

Antibacksliding - Overview

ACWA Permit Writers' Meeting
September 18, 2019



Anti-backsliding



- Anti-backsliding requirements might prohibit less stringent limitations than those in the previous permit
- Permit writers must complete an anti-backsliding analysis where revised limitations or other permit conditions would be less stringent than existing limitations or conditions

What is “Anti-backsliding?”



Anti-backsliding refers to provisions prohibiting the relaxation of effluent limitations or conditions in reissued permits

- CWA sections 402(o) and 303(d)(4)
 - Established in 1987 WQA
- NPDES regulations: § 122.44(l)
 - Established in 1979 (revised in 1989)

CWA Anti-backsliding Provisions

- CWA Section 402(o)(1) provides two specific situations where backsliding is prohibited:
 - relaxing case-by-case, technology-based limitations when less stringent effluent guidelines are promulgated
 - relaxing limitations based on state water quality standards (WQS) unless the change is consistent with section 303(d)(4)
- CWA Section 402(o)(2) provides specific exceptions to each of the prohibitions

Limitations Based on *State Standards*

CWA section 402(o)(1)

- For limits based on WQS, backsliding generally is not prohibited as long as the change in limits is consistent with section 303(d)(4)
- If the change is not consistent with section 303(d)(4), one of the “exceptions” in section 402(o)(2) could apply
 - However, final limit must still comply with all applicable WQS (including antidegradation policy)

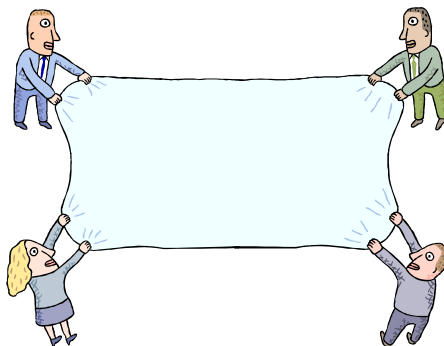
CWA section 303(d)(4)

- 1. For Waters Attaining Standards:**
less stringent limitation acceptable only if the revision is subject to and consistent with state antidegradation policy
- 2. For Waters Not Attaining Standards:**
less stringent limitation than an existing limitation based on a TMDL or other WLA is acceptable if:
 - the cumulative effect of all limitations assure attainment of water quality standards or
 - the designated use that is not being attained is removed

Exception *Safety Clause*

Regardless of any exceptions that are met, section 402(o)(3) prohibits backsliding if the less stringent limitation:

- violates applicable effluent guidelines
- violates water quality standards (including antidegradation policy)



All Other Effluent Limitations, Standards or Conditions

NPDES regulations prevent backsliding unless
[§ 122.44(l)(1)]:

- circumstances upon which the previous permit was based have materially and substantially changed since the time the permit was issued
- changes would constitute a cause for permit modification or revocation and reissuance under § 122.62