

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

May 2, 2012

Antidegradation Procedures

Issue: Antidegradation Procedures.

Background: The Department is requesting the Commission approve the proposed revision to the Antidegradation Implementation Procedure. The Commission adopted the Antidegradation Implementation Procedures on May 7, 2008. The Antidegradation procedures were formally submitted to the Environmental Protection Agency (EPA), as part of Missouri's Water Quality Standards. In a letter dated July 2, 2009, EPA provided a determination that the submitted Antidegradation Procedure were not approvable, due to the United States Sixth Circuit Court of Appeals September 23, 2008 Kentucky Waterways vs. Johnson decision. In the Court of Appeals decision, the Court emphasized EPA must consider individual and cumulative impacts of de minimis exemptions.

EPA's July 2, 2009 letter states that Missouri did not provide appropriate technical justification for the cumulative de minimis cap of 20%; however EPA would support the adoption of a 10% cumulative cap. With three and half years of Antidegradation Reviews, the cumulative cap has not been an issue. The Department is proposing to revise the Antidegradation Implementation Procedure solely to change the 20% cumulative cap to 10%. It is important to obtain EPA's approval, as Antidegradation Procedure is part of the Water Quality Standards. Therefore, the Department has limited the revision to address the sole concern EPA raised in their July 2, 2009 letter.

The proposed revision to the Antidegradation Procedure was placed on public notice March 23, 2012. At this time, no comments have been received on the proposed revision. Copies of any comments received and the Department's response will be posted to the Commission's webpage prior to the Commission meeting and be available at the meeting. A recommendation will be made following the conclusion of the public comment period.

Recommended Action: The public comment period concludes on April 23. Following review and response of comments received, the staff will make a recommendation at that time.

Suggested Motion Language: Following review and response of comments received, the staff will make a recommendation.

Attachments: None.

