier 1).

Rule 391-3-6-.03(2)(b)2. is revised to replace a reference to the continuing planning process with a statement explaining that the public participation requirements are found in this Rule and in the Water Quality Control Act for greater clarification.

Rule 391-3-6-.03(2)(b)2.(i) is added to explain how to demonstrate that additional wastewater capacity is needed to accommodate important social or economic

development. This revision also presumes that a discharge accommodates such development if it is specifically referenced in a regional water plan.

Under the current antidegradation implementation procedures, important socioeconomic development is shown as follows. The applicant determines the flow capacity they want and uses that number to develop the worksheets contained in Attachment 1 to the guidelines entitled *Planning for Domestic Wastewater Systems* for only a no-discharge alternative. These worksheets were developed based on USEPA guidance. The revised process under the draft *Guidelines for Wastewater Discharge Antidegradation Analysis* would first require that the requested flow capacity be either specified in a Regional Water Plan or supported by population and flow projections. It would then require the comparison of the present worth costs of all technologically feasible alternatives.

The referenced Regional Plan may be one of the Regional Water Development and Conservation Plans or the Metropolitan North Georgia Water Planning District's (District) Wastewater Management Plan. To date, the District Wastewater Management Plan is the only Plan that specifies discharges by flow and location.

The Regional Water Councils and the District each developed their individual Regional Plans following standards established by the Director of EPD based upon compliance with existing laws and rules, the Water Conservation Implementation Plan, and other guidance documents for Regional Plan development. The District Plans' standards were issued by the Director in a December 18, 2001 correspondence. The Regional Council Plans' standards are in the *July 2009 Regional Water Planning Guidance* document issued by EPD. The standards for the Regional Plans include provisions for public sector involvement throughout the planning process. Each draft Regional Plan is placed on public notice for review and comment.

For the District's Wastewater Management Plan, following the public notice, the Director certifies the Plan is in accordance with the Director's standards. The District Board then adopts the Plan for implementation. For the Regional Water Development and Conservation Plans, following public notice, the Director adopts the Plans provided they meet the established standards.

The District Plan includes specific flow capacities for each publicly owned treatment works (POTW) for a twenty-five year planning period. The draft Regional Water Development and Conservation Plans include county-wide water and wastewater flows but are not plant specific. The flows in the Regional Plans (whether county-wide or POTW specific) are based on population projections and employment forecasts. The Regional Water Councils may elect to include plant specific flows in future updates to their plans.

The current antidegradation process does not require an applicant to justify the flow requested for their facility. The draft *Guidelines for Wastewater Discharge Antidegradation Analysis* will add the requirement to justify the flow capacity and

consider the cost of the discharge in relation to other options, neither of which is currently required.

Rule 391-3-6-.03(2)(b)2.(ii) is revised to name the alternatives that must be analyzed to determine if it is necessary to allow lower water quality to accommodate important social or economic development so that the public and regulated community know exactly what alternatives must be addressed.

EPD's current implementation procedures focus on land application and discharge to another system as the chief alternatives to a proposed discharge. These revisions specify water conservation, pollution prevention measures, reduction of inflow and infiltration to sewers, recycling or reuse of reclaimed water, waste by-products, or production materials and fluids as alternatives to be considered. Requiring an analysis of these alternatives and employing them will reduce impacts to state waters and aid in water conservation.

Rule 391-3-6-.03(2)(b)2.(iii) is being added to expressly allow an applicant to show that a discharge will not significantly lower water quality and that, therefore, an antidegradation analysis is not needed. According to USEPA's interpretation, and that of the courts, this has always been an option. Language regarding this option is being added, along with a definition for "not significantly lowering water quality", in Rule 391-3-6-.03(3)(j). The definition ties this demonstration to the assimilative capacity of a receiving waterbody for some pollutants and to a non-measurable change for dissolved oxygen, pH, fecal coliform, and temperature. Putting this definition in the rule provides greater clarification for the public and needed guidance for applicants who may want to pursue this optional demonstration.

Rule 391-3-6-.03(2)(b)2.(iv) is being added to allow the consideration of documented water quantity needs in the alternatives analysis. If a permit applicant demonstrates that there is a documented need to return flows to the proposed receiving water body and that the water quantity benefits of allowing a surface water discharge outweigh the water quality impacts resulting from the discharge, the applicant may conduct an abbreviated alternatives analysis. The applicant need not address the use of a land application system, reuse of reclaimed water, discharge to other treatment systems, or the use of best management practices designed to reduce or eliminate the need for a discharge. Applicable water quantity needs include protection of the public health or welfare in accordance with the public interest for drinking water supplies, conservation of fish, wildlife and other beneficial aquatic life, and agricultural, industrial, recreational, and other reasonable and necessary uses and maintenance and improvement of the biological integrity of the waters of the State. This provision will encourage the return of flows to streams where those returns would benefit public health and state waters, provided that existing uses will be maintained and protected.

Rule 391-3-6-.03(2)(b)2.(v) is being added to clarify that EPD may use information other than that provided by the applicant to make determinations regarding antidegradation, as requested by stakeholders.

Rule 391-3-6-.03(2)(b)3. is being added to create a Tier 2.5 to the State's antidegradation policy. For waters that are designated as Significant Natural Resource Waters, or Tier 2.5 waters, a higher degree of protection will be required to ensure that these waters remain a significant resource. New and/or expanded point source discharges may be allowed to a Tier 2.5 water if the requirements for a discharge to Tier 2 waters are met; however, additional protections will be afforded to Tier 2.5 waters including: (1) appropriate water quality controls, (2) maintenance of flow regime for both regulated and unregulated systems, (3) protection of instream habitat, and (4) encouragement of land management practices that protect unique qualities of the watershed. Implementation procedures for Tier 2.5 waters will be developed under a stakeholder process.

Rule 391-3-6-.03(2)(b)4. is being revised to update the attributes of waters being considered for Outstanding National Resource Waters (ONRW) status to include those with aesthetic and historic significance. These attributes are being added based on the feedback provided at stakeholder meetings that EPD held on revision of guidance for ONRW selection procedures. The rule is also being changed to clarify that waters designated as an ONRW will be included in the Rules to provide greater clarification.

Rule 391-3-6-.03(2)(b)4.(iii) is being changed to allow EPD to approve activities that result in temporary or short-term changes in water quality in Tier 3 (ONRW) waters as is described under Federal guidance. Attempts to designate a water body as an ONRW have been stalled because of concerns that activities, such as trail repair or installation of a boat ramp in or near an ONRW, would cause temporary changes in water quality and therefore could not be allowed.

Rule 391-3-6-.03(2)(b)4.(iv) contains requirements for new or expanding point source discharges upstream of or tributary to an ONRW (Tier 3 water). The requirements are being reworded for clarity and are being renumbered.