





Indiana's Antidegradation Rulemaking Process

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Outline

- **History of Past Antidegradation Rulemaking**
- **Current Antidegradation Rulemaking Efforts**
- **Stakeholder Process**
- **Major Antidegradation Issues**
- **Next Steps**
- **EPA Assistance**

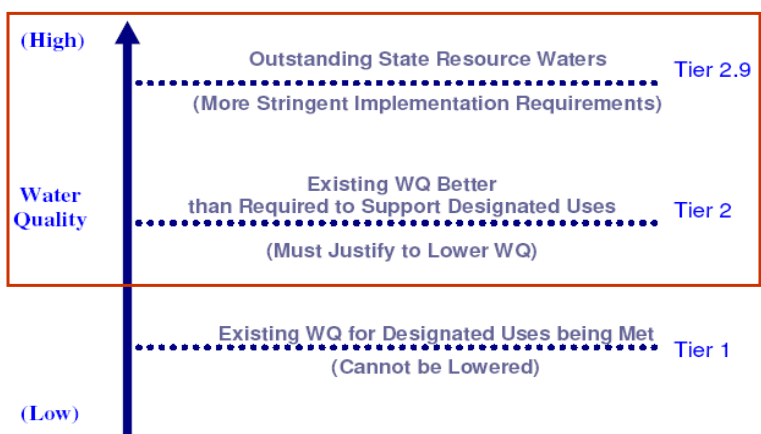

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History of Past Antidegradation Rulemaking

- **1970s:** antidegradation policy adopted for all waters as part of the WQS
- **1997:** as part GLI, antidegradation **implementation** procedures adopted for the Great Lakes Basin only
- **1997- 2002:** workgroup established to work on antidegradation issues for 'downstate waters'
 - representatives from various stakeholder groups
 - efforts failed to resolve issues

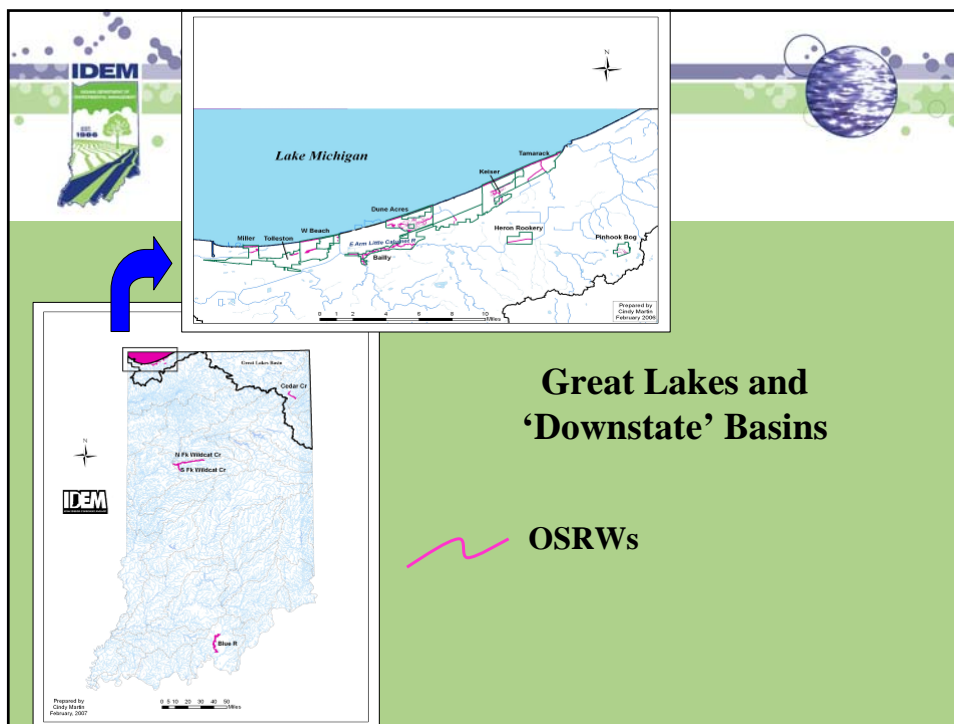

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Indiana Waters



The diagram illustrates the hierarchy of water quality tiers in Indiana. A vertical axis on the left is labeled 'Water Quality' and ranges from '(High)' at the top to '(Low)' at the bottom. Three horizontal dotted lines represent different tiers:


- Tier 2.9:** Outstanding State Resource Waters (More Stringent Implementation Requirements)
- Tier 2:** Existing WQ Better than Required to Support Designated Uses (Must Justify to Lower WQ)
- Tier 1:** Existing WQ for Designated Uses being Met (Cannot be Lowered)



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History of Past Antidegradation Rulemaking

- **November 2002:** first meeting of Antidegradation-OSRW workgroup
- **March 1, 2003:** first notice of rulemaking
 - extensive comments received & responses developed
- **March 2003 – December 2004:** workgroup meetings
- **April 1, 2005:** second notice of rulemaking
 - responses to the comments not prepared




Current Antidegradation Rulemaking Efforts

- IDEM determined second noticed draft difficult to implement
 - extensive amount of comments received
 - an internal review by staff who responsible for implementing antidegradation procedures
- April 2005 – December 2007:
 - regular meetings of internal IDEM-OWQ workgroup to develop revised concept and implementable procedures



Current Antidegradation Rulemaking Efforts

- August – Oct 2007: presentation of revised key concepts to:
 - regulated community, environmental interest groups, Water Pollution Control Board
- Oct 2007 – March 2008: draft rule language developed
 - feedback from the presentations and follow-up meetings
- March 2008: Governor's Stakeholder Meeting
 - presentation of revised concept
- June 2008: Establishment of smaller stakeholder workgroups
 - prioritization of key concepts for future discussions




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Current Stakeholder Process

- Composition of Subgroups
 - 4 reps./stakeholder group at each meeting
 - Reps. from Water Board
 - Commissioner attends when possible
 - IDEM staff
- Purpose of Subgroups
 - Reach agreement on key elements through workgroup discussions
 - IDEM draft rule language as basis for discussion



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Major Issues

(1) Applicability

- Trigger
 - new/increased permit limit
 - new/increased loading of pollutant of concern (POC)

The antidegradation implementation procedures established by this rule apply to a nonexempt proposed new or increased discharge of a pollutant of concern to a surface water of the state that will result in a reasonable potential to exceed (RPE) a water quality standard.



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Major Issues

(2) Definition of POC

- limit POCs to constituents with Tier 1 criteria?
- only limited to those above Limit of Quantification (LOQ)?
- ‘constituent that is reasonably expected to be present based on source and nature of discharge.’

“Pollutant of concern” means a substance for which an NPDES permit limit can be established using a WQBEL or a technology-based effluent limitation according to...




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Major Issues

- Exemptions
 - Qualifying activities
 - variances and thermal discharges (316 b)?
 - Justification for certain exempted activities
 - Eg. **New or increased discharges of a POC that will result only in a short term, temporary (not to exceed twelve (12) months) lowering of water quality.**
 - Importance of public participation?
 - Agreement on some activities as exemptions
 - No agreement on others




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- **Exemptions subgroup agreed create no increased loading**
 - renewal
 - bypass
 - POC in intake water
 - wet weather and CSO controls
- **Exemptions that the subgroup agrees create an increased loading**
 - short term increase
 - CERCLA, etc.
 - pollutant trading
 - de minimis




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Major Issues (cont'd)

- **De Minimis**
 - Definition
 - background, some percent of unused loading capacity?
 - exempted activities
 - different for OSRWs and non-OSRWs?
 - Cumulative cap
 - should there be one?
 - if so, what should it be?




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Major Issues (cont'd)

- Antidegradation Demonstration
 - Requirements
 - Social/Economic/Necessary tests
 - need to balance economic benefits against cost to water quality
 - Alternatives analysis
- Public Participation
 - When in the process
 - Formal or informal
 - Mechanisms for providing information




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Major Issues (cont'd)

- OSRWS
 - Antidegradation Requirements of IC 13-18-3-2 (a/k/a SEA 431)
 - A definition of significant lowering of water quality that includes a de minimis quantity of additional pollutant load:
 - ❖ for which a new or increased permit limit is required;
 - ❖ below which antideg. implementation procedures don't apply




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Major Issues (cont'd)

- Significant lowering of water quality allowed in OSRWs or Exceptional Use Water (EUW) IF:
 - There'll be an overall improvement in water quality by:
 - ❖ implementation of a water quality project in the watershed of the OSRW/EUW **OR**
 - ❖ payment of a fee, not to exceed \$500,000, based on type and quantity of increased pollutant loadings




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Next Steps

- Need to address
 - Tributaries to OSRWs
 - General Permits
- Propose revised draft rule language to WPCB



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How EPA Can Help

- EPA's position on recent court cases
 - Eg. position on de minimis
- Practical way to evaluate social/economic justification
- Guidance on technical aspects such as:
 - Determination of representative background
 - Total assimilative capacity determination
 - How to justify a de minimis of X %
- Revisions to federal effluent guidelines