

Limited and Temporary Degradation of Tier 3 Waters

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LIMITED AND TEMPORARY DEGRADATION OF TIER 3 WATERS

The state of California's implementation policy expressly states that discharges that are temporally or spatially (i.e., mixing) limited are exempt from antidegradation review, therefore considered insignificant. No guidelines are provided to measure this limitation, only best professional judgment is required to make the determination.

Missouri has a definition of temporary degradation for Tier 3 waters:

Degradation that is non-permanent and the effects can be regarded as insignificant following a review of the a) length of time during which water quality will be lowered, b) percent change in ambient conditions, c) parameters affected, d) likelihood for long term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments), e) degree to which achieving the applicable Water Quality Standards (WQS) during the proposed activity may be at risk, and f) potential for any residual long-term influences on existing uses.

The EPA Region 8 *Antidegradation Implementation* manual contains a nonbinding general rule that defines activities with durations of less than one month as temporary. The EPA *Water Quality Standards Handbook* notes that the Tier 3 rule allows "limited activities that result in temporary and short-term" impacts:

EPA interprets this provision to mean no new or increased discharges to ONRWs and no new or increased discharge to tributaries to ONRWs that would result in lower water quality in the ONRWs. The only exception to this prohibition, as discussed in the preamble to the Water Quality Standards Regulation (48 F.R. 51402), permits States to allow some limited activities that result in temporary and short-term changes in the water quality of ONRW. Such activities must not permanently degrade water quality or result in water quality lower than that necessary to protect the existing uses in the ONRW. It is difficult to give an exact definition of "temporary" and "short-term" because of the variety of activities that might be considered. However, in rather broad terms, EPA's view of temporary is weeks and months, not years. The intent of EPA's provision clearly is to limit water quality degradation to the shortest possible time. If a construction activity is involved, for example, temporary is defined as the length of time necessary to construct the facility and make it operational. During any period of time when, after opportunity for public participation in the decision, the State allows temporary degradation, all practical means of minimizing such degradation shall be implemented.

The majority of states surveyed do have definitions of limited and temporary impacts for Tier 3 waters (Pennsylvania, Washington, Oregon, New Mexico, West Virginia) that generally follow the EPA guidelines above.

West Virginia rules prohibit any lowering of water quality for Tier 3 waters unless it is limited and temporary, as determined by the Secretary of the DEP on a case-by-case basis. The state's antidegradation implementation procedures provide more details in the review process:

In approving short term, limited effect activities, DEP will ensure that:

- All practical means to minimize the impacts have been applied
- There will be no permanent degradation of the receiving water segment
- Tier 1 protection requirements will be met
- Determinations to permit activities that may have short term, limited effects will be made on a case-by-case basis and shall be made after consideration of the following factors:

- The length of time during which the water quality will be lowered;
- The percent change in ambient concentrations;
- The parameters affected;
- The likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments);
- The degree to which achieving applicable water quality standards during the proposed activity may be at risk;
- The potential for any residual long-term influences on existing uses; and
- The cumulative impacts from all sources for the parameters affected.

Washington has procedures for allowing limited degradation in Tier 3 waters as follows:

The criteria and special conditions established in WAC 173-201A-200 through 173-201A-260, 173-201A-320, 173-201A-602 and 173-201A-612 may be modified for a specific water body on a short-term basis (e.g., actual periods of nonattainment would generally be limited to hours or days rather than weeks or months) when necessary to accommodate essential activities, respond to emergencies, or to otherwise protect the public interest, even though such activities may result in a temporary reduction of water quality conditions. (1) A short-term modification will:

(a) Be authorized in writing by the department, and conditioned, timed, and restricted in a manner that will minimize degradation of water quality, existing uses, and designated uses. (b) Be valid for the duration of the activity requiring modification of the criteria and special conditions in WAC 173-201A-200 through 173-201A-260, 173-201A-602 or 173-201A-612, as determined by the department. (c) Allow degradation of water quality if the degradation does not significantly interfere with or become injurious to existing or designated water uses or cause long-term harm to the environment. (d) In no way lessen or remove the proponent's obligations and liabilities under other federal, state, and local rules and regulations.

(2) The department may authorize a longer duration where the activity is part of an ongoing or long-term operation and maintenance plan, integrated pest or noxious weed management plan, water body or watershed management plan, or restoration plan.