

Antidegradation and Reclassification

**Senate Natural Resources and Energy
April 5, 2023**

Vermont Water Quality Standards

Designated Uses



Management
Objectives and
Minimum Criteria

Antidegradation Policy

Designated Uses

**Aquatic biota
& wildlife**



Aquatic habitat



**Fishing &
related
recreational
uses**



**Swimming &
other primary
contact
recreation**



**Boating & related
recreational uses**



Aesthetics



**Public water
source**

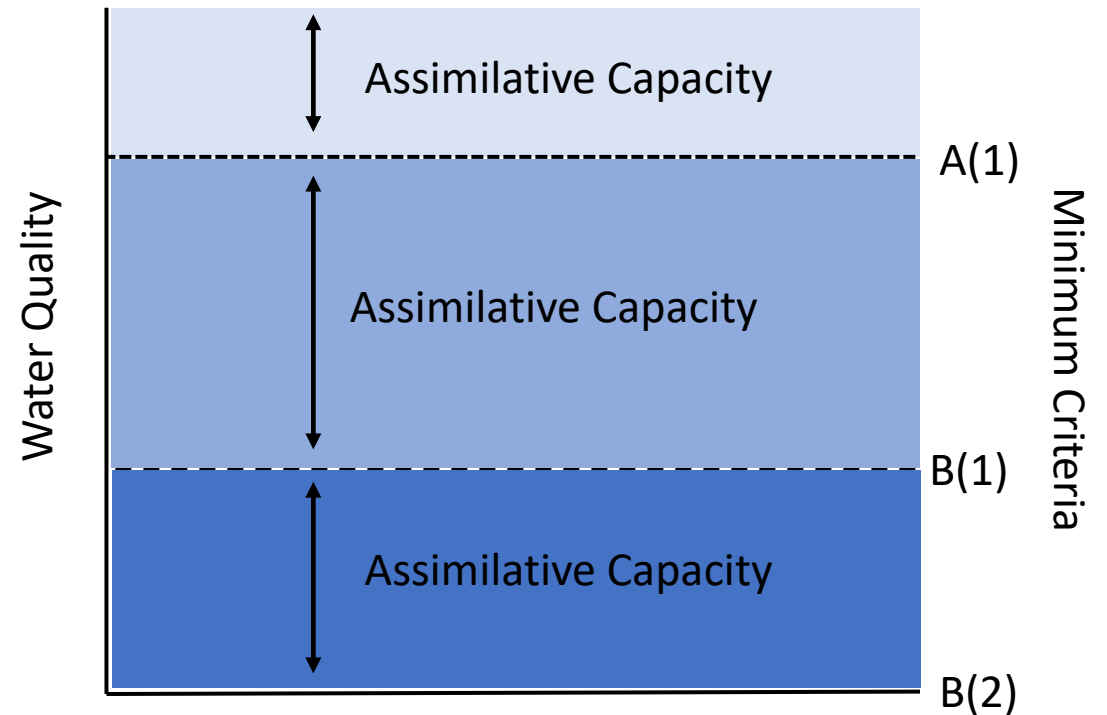


**Irrigation &
other
agricultural
uses**



Classification of Designated Uses

- A(1), B(1): Aquatic biota, aquatic habitat, aesthetics, swimming, fishing, boating
- A(2): Public water source
- B(2): All designated uses
- All waters at or above 2,500 feet are Class A, A(1) or Class A(2)
- All waters below 2,500 feet are B(2) unless reclassified



What is Antidegradation?

- Mandated by the federal Clean Water Act and Vermont State Statute.
- Limits any incremental water quality degradation unless it is necessary to avoid important, substantial socioeconomic impacts to people of the state.
- Requires maintenance and protection of water quality to support uses.
- Implemented through permits for new or increased discharges when compliance with the Vermont Water Quality Standards is required.

Antidegradation Policy (§ 29A-105)

- To protect and maintain the water quality of Outstanding Resource Waters (Tier 3)
- To limit water quality degradation that results from permitted activities and ensure any water quality degradation that occurs is to avoid substantial adverse socioeconomic impacts (Tier 2)
- To ensure that existing uses are protected and maintained (Tier 1)

Antidegradation Implementation

- Only applies to high quality waters (i.e., those that meet or exceed the minimum criteria in the Water Quality Standards).
- Only applicable in permitting decisions for new or increased discharges when a proposed activity must demonstrate compliance with the Water Quality Standards.
- In most cases, except for Outstanding Resource Waters, implementation of antidegradation allows degradation, but the degradation must be limited, must never go below the minimum criteria, and must only occur to avoid substantial adverse socioeconomic losses.

Tier 3: Protection of Outstanding Resource Waters

- Existing water quality associated with their exceptional natural, recreational, cultural, or scenic values shall be maintained and protected.
- Discharges only permitted if:
 - Necessary to maintain current environmental conditions or improves water quality; or
 - Discharge is temporary and receiving water quality is expected to be maintained or improved relative to that which existed before the discharge.

Tier 2: Protection of High Quality Waters

- A limited reduction in the existing quality of high quality waters may be allowed only when it is shown that:
 - through the applicable permitting or approval process, the Secretary has provided public notice of the draft decision and an opportunity for public comment on the decision;
 - after an analysis of alternatives, allowing lower water quality is necessary to prevent substantial adverse economic or social impacts on the people of the State; and
 - there shall be achieved the highest statutory and regulatory requirements for all new or existing point sources, and all cost effective and reasonable best management practices for nonpoint source control, consistent with state law.

Tier 2: Protection of High Quality Waters

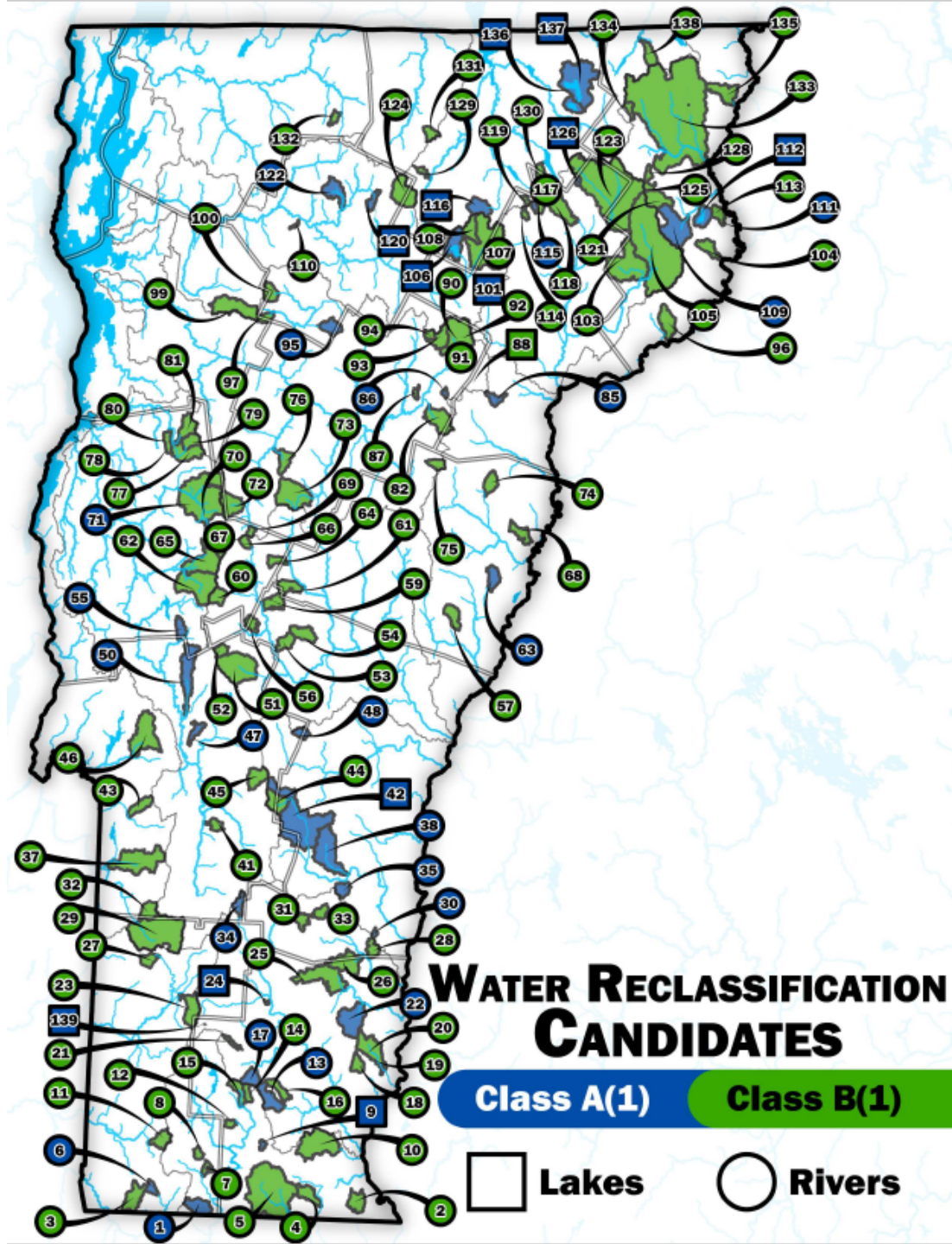
- Does the receiving water meet or exceed minimum water quality criteria for a given parameter?
- How far above the minimum water quality criteria is the receiving water?
- What will be the effect of the proposed activity on receiving water quality?
- Is the lowering of water quality justified by avoidance of substantial socioeconomic impacts to people of the state?

Tier 1: Protection of Existing Uses

- The existing uses of waters, and the level of water quality necessary to protect those existing uses, shall be maintained and protected.
- Beginning on July 1, 2023, and biannually thereafter, the Secretary shall determine through the evaluation of existing water quality data the waters that meet or exceed the minimum criteria for a higher class for one or more designated uses.
- For waters where the Secretary determines water quality data meets or exceeds the minimum criteria for a higher class for one or more designated uses, or the Secretary has received an administratively and technically complete petition to reclassify waters, any permit issued by the Secretary must ensure the maintenance of water quality necessary to protect that existing use.
- On or before January 1, 2026, and upon each subsequent triennial rulemaking for the Vermont Water Quality Standards, the Secretary shall propose to reclassify waters as described above.

Statutory Prohibition versus Individual Permits

- Legislative initiative to remove prohibition
 - 10 V.S.A. § 1259: Onsite systems greater than 1,000 gallons/day prohibited in Class A watersheds
 - No clear nexus to water quality protection and may impede resolving water quality issues for failing septic systems.
- Proposed Antidegradation Implementation Rule
 - Tier 2: Individual permit requirement for Class A(1), B(1), and A(2) watersheds, in consideration of location, size, and scale of proposed activity
 - Tier 1: Requirement to protect higher water quality even if not reclassified



Recommendations

- The Antidegradation Implementation Rule would provide better and more appropriate protection for these very high quality waters.
- Classification of the receiving water and regulatory management requirements should be separate determinations and processes.
- The removal of the existing prohibition would enable us to efficiently move reclassifications forward with a singular focus on the existing quality of the water.
- This proposal would only impact those waters reclassified after July 1, 2023; the existing prohibition would remain in effect for all current Class A waters.
- These candidate waters for reclassification currently remain classified as B2, and therefore do not have any size limitations on indirect discharge systems, no requirement for individual permit reviews, and have a lower minimum water quality criteria than if they were reclassified upward.
- Through the combination of the rule and the removal of this outdated statutory prohibition we seek to more efficiently and effectively reclassify our waters and provide more enhanced and appropriate protections of our very high quality waters.