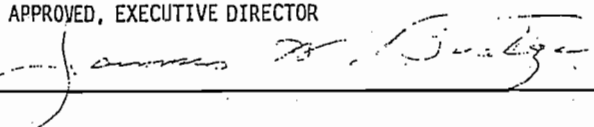


STATE WATER RESOURCES CONTROL BOARD
 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

ADMINISTRATIVE PROCEDURES UPDATE

TO REGIONAL BOARD STAFF WQ MANUAL HOLDERS WQ PROGRAM MANAGERS	SUBJECT ANTIDegradation POLICY IMPLEMENTATION FOR NPDES PERMITTING	
	APU NUMBER 90-004	SUPERSEDES APU
APPROVED, EXECUTIVE DIRECTOR 	EFFECTIVE DATE 7-2-90	

INTENT

This Administrative Procedures Update provides guidance for the Regional Boards for implementing State Board Resolution No. 68-16, "Statement of Policy With Respect to Maintaining High Quality of Waters in California" (Appendix I-1), and the Federal Antidegradation Policy, as set forth in 40 CFR 131.12 (Appendix I-2), as applied to the NPDES permitting process. Additional guidance for interpreting State Board Resolution No. 68-16 and the federal antidegradation regulation may be found in Appendices I-3 (EPA's Questions and Answers on Antidegradation), I-4 (State Board legal memo entitled "Federal Antidegradation Policy") and I-5 (EPA Region 9's Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12).

WHEN IS AN ANTIDegradation ANALYSIS REQUIRED

To implement the antidegradation policy, the Regional Boards must consider the need to include a finding that specifies that water quality degradation is permissible when balanced against benefit to the public of the activity in question. The determination as to whether a finding is needed must be made when issuing, reissuing, amending, or revising an NPDES permit. The Regional Board should also make this finding when an existing discharge has reduced water quality, since the facility was last permitted and the reduction is not authorized by the permit. The findings should specifically state that the Regional Board has considered antidegradation pursuant to 40 CFR 131.12 and State Board Resolution No. 68-16 and finds that the permitted discharge is consistent with those provisions. If the Regional Board finds that lowering of water quality is consistent with the conditions established in the State policy and the federal regulation, the findings should indicate:

1. The pollutants that will lower water quality;
2. The socioeconomic and public benefits that result from lowered water quality; and
3. The beneficial uses that will be affected.

Potential beneficial uses are not protected by the federal regulation. Regional Board staff should only apply the State policy when permitting a discharge that solely impacts potential beneficial uses.

ANTIDegradation FINDING NOT REQUIRED

A Regional Board may decide that an antidegradation finding is not required because the proposed discharge is prohibited under either the State or federal policies. For example, if the proposed discharge would violate water quality objectives in the receiving water, no discharge will be allowed and therefore no antidegradation analysis is required. Alternatively, if the Regional Board has no reason to believe that existing water quality will be reduced due to the proposed action, no antidegradation analysis is required.

SIMPLE ANTIDegradation ANALYSIS SUFFICIENT

A Regional Board may determine that it is not necessary to do a complete antidegradation analysis. The Regional Board may reach this determination if, using its best professional judgment and all available pertinent information, the Regional Board decides that the discharge will not be adverse to the intent and purpose of the State and federal antidegradation policies.

Based on information available to the Regional Board and any other background material the Regional Board believes is necessary, a complete antidegradation analysis will not be required if:

1. A Regional Board determines that the reduction of water quality will be spatially localized or limited with respect to the waterbody; e.g., confined to the mixing zone; or
2. A Regional Board determines the reduction in water quality is temporally limited and will not result in any long-term deleterious effects on water quality; e.g., will cease after a storm event is over; or
3. A Regional Board determines the proposed action will produce minor effects which will not result in a significant reduction of water quality; e.g., a POTW has a minor increase in the volume of discharge subject to secondary treatment; or
4. The Regional Board determines that the proposed activity, which may potentially reduce water quality, has been approved in the General Plan of a political subdivision and has been adequately subjected to the environmental and economic analyses in an environmental impact report (EIR) required under the California Environmental Quality Act (CEQA). If the Regional Board finds that the EIR is inadequate, the Regional Board must supplement this information to support the decision.

The above criteria may vary with the types of pollutants. Some pollutants are believed to elicit an effect at a certain concentration (threshold pollutants). Others (non-threshold pollutants) have no safe level. Non-threshold pollutants include carcinogens, mutagens, and teratogens. Regional Boards are urged to apply stricter scrutiny to non-threshold pollutants, and to note that repeated or

multiple small changes in water quality (which would otherwise not require detailed analysis) can result in significant water quality degradation if non-threshold pollutants are involved. The Regional Boards must still make the necessary findings regardless of the nature of pollutants involved, and summarize them in the Fact Sheet for major NPDES permits or in the Statement of Basis for minor NPDES permits.

COMPLETE ANTIDegradation ANALYSIS REQUIRED

The Regional Board may determine that antidegradation provisions must be evaluated in making its decision. In general, an antidegradation analysis is needed to support all regulatory actions that, in the Regional Board's judgement, will result in a significant increase in pollutant loadings. The Regional Boards must consider antidegradation effects and conduct an antidegradation analysis when the proposed activity results in:

1. A substantial increase in mass emissions of a pollutant, even if there is no other indication that the receiving waters are polluted; or
2. Mortality or significant growth or reproductive impairment of resident species.

In particular, an antidegradation finding should be made and, if necessary, an analysis should be conducted when performing the following permit activities:

1. Issuance of a permit for any new discharge, including Section 401 certifications; or
2. Material and substantial alterations to the permitted facility, such as relocation of an existing discharge; or
3. Reissuance or modification of permits which would allow a significant increase in the concentration or mass emission of any pollutant in the discharge.

IMPLEMENTATION OF ANTIDegradation POLICIES

If the Regional Board finds the proposed activity does not warrant a complete antidegradation analysis; e.g., one of the criteria listed above is satisfied, such findings should be documented in the Fact Sheet of the proposed permit action or Regional Board order, along with the basis for those findings.

If the Regional Board determines that a complete antidegradation analysis is necessary to support a finding under State or federal antidegradation policies, the Regional Board shall ensure that sufficient evidence is analyzed to support this decision and that this evidence is summarized in an appropriate finding. When a discharge is included in a project requiring CEQA documentation, the antidegradation analysis should be integrated in the environmental review process. If the Regional Board is not the lead agency on a project requiring an antidegradation finding, the Regional Board should ensure that the lead agency includes the antidegradation information in the EIR. The Regional Board shall make such a request to the lead agency no later than 30 days after the Regional Board receives a Notice of Preparation from the lead agency [CEQA, Section 15096(b)(2)].

PROCEDURE FOR COMPLETE ANTIDegradation ANALYSIS

When undertaking an antidegradation analysis, the Regional Board should proceed as follows:

1. Compare receiving water quality to the water quality objectives established to protect designated beneficial uses.

The baseline quality of the receiving water determines the level of water quality protection. Baseline quality is defined as the best quality of the receiving water that has existed since 1968 when considering Resolution No. 68-16, or since 1975 under the federal policy, unless subsequent lowering was due to regulatory action consistent with State and federal antidegradation policies. If poorer water quality was permitted, the most recent water quality resulting from permitted action is the baseline water quality to be considered in any antidegradation analysis. Baseline quality is pollutant specific, not waterbody specific. Baseline quality should be determined for each constituent in the discharge which is likely to degrade water quality. The baseline water quality should be representative of the water body, accounting for temporal and spatial variability. Water quality protection depends on the baseline receiving water, as follows:

- a. If baseline water quality is equal to or less than the quality as defined by the water quality objective, water quality shall be maintained or improved to a level that achieves the objectives. Baseline water quality should be compared to all numerical and narrative objectives that protect the actual and potential beneficial uses which would be affected by the proposed discharge. The discharge may be prohibited or allowed as described under 40 CFR 130.7.
- b. If baseline water quality is better than the water quality as defined by the water quality objective, the baseline water quality shall be maintained unless poorer water quality is necessary to accommodate important economic or social development and is considered to be of maximum benefit to the people of the State.

If the receiving water has been designated as an outstanding national resource water in the Region's Basin Plan, or if it can be argued that the waterbody in question deserves the same treatment (for example a wild and scenic river, an area of special biological significance, etc.), no discharge which will lower existing water quality shall be allowed. Lake Tahoe is the only water body in the State presently designated as an outstanding national resource water.

2. Balancing the proposed action against the public interest.

Ensure that a discharge to high quality water, which is likely to reduce water quality, is not permitted unless the reduction in water quality is offset by maximum public benefit to the people of the State. This step should be performed if a finding of reduced water quality is made. Regional Board staff shall not recommend that the activity be permitted unless all of the following conditions are met:

- a. The proposed action is necessary to accommodate important economic or social development in the area. (Factors to be considered when determining important economic or social development follow.)

- b. The reduction in water quality is consistent with maximum public benefit.
- c. The reduction in water quality will not unreasonably affect actual or potential beneficial uses.
- d. Water quality will not fall below water quality objectives prescribed in the Basin Plan.

The severity and extent of water quality reduction should be weighed when evaluating the benefits required to compensate for that degradation. The magnitude of the proposed project and potential reduction should also determine the scope of impact assessment. The Regional Board should ensure that a systematic impact assessment is conducted.

Factors that should be considered when determining whether the discharge is necessary to accommodate social or economic development and is consistent with maximum public benefit, include:

- a. Past, present, and probable beneficial uses of the water.
- b. Economic and social costs, tangible and intangible, of the proposed discharge compared to benefits. The economic impacts to be considered are those incurred in order to maintain existing water quality. The financial impact analysis should focus on the ability of the facility to pay for the necessary treatment. The ability to pay depends on the facility's source of funds. In addition to demonstrating a financial impact on the publicly-or privately-owned facility, the analysis must show a significant adverse impact on the community. The long-term and short-term socioeconomic impacts of maintaining existing water quality must be considered. Examples of social and economic parameters that could be affected are employment, housing, community services, income, tax revenues, and land value. To accurately assess the impact of the proposed project, the projected baseline socioeconomic profile of the affected community without the project should be compared to the projected profile with the project.
- c. The environmental aspects of the proposed discharge must be evaluated. The proposed discharge--while actually causing a reduction in water quality in a given water body--may be simultaneously causing an increase in water quality in a more environmentally sensitive body of water from which the discharge in question is being diverted; e.g., changing the location of San Francisco's outfall from the Bay to the ocean.
- d. The implementation of feasible alternative control measures which might reduce, eliminate, or compensate for negative impacts of the proposed action.

The Regional Board should encourage the participation of the public and appropriate government agencies in the public interest balancing process so that the environmental, social, and economic impacts of the project are accurately assessed. EPA's Water Quality Standards Handbook (Chapter 5) provides additional guidance in assessing financial and socioeconomic impacts.

3. Report on the antidegradation analysis.

The Regional Board must ensure full intergovernmental coordination and public participation in the permitting process. The antidegradation analysis should be summarized in the Fact Sheet for major NPDES permits or the Statement of Basis for minor NPDES permits.

The summary should include all the following information:

- a. The water quality parameters and beneficial uses which will be affected by the proposed action and the extent of the impact.
- b. The scientific rationale for determining that the proposed action will or will not lower water quality.
- c. A description of the alternative measures that were considered.
- d. A description of the socioeconomic evaluation.
- e. The rationale for determining that the proposed action is or is not justified by socioeconomic considerations.

The findings should specifically state that the Regional Board has considered antidegradation pursuant to 40 CFR 131.12 and State Board Resolution No. 68-16 and finds that the permitted discharge is consistent with those provisions.

cc: All Regional Board Staff
WQ Program Managers

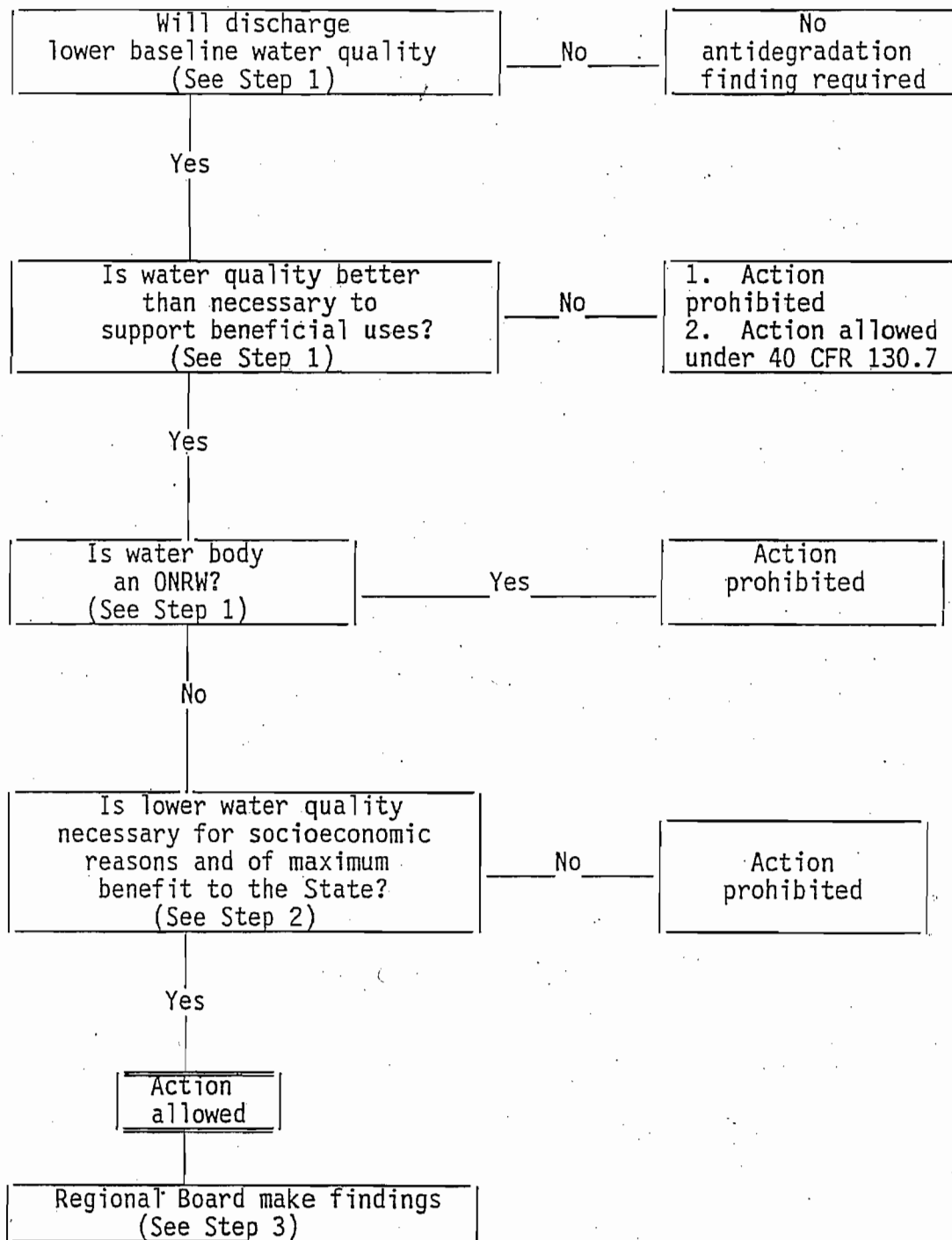


Figure 1 - Decision making flow chart.