

**Workshop to Solicit Comments on proposed regulations R113-22**  
**Date: January 25, 2024, Time: 13:30 In-Person & Virtual Workshop using Teams**

**MEETING NOTES**

**ATTENDEES:**

*Workshop Chair:*

Jason Kuchnicki, Chief, Bureau of Water Quality Planning

*NDEP Staff:*

Seth Alm, Supervisor, Bureau of Water Quality Planning, Standards Branch

Zack Blumberg, Environmental Scientist, Bureau of Water Quality Planning, Standards Branch

Carrie Skorcz, Environmental Scientist, Bureau of Water Quality Planning, Standards Branch

Bryceton Schilling, Environmental Scientist, Bureau of Water Quality Planning, Standards Branch

Dave Simpson, Environmental Scientist, Bureau of Water Quality Planning, Standards Branch

Andrew Dixon, Chief, Bureau of Water Pollution Control

Donette Baretto, Supervisor, Bureau of Water Pollution Control

Jennifer Carr, Administrator, Nevada Division of Environmental Protection

Danilo Dragoni, Deputy Administrator, Nevada Division of Environmental Protection

Chris Fritzen, Supervisor, Bureau of Water Quality Planning, NPS Branch

Weston Fettgather, Supervisor, Bureau of Water Quality Planning, Bioassessment Branch

Veda Parker, Environmental Scientist, Bureau of Water Quality Planning, Bioassessment Branch

Zachary Carter, Environmental Scientist, Bureau of Water Quality Planning, NPS Branch

*Public:*

Minnela Jones, Theresa Jones, Paul Comba, Coral Taylor, Adrian Edwards, AJ Rodrigues, Alan CNLV, Amy Egan, Andrew Burns, Casey Mentzer, Cody McDougal, Daniel Fischer, Daylin Sigler, Devin Harbke, Eric Dickerson, Prasad Gullapalli, Haley Brown, Jillian Hillenbrand, Jacob Brinkerhoff, James Prieur, Jason Eckberg, Jay Pietrazek, Jeff Fontaine, Jim Waltrus, John Flansberg, Jonathan Simpson, Josh Coffey, Kathryn Foxworthy, Kevin Calcagno, Kevin Martindale, Kyle Davis, Kyle Richrds, Lawrence S. Bazel, Lisa A. Kirschner, Austin Martin, Matt Smith, James Murphy, My-linh Nguyen, Nic Ciccone, Nicholas Brothers, NOV Big Ledge..., Kimberly Rigdon, Sara Gedo, Stephanie Stoeb..., Susan Rothe, Heather Tate, Vistoria Tiscareno, Todd Lewis, Todd Tietjen, Trina Magoon, Timber A. Weiss, Birgit M. Widegren, Xiaoping Zhou

**SUMMARY:**

The workshop was held virtually from the Bryan Building at 901 South Stewart Street, Carson City, NV in the Bonnie Conference Room, located on the 1st Floor. The workshop was organized for participation in-person or virtually using a provided link to a virtual TEAMS meeting. The workshop was recorded and the recording will be available on the NDEP Proposed Regulations for Antidegradation Website at: <https://ndep.nv.gov/water/rivers-streams-lakes/water-quality-standards/current-and-past-actions/antideg>.

Jason Kuchnicki, Chief, Bureau of Water Quality Planning (BWQP) opened the workshop with contextual introduction of where we have been in the regulation development and major changes from previous version.

Zack Blumberg, BWQP, presented an overview of the regulation going into the need, definitions, and an in-depth explanation of the Tier levels covered in the regulation.

Donette Baretto, Bureau of Water Pollution Control, presented a comprehensive discussion on the antidegradation review and permitting process.

#### QUESTIONS (Q), ANSWERS (A) AND COMMENTS (C):

A few comments and questions about MS4 permits and Tier level designations were made by the public participants and all were discussed and answered or clarified by staff during the workshop.

**Q-** Theresa Jones, City of Reno: I reviewed the Las Vegas Valley MS4 permit and we noticed language referencing antidegradation. I'm wondering how this regulation overlaps with/applies to the MS-4 permit.

**A-** Andrew Dixon, NDEP: if you're complying with your permit and your approved storm water management plan that is required by the MS-4 permit, then you would be in compliance with the antidegradation requirement.

**Q-** Lawrence S. Bazel, Clark County Regional Flood Control District: My question focuses on the concepts of maintaining baseline water quality and degrading baseline water quality. Larry suggested that NDEP be careful that it is not so easy to compare across real world datasets – stormwater runoff data shouldn't be compared to dry weather data. The problem that Larry sees is if there is an established baseline water quality, it's undoubtedly composed entirely or virtually entirely from dry weather data, because that's what people generally collect. The Tier 2.5 and 3 section refers specifically to storm water runoff and storm water runoff shouldn't be compared to dry weather data. Larry also recommended considering adding a general section where and instead of figuring out whether you put IBV (Interim Baseline Value) every place throughout the regulation where it might apply, you might put a general section in there that discussed IBV.

**A-** NDEP: Thank you for the comment.

**Q-** Coral Taylor, Carollo Engineers: my questions are related to effluent and potable reuse. Is potable reuse, indirect or direct potable reuse or not direct but indirect potable reuse? Would that be considered effluent by NDEP?

**A-** Andrew Dixon, NDEP: This regulation is not intended to cover discharges to groundwater. Currently our indirect potable reuse regulations are for the injection or disposal into groundwater.

**Q-** Coral Taylor, Carollo Engineers: here in Nevada, most of our streams are really variable throughout the water year. So, a waterway might be effluent, dominated at some points of the year, but perhaps not other points of the year. Can you speak to how that's been taken into consideration?

**A-** Jason Kuchnicki, NDEP: this language was a holdover from the previous public workshops and working through the Antidegradation regulation, so I don't have a great perspective on this. We felt that because this had been negotiated and stakeholders had largely agreed on this concept that we better not consider adjusting this language.

**Q-** Lisa A. Kirschner, Nevada Gold: have the guidance documents referenced in the Fact Sheet been updated to reflect the changes that you've outlined today?

**A-** The permit writers' guidance has not been updated. We are waiting for this regulation to go through the process.

**Q-** Lisa A. Kirschner, if an entity is proposing to discharge into a Tier 2 water and there is not an RMHQ and there is insufficient data, does this approach mean that the prospective permittee is going to have to wait at least two years to be able to obtain a discharge permit?

**A-** Andrew Dixon, NDEP: yes, you would need to wait to develop an IBV.

- Jennifer Carr, NDEP: there is nothing that I'm aware of that would prohibit a project proponent coming in and talking about their project well before their application is submitted, so sampling could conceivably start well before an application is submitted. NDEP will do outreach to make sure we're informing everybody in the regulated Community of the timeline.

**Q-** Nicholas Brothers, City of Reno: are there currently designated 2.5 tier protections and what water bodies might those be?

**A-** Jason Kuchnicki, NDEP: no, tier 2.5 level of antidegradation protection would be new with this regulation. This regulation would establish that tier and then it would be up to the State Environmental Commission what, if any, waters are assigned to that tier.

**Q-** Jeff Fontaine, Humboldt River Basin Water Authority: is the new definition of extraordinary ecological, aesthetical, and recreational value the same as the previous version of the regulation (i.e., the term EAWs)?

**A-** We are not referencing the term EAW anymore, the term is sunsetting. This term refers to the designated beneficial use of extraordinary ecological, aesthetical, and recreation value which applies to Tier 2.5 and Tier 3 in the new regulation.

**Q-** Nicholas Brothers, City of Reno: I want to talk through an example. Let's assume we have a renewal that is subject to antidegradation review and there are constituents coming from wastewater facilities, let's assume copper an acute toxic parameter as an example. Does that mean that the renewal would be halted, or the existing parameter permit limit kept as it is or until a new limit is determined based on baseline water quality?

**A-** Andrew Dixon, NDEP: yes, that is an example, but I would like to remind you reaching out to us ahead of time is the way to get ahead of that. So, the sooner you contact us the better so that we can establish an IBV if that's what's needed.

**Q-** Nicholas Brothers, City of Reno: I'm thinking actually that there are perhaps parameters or pollutants of concern which may have limits that are determined to be below treatment thresholds. So, are you saying that the permittees or the applicants would need to prepare for going to the SEC for those parameters?

**A-** Andrew Dixon, NDEP: Correct.

**Q-** Nicholas Brothers, City of Ren: as federal regulations may get adopted, say for example for PFOS, for drinking water, does that become a pollutant of concern in source waters?

**A-** Andrew Dixon, NDEP: It's too early for us to talk about what the drinking water standard would be and how it might affect the wastewater discharge permits.

**Q-** Lisa A. Kirschner, Nevada Gold: let's assume an IBV is established in the time period prescribed by the rules and a permit is issued. In the subsequent three years of data collection, the IBV values change and are less stringent. Would you be precluded from issuing a less stringent permit after the fact because of anti-backsliding?

**A-** Donette Barreto, NDEP: I don't believe so, we have talked to EPA about that, and I don't remember that being an issue.

**Q-** James Murphy, NDOT: I just had a follow up question with what Andrew was saying earlier about MS-4 permit compliance. If I heard correctly, if MS-4 permittees are compliant with their permit, then they're compliant with antidegradation requirements, correct?

**A-** Donette Barreto, NDEP: that is correct.

**Q-** James Murphy, NDOT: so a hypothetical question, does that mean If an MS4 permittee is non-compliant with any aspect of their permit, then automatically their noncompliant with antideg?

**A-** Donette Barreto, NDEP: the antidegradation review is done during the permit application writing and or renewal process, so maybe it would.

**Q-** Theresa Jones, do you anticipate or have a timeframe for any waters going before the State Environmental Commission to be designated at the 2.5 or 3 level?

**A-** Jason Kuchnicki, NDEP: No, we don't have a plan or schedule for assigning new waters to tier 2.5 or tier 3.

#### ADJOURNMENT:

Workshop adjourned by Jason Kuchnicki after providing an overview of the next steps and tentative schedule for adopting the regulation, including Mach 21 State Environmental Commission meeting to be held in Carson City, NV.