

# Dr 23-1011: Indirect Discharges; Antidegradation; and Reclassification

Senate Natural Resources and Energy

March 30, 2023

10 V.S.A.  
§1259(d)

(d) No person shall cause a discharge of wastes into Class A waters, except for on-site disposal of sewage from systems with a capacity of 1,000 gallons per day (gpd), or less, that are either exempt from or comply with the environmental protection rules, or existing systems, which shall require a permit according to the provisions of subsection 1263(f) of this title.

- On-site disposal = onsite wastewater systems, aka septic
- 1263(f) = indirect discharge
- Typical 3 to 4 bedroom home needs a septic tank with more than 1,000 gallon per day capacity
- Consequence: Can't get suitable septic in Class A water

# Classified Waters

## § 1252. CLASSIFICATION OF HIGH QUALITY WATERS; MIXING ZONES

(a) The State adopts, for the purposes of individually classifying the uses of its high quality waters, the following classes and definitions:

Class A(1): Waters in a natural condition that have significant ecological value;

Class A(2): Waters that are suitable for a public water source with filtration and disinfection or other required treatment; character uniformly excellent.

Class B(1): Waters in which one or more uses are of demonstrably and consistently higher quality than Class B(2) waters; or

Class B(2): Waters that are suitable for swimming and other primary contact recreation; irrigation and agricultural uses; aquatic biota and aquatic habitat; good aesthetic value; boating, fishing, and other recreational uses and suitable for public water source with filtration and disinfection or other required treatment.

# On-site Wastewater vs Indirect Discharge

## On-site Wastewater

- Professional Engineer designed. ANR technically issues the permit, but the PR certification is the key regulatory condition.
- Can be expensive depending on site conditions, but VT industry is experienced and can adjust to most situations.
- No permit term. Once installed do not need to renew unless system fails

## Indirect Discharge

- Need a permit from ANR under Indirect Discharge Rule
- Indirect Discharge Rule is fairly technical
- Permit term of 5 years—must be renewed or discharge must stop
- If law changes after permit is issued, discharge may be subject to new conditions in renewed permit
- 1259(d) 1,000 gpd capacity in Class A also applies to indirect discharge

## Consequence

Indirect discharge permits are not issued in Class A waters and on-site is not available.

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Sec. 2. 10 V.S.A. § 1259(d) is amended to read:

(d) No person shall cause a discharge of wastes into Class A waters classified as Class A before July 1, 2023, except for on-site disposal of sewage from systems with a capacity of 1,000 gallons per day (gpd), or less, that are either exempt from or comply with the environmental protection rules, or existing systems, which shall require a permit according to the provisions of subsection 1263(f) of this title. For all other waters, the on-site disposal of wastewater from a system with a capacity of less than 6,500 gallons per day may be permitted within a Class A or Class B water provided that the system complies with the permitting requirements described in chapter 64 of this title. The on-site disposal of sewage from a system with a capacity of 6,500 gallons or more per day shall require an individual permit according to the requirements of subsection 1263(f) of this title.

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Sec. 3. 10 V.S.A. § 1263(f) is amended to read:

(f) Existing indirect discharges to the waters of the State from on-site disposal of sewage from systems with a capacity of 6,500 gallons per day or more shall comply with and be subject to the provisions of this chapter, and shall obtain the required permit, ~~no~~ not later than July 1, 1991. Notwithstanding the requirements of subsections 1259(d) and (e) of this title, the Secretary shall grant a permit for an existing or new indirect discharge to the waters of the State for on-site disposal of sewage unless ~~he or she~~ the Secretary finds that the discharge violates the water quality standards. Existing indirect discharges from on-site sewage disposal systems of less than 6,500 gpd capacity shall not require a permit under this chapter.

## Why? Anti-degradation Implementation

(4) the ANR Antidegradation Implementation Rule shall also clarify how proposed new discharges to State waters will be reviewed and permitted by ANR;

(5) the ANR Antidegradation Implementation Rule shall require consideration of cumulative impacts to the receiving water during the evaluation of any proposed discharge;

(6) pursuant to the Antidegradation Implementation Rule, the Secretary of Natural Resources shall require a site-specific Tier 2 analysis through the use of individual permits to ensure the protection of waters that are Class A(1), B(1), or A(2); waters where the Secretary determines water quality data meets or exceeds the minimum criteria for these classes; or waters for which the Secretary has received a complete reclassification petition, when proposed activities may result in a measurable reduction in the physical, chemical, or biological quality of such waters due to their location, size, and scale;

# Anti- degradation Policy VWQS

## § 29A-105 Antidegradation Policy

(a) General. All waters shall be managed in accordance with these rules to protect, maintain, and improve water quality.

### (b) Protection and Determination of Existing Uses

Existing uses of waters and the level of water quality necessary to protect those existing uses shall be maintained and protected regardless of the water's classification. Determinations of what constitute existing uses of particular waters shall be made either during the basin planning process or on a case-by-case basis during consideration of an application. The use of waters to receive or transport discharges of waste shall not constitute an existing use for purposes of these rules. In determining the existing uses to be protected and maintained under this section and all other sections of these rules, the Secretary shall consider the designated uses, and at least the following factors:

- (1) Aquatic biota and wildlife that utilize or are present in the waters;
- (2) Habitat that supports or is capable of supporting aquatic biota, wildlife, or plant life;
- (3) The use of the waters for recreation or fishing;
- (4) The use of the water for public water source, or commercial activity that depends directly on the preservation of an existing high level of water quality; and
- (5) For factors (1) and (2) above, evidence of the use's ecological significance in the functioning of the ecosystem or evidence of the use's rarity.



Anti-  
degradation  
Implementation  
Policy Rule: 10  
V.S.A. §1251a

(c) On or before July 1, 2016, the Secretary of Natural Resources shall adopt by rule an implementation process for the antidegradation policy in the water quality standards of the State. The implementation process for the antidegradation policy shall be consistent with the State water quality policy established in section 1250 of this title, the Vermont Water Quality Standards, and any applicable requirements of the federal Clean Water Act. The Secretary of Natural Resources shall apply the antidegradation implementation policy to all new discharges that require a permit under this chapter.

If You Can't  
Go Through;  
Go Around

**VERMONT AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
INTERIM ANTI-DEGRADATION IMPLEMENTATION PROCEDURE**

**I. Authority and Purpose**

A. Section 1-03, Anti-degradation Policy, of the Vermont Water Quality Standards is required pursuant to the federal Clean Water Act (40 C.F.R. 131.12) and is adopted under the authority of 10 V.S.A. Chapter 47. The primary goal of the Policy is the maintenance and protection of water quality, and existing and designated uses. The Policy consists of three main elements:

1. Protection of water quality in outstanding resource waters ("Tier 3").
2. Protection and maintenance of water quality in high quality waters ("Tier 2"); and
3. Determination and protection of existing uses ("Tier 1").

B. Pursuant to 40 C.F.R. 131.12(a) a state must develop and adopt a statewide anti-degradation policy and identify the methods for implementing the policy. The Vermont Legislature has required through statute that the Agency promulgate an anti-degradation rule to identify how the Agency will implement the Policy. Through separate statute, the Legislature has directed that this rulemaking may not commence until at least January 2011. Since rulemaking typically takes at least one year, the Secretary has determined that this Procedure is needed to assist implementation of the Policy during the interim period prior to formal adoption of an anti-degradation rule. This Interim Anti-Degradation Implementation Procedure describes the methods that the Agency will use to implement the Policy during this interim period. This Procedure will expire upon the effective date of an Agency anti-degradation rule.

**II. Definitions**

# Finding Implementation

**VERMONT AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
ANTIDegradation IMPLEMENTATION RULE**

**I. Authority and Purpose**

- a. Pursuant to 40 C.F.R. 131.12, a state must develop and adopt a statewide anti-degradation policy and identify the methods for implementing the policy.
- b. Section 29A-105, Antidegradation Policy (Policy), of the Vermont Water Quality Standards is adopted under the authority of 10 V.S.A. Chapter 47. The primary goal of the Policy is to protect and maintain water quality and existing and designated uses. The Policy consists of three main elements:
  1. Protection of water quality in outstanding resource waters (“Tier 3”);
  2. Protection and maintenance of water quality in high quality waters (“Tier 2”); and
  3. Determination and protection of existing uses (“Tier 1”).
- c. The Antidegradation Implementation Rule (Rule) describes the methods the Agency will use to implement the Policy.

**II. Definitions**

- a. As used in this Rule, the following terms shall have the specified meaning. If a term is not defined, it shall have the meaning specified in the Vermont Water Quality Standards or, in the absence of a definition in the Standards, it shall have its common meaning.
  1. “Agency” means the Vermont Agency of Natural Resources.
  2. “Application” means any request for a permit required by state or federal law when filed with, and deemed complete, by the reviewing authority.

## So—What?

(6) pursuant to the Antidegradation Implementation Rule, the Secretary of Natural Resources shall require a site-specific Tier 2 analysis through the use of individual permits to ensure the protection of waters that are Class A(1), B(1), or A(2); waters where the Secretary determines water quality data meets or exceeds the minimum criteria for these classes; or waters for which the Secretary has received a complete reclassification petition, when proposed activities may result in a measurable reduction in the physical, chemical, or biological quality of such waters due to their location, size, and scale;

❖ Will also allow reclassification of Class B waters to Class A while also allowing for development in those waters

# So Everybody Wins? Maybe

- Water Quality should be protected under Anti-degradation Implementation Rule.
- Development should be allowed if there is no degradation.
- Class B waters can be reclassified as Class A.

BUT

- Rule has not been adopted yet—i.e. don't know exactly what it will require.
- No requirement or condition that ANR reclassify Class B waters that qualify as Class A.
- No requirement in Statute or Rule to document the Anti-degradation analysis, including the Socioeconomic Impact Analysis.
- Not sure if Anti-degradation is required for on-site wastewater.

ALL OF THESE ISSUES ARE LIKELY ADDRESSABLE