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# ANTI-DEGRADATION SYNOPSIS

The following is a brief synopsis of why planning modules proposing the use of on-lot sewage systems must include an anti-degradation analysis. The EHB decision was a result of an appeal of a planning modules approval. I suggest you read the EHB decision, Chapter 93 regulations and Chapter 71 regulations but I have included below some specific sections to which you should pay special attention.

\* Page 8 of the EHB decision-middle paragraph “We reject the Landowner’s contention that the antidegradation regulations do not apply to on-lot sewage facilities”.

\* Page 9 of the EHB decision-upper paragraph “requires that the Department protect the existing use of a watershed”.

\* Page 11 of the EHB decision “this analysis is clearly required by Sections 93.4a and 93.4c—”

Based on the above listed regulations it appears that two items have to be documented: 1) the existing use has to be maintained and protected and 2) a cost effective and reasonable best management practice is required.

## Chapter 93 regulations

\*93.1 definition of BMP, High Quality Waters, Exceptional Value Waters, Nonpoint Source, Water Quality Criteria

\*93.4a antidegradation existing use protection

\*93.4b(a) water chemistry parameters evaluated to support HQ water

\*93.4c(b)(2) BMP requirement

\*93.4(c)(3) public notice

\*93.7(b) specific water quality criteria for HQ and EV

## Chapter 71

\*71.55(a)(4) Component 1’s are not allowed when the proposal is not consistent with the requirements of 71.21(a)(5)(iii)

\*71.21(A)(5)(iii) references water quality standards and Subchapter D

\*71.61 first section in Subchapter D which requires alternative evaluations in accordance with 71.21 and 71.52(a)(3)

\*71.21(a)(4-6) includes antidegradation requirements 71.21(a)(5)(i)(E)

\*71.53(d)(6)(iv)(ix) public notice required for resolution of a conflict contained in 71.21(a)(5)(i)-(III)

Sewage management appears to satisfy the definition of Best Management Practice (BMP). If you or the applicant read the definition of BMP and proposed something else, the Department will certainly review what you submit and evaluate your reasons why this would qualify as a BMP. As I mentioned, there are different options for sewage management that the Township can pursue.



# ANTI-DEGRADATION

## 93.4a. **Antidegradation**

- (a) *Scope.* This section applies to surface waters of the Commonwealth.
- (b) *Existing use protection for surface waters.* Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
- (c) *Protection for High Quality Waters*—The water quality of High Quality Waters shall be maintained and protected, except as provided in Chapter 93.4c(b)(1)(iii) (relating to implementation of antidegradation requirements).
- (d) *Protection for Exceptional Value Waters*—The water quality of Exceptional Value Waters shall be maintained and protected.

# PROTECTION OF HIGH QUALITY AND EXCEPTIONAL VALUE WATERS

## 93.4b. **Qualifying as High Quality or Exceptional Value Waters.**

(a) *Qualifying as a High Quality Water.* A surface water that meets one or more of the following conditions is a High Quality Water.

### (1) *Chemistry.*

(i) The water has long-term water quality, based on at least 1 year of data which exceeds levels necessary to support the propagation of fish, shellfish and wildlife, and recreation in and on the water by being better than the water quality criteria in Chapter 93.7, Table 3 (relating to specific water quality criteria) or otherwise authorized by Chapter 93.8a(b) (relating to toxic substances), at 99% of the time for the following parameters:

dissolved oxygen	aluminum
iron	dissolved nickel
dissolved copper	dissolved cadmium
temperature	pH
dissolved arsenic	ammonia nitrogen
dissolved lead	dissolved zinc

# ANTI-DEGRADATION REQUIREMENTS

## 93.4C. IMPLEMENTATION OF ANTIDegradation REQUIREMENTS.

### (a) *Existing use protection*

#### (1) *Procedures.*

(i) Existing use protection shall be provided when the Department's evaluation of information (including data gathered at the Department's own initiative, data contained in a petition to change a designated use submitted to the EQB under Chapter 93.4d(a) (relating to processing of petitions, evaluations and assessments to change a designated use), or data considered in the context of a Department permit or approval action) indicates that a surface water attains or has attained an existing use.

(ii) The Department will inform persons who apply for a Department permit or approval which could impact a surface water, during the permit or approval application or review process, of the results of the evaluation of information undertaken under subparagraph (i).

(iii) Interested persons may provide the Department with additional information during the permit or approval application or review process regarding existing use protection for the surface water.

(iv) The Department will make a final determination of existing use protection for the surface water as part of the final permit or approval action.

(2) *Endangered or threatened species.* If the Department has confirmed the presence, critical habitat, or critical dependence of endangered or threatened Federal or Pennsylvania species in or on a surface water, the Department will ensure protection of the species and critical habitat.

### (b) *Protection of High Quality and Exceptional Value Waters*

(1) *Point source discharges.* The following applies to point source discharges to High Quality or Exceptional Value Waters.

#### (i) *Nondischarge alternatives/use of best technologies*

(A) A person proposing a new, additional or increased discharge to High Quality or Exceptional Value Waters shall evaluate nondischarge alternatives to the proposed discharge and use an alternative that is environmentally sound and cost effective when compared with the cost of the proposed discharge. If a nondischarge alternative is not environmentally sound and cost effective, a new additional or increased discharge shall use the best available combination of cost effective treatment, land disposal, pollution prevention and wastewater reuse technologies. 5

# BMP – Best Management Practices

## *BMP – Best Management Practices*

- (i) Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce pollution to surface waters of this Commonwealth.
- (ii) The term includes:
  - (A) Treatment requirements.
  - (B) Operating procedures.
  - (C) Practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage .



# PUBLIC NOTICE

(3) *Public participation requirements for official sewage facilities plans or revisions to official plans in High Quality or Exceptional Value Waters.* A proponent of a sewage facility in High Quality or Exceptional Value Waters seeking approval of an official plan or revision shall comply with the public participation requirements in Chapter 71.53(d)(6) (relating to municipal administration of new land development planning requirements for revisions).

# EXCEPTIONS

## 71.55. **Exceptions to the requirement to revise the official plan for new land development**

(a) A municipality does not have to revise its official plan when the Department determines that the proposal is for the use of individual onlot sewage systems serving detached single family dwelling units in a subdivision of ten lots or less and the following apply:

(1) The proposal, in addition to the existing or proposed subdivision of which it is a part, will not exceed ten lots.

(2) The subdivision has been determined to have soils and site conditions which are generally suitable for onlot sewage disposal systems under Chapter 71.62 (relating to individual and community onlot sewage systems).

(3) For the purposes of determining whether a proposal qualifies for an exception under this section, the enumeration of lots shall include only lots created after May 15, 1972.

(4) The proposal is consistent with the requirements of Chapter 71.21(a)(5)(iii) (relating to content of official plans).

(b) Documentation supporting a request for exception under this section shall be submitted to the Department using the Department's sewage facilities planning module and shall include:

(1) A statement by the governing body of the municipality acknowledging that they and an existing municipal planning or zoning agency, or both, have reviewed the proposal and found it to be consistent with the municipality's official plan.

(2) Evidence of review by the municipality's sewage enforcement officer.

(c) The municipality shall review sewage facilities planning modules upon receipt. If appropriate documentation and comments required by subsection (b) were not included in the planning module, the municipality shall forward a copy of the sewage facilities planning module to the sewage enforcement officer and appropriate planning or zoning agency within 10 days of receipt. The municipality shall review and act upon an application for an exception to the requirements to revise an official plan within 60 days of receipt of a completed sewage facilities planning module or additional time that the applicant and municipality may agree to in writing. Failure of the municipality to act within the 60 day period or an agreed to time extension shall cause the application for the exception to the requirement to revise to be deemed approved by the municipality and the complete application shall then be submitted to the Department by the municipality or the applicant.