

did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

(i) *Antidegradation Implementation Methods.* (1) What is an existing use for purposes of § 131.12(a)(1)? An existing use is a use actually attained in the waterbody on or after November 28, 1975, as defined in § 131.3(e).

(2) How is § 131.12(a)(1) implemented? Existing uses must be protected when authorizing any discharge or conducting any assessment pursuant to the Clean Water Act.

(3) What is a high quality water for purposes of § 131.12(a)(2)? High quality waters are those which have water quality that meets or is better than all applicable water quality standards, including all water quality criteria.

(4) What does not constitute a lowering of water quality for purposes of § 131.12(a)(2)? For purposes of § 131.12(a)(2), there is no lowering of water quality in connection with:

(i) a pollutant concentration increase when there is no overall increase in the total mass load of the pollutant on at least an annual basis; or

(ii) a *de minimis* change in temperature (*i.e.*, a 7DADM stream temperature increase 0.3°C/0.5°F or less across the watershed above an applicable temperature criteria.)

(5) What information must be considered before a lowering of water quality is allowed under § 131.12(1)(2)?

(i) No other reasonable alternatives exist except to lower water quality.

(ii) The action is necessary and justifiable for economic and social

development benefits and outweighs the environmental costs of lowered water quality.

(iii) All water quality standards will be met and beneficial uses protected.

(6) What process must be followed in determining whether to allow a lowering of water quality?

(i) In order to demonstrate the necessity and importance of the proposed activity in a high quality water, the discharger/applicant/source must provide the State with enough information to allow for a financial impact analysis that assesses whether allowing an activity that lowers water quality has socioeconomic benefits that outweigh the environmental costs;

(ii) After the permitting authority considers whether the activity will likely cause a lowering of water quality and whether the discharger/applicant/source has demonstrated the necessary justification, the permitting authority will issue a preliminary decision/recommendation on whether to allow or deny the proposed permit or certificate; and

(iii) This decision/recommendation will be noted prior to the intergovernmental coordination and public notice phases of the antidegradation review.

(7) What process should be used by the State of Oregon in identifying Outstanding Resource Waters (ORWs) for purposes of § 131.12(a)(3)?

(i) The State may designate high quality waterbodies to be classified as ORWs in order to protect the water quality parameters that affect ecological integrity of critical habitat or special

water quality values that are vital to the unique character of those waterbodies.

(ii) The State of Oregon will develop a screening process and establish a list of nominated waterbodies for ORWs designation in the Biennial Water Quality Status Assessment Report (305(b) Report). The priority waterbodies for nomination include: those in State and National Parks, National Wild and Scenic Rivers, State Scenic Waterways, those in State and National Wildlife Refuges, and those in Federally designated wilderness areas.

(iii) The State will publish a list of water bodies which are proposed for designation as ORWs as appropriate at the time of each triennial water quality standards review.

(iv) When designating ORWs, the State shall establish the water quality values to be protected and provide a process for determining what activities are allowed that would not affect the outstanding resource values.

(8) What is the significance of an ORW designation?

(i) After the designation, any regulatory authority that is required to follow water quality standards in authorizing an activity shall not allow activities that may lower water quality below the level established except on a short-term basis to respond to emergencies or to otherwise protect human health and welfare.

(ii) [Reserved]

[FR Doc. 03-25525 Filed 10-9-03; 8:45 am]

BILLING CODE 6560-50-P