

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The proposed amendments will:

- Incorporate by reference the document entitled "Iowa Antidegradation Implementation Procedure," which proposes an approach to be followed in assessing and minimizing degradation of Iowa's surface waters.

- Update antidegradation policy language with four tier approach
- Remove High Quality (Class HQ) and High Quality Resource (Class HQR) designated uses, as they are being replaced by the four tier approach.

Iowa Code (Sections 455B.171 – 455B.183) establishes requirements for the protection and management of surface water quality. The Environmental Protection Commission, through the assistance of the department, promulgates administrative regulations on water quality. Iowa's Water Quality Standards (WQS) are written into regulation at 567 IAC Chapter 61 – Water Quality Standards. The specific portion of the regulation prescribing the policy on antidegradation is 567 IAC Chapter 61.2(2).

The antidegradation rule is one of three required regulatory elements of the WQS. The other two elements include beneficial uses, and water quality criteria (narrative and numeric). All of these

review elements must be administered as a whole. All surface waters of the state are subject to antidegradation provisions. The main purpose of the antidegradation policy and implementation procedures is to protect existing uses of surface waters and to specify how the department will determine, on a case-by-case basis, whether and to what extent, existing water quality may be lowered in a surface water.

The Iowa Department of Natural Resources is required by 40 CFR §131.12(a) to develop and adopt a statewide antidegradation policy and to identify procedures for implementing that policy. There has been an antidegradation policy in the WQS, but formal implementation procedures were absent which limited the policy's usefulness. The proposed implementation procedures include identifying the antidegradation review levels (i.e., the "tiers") that apply to a surface water; determining existing water quality; assessing and determining water quality degradation; identifying and assessing less-degrading or non-degrading alternatives; determining the importance of economic or social development to justify degradation of waters; and establishing intergovernmental coordination and public participation processes.

The antidegradation policy and implementing procedures are intended to provide guidance to persons who are responsible for the regulated activities that may degrade water quality in Iowa. Regulated activities include any activity that requires a CWA permit or a water quality certification pursuant to federal law.

This effort will also establish the Outstanding National Resource Waters (ONRW) and Outstanding Iowa Waters (OIW) antidegradation use categories. These categories will provide an increased level of protection where degradation is prohibited except in limited circumstances. The implementation procedures detail how the public can nominate a surface water to be afforded these levels of protection to the department.

Additional information on Iowa's Water Quality Standards and the Department's rules can be found on the Department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

Any person may submit written suggestions or comments on the proposed amendments through January 29, 2009. Such written material should be submitted to Adam Schnieders, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034, fax (515)281-8895 or by E-mail to adam.schnieders@dnr.iowa.gov. Persons who have questions may contact Adam Schnieders at (515)281-7409. This NOIA was modified to include two additional hearings and an extension of the public comment based on changes at the October EPC meeting.

Persons are invited to present oral or written comments at public hearings which will be held:

December 12, 2008	1 p.m.	Wallace State Office Building Fifth Floor Conference Rooms 502 East 9 th Street Des Moines, Iowa
December 15, 2008	10 a.m.	Washington Public Library 120 E. Main Street Washington, IA
December 17, 2008	10 a.m.	Storm Lake Public Library 609 Cayuga Street Storm Lake, IA
December 17, 2008	6 p.m.	Atlantic Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa
December 18, 2008	1 p.m.	Clear Lake Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa
January 14, 2009	10 a.m.	Manchester Public Library 304 Franklin Street Manchester, IA

January 14, 2009	6 p.m.	Northeast Iowa Community College - Waukon 1220 3rd Avenue, Suite 102, Room 115 Waukon, IA 52172
January 15, 2009	1 p.m.	Davenport Public Library 321 Main, Film Room Davenport, IA 52801

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend subrule 61.2(2) as follows:

61.2(2) Antidegradation policy. It is the policy of the state of Iowa that:

a. Tier 1 protection. Existing surface water uses and the level of water quality necessary to protect the existing uses will be maintained and protected.

b. Tier 2 protection. Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the department shall assure water quality adequate to protect existing uses fully. Further, the department shall assure the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control before allowing any lowering of water quality.

c. Tier 2 ½ protection – Outstanding Iowa waters. Where high quality waters constitute an outstanding state resource, such as waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

d. Tier 3 protection – Outstanding national resource waters. Where high quality waters constitute an outstanding national resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. Any proposed activity that would result in a permanent new or expanded direct source of pollutants in an Outstanding National Resource Water is prohibited.

e. The four levels of protection provided by the antidegradation policy in subsections (a) through (d) of this section shall be implemented according to procedures hereby incorporated by

reference and known as the “Iowa Antidegradation Implementation Procedure,” effective (insert effective date). This document may be obtained on the Department’s Web site at

<http://www.iowadnr.com/water/standards/index.html>.

f. All unapproved facility plans for new or expanded construction permits, except for construction permits issued on non-discharging facilities, shall undergo an antidegradation review if degradation is likely in the receiving water or downstream waters following the effective date of the “Iowa Antidegradation Implementation Procedure”.

~~a. Existing surface water uses and the level of water quality necessary to protect the existing uses will be maintained and protected.~~

~~b. Chemical integrity: For those water bodies where water quality significantly exceeds levels necessary to protect existing uses and the waters designated as high quality in 61.3(5) “e,” that water quality will be maintained at or above existing quality, except when it is determined by the environmental protection commission after public hearing and after intergovernmental coordination and public participation provisions noted in the continuing planning process that there is need to allow a lower chemical quality because of necessary and justifiable economic and social development in the area.~~

~~The state shall ensure adequate chemical quality to fully protect existing uses.~~

~~(1) Bear Creek, mouth in Winneshiek County and tributary to the Upper Iowa River.~~

~~(2) Bloody Run, mouth in Clayton County and tributary to the Mississippi River.~~

~~(3) Catfish Creek from Swiss Valley Park in Dubuque County to its source.~~

~~(4) Unnamed Creek known locally as Coldwater Creek with mouth in Winneshiek County and tributary to the Upper Iowa River.~~

~~(5) Fenchel Creek, mouth to Richmond Springs, in Delaware County and tributary to the Maquoketa River.~~

~~(6) Odell Branch (aka Fountain Spring Creek), mouth (section 10, T90N, R4W, Delaware County), tributary to Elk Creek, which is tributary to the Turkey River to west line of section 9, T90N, R4W, Delaware County.~~

~~(7) Iowa Great Lakes chain of lakes in Dickinson County, including West Lake Okoboji, Spirit Lake, East Lake Okoboji, Minnewashta Lake, Upper Gar Lake, and Lower Gar Lake.~~

~~(8) North Bear Creek, with mouth in Winneshiek County and tributary to Bear Creek, listed as number 1 in this listing.~~

~~(9) North Cedar Creek, with mouth in Clayton County and tributary to Sny Magill Creek.~~

~~(10) Sny Magill Creek, with mouth in Clayton County and tributary to the Mississippi River.~~

~~(11) Turkey River, from the point where it is joined by the Volga River in Clayton County to Vernon Springs in Howard County.~~

~~(12) Waterloo Creek, with mouth in Allamakee County and tributary to the Upper Iowa River.~~

~~(13) Maquoketa River, from confluence with South Fork Maquoketa River (section 16, T90N, R6W, Delaware County) to Highway 3 (north line of section 24, T91N, R7W, Fayette County).~~

~~(14) Spring Branch, mouth (section 10, T88N, R5W, Delaware County) to spring source (section 35, T89N, R5W, Delaware County).~~

~~(15) Little Turkey River, Clayton Delaware County line to south line of section 11, T90N, R3W, Delaware County.~~

~~(16) Middle Fork Little Maquoketa River (aka Bankston Creek), west line of section 31, T90N, R1E to north line of section 33, T90N, R1W, Dubuque County.~~

~~(17) Brush Creek, north line of section 23, T85N, R3E to north line of section 1, T85N, R3E, Jackson County.~~

~~(18) Dalton Lake — Jackson County.~~

~~(19) Little Mill Creek, mouth (Jackson County) to west line of section 29, T86N, R4E, Jackson County.~~

~~(20) Mill Creek (aka Big Mill Creek), from confluence with Little Mill Creek in section 13, T86N, R4E, Jackson County, to confluence with Unnamed Creek, section 1, T86N, R3E, Jackson County.~~

~~(21) Unnamed Creek (tributary to Mill Creek), mouth (section 1, T86N, R3E, Jackson County) to west line of section 1, T86N, R3E, Jackson County.~~

~~(22) Unnamed Creek (aka South Fork Big Mill), tributary to Mill Creek, from mouth (section 8, T86N, R4E, Jackson County) to west line of section 17, T86N, R4E, Jackson County.~~

~~(23) Clear Creek, mouth (Allamakee County) to west line of section 25, T99N, R4W, Allamakee County.~~

~~(24) French Creek, mouth (Allamakee County) to east line of section 23, T99N, R5W, Allamakee County.~~

~~(25) Hickory Creek, mouth (Allamakee County) to south line of section 28, T96N, R5W, Allamakee County.~~

~~(26) Little Paint Creek, mouth to north line of section 30, T97N, R3W, Allamakee County.~~

~~(27) Paint Creek, from confluence with Little Paint Creek to road crossing in section 18, T97N, R4W, Allamakee County.~~

~~(28) Patterson Creek, mouth (Allamakee County) to east line of section 3, T98N, R6W, Allamakee County.~~

~~(29) Silver Creek, mouth (Allamakee County) to south line of section 31, T99N, R5W,
Allamakee County.~~

~~(30) Village Creek, mouth (Allamakee County) to west line of section 19, T98N, R4W,
Allamakee County.~~

~~(31) Wexford Creek, mouth to west line of section 25, T98N, R3W, Allamakee County.~~

~~(32) Buck Creek, mouth (Clayton County) to west line of section 9, T93N, R3W, Clayton
County.~~

~~(33) Ensign Creek (aka Ensign Hollow), mouth (section 28, T92N, R6W, Clayton County) to
spring source (section 29, T92N, R6W, Clayton County).~~

~~(34) South Cedar Creek (aka Cedar Creek), mouth (Clayton County) to north line of section 7,
T92N, R3W, Clayton County.~~

~~(35) Bear Creek, mouth (Fayette County) to west line of section 6, T92N, R7W, Fayette
County.~~

~~(36) Unnamed Creek (aka Glover's Creek), mouth to west line of section 15, T94N, R8W,
Fayette County.~~

~~(37) Grannis Creek, mouth to west line of section 36, T93N, R8W, Fayette County.~~

~~(38) Mink Creek, mouth to west line of section 15, T93N, R7W, Fayette County.~~

~~(39) Otter Creek, mouth (Fayette County) to confluence with Unnamed Creek (aka Glover's
Creek) in section 22, T94N, R8W, Fayette County.~~

~~(40) Nichols Creek (aka Bigalk Creek), mouth (section 18, T100N, R10W, Winneshiek
County) to west line of section 23, T100N, R11W, Howard County.~~

~~(41) Spring Creek, mouth (Mitchell County) to north line of section 8, T97N, R16W, Mitchell
County.~~

~~(42) Turtle Creek, mouth (Mitchell County) to east line of section 7, T99N, R17W, Mitchell County.~~

~~(43) Wapsipinicon River, from the town of McIntire to north line of section 20, T99N, R15W, Mitchell County.~~

~~(44) Bohemian Creek, mouth (Winneshiek County) to Howard County Road V58 (west line of section 2, T97N, R11W, Howard County).~~

~~(45) Coon Creek, mouth (Winneshiek County) to road crossing in section 13, T98N, R7W, Winneshiek County.~~

~~(46) Smith Creek (aka Trout River), mouth to south line of section 33, T98N, R7W, Winneshiek County.~~

~~(47) Unnamed Creek (aka Trout Run), mouth to south line of section 27, T98N, R8W, Winneshiek County.~~

~~(48) Twin Springs Creek, mouth to springs in Twin Springs Park in section 20, T98N, R8W, Winneshiek County.~~

~~(49) Canoe Creek (aka West Canoe Creek), from Winneshiek County Road W38 to west line of section 8, T99N, R8W, Winneshiek County.~~

~~e. Standards and restrictions more stringent than those applied to other waters may be applied by the commission to those waters listed below when it is determined that such more stringent standards and restrictions are necessary to fully maintain water quality at existing levels.~~

~~West Lake Okoboji in Dickinson County.~~

~~d. The Mississippi River and the Missouri River do not meet the criteria of 61.2(2) "c" but nevertheless constitute waters of exceptional state and national significance. Water quality management decisions will be made in consideration of the exceptional value of the resource.~~

~~e. In furtherance of the policy stated in 61.2(2) “b,” there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources, and feasible management and regulatory programs pursuant to Section 208 of the Federal Water Pollution Control Act for nonpoint sources, both existing and proposed.~~

~~f. Physical and biological integrity: The waters designated as high quality resource waters in 61.3(5) “e” will receive protection of existing uses through maintaining water quality levels necessary to fully protect existing uses or improve water quality to levels necessary to meet the designated use criterion in Tables 1, 2 and 3 and at preserving or enhancing the physical and biological integrity of these waters. This involves the protection of such features of the water body as channel alignment, bed characteristics, water velocity, aquatic habitat, and the type, distribution and abundance of existing aquatic species.~~

~~g. It is the intent of the antidegradation policy to protect and maintain the existing physical, biological, and chemical integrity of all waters of the state. Consistency with Iowa’s water quality standards requires that any proposed activity modifying the existing physical, biological, or chemical integrity of a water of the state shall not adversely impact these resource attributes, either on an individual or cumulative basis. An adverse impact shall refer to the loss of or irreparable damage to the aquatic, semiaquatic or wildlife habitat or population, or a modification to the water body that would cause an overall degradation to the aquatic or wildlife population and diversity. The fish and wildlife division of the department and the U.S. Fish and Wildlife Service shall serve as consultants to the department for assessing impacts. Exceptions to the preceding will be allowed only if full mitigation is provided by the applicant and approved by the department.~~

~~For those waters of the state designated as high quality or high quality resource waters and the Mississippi and Missouri Rivers, any proposed activity that will adversely impact the existing~~

~~physical, chemical, or biological integrity of that water will not be consistent with Iowa's water quality standards. Mitigation will not be allowed except in highly unusual situations where no other project alternatives exist. In these cases, full mitigation must be provided by the applicant and approved by the department.~~

~~h.g.~~ This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. ~~The repair and maintenance of a drainage district ditch as defined in 567—70.2(455B,481A) will not be considered a violation of the antidegradation policy for the purpose of implementing Title IV of these rules.~~ United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 as well as Corps regional permits 7, 33, and 34 as promulgated March 19, 2007, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

(4) For discharges of dredged or fill material resulting in the permanent loss of more than 1/10 acre of waters of the United States (including jurisdictional wetlands), a compensatory mitigation plan to offset those losses will be required. In addition, a preconstruction notice to the Corps of Engineers in accordance with general condition 27 will be required.

(5) For newly constructed channels through areas that are unvegetated, native grass filter strips or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

(6) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

(7) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

(8) For projects that impact fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(9) For nationwide permits when the Corps' district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition). Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permit or the Corps, and the activities are allowed subject to

the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require preconstruction notice under nationwide permit conditions.

ITEM 2. Amend subrule 61.3(1), paragraph "b," by removing subparagraphs (6) and (7) and renumber subrule 61.3(3), paragraph "b", subparagraphs (8), (9), (10), (11), (12), and (13) to (6), (7), (8), (9), (10) and (11), as follows:

~~(6) High quality water (Class "HQ"). Waters with exceptionally better quality than the levels specified in Tables 1, 2 and 3 and with exceptional recreational and ecological importance. Special protection is warranted to maintain the unusual, unique or outstanding physical, chemical, or biological characteristics which these waters possess.~~

~~(7) High quality resource water (Class "HQR"). Waters of substantial recreational or ecological significance which possess unusual, outstanding or unique physical, chemical, or biological characteristics which enhance the beneficial uses and warrant special protection.~~

~~(8) Warm water—Type 1 (Class "B(WW-1)"). Waters in which temperature, flow and other habitat characteristics are suitable to maintain warm water game fish populations along with a resident aquatic community that includes a variety of native nongame fish and invertebrate species. These waters generally include border rivers, large interior rivers, and the lower segments of medium-size tributary streams.~~

(~~97~~) Warm water—Type 2 (Class “B(WW-2)”). Waters in which flow or other physical characteristics are capable of supporting a resident aquatic community that includes a variety of native nongame fish and invertebrate species. The flow and other physical characteristics limit the maintenance of warm water game fish populations. These waters generally consist of small perennially flowing streams.

(~~108~~) Warm water—Type 3 (Class “B(WW-3)”). Waters in which flow persists during periods when antecedent soil moisture and groundwater discharge levels are adequate; however, aquatic habitat typically consists of nonflowing pools during dry periods of the year. These waters generally include small streams of marginally perennial aquatic habitat status. Such waters support a limited variety of native fish and invertebrate species that are adapted to survive in relatively harsh aquatic conditions.

(~~119~~) Lakes and wetlands (Class “B(LW)”). These are artificial and natural impoundments with hydraulic retention times and other physical and chemical characteristics suitable to maintain a balanced community normally associated with lake-like conditions.

(~~210~~) Human health (Class “HH”). Waters in which fish are routinely harvested for human consumption or waters both designated as a drinking water supply and in which fish are routinely harvested for human consumption.

(~~311~~) Drinking water supply (Class “C”). Waters which are used as a raw water source of potable water supply.

ITEM 3. Amend the Bacteria Criteria Table in subrule 61.3(3), paragraph "a," subparagraphs (1) as follows:

Bacteria Criteria Table (organisms/100 ml of water)

Use or Category	Geometric Mean	Sample Maximum
Class A1		
3/15 - 11/15	126	235
11/16 - 3/14	Does not apply	Does not apply
Class A2 (Only)		
3/15 - 11/15	630	2880
11/16 - 3/14	Does not apply	Does not apply
Class A2 and (B(CW) or HQ OIW or ONRW)		
Year Round	630	2880
Class A3		
3/15 - 11/15	126	235
11/16 - 3/14	Does not apply	Does not apply
Class A1 – Primary Contact Recreational Use Class A2 - Secondary Contact Recreational Use Class A3 – Children’s Recreational Use		

ITEM 4. Amend subrule 61.3(5) Surface Water Classification as follows:

The department hereby incorporates by reference “Surface Water Classification,” effective ~~June 11, 2008~~ [insert effective date]. This document may be obtained ~~from the Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034,~~ or on the department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

Date

Richard Leopold, Director