



Department of
**Environment &
Conservation**

Proposed Rule Changes to WQ Standards and ARAP Rules

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Rule Changes 2018

- The Rule changes proposed are not final
- Proposed Rule changes have been Noticed for public comment, comments have been received, and formal responses are being prepared
- Once the Notice of Determination has been finalized and the last edits made, DWR will seek Board approval for the Rule changes this fall.

EPA's Role

- Provide guidance to states.
EPA researches the toxicity or carcinogenicity of various substances and publishes National Criteria following public review and comment.
- Reviews state water quality standards actions and has approval/disapproval authority in their role to protect waters of the U.S.



EPA's National Criteria

Each triennial review, staff review changes to EPA's national criteria and make recommendations to the Board.

National criteria do not have to be adopted exactly as recommended, BUT states must have an acceptable science basis for modifying or rejecting EPA's recommendations.

2018 general staff recommendation regarding EPA's National Criteria (cont.):

- TDEC proposes to adopt EPA's recommended numerical criteria changes for aquatic life protection and recreation. (*Some are slightly more stringent, others are less stringent than current wq criteria*)
- However, we do NOT propose to adopt EPA's new human health criteria (*legal issues*)

Selenium Criteria

- Propose to keep existing acute criterion of 20 ug/l
- Propose to adopt EPA's recommended chronic criterion of 3.1 ug/l (current chronic number is 5 ug/l)
- Propose to add narrative addressing the use of fish tissue values:

The numeric water criteria for Se are applicable for all purposes, but for water quality assessment, fish tissue values may be used to confirm or refute impacts to aquatic life [using EPA's June 2016 criteria]...However a lack of fish tissue data or the absence of fish from a waterbody will not prevent it from being assessed as impaired if a numeric ...criterion is exceeded. Fish tissue concentration alone may be used to establish use impairment.



Revisions to Antidegradation Statement

- The Antidegradation Statement is a procedural rule that governs the Division's determinations regarding whether and how much of a water's assimilative capacity for additional discharges of pollutants, water withdrawals, or habitat alterations should be allocated to a permit applicant based on necessity and public benefit.



Revisions to Antidegradation Statement

- Section 1(b) 3 has been deleted, which required the use of EPA forms to document economic and social justification
- All reference to the Anti-Degradation Guidance document for illustrating economic and social justification has been deleted.
- Both have been replaced with a generic statement, as follows:

- Section 1(b) 4 will now read:

To demonstrate that > de minimis degradation is necessary to accommodate important social or economic development...the applicant shall provide a written justification to include a description of the project, number of jobs anticipated to be created (including salaries and benefits, duration, and type) tax revenue to be generated...and other justification...The justification should demonstrate an overall benefit to the local community, not just a benefit to the applicant.

New Or Increased Discharge – What Does The New Definition Mean For You?

New or increased discharge - *a new discharge of pollutants to waters of the state or an increase in the authorized loading of a pollutant above 1) numeric limits established in the NPDES permit, or 2) if no such limits exist, the actual discharges of that pollutant.* “

- Expanded mining activities do not necessarily mean an expanded discharge, or expanded loading of a pollutant.



Aquatic Resource Alteration Permits

Rule Chapter 0400 – 40 – 07

- This proposed rulemaking would substantially revise the rules which govern Aquatic Resource Alteration Permits, or ARAPs (Rule Chapter 0400-40-07).
- ARAPs authorize habitat alterations and water withdrawals, and where required serve as certifications of compliance with state water quality standards under Section 401 of the Clean Water Act.
- The current ARAP Rule has not been revised since the year 2000.



Aquatic Resource Alteration Permits

Rule Chapter 0400 – 40 – 07

PROPOSED REVISIONS

- Clarify that ARAPs are required only for alterations of streams and wetlands. All reference to wet weather conveyances will be removed because they are governed under TCA 69-3-108(q).

Aquatic Resource Alteration Permits

Rule Chapter 0400 – 40 – 07

- Introduces the term “*existing conditions*”, to be defined as the actual existing condition of the resource prior to the alteration being proposed.

This is intended to ensure that any mitigation required by DWR in an ARAP is limited to that necessary to offset the actual harm caused by permitted activities, and not any pre-existing degradation. The rules will therefore require no overall net loss of resource value from baseline conditions.

Aquatic Resource Alteration Permits

Rule Chapter 0400 – 40 – 07

- ARAP Rules already require mitigation for any impact to a waterbody that will cause an appreciable permanent loss of resource values.
- Social and Economic justification will no longer be required for ARAPs (unless ETW)
- As proposed, if a waterbody is already impaired for habitat alterations, then an application can only be approved if it causes “no significant degradation” (i.e. sufficient mitigation to ensure no overall net loss is provided).

Aquatic Resource Alteration Permits

Rule Chapter 0400 – 40 – 07

- The current rules require only that an applicant consider avoidance and minimization of impacts to water resources, and to submit an alternatives analysis.
- New language would require implementation of practicable alternatives that have the least impact on the resources, as long as that alternative doesn't result in other adverse environmental consequences

Aquatic Resource Alteration Permits

Rule Chapter 0400 – 40 – 07

- Require the division to include a **draft permit and rationale** for the public to review during the public notice process, not simply an application as is the current process.

This would make ARAPs consistent with other DWR permits, and provides better and more transparent information for the public to review and comment upon.

Aquatic Resource Alteration Permits

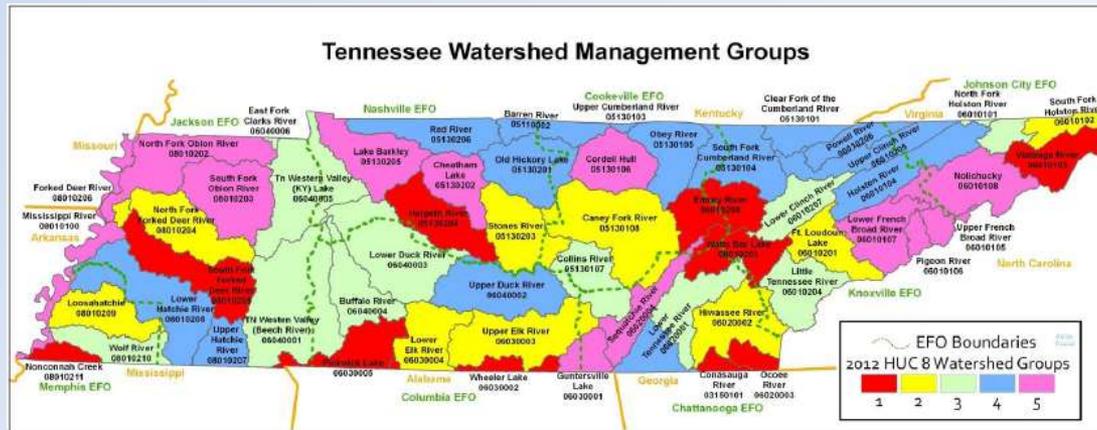
Rule Chapter 0400 – 40 – 07

- Clarify and expand the existing language related to mitigation, designed to ensure that no net loss of resource values as compared to existing conditions occurs as a result of an ARAP. This would also prioritize mitigation as close as possible to the site of the impacts, as well as requiring that mitigation for impacts to Tennessee waters must occur within Tennessee

Aquatic Resource Alteration Permits

Rule Chapter 0400 – 40 – 07

- For Exceptional TN Waters, required mitigation must either be provided “in-system”, or the applicant must demonstrate the economic or social necessity for the proposed impacts (and provide mitigation elsewhere sufficient to offset lost water resource values).



- “In-system” is defined for the first time in Rule, as within the same 8-digit Hydrologic Unit Code (HUC-8)

Aquatic Resource Alteration Permits

Rule Chapter 0400 – 40 – 07

- As always, proposed revisions include various non-substantive administrative updates and clean-up edits, including deletion of definitions not currently used in the rules or in permits.
- The requirement for posting public notice in a local newspaper has been deleted as obsolete and overly expensive

Questions?

