

FAQs -

Proposed Regulations for Antidegradation Procedures and Ecological and Aesthetic Waters

What is antidegradation?

Antidegradation is a program and set of procedures to maintain and protect the existing quality of surface waters.

The primary goal of antidegradation is to protect water quality and preserve the unique attributes and conditions that may be impossible to fully restore if high-quality waters are degraded.

Which waters are affected?

Only surface waters in Nevada are affected by the proposed regulation and program. Groundwater is not affected.

Does the Clean Water Act (CWA) include antidegradation protection?

The antidegradation component of the CWA requires states to have an antidegradation program, along with procedural steps for implementation that:

- Establish additional protection for surface waters with exceptional water quality, unique water quality characteristics, or important ecological, aesthetic, or recreational value.
- Limit degradation of the higher water quality conditions, where the quality of the receiving water for any permitted discharge is better than the established water quality standards to protect beneficial uses of that water.
- Evaluate whether lowering water quality in a high-quality water can be avoided with cost-effective practicable alternatives, and if not, determine whether the lower water quality is justified based on economic or social benefits.

- Ensure beneficial uses of the receiving water are maintained and protected.

How has Nevada addressed the CWA antidegradation requirement?

Nevada Revised Statute (NRS) 445A.565 was enacted to comply with the CWA and states, in relevant part, “[a]ny surface waters of the State whose quality is higher than the applicable standards of water quality as of the date when those standards become effective must be maintained in their higher quality.”

NRS 445A.565 also allows for lowering of water quality conditions for economic or social reasons.

NDEP’s policy to fulfill antidegradation statutory requirements has been to develop RMHQ (requirements to maintain higher quality) standards when sufficient water chemistry data exist for a particular parameter in a specified waterbody. The RMHQ value, which reflects the higher water quality level, is proposed in conjunction with the beneficial use standard during the regulatory process of adopting water quality standards. Where present for a water, RMHQs are used in the permitting process for any discharge to that water.

Why is NDEP pursuing a change to the current approach to antidegradation?

Across Nevada, there are many waters that have higher water quality conditions but do not have established RMHQ values to maintain and protect those conditions. If a discharge is proposed to such a high-quality water, the current approach would involve a lengthy process of monitoring, characterization of water quality, development of RMHQ values, and regulatory approval of RMHQ standards *before* the discharge could be authorized.

NDEP has recognized that a more flexible and comprehensive antidegradation program is needed to ensure that high-quality waters are protected when point-source discharges to these waters are proposed.

During the permit-development process, defined procedural steps for conducting an antidegradation review will satisfy statutory antidegradation requirements to maintain existing water quality levels and preserve higher water quality conditions in the receiving waters.

What is included in Draft Regulatory Petition R119-20?

Draft petition R119-20 has two main components, in which it:

1. Describes the proposed antidegradation program delineating “tiers of protection” to maintain and protect the existing condition of higher-quality surface waters from point-source discharges.
2. Outlines a formal rule-making process for nominating and classifying surface waters that have exceptional or special water quality characteristics or important ecological, aesthetic, or recreational value as “ecological or aesthetic waters” (EAWs).

How would the antidegradation program be implemented?

The proposed antidegradation program would be implemented during review and development of discharge permits, and would be inclusive of all state surface waters.

NDEP has drafted detailed implementation procedures as part of the regulatory petition; these procedures outline the sequence of steps that would be followed to achieve the different tiers of antidegradation protection. The steps would prevent degradation in some waters, maintain and protect high quality conditions in other waters, and assure that water quality necessary to support beneficial uses are maintained in all surface waters.

How would exceptional waters be nominated, adopted, and protected?

Draft Regulation R119-20 also outlines a formal rule-making process for nominating and classifying surface waters that have exceptional or special water quality characteristics or important ecological, aesthetic, or recreational value as “ecological or aesthetic waters” (EAWs).

EAWs would be afforded a higher level of antidegradation protection relative to other waters of the state under the proposed antidegradation program.

Who can nominate a surface water as an EAW, and what information is needed?

A surface water or a segment of a surface water of the state may be nominated for classification as an EAW by any Nevada citizen or group. A process for nomination is described in the draft petition, and includes nomination criteria, required nomination information, and the factors that would be considered to designate a water as an EAW.

The individual or group proposing the nomination would work with NDEP during the public decision-making process to evaluate whether a nominated water qualifies for consideration, and to gather the required information and documentation. This information should include the level of public support to submit a recommendation to the State Environmental Commission to designate a water as an EAW.

The above information and documentation, along with Form #1, must be submitted to the State Environmental Commission, per NAC 445B.886. See specific requirements for EAW nominations in the proposed regulation.

