

**Utah Division of Water Quality (DWQ) responses (indented) to EPA REGION 8 WATER QUALITY UNIT COMMENTS ON THE DECEMBER 15, 2009 DRAFT UTAH ANTIDEGRADATION IMPLEMENTATION GUIDANCE**

1. General Comment -We suggest that the Division develop guidance that is fully consistent with Utah's antidegradation rule, while also considering whether there are specific issues where additional regulatory authority is needed. In particular, to the extent that the Division is interested in relaxing or modifying current antidegradation requirements in particular situations or for particular types of permits, it may be best to do that with a rulemaking action. Guidance provides a useful way to let stakeholders know how the rule will be interpreted, but it should not be used in a way that essentially modifies the regulation. Another approach that can be considered is to develop the guidance in phases to allow more time to address especially difficult issues.

**DWQ Response:** DWQ agrees that any guidance must be consistent with DWQ rules. Our current approach is iterative because of the level of complexity of conducting antidegradation reviews (ADRs) and lack of national guidance from USEPA. Future modifications to our rules may be necessary but we will attempt to bundle these changes for efficiency and to be sure that the changes will achieve the desired results. We also want to avoid the confusion that may result within DWQ and in the regulated community when Standards keep changing.

2. General Comment – We suggest that it may be useful to include definitions of key terms in the guidance. Should the Division add a definitions section or discuss definitions included elsewhere in Utah rule?

**DWQ Response:** DWQ agrees that a definitions section will be helpful. Future iterations of the guidance will include a definitions section. As DWQ has discussed with USEPA, our current priority is having the portions of the guidance relevant to the UPDES permitting program completed as soon as possible so that the permits can be issued in a timely fashion.

3. Section 2.0 – We suggest that this section should emphasize that reviews will be conducted to implement antidegradation requirements for all waters of the State including Category 1, Category 2, and Category 3 waters, and that the questions to be answered by the review depend on the antidegradation protection requirements for the water segments that would be affected by the proposed activity. As currently drafted, there may be too much emphasis in this section on the necessity determination which is a key element (but not the only element) of the protection requirements for Category 3 waters.

**DWQ Response:** Portions of the text were revised in response to this comment and we look forward to USEPA's continuing support as we finalize the guidance. The emphasis on the necessity determination was in response to the concerns of permittees and DWQ permitting staff.

4. Section 2.1.1 – This section provides an introduction to the protection requirements for Category 1 waters. It is noted that “future discharges of wastewater into these waters are not permitted.” It may be useful to consider situations where a Category 1 designation does not extend all the way to headwaters (even if there are none currently), and an activity is proposed in a segment located upstream of the Category 1 segment. What requirements apply to such situations and what implementation guidance is appropriate? If the Division develops procedures for Category 1 waters, this may be an issue that should be addressed. The same situation might arise for Category 2 waters that do not extend all the way to headwaters. Another implementation issue for Category 1 waters concerns situations where proposed activities may be authorized because water quality effects would be temporary and limited.

**DWQ Response:** DWQ agrees but anticipates continuing the near-term focus on Category 3 waters because these are the waters affected by the majority of Utah’s discharge permits. Downstream uses must be protected and if downstream waters are classified as Category 1 or 2, discharges upstream must not degrade these waters. DWQ acknowledges that a description of the procedures for implementing this protection will be helpful and should be addressed by future iterations. Additional detail was added to provide guidance on the considerations to determine if the temporary and limited criteria are appropriate for an activity.

5. Section 2.1.2 – This section provides an introduction to the protection requirements for Category 2 waters. It is noted that discharges are permissible “provided no degradation of water quality will occur.” If the Division develops procedures for Category 2 waters, issues that might need to be addressed include: (1) use of upstream offsets (or pollutant trading) in the same drainage to achieve the “no degradation” requirement, (2) determination of background water quality concentrations, and (3) determination of effluent limits for point sources including how the magnitude and averaging period (e.g., daily max, 30-day average, etc.) are determined.

**DWQ Response:** DWQ agrees that additional implementation procedures for addressing the no degradation requirement for Category 2 waters would be helpful in future iterations.