



## Watershed Management Division Fact Sheet Proposed Water Quality Standards Revisions for 2015-2016



**Background:** In 2012, Vermont Act 138 conferred statutory authority to the Agency of Natural Resources (ANR) to conduct rulemaking for the Water Quality Standards (Standards); authority which previously rested with the VT Natural Resources Board. In 2014, ANR completed the first major upgrade to the Standards in many years, by upgrading over 100 individual water quality criteria, fixing previously flawed E. coli criteria, and introducing the regions first nutrient criteria for phosphorus for inland lakes and rivers/streams. These new Standards were adopted in October, 2014, and approved by USEPA in September, 2015. With these important technical changes complete, the Division is now engaging a public process to address structural components of the Standards, to improve Vermont's ability to protect, maintain, enhance, and restore surface waters. These proposed changes are intended to address two longstanding issues. The first issue regards the long-term challenges of implementing the "Water Management Types" component of the Standards. The second issue capitalizes on an opportunity presented by Act 64 of 2015, to revise the Antidegradation Policy within the Standards to obtain consistency with the Federal approach to antidegradation, while developing a companion Antidegradation Rule.

**Addressing Water Management Types:** The intent of Water Management Types (WMT) is to recognize that certain Class B waters exhibit conditions that are in the higher range of the Class B scale and should be managed to maintain this quality. The challenge to implementing WMT is that the Standards require that a surface water ascribed to a WMT be managed to support all respective uses described by that WMT. This means that in order for a water to be recognized as a specific WMT, all uses have to be of the same quality, notwithstanding that some uses are measured along an ecological scale, and others along a gradient of human use or enjoyment. As such, it can be impractical to manage a stream simultaneously for very high quality biota, very good aesthetics, and very good boating. Criteria can be developed to protect these uses individually, but these criteria may conflict when applied across uses. Articulating the management implications for waters in a particular WMT has proven difficult and confusing, resulting in no WMT designations since the introduction of the approach in 1998. Therefore, the Division is proposing to restructure the current classification system to allow-designated uses to be independently classified based on their existing or reasonably attainable condition. This means that a waterbody could be classified at different levels for individual uses, so long as the Class B minimum water quality conditions are maintained. The Division is also proposing to maintain the valuable intent of WMTs, by creating an intermediate class between B and A(1), and clarifying the criteria that are applied when a particular use is designated to a class. For discussion purposes in this document, we name the class "B(1)" and three of many prospective examples of the use of Class "B(1)" may be:

- A stream currently classified as B could be designated as Class "B(1)" for aesthetic uses, in recognition of specific aesthetic characteristics that provide very good aesthetic condition, but which do not rise to the level of Class A(1) or Outstanding Resource Waters.
- A stream currently classified as B could be designated as Class "B(1)" for aquatic life use, in specific recognition of the very high quality status of that stream's biological integrity.

- A river currently classified as B may be designated as Class “B(1)” boating, in recognition of specific boating characteristics, the maintenance of which may conflict with other “Class B(1)” criteria.

The Division’s intent is to impart clarity and predictability into the WQS, and to create a simple process, grounded in the tactical basin planning process, to elevate designated uses to higher classification levels. Accompanying this proposed restructuring of the Standards is a recommendation to modify 10VSA§1252 to provide statutory clarity for the improved classification approach.

**Proposed Antidegradation Rule:** The adoption of the restructured classification approach in the Standards will significantly facilitate the development of an antidegradation rule. The fundamental premise of the antidegradation policy is that no Class B surface water shall be managed in such a manner as to permit the incremental reduction of quality until that water only just attains criteria. Under its most basic application, the antidegradation policy requires that the State only allow lowering of waters from their current condition towards the “floor” of Class B criteria, when not doing so would result in significant socioeconomic impacts. Under the current classification, where the vast majority of VT’s waters are Class B for all uses, the distance between the current condition and the “floor” of Class B criteria may be quite large. The Division envisions an antidegradation approach that links to the proposed classification, such that:

1. The intermediate class between A and B will essentially create a higher “floor” within the current Class B range and so-designated Class “B(1)” waters will be managed to remain between their current condition and that elevated “floor,” for the specific use;
2. The allowable lowering within this range remains subject to the same socioeconomic justifications that are expressed by the proposed Federally-consistent antidegradation policy language;
3. The existing condition of waters establishes the use-specific classification level to which that water shall be managed; and,
4. Thru the tactical basin planning process, the existing condition is identified for all waters for which data are available.

**Process and Schedule:** These proposed revisions to the Standards and design of an antidegradation rule approach result from a yearlong, staff-led effort. The basic approach taken by Division staff was that no existing criteria were to be eliminated nor rendered less stringent. Proposed revisions include the restructuring of the Standards to accommodate use-specific classification, reorganization of existing criteria around the proposed use-specific classifications, and a robust antidegradation process that is consistent with Federal guidelines. During fall 2015 and winter 2016, the Division will lead a pre-rulemaking stakeholder process to describe the proposed changes including the antidegradation policy, with the intention of entering the rulemaking process, pursuant to the VT Administrative Procedures Act, as soon as statutory language amendment allows. Leading up to this, the Division will be interacting with legislative Committees of jurisdiction to secure appropriate modifications to 10 V.S.A. §1252 to accommodate classification, and 10 VSA §1251a(c) to ensure that the antidegradation rule process remains timely.