

**Summary of Testimony at March 12, 2008, Hearing
(during Clean Water Commission Meeting)
on the Proposed Amendment to 10 CSR 20-7.031(2) Antidegradation
and Responses by the Missouri Department of Natural Resources**

Aimee Davenport, Attorney, Lathrop and Gage, representing the Little Blue Valley Sewer District (LBVSD)

Ms. Davenport stated, on behalf of the LBVSD, that the aggregate cost to the public entities is underestimated in the fiscal note. She requested a modification to the assumptions used in estimating the number of permits likely to receive an antidegradation review. She explained that the department issued 1,132 construction permits in 2006, whereas, the fiscal note reflects only 42 needing a review annually.

Ms. Davenport also stated that the general trend is toward an increase in the number of Water Quality Review Sheets (WQRS) written each year, indicating that the fiscal impact may be increasing in the upcoming years.

Ms. Davenport stated that LBVSD requests that the department reevaluate the effectiveness of the Antidegradation Implementation Procedure (AIP) after one year of its implementation. In closing, she stated that the LBVSD supports moving forward with the rulemaking.

Department Response: The department recognizes the limitations in the fiscal note estimations and Ms. Davenport identifies events that may create additional costs for permittees; however, deriving a reasonably accurate estimate is extremely difficult. There is no certainty about the actual number of permits that will be subject to an antidegradation review. The department made its estimate from the record of the number of WQRSs written during the past year. This record provides an indication of the number of permits requesting new or expanding discharges and for which the department is evaluating for water quality based effluent limitations. The department has not identified any other more reliable source from which to derive an estimate.

Construction permits include actions which do not require an antidegradation review such as sewer extensions, modifications to wastewater irrigation (no discharge) systems, and other modifications that do not affect the effluent quality. The department suspects that a significant number of the 1,132 applications received in 2006 are actions that would not affect the fiscal impact caused by the proposed amendment to the antidegradation rule because the action does not result in a new or expanded discharge. Determining the exact number of permit actions that fall within this category in any calendar year would involve an extensive manual search of the records and would not likely result in a reliable estimate.

Without more information or actual estimates of the other potential costs that may be caused by this proposed rule, the department is not able to identify any specific changes that would improve the accuracy of the fiscal note; however, Ms. Davenport's comments will be contained within the administrative record. These comments broaden the understanding of the events that may lead to additional costs and may provide the readers another way to recognize how the rule may impact them.

The AIP, along with all other parts of the water quality standards, will be reviewed for needed modifications during the next Triennial Review required by 40 CFR 131.20(a). The next review is scheduled during calendar years 2009 through 2011. Unless needed to address significant fiscal impacts, the department will propose needed modifications to the AIP in conjunction with the modifications identified for the other sections of the standards. Combining all of the modifications identified during a Triennial Review is less burdensome to the department and to the stakeholders involved in the standards development.

Mary West, Manager of Environmental Services, Missouri Public Utility Alliance (MPUA)

Ms. West stated that the MPUA supports the re-evaluation of the AIP after one year of its implementation.

Ms. West stated the fiscal note does not include the costs likely to be incurred by small facilities. The costs presented in the fiscal note were derived from one example presented for a medium-sized municipality and based on the experience of one consultant. Costs are not included for providing equipment to achieve the treatment determined necessary by the AIP. Smaller engineering firms will require education and assistance such as workshops offered by the department.

A clarification is needed within the AIP regarding the requirements for determining Existing Water Quality (EWQ). The AIP contains conflicting language on whether or not it is necessary to determine EWQ in all instances during an antidegradation review on Tier 2 waters.

The MPUA requests clarification on how permit limits will be set following an antidegradation review. Commissioner Ron Hardeke, Clean Water Commission (CWC), commented on whether or not it would be possible to develop standard treatment options for smaller entities. Ms. West responded that such options may become apparent after an initial period of implementation of the AIP.

Department Response: As stated in the department's response to Ms. Davenport, the department understands that other possible factors may influence the actual cost to dischargers during an antidegradation review. Smaller discharging entities may find the implementation of the AIP particularly challenging financially because of the engineering costs associated with performing an alternatives analysis. The department encourages any entity needing assistance to contact the department and/or attend the workshops being offered.

The AIP states in Section II.A.1 on Page 16 that a determination of EWQ is not necessary if the applicant *assumes* that a proposed discharge would result in significant degradation. An assumption would direct the applicant to perform an alternative analysis in accordance with Section II.B. The only purpose of determining EWQ is to determine available assimilative capacity, as either Facility Assimilative Capacity (FAC) or Segment Assimilative Capacity (SAC) and the only reason to determine FAC or SAC is to verify that the proposed discharge would not result in significant degradation. The department encourages applicants to avoid the cost of determining the EWQ by assuming significant degradation and going directly to performing the alternatives analysis. An alternative analysis incorporates provisions to ensure that treatment alternatives are identified through the analysis that is cost efficient and reasonable. While an EWQ analysis may in some instances (particularly in larger rivers) where degradation will be minimal, applicants should be cautious of performing an analysis for EWQ in cases it where may might add to the cost of satisfying the antidegradation rule.

Robert Brundage, Attorney, Newman, Comley and Ruth, representing Missouri Agribusiness Association (MAA)

Mr. Brundage states that the MAA supports the comments made by Ms. Davenport and Ms. West. In addition, Mr. Brundage encouraged the department to continue plans to add one full-time employee to ensure proper and efficient implementation of the AIP. Mr. Brundage expressed concern regarding the potential for the AIP to slow down the issuance of discharge permits.

Section II, Page 15, of the AIP states that the department shall assure activities within a watershed are implementing cost-effective, reasonable best management practices to control nonpoint source pollution. This requirement necessitates that the permitting staff of the department closely coordinate with the nonpoint source management staff in order to avoid any delay in the processing of permits.

Department Response: While the creation of positions and the hiring of staff are dependent upon available funding and budget appropriations, the department recognizes the need for at least one additional full-time employee to oversee the implementation of the AIP. This need was shown in the fiscal note presenting the probable fiscal impact to the state.

The department recognizes the need to coordinate permitting activities closely with the nonpoint source management staff. Discussions are ongoing within the department to ensure full awareness of this requirement and to prepare both groups for efficiently handling any tasks associated with this coordination requirement.

Roger Walker, Executive Director, REGFORM

Mr. Walker expressed appreciation for the opportunity for stakeholders to participate in the development of the AIP. Generally, his organization felt the AIP was longer and more burdensome than necessary and that more could have been done to reduce the cost and impact on economic development.

He also echoed the comment that the department should re-evaluate the fiscal impact of the AIP after one year of implementation.

In closing, he supports the AIP as drafted.

Department Response: State rulemaking requirements dictate that the department compares the actual fiscal impact that occurs during the first year after the effective date of new rules with the fiscal impact estimated during the rulemaking. If a significantly greater impact was experienced than predicted, then the department must publish an updated fiscal note in the Missouri Register.

As stated in the department's response to Ms. Davenport, the AIP, along with all other parts of the water quality standards, will be reviewed for needed modifications during the next Triennial Review required by 40 CFR 131.20(a). The department will pursue any modifications to the AIP that it, the Clean Water Commission and the stakeholders agree are needed to improve the AIP's effectiveness and efficiency.

Kim Knowles, Staff Attorney, Missouri Coalition for the Environment (MCE)

Ms. Knowles encouraged the department and CWC to stay on the schedule of completing the rulemaking by September 1, 2008 so that the Environmental Protection Agency (EPA) will have sufficient time to make a determination by September 30, 2008, regarding the adequacy of the AIP in satisfying federal rule at 40 CFR 131.12. She further encouraged the department and CWC to avoid any further comment period on the AIP. In closing, she stated that the MCE supported the AIP as currently written.

Department Response: The department is responding to all comments on the rulemaking and will present an Order of Rulemaking to the CWC on May 7, 2008. If given continued support by the CWC and absent any objection by the Joint Committee of Administrative Rules, the rulemaking should result in an effective rule on or about August 29, 2008. The department will forward a final and effective AIP to EPA immediately following the effective date of the rule.

Trent Stober, MEC Water Resources

Mr. Stober stated that he supported the comments of earlier testimony.

Department Response: The department refers the reader of this record to the responses made to the other comments.