§131.42 Antidegradation Implementation Methods for the Commonwealth of Puerto Rico.

(a) General Policy Statement. (1) All point sources of pollution are subject to an antidegradation review.

(2) An antidegradation review shall be initiated as part of the Section 401—“Water Quality Certification Process” of the Clean Water Act.

(3) The 401 Certification Process shall follow the procedures established by the February 2, 1989 Resolution R-89-2-2 of the Governing Board of the Puerto Rico Department of Natural and Environmental Resources.

(4) A compliance schedule for an existing pathogen discharger shall require compliance with water quality-based effluent limitations based on water quality criteria set forth in paragraph (c) of this section as soon as possible, taking into account the discharger’s ability to achieve compliance with such water quality-based effluent limitations.

(5) If the schedule of compliance for an existing pathogen discharger exceeds one year from the date of permit issuance, reissuance or modification, the schedule shall set forth interim requirements and dates for their achievement. The period between dates of completion for each requirement may not exceed one year.

If the time necessary for completion of any requirement is more than one year and the requirement is not readily divisible into stages for completion, the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of interim requirements.

(6) In no event shall the permit issuing authority approve a schedule of compliance for an existing pathogen discharge which exceeds five years from the date of permit issuance, reissuance, or modification, whichever is sooner.

(7) If a schedule of compliance exceeds the term of a permit, interim permit limits effective during the permit shall be included in the permit and addressed in the permit’s fact sheet or statement of basis. The administrative record for the permit shall reflect final permit limits and final compliance dates. Final compliance dates for final permit limits, which do not occur during the term of the permit, must occur within five years from the date of issuance, reissuance or modification of the permit which initiates the compliance schedule.

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Rico Environmental Quality Board (EQB).

(4) The following are not subject to an antidegradation review due to the fact that they are nondischarge systems and are managed by specific applicable Puerto Rico regulations:

(i) All nonpoint sources of pollutants.
(ii) Underground Storage Tanks.
(iii) Underground Injection Facilities.

(5) The protection of water quality shall include the maintenance, migration, protection, and propagation of desirable species, including threatened and endangered species identified in the local and federal regulations.

(b) Definitions. (1) All the definitions included in Article 1 of the Puerto Rico Water Quality Standards Regulation (PRWQSR), as amended, are applicable to this procedure.

(2) High Quality Waters:

(i) Are waters whose quality is better than the mandatory minimum level to support the CWA Section 101(a)(2) goals of propagation of fish, shellfish, wildlife and recreation in and on the waters. High Quality Waters are to be identified by EQB on a parameter-by-parameter basis.

(ii) [Reserved]

(3) Outstanding National Resources Waters (ONRWs):

(i) Are waters classified as SA or SE in the PRWQSR, as amended, or any other water designated by Resolution of the Governing Board of EQB. ONRWs are waters that are recreationally or ecologically important, unique or sensitive.

(ii) [Reserved]

(c) Antidegradation Review Procedure.

(1) The antidegradation review will commence with the submission of the CWA Section 401 water quality certification request. EQB uses a parameter-by-parameter approach for the implementation of the anti-degradation policy and will review each parameter separately as it evaluates the request for certification. The 401 certification/antidegradation review shall comply with Article 4(B)(3) of the Puerto Rico Environmental Public Policy Act (Law No. 416 of September 22, 2004, as amended (12 LPRA 8001 et seq.)). Compliance with Article 4(B)(3) shall be conducted in accordance with the Reglamento de la Junta de Calidad Ambiental para el Proceso de Presentación, Evaluación y Trámite de Documentos Ambientales (EQB’s Environmental Documents Regulation). As part of the evaluation of the Environmental Document an alternative analysis shall be conducted (12 LPRA 8001(a)(5), EQB’s Environmental Documents Regulation, e.g., Rules 211E and 253C), and a public participation period and a public hearing shall be provided (12 LPRA 8001(a), EQB’s Environmental Documents Regulation, Rule 254).

(2) In conducting an antidegradation review, EQB will sequentially apply the following steps:

(i) Determine which level of antidegradation applies

(A) Tier 1—Protection of Existing and Designated Uses.

(B) Tier 2—Protection of High Quality Waters.

(C) Tier 3—Protection of ONRWs.

(ii) [Reserved]

(3) Review existing water quality data and other information submitted by the applicant. The applicant shall provide EQB with the information regarding the discharge, as required by the PRWQSR including, but not limited to the following:

(i) A description of the nature of the pollutants to be discharged.

(ii) Treatment technologies applied to the pollutants to be discharged.

(iii) Nature of the applicant’s business.

(iv) Daily maximum and average flow to be discharged.

(v) Effluent characterization.

(vi) Effluent limitations requested to be applied to the discharge according to Section 6.11 of the PRWQSR.

(vii) Location of the point of discharge.

(viii) Receiving waterbody name.

(ix) Water quality data of the receiving waterbody.

(x) Receiving waterbody minimum flow (7Q2 and 7Q10) for stream waters.

(xi) Location of water intakes within the waterbody.

(xii) In the event that the proposed discharge will result in the lowering of water quality, data and information demonstrating that the discharge is necessary to accommodate important economic or social development in the...
area where the receiving waters are located.

(4) Determine if additional information or assessment is necessary to make the decision.

(5) Prepare an intent to issue or deny the 401 water quality certificate and publish a notice in a newspaper of wide circulation in Puerto Rico informing the public of EQB’s preliminary decision and granting a public participation period of at least thirty (30) days.

(6) Address the comments received from the interested parties and consider such comments as part of the decision making process.

(7) Make the final determination to issue or deny the requested 401 certification. Such decision is subject to the reconsideration procedure established in Law 170 of August 12, 1988, Ley de Procedimiento Administrativo Uniforme del Estado Libre Asociado de Puerto Rico (3 LPRA 2165).

(d) Implementation Procedures. (1) Activities Regulated by NPDES Permits

(i) Tier 1—Protection of Existing and Designated Uses:

(A) Tier 1 waters are:

(1) Those waters of Puerto Rico (except Tier 2 or Tier 3 waters) identified as impaired and that have been included on the list required by Section 303(d) of the CWA; and

(2) Those waters of Puerto Rico (except Tier 2 and Tier 3 waters) for which attainment of applicable water quality standards has been or is expected to be, achieved through implementation of effluent limitations more stringent than technology-based controls (Best Practicable Technology, Best Available Technology and Secondary Treatment).

(B) To implement Tier 1 antidegradation, EQB shall determine if a discharge would lower the water quality to the extent that it would no longer be sufficient to protect and maintain the existing and designated uses of that waterbody.

(ii) Tier 2—Protection of High Quality Waters:

(A) To verify that a waterbody is a high quality water for a parameter of concern which initiates a Tier 2 antidegradation review, EQB shall evaluate and determine:

(1) The existing water quality of the waterbody;

(2) The projected water quality of the waterbody pursuant to the procedures established in the applicable provisions of Articles 5 and 10 of the PRWQSR including but not limited to, Sections 5.2, 5.3, 5.4, 10.2, 10.3, 10.4, 10.5, and 10.6;

(3) That the existing and designated uses of the waterbody will be fully maintained and protected in the event of a lowering of water quality.

(B) To implement Tier 2 antidegradation, EQB shall determine if a discharge would lower the water quality in high quality waters, the applicant must show and justify the necessity for such lowering of water quality through implementation of applicable provisions of Article 10 of the PRWQSR or the applicable provisions of Article 5 regarding mixing zones.

(C) In order to allow the lowering of water quality in high quality waters, the applicant must show and justify the necessity for such lowering of water quality through implementation of applicable provisions of Article 10 of the PRWQSR or the applicable provisions of Article 5 regarding mixing zones.

(D) When the assimilative capacity of a waterbody is not sufficient to ensure maintenance of the water quality standard for a parameter of concern with an additional load to the waterbody, EQB will not allow an increase of the concentration of the parameter of concern or pollutants affecting the parameter of concern in the waterbody. This no increase will be achieved by meeting the applicable water quality standards at the end of the pipe. Until such time that a TMDL is developed for the parameter of concern for the waterbody, no discharge will be allowed to cause or contribute to further degradation of the waterbody.

(E) Implementation Procedures. (1) Activities Regulated by NPDES Permits

(i) Tier 1—Protection of Existing and Designated Uses:

(A) Tier 1 waters are:

(1) Those waters of Puerto Rico (except Tier 2 or Tier 3 waters) identified as impaired and that have been included on the list required by Section 303(d) of the CWA; and

(2) Those waters of Puerto Rico (except Tier 2 and Tier 3 waters) for which attainment of applicable water quality standards has been or is expected to be, achieved through implementation of effluent limitations more stringent than technology-based controls (Best Practicable Technology, Best Available Technology and Secondary Treatment).

(B) To implement Tier 1 antidegradation, EQB shall determine if a discharge would lower the water quality to the extent that it would no longer be sufficient to protect and maintain the existing and designated uses of that waterbody.

(2) When a waterbody has been affected by a parameter of concern causing it to be included on the 303(d) List, then EQB will not allow an increase of the concentration of the parameter of concern or pollutants affecting the parameter of concern in the waterbody. This no increase will be achieved by meeting the applicable water quality standards at the end of the pipe. Until such time that a Total Maximum Daily Load (TMDL) is developed for the parameter of concern for the waterbody, no discharge will be allowed to cause or contribute to further degradation of the waterbody.
waterbody for a parameter of concern to be allocated to a discharger, if the necessity of the requested effluent limitation for the parameter of concern is not demonstrated to the full satisfaction of EQB.

(iii) Tier 3—Protection of ONRWs:

(A) EQB may designate a water as Class SA or SE (ONRWs) through a Resolution (PRWQSR Sections 2.1.1 and 2.2.1). Additionally, any interested party may nominate a specific water to be classified as an ONRW and the Governing Board of EQB will make the final determination. Classifying a water as an ONRW may result in the water being named in either Section 2.1.1 or 2.2.2 of the PRWQSR. The process for amending the PRWQSR, including public participation, is set forth in Section 8.6 of said regulation.

(B) The existing characteristics of Class SA and SE waters shall not be altered, except by natural causes, in order to preserve the existing natural phenomena.

(1) No point source discharge will be allowed in ONRWs.

(2) [Reserved]

(2) Activities Regulated by CWA Section 404 or Rivers and Harbors Action Section 10 Permits (Discharge of Dredged or Fill Material)

(i) EQB will only allow the discharge of dredged or fill material into a wetland if it can be demonstrated that such discharge will not have an unacceptable adverse impact either individually or in combination with other activities affecting the wetland of concern. The impacts to the water quality or the aquatic or other life in the wetland due to the discharge of dredged or fill material should be avoided, minimized and mitigated.

(ii) The discharge of dredged or fill material shall not be certified if there is a practicable alternative to the proposed discharge which would have less adverse impact on the recipient ecosystem, so long as the alternative does not have other more significant adverse environmental consequences. Activities which are not water dependent are presumed to have practicable alternatives unless the applicant clearly demonstrates otherwise. No discharge of dredged and fill material shall be certified unless appropriate and practicable steps have been taken which minimize potential adverse impacts of the discharge on the recipient ecosystem. The discharge of dredged or fill material to ONRWs, however, shall be governed by paragraph (d)(1)(iii) of this section.

[72 FR 70524, Dec. 12, 2007]

§ 131.43 Florida.

(a) Scope. This section promulgates numeric criteria for nitrogen/phosphorus pollution for Class I and Class III waters in the State of Florida. This section also contains provisions for site-specific alternative criteria.

(b) Definitions.—(1) Canal means a trench, the bottom of which is normally covered by water with the upper edges of its two sides normally above water.

(2) Clear, high-alkalinity lake means a lake with long-term color less than or equal to 40 Platinum Cobalt Units (PCU) and Alkalinity greater than 20 mg/L CaCO$_3$.

(3) Clear, low-alkalinity lake means a lake with long-term color less than or equal to 40 PCU and alkalinity less than or equal to 20 mg/L CaCO$_3$.

(4) Colored lake means a lake with long-term color greater than 40 PCU.

(5) Lake means a slow-moving or standing body of freshwater that occupies an inland basin that is not a stream, spring, or wetland.

(6) Lakes and flowing waters means inland surface waters that have been classified as Class I (Potable Water Supplies) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) water bodies pursuant to Rule 62-302.400, F.A.C., excluding wetlands, and are predominantly fresh waters.

(7) Nutrient watershed region means an area of the State, corresponding to drainage basins and differing geological conditions affecting nutrient levels, as delineated in Table 2.

(8) Predominantly fresh waters means surface waters in which the chloride concentration at the surface is less than 1,500 milligrams per liter.

(9) South Florida Region means those areas south of Lake Okeechobee and