
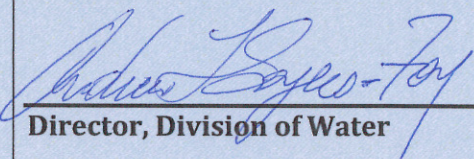


State of Alaska Department of Environmental Conservation Division of Water  Policy and Procedure		Policy and Procedure Number 05.03.104	PAGE 1 of 2
		EFFECTIVE DATE November 21, 2018	
SUBJECT Guidance Relating to the Nomination and Designation of Tier 3 Waters		SUPERSEDES Interim Antidegradation Implementation Methods (05.03.103)	
Section Division of Water	CHAPTER Water Quality Standards, Assessment, and Restoration (WQSAR)	APPROVED BY  Director, Division of Water	

PURPOSE

The purpose of this *Guidance Relating to the Nomination and Designation of Tier 3 Waters* is to document the current process for the nomination and designation of Tier III waters in the State of Alaska. Currently there is no administrative process. The legislative process, however, is available to consider Tier 3 designation requests from the public or others. Tier 3 designations may be made by legislation that is enacted into law.

(Note: The Department engaged extensively with tribes and stakeholders over the last ten years in several efforts to develop an administrative process that would provide the opportunity for Alaska tribes and public to nominate waters for Tier 3 designation along with a public process involving state agencies to vet the nominations before a decision on a nomination is made. This effort included regulations proposed in 2013 and legislation proposed in 2016 (SB 163/HB 283). Because there wasn't sufficient consensus on the proposed regulations or legislation for them to move forward, the Department conducted additional outreach and discussion with the tribes and public in 2017. While there is still a lack of consensus on other potential Tier 3 nomination and designation processes Alaska might want to pursue, it is important for Alaskans to understand the legislative process described below remains present and available to them.)

AUTHORITY

To prevent unnecessary lowering of water quality, 40 CFR § 131.12 requires states to develop and adopt an antidegradation policy, as well as to develop methods for implementing the policy. Alaska's antidegradation policy and implementation methods are established at 18 AAC 70.015 and 18 AAC 70.016, in 1997 and 2018, respectively.

BACKGROUND

The Division of Water's Antidegradation policy under the 18 AAC 70 Water Quality Standards regulations provides for the protection of Tier 3 (or Outstanding National Resource Water) at 18 AAC 70.015(a)(3).

The Division of Water's Antidegradation Implementation Methods Regulations at 18 AAC 70.016 were filed on March 7, 2018 with an effective date of April 6, 2018 and approved by the EPA on July 26, 2018. The approved regulations are now in effect for actions regulated under the federal Clean Water Act (CWA) and specifically apply to CWA section 402 Alaska Pollutant Discharge Elimination System (APDES) wastewater permits and CWA section 401 water quality certifications.

In these regulations, the Division does not address nomination and designation procedures for Tier 3 (Outstanding National Resource Water). The regulations only include implementation methods for permitted discharges to Tier 3 waters once such waters have been designated.

POLICY

The current process for nominating Tier 3 waters involves proposing the introduction of legislation to make the designation. Any such request may go to a legislative representative or committee for consideration for introduction as a legislative bill.

Typically, a request to an individual legislator would go to a legislator whose district contains the proposed Tier 3 water. Contact information for legislators is available online at <http://akleg.gov/senate.php> and <http://akleg.gov/house.php>.

Bills may also be introduced in the legislature through the House and/or Senate Rules committees at the request of the Governor. (AS 24.08.060(b)).

If a nomination is submitted to the Department with the expectation it will be processed administratively or otherwise acted on by the Department, the application will be returned to the nominator and the nominator will be informed of the legislative process described above.