

.04 Antidegradation ~~Anti-Degradation~~ Policy.

A. Waters of this State shall be protected and maintained for existing uses and the basic uses of water contact recreation, fishing, protection of aquatic life and wildlife, and agricultural and industrial water supply as identified in Class-Use Class designations.

B. Consistent with the Federal Act, existing uses and the level of water quality necessary to protect existing uses for any water body must be maintained.

B.C. Certain waters of this State possess an existing quality that is better than the water quality standards established for them. The quality of these waters shall be maintained unless:

- (1) The Department determines a change in quality is justifiable as a result of necessary economic or social development; and
- (2) The change will not diminish uses made of, or presently existing, in these waters.

CD. To accomplish the objective of maintaining existing water quality:

- (1) New and existing point sources shall achieve the highest applicable statutory and regulatory effluent requirements; and
- (2) Nonpoint sources shall achieve all cost effective and reasonable best management practices for nonpoint source control.

DE. The Department shall ensure that existing uses are maintained and protected and support changes to designated uses and associated criteria in any circumstances where the designated use and criteria do not reflect and protect uses that are being attained. Changes in designated uses and associated criteria to less stringent uses and criteria may only be undertaken when~~The Department shall discourage the downgrading of any stream from a designated use with more stringent criteria to one with less stringent criteria. Downgrading may only be considered if:~~

- (1) The designated use is not attainable because of natural causes;
- (2) The designated use is not attainable because of irretrievable man-induced conditions; or
- (3) Controls more stringent than the effluent limitations and national performance standards mandated by the Federal Act, and required by the Department, would result in substantial and widespread economic and social impact.

EF. The Department shall provide public notice and opportunity for a public hearing on the proposed change before:

- (1) Permitting a change in high quality waters; or

(2) Changing the ~~Downgrading any~~ stream use designation.

FG. Water which does not meet the standards established for it shall be improved to meet the standards.

.04-1 Antidegradation Policy Implementation Procedures: **Tier I Level of Protection-Existing Uses and Designated Uses**

~~A. All waters of the State shall receive Tier I protection which requires the protection and maintenance of existing uses and designated uses. Where water quality is better than the minimum requirements specified by the water quality standards, that water quality shall be maintained. These waters are listed by the Department as Tier II waters. An antidegradation review of new or proposed amendments to water and sewer plans (county plans) and discharge permits is required to assure consistency with antidegradation requirements.~~

~~B. Protections. Waters that have demonstrated an existing use that is not protected by the water quality criteria specified for the current designated use for this water body shall be protected so as to maintain the existing use and the water quality necessary to protect the existing use.~~
~~B. General. An applicant for proposed amendments to county plans or discharge permits for discharge to Tier II waters that will result in a new, or an increased, permitted annual discharge of pollutants and a potential impact to water quality, shall evaluate alternatives to eliminate or reduce discharges or impacts. If impacts are unavoidable, an applicant shall prepare and document a social and economic justification. The Department shall determine, through a public process, whether these discharges can be justified.~~

~~C. Implementation of the Tier I level of protection for cold water existing uses. The determination and protection of cold water existing uses in Maryland will be implemented according to the “Cold Water Existing Use Determinations: Policy and Procedures (Maryland Department of the Environment, May 12, 2021)”, which is incorporated by reference.~~
~~C. Compilation and Maintenance of the List of High Quality Waters. When the water quality of a water body is better than that required by water quality standards to support the existing and designated uses, the Department shall list the water body as a Tier II water body. All readily available information may be considered to determine a listing. The Department shall compile and maintain a public list of the waters identified as Tier II waters. Tier II listings shall be made only for those specific characteristics for which monitoring data indicates the water body exceeds numeric water quality criteria or thresholds established under the narrative standards for biocriteria. The Department shall consider information available from the categories listed under §D(2) and (3) of this regulation.~~

~~D. Compilation and Maintenance of the List of Waters with Existing Uses. The Department shall compile and maintain, on its website, a public list of the waters with an existing use that is not protected by the currently designated use and associated water quality criteria.~~
~~Compilation and Maintenance of the List of Waters with Existing Uses. The Department shall compile and maintain a public list of the waters with an existing use in COMAR 26.08.02.08.~~

~~D. Waters Not Listed as Tier II.~~

~~(1) All water bodies not listed as Tier II or as Outstanding National Resource Waters (Tier III, described and defined in Regulation .04-2 of this chapter) are Tier I.~~

~~(2) Waters That May Not be Listed as Tier II. Water bodies included in the List of Impaired Waters (303(d) List) are not Tier II waters for the impairing substance.~~

~~(3) Waters may be listed as Tier II, if the exclusion under §D(2) of this regulation is not applicable and if:~~

~~(a) Measured water quality characteristics for which numeric criteria have been promulgated are significantly better than the water quality criteria specified in Regulations .03—.03-3 of this chapter; or~~

~~(b) Biological assessment data indicate water quality is within 20 percent of the maximum attainable value of the index of biological integrity.~~

~~(4) Significantly better is evaluated statistically to demonstrate at least a 90 percent certainty that the mean of the available data is better than the applicable standard (for example, the criterion is outside the outer bound of the 90 percent confidence interval).~~

~~E. Designation for Specific Water Quality Measures. Where a water body is designated a Tier II water based on a specific water quality measure, potential impacts to only that specific characteristic shall be subject to Tier II review. For example, where a water body is designated Tier II because of high dissolved oxygen, only potential impacts to dissolved oxygen are subject to Tier II review.~~

~~F. Need for Tier II Antidegradation Review.~~

~~(1) Permits. Before submitting an application for a new discharge permit or major modification of an existing discharge permit (for example, expansion), the discharger or applicant shall determine whether the receiving water body is Tier II or, if a Tier II determination is pending, by consulting the list of Tier II waters.~~

~~(2) Water and Sewer Plans (County Plans). As part of its continuing planning process, the Department shall review proposed amendments to county plans for any new or major modifications to discharges to Tier II bodies of water. If a proposed amendment to a County Plan results in a new discharge or a major modification of an existing discharge to a Tier II water, the applicant shall perform a Tier II antidegradation review.~~

~~(3) Exemptions. The requirement to perform a Tier II antidegradation review does not apply to individual discharges of treated sanitary wastewater of less than 5,000 gallons per day, if all of the existing and current uses continue to be met.~~

~~G. Tier II Antidegradation Review.~~

~~(1) If a Tier II antidegradation review is required, the applicant shall provide an analysis of reasonable alternatives that do not require direct discharge to a Tier II water body (no discharge~~

~~alternative). The analysis shall include cost data and estimates to determine the cost effectiveness of the alternatives.~~

~~(2) If a cost effective alternative to direct discharge is reasonable, the alternative is required as a condition of the discharge permit or amendment to the county plan.~~

~~(3) If the Department determines that the alternatives that do not require direct discharge to a Tier II water body are not cost effective, the applicant shall:~~

~~(a) Provide the Department with plans to configure or structure the discharge to minimize the use of the assimilative capacity of the water body, which is the difference between the water quality at the time the water body was designated as Tier II (baseline) and the water quality criterion; and~~

~~(b) If an impact cannot be avoided, or no assimilative capacity remains as described in §G(3)(a) of this regulation, provide the Department with a social and economic justification for permitting limited degradation of the water quality.~~

~~(4) An applicant shall update an antidegradation review when applying for a new permit or major modification to an existing permit.~~

~~H. Potential Determinations Resulting from Antidegradation Reviews.~~

~~(1) If there is a cost effective alternative to direct discharge, the applicant shall implement the no discharge alternative and it shall be a condition of the discharge permit.~~

~~(2) If there is no cost effective alternative to direct discharge, but there is potential for further minimization of the use of assimilative capacity, the applicant shall revise the initial application to further minimize the use of assimilative capacity.~~

~~(3) If there is no cost effective, no discharge alternative, and minimization of the use of assimilative capacity is adequate, but the social and economic justification (SEJ) is not adequately performed, the applicant shall revise the SEJ.~~

~~(4) If there is no cost effective alternative to direct discharge, minimization of the use of assimilative capacity is adequate, the SEJ is adequately performed but does not justify the water quality impact, the proposed amendment to the county plan or discharge permit application shall be denied.~~

~~(5) If there is no cost effective alternative to direct discharge, all reasonable efforts have been made to minimize the use of assimilative capacity, and the SEJ is adequate and justifies the discharge, the proposed amendment to the county plan or discharge permit shall be granted subject to other applicable requirements.~~

~~I. Wetlands Permits and Water Quality Certifications. Maryland's wetlands and waterways regulatory process, governed by the Tidal Wetlands (COMAR 26.24.01—26.24.05), Nontidal~~

Wetlands (COMAR 26.23.01—26.23.06), and Waterway Construction (COMAR 26.17.04) regulations, satisfies the requirements of this regulation.

~~J. Social and Economic Justification (SEJ).~~

~~(1) An SEJ shall be submitted if:~~

~~(a) No cost effective alternative to the discharge is available; or~~

~~(b) The cumulative degradation resulting from nonpoint source pollution and any other permitted discharges would diminish water quality.~~

~~(2) To allow for natural variability, water quality shall be considered diminished only if the assimilative capacity as defined in §G(3)(a) of this regulation is cumulatively reduced by more than 25 percent from the baseline water quality determined when the water body was listed as Tier II.~~

~~K. Demonstrating Social and Economic Justification for an Impact to Tier II Waters.~~

~~(1) In order to promote compact development, maintain habitat and open lands, and minimize water impacts in undeveloped areas, the requirement for social and economic justification is met if the following demonstrations are made:~~

~~(a) The watershed affecting the Tier II water is located in a priority funding area as defined in State Finance and Procurement Article, §5-7B-02, Annotated Code of Maryland;~~

~~(b) The Department determines, in consultation with the Maryland Department of Planning, that the local jurisdiction in which the watershed affecting Tier II waters are located, is using to the extent reasonably practical, innovative development approaches to minimize impacts to water quality from development;~~

~~(c) Physical development after the date of the Tier II listing is necessary to accommodate the projected growth within the watershed, and use of innovative development approaches are maximized to the extent reasonably practicable to encourage redevelopment, reuse and infill development; and~~

~~(d) If the Department of Planning's growth projections for the watershed affecting the Tier II waters demonstrate that additional physical development of undeveloped land is required to accommodate the projected growth and that development is consistent with the applicable county master plan.~~

~~(2) The approaches described in §K(1)(b) of this regulation include, but are not limited to, innovative stormwater management and sediment and erosion control design practices, green building design techniques, nutrient removal technology for septic systems, innovative technologies designed to reduce point source discharges of pollutants, uniform building codes~~

~~designed to remove impediments to rehabilitation projects, model infill development guidelines designed by the Maryland Department of Planning, and transit-oriented development.~~

~~L. Components of the Social and Economic Justification.~~

~~(1) Components of the SEJ may vary depending on factors including, but not limited to, the extent and duration of the impact from the proposed discharge and the existing uses of the water body.~~

~~(2) The economic analyses shall include impacts that result from treatment beyond the costs to meet technology-based or water quality-based requirements.~~

~~(3) The economic analysis shall address the cost of maintaining high water quality in Tier II waters and the economic benefit of maintaining Tier II waters.~~

~~(4) The economic analysis shall determine whether the costs of the pollution controls needed to maintain the Tier II water would limit growth or development in the watershed including the Tier II water.~~

~~M. Department Responsibilities.~~

~~(1) The Department shall determine whether the SEJ demonstrates that the costs of water pollution controls are reasonable and would not limit development or growth and, if not, shall determine whether lowering of the water quality is necessary for development or growth to take place in the watershed.~~

~~(2) The Department shall determine whether the SEJ demonstrates that the impact to water quality is necessary for development or growth to take place in the watershed. Evaluation of the SEJ shall consider the relative magnitude of costs and benefits of development, recognizing the difficulty in quantifying benefits, and the extent to which denial of the amendment or permit would substantially impact future development within the watershed.~~

~~(3) The Department shall propose a tentative determination to either issue or deny the permit application. If the tentative determination is made to issue a permit, the notice of tentative determination shall state that these waters are designated as Tier II and, if applicable, that a social and economic justification is available for review.~~

~~(4) Existing in-stream water uses and the level of water quality necessary to protect existing uses shall be maintained and protected.~~

~~(5) All required point and nonpoint source controls under State statutes and regulations shall be achieved.~~

~~N. Public Participation.~~

~~(1) Public participation for a permit to discharge to a Tier II water is the same as that required for any permit subject to the Administrative Procedure Act or the requirements of Environment Article, Title 1, Subtitle 6, Annotated Code of Maryland.~~

~~(2) If an SEJ is not required, the public notice shall reflect the Tier II status of the waterbody and note that an SEJ is not required and note the justification.~~

.04-2 Antidegradation Policy Implementation Procedures: Tier II Level of Protection - High Quality Waters~~—Antidegradation Policy Implementation Procedures.~~

~~A. In Maryland, the term “Tier II water” is defined as a water body with water quality that measures significantly better than that required by water quality standards to support its designated uses. A Tier II watershed is defined as the area of land that contributes runoff to a Tier II waterbody, and any discharges to streams, upstream of, and including the Tier II waterbody. Significantly better is evaluated statistically to demonstrate at least a 90 percent certainty that the mean of the available data is better than the applicable standard (for example, the criterion is outside the outer bound of the 90 percent confidence interval). Water quality is considered significantly better and waters may be listed as Tier II, if the exclusion under §D of this regulation does not apply and if:~~

~~(a) Measured water quality characteristics for which numeric criteria have been promulgated are significantly better than the water quality criteria specified in Regulations .03—.03-3 of this chapter; or~~

~~(b) Maryland Biological Stream Survey assessment data indicate that both fish and benthic values of the index of biological integrity are 4.00 or greater. Where water quality is better than the minimum requirements specified by the water quality standards, that water quality shall be maintained. These waters are listed by the Department as Tier II waters. An antidegradation review of new or proposed amendments to water and sewer plans (county plans) and discharge permits is required to assure consistency with antidegradation requirements.~~

~~B. General. An applicant for proposed amendments to county plans or discharge permits for discharge to Tier II waters that will result in a new, or an increased, permitted annual discharge of pollutants and a potential impact to water quality, shall evaluate alternatives to eliminate or reduce discharges or impacts. If impacts are unavoidable, an applicant shall prepare and document a social and economic justification. The Department shall determine, through a public process, whether these discharges can be justified.~~

~~€B. Compilation and Maintenance of the List of High Quality Waters. The Department shall compile and maintain a public list of the Tier II waters. That list is contained in §ON of this regulation. When the water quality of a water body is better than that required by water quality standards to support the existing and designated uses, the Department shall list the water body as a Tier II water body. All readily available information may be considered to determine a listing. The Department shall compile and maintain a public list of the waters identified as Tier II~~

~~waters.~~ Tier II listings shall be made only for those specific characteristics for which monitoring data indicates the water body exceeds numeric water quality criteria or thresholds established under the narrative standards for biocriteria. The Department shall consider information available from the categories listed under ~~§D(2)A~~ and ~~§D(3)~~ of this regulation.

C. Designation for Specific Water Quality Measures. Where a water body is designated a Tier II water based on a specific water quality measure, potential impacts to only that specific characteristic shall be subject to Tier II review. For example, where a water body is designated Tier II because of high dissolved oxygen, only potential impacts to dissolved oxygen are subject to Tier II review.

D. Waters That May Not be Listed as Tier II. Water bodies included in the List of Impaired Waters (303(d) List) are not Tier II waters for the impairing substance. Waters Not Listed as Tier II.

~~(1) All water bodies not listed as Tier II or as Outstanding National Resource Waters (Tier III, described and defined in Regulation .04-2 of this chapter) are Tier I.~~

~~(2) Waters That May Not be Listed as Tier II. Water bodies included in the List of Impaired Waters (303(d) List) are not Tier II waters for the impairing substance.~~

~~(3) Waters may be listed as Tier II, if the exclusion under §D(2) of this regulation is not applicable and if:~~

~~(a) Measured water quality characteristics for which numeric criteria have been promulgated are significantly better than the water quality criteria specified in Regulations .03—.03-3 of this chapter; or~~

~~(b) Biological assessment data indicate water quality is within 20 percent of the maximum attainable value of the index of biological integrity.~~

~~(4) Significantly better is evaluated statistically to demonstrate at least a 90 percent certainty that the mean of the available data is better than the applicable standard (for example, the criterion is outside the outer bound of the 90 percent confidence interval).~~

E. Antidegradation Review - General. An antidegradation review of updated, new, or proposed amendments to Water and Sewerage Plans (“County Plans”), wetlands and waterways permits, water quality certifications, or discharge permits in a Tier II watershed is required to assure consistency with antidegradation requirements. An applicant for proposed amendments to County Plans, a wetlands and waterways permit, water quality certification, or discharge permits in a Tier II watershed that will result in a new, or an increased, permitted annual discharge of pollutants or a potential impact to water quality, shall evaluate alternatives to eliminate or reduce discharges or impacts. If impacts are unavoidable (as defined in §H of this regulation), an applicant shall prepare and document a social and economic justification. The Department shall

~~determine, through the public processes for each of these permits or authorizations, whether these activities can be justified. E. Antidegradation Review – General. An antidegradation review of updated, new, or proposed amendments to Water and Sewerage Plans (“County Plans”), wetlands and waterways permits, water quality certifications, or discharge permits in a Tier II watershed is required to assure consistency with antidegradation requirements. An applicant for proposed amendments to County Plans, a wetlands and waterways permit, water quality certification, or discharge permits in a Tier II watershed that will result in a new, or an increased, permitted annual discharge of pollutants or a potential impact to water quality, shall evaluate alternatives to eliminate or reduce discharges or impacts. If impacts are unavoidable (as defined in §H of this regulation), an applicant shall prepare and document a social and economic justification. The Department shall determine, through the public processes for each of these permits or authorizations, whether these activities can be justified. Designation for Specific Water Quality Measures. Where a water body is designated a Tier II water based on a specific water quality measure, potential impacts to only that specific characteristic shall be subject to Tier II review. For example, where a water body is designated Tier II because of high dissolved oxygen, only potential impacts to dissolved oxygen are subject to Tier II review.~~

F. Need for Tier II Antidegradation Review.

(1) ~~Permits and Authorizations.~~ Before submitting an application for a new discharge permit or major modification of an existing discharge permit or Notice of Intent for authorization under a general permit, wetlands and waterways permit, or water quality certification, (for example, expansion), the discharger or applicant shall determine whether the receiving water body is in a Tier II watershed~~Tier II or, if a Tier II determination is pending,~~ by consulting the list of Tier II waters.

(2) ~~Water and Sewer Plans (County Plans).~~ As part of its continuing planning process, the Department shall review proposed amendments to county plans for any new or major modifications to discharges to a Tier II bodies of water watershed. If a proposed amendment to a County Plan results in a new discharge or a major modification of an existing discharge to a Tier II watershed, the applicant shall perform a Tier II antidegradation review.

(a) State final action letters for updated County Plans or proposed amendments to the County Plan, such as changes to water or sewerage service areas shall, at a minimum, include notification that portions of the updated Plan or amendments to service areas may impact Tier II watersheds; and

(b) For updates or amendments to the County Plans that require discharge permits that grant new discharges or an increase or modification to an existing discharge, the County shall be notified that the applicant for the permit will be required to complete an antidegradation review.

(3) Exemptions. The requirement to perform a Tier II antidegradation review does not apply to individual discharges of treated sanitary wastewater of less than 5,000 gallons per day, if all of the existing and designated uses continue to be met.

G. Tier II Antidegradation Review.

(1) If a Tier II antidegradation review is required, the applicant shall provide an analysis of reasonable alternatives that do not require direct discharge to a Tier II ~~water body (no discharge alternative)~~ watershed. The analysis shall include cost data and estimates to determine the cost effectiveness and feasibility of the alternatives.

(2) If the analysis in subsection (1) shows that the alternatives are cost effective and feasible, if a cost effective alternative to direct discharge is reasonable, the alternative is required as a condition of the ~~discharge~~ permit, authorization, or amendment to the ~~Ce~~ county ~~Pp~~lan.

~~(3) (3) If the analysis in subsection (1) shows that the alternatives are not cost effective and feasible, the applicant shall provide the Department with plans to configure or structure the discharge or other regulated activities that may cause a potential water quality impact so as to minimize the use of the assimilative capacity of the water body. The assimilative capacity of the water body is the difference between the water quality at the time the water body was designated as Tier II, the baseline, and the water quality criterion. If the Department determines that the alternatives that do not require direct discharge to a Tier II water body are not cost effective, the applicant shall:~~

~~(a) Provide the Department with plans to configure or structure the discharge to minimize the use of the assimilative capacity of the water body, which is the difference between the water quality at the time the water body was designated as Tier II (baseline) and the water quality criterion; and~~

~~(b) If an impact cannot be avoided, or no assimilative capacity remains as described in §G(3)(a) of this regulation, provide the Department with a social and economic justification for permitting limited degradation of the water quality.~~

(4) An applicant shall update an antidegradation review when applying for a new permit or major modification to an existing permit or authorization.

H. Potential Determinations Resulting from Antidegradation Reviews.

(1) If there is a cost-effective alternative to direct discharge or water quality impacts, the applicant shall implement the ~~no discharge~~ alternative and it shall be a condition of the ~~discharge~~ permit or authorization.

(2) If there is no cost-effective alternative to direct discharge or water quality impacts, but there is potential for further minimization of the use of assimilative capacity, the applicant shall revise the initial application to further minimize the use of assimilative capacity, and it shall be a condition of the permit or authorization. If the minimization of the use of assimilative capacity is adequate, then no social and economic justification (SEJ) is required.

~~(3) If there is no cost-effective, no discharge alternative, and minimization of the use of assimilative capacity is adequate, but the social and economic justification (SEJ) is not adequately performed, the applicant shall revise the SEJ.~~

~~(43) If there is no cost-effective alternative to direct discharge or water quality impacts, minimization of the use of assimilative capacity is not adequate, and the SEJ does not justify the water quality impact, the permit application or authorization shall be denied. the SEJ is adequately performed but does not justify the water quality impact, the proposed amendment to the county plan or discharge permit application shall be denied.~~

(54) If there is no cost-effective alternative to direct discharge or water quality impacts, all reasonable efforts have been made to minimize the use of assimilative capacity, and the SEJ is adequate and justifies the discharge or water quality impacts, the ~~proposed amendment to the county plan or~~ discharge permit shall be granted subject to other applicable requirements.

~~I. Wetlands Permits and Water Quality Certifications. Maryland's wetlands and waterways regulatory process, governed by the Tidal Wetlands (COMAR 26.24.01—26.24.05), Nontidal Wetlands (COMAR 26.23.01—26.23.06), and Waterway Construction (COMAR 26.17.04) regulations, satisfies the requirements of this regulation.~~

J. Social and Economic Justification (SEJ).

(1) An SEJ shall be submitted if:

(a) No cost effective alternative to the discharge or water quality impacts is available; or

(b) The cumulative degradation resulting from nonpoint source pollution and any other permitted discharges would diminish water quality.

(2) To allow for natural variability, water quality shall be considered diminished only if the assimilative capacity as defined in §G(3)(a) of this regulation is cumulatively reduced by more than 25 percent from the baseline water quality of either benthic or fish IBI value used to make the Tier II stream designation identified in §O of this regulations~~determined when the water body was listed as Tier II.~~

K.J. Demonstrating Social and Economic Justification for an Impact to Tier II Waters.

(1) In order to promote compact development, maintain habitat and open lands, and minimize water impacts in undeveloped areas, the requirement for social and economic justification is met if the following demonstrations are made:

(a) The watershed affecting the Tier II water is located in a priority funding area as defined in State Finance and Procurement Article, §5-7B-02, Annotated Code of Maryland; and

(b) The Department determines, in consultation with the Maryland Department of Planning, that the local jurisdiction in which the watershed affecting Tier II waters are located, is using to the extent reasonably practical, innovative development approaches to minimize impacts to water quality from development; and

(c) Physical development after the date of the Tier II listing is necessary to accommodate the projected growth within the watershed, and use of innovative development approaches are maximized to the extent reasonably practicable to encourage redevelopment, reuse and infill development; and

(d) If the Department of Planning's growth projections for the watershed affecting the Tier II waters demonstrate that additional physical development of undeveloped land is required to accommodate the projected growth and that development is consistent with the applicable county master plan.

(2) The approaches described in §~~KJ~~(1)(b) of this regulation include, but are not limited to, innovative stormwater management and sediment and erosion control design practices, green building design techniques, nutrient removal technology for septic systems, innovative technologies designed to reduce point source discharges of pollutants, uniform building codes designed to remove impediments to rehabilitation projects, model infill development guidelines designed by the Maryland Department of Planning, and transit-oriented development.

~~LK~~. Components of the Social and Economic Justification.

(1) Components of the SEJ may vary depending on factors including, but not limited to, the extent and duration of the impact from the proposed discharge and the existing uses of the water body.

(2) The economic analyses shall include impacts that result from treatment beyond the costs to meet technology-based or water quality-based requirements.

(3) The economic analysis shall address the cost of maintaining high water quality in Tier II waters and the economic benefit of maintaining Tier II waters.

(4) The economic analysis shall determine whether the costs of the pollution controls needed to maintain the Tier II water would limit growth or development in the watershed including the Tier II water.

~~ML~~. Department Responsibilities.

(1) The Department shall determine whether the SEJ demonstrates that the costs of water pollution controls are reasonable and would not limit development or growth and, if not, shall determine whether lowering of the water quality is necessary for development or growth to take place in the watershed.

(2) The Department shall determine whether the SEJ demonstrates that the impact to water quality is necessary for development or growth to take place in the watershed. Evaluation of the SEJ shall consider the relative magnitude of costs and benefits of development, recognizing the difficulty in quantifying benefits, and the extent to which denial of the amendment or permit would substantially impact future development within the watershed.

(3) The Department shall propose a tentative determination to either issue or deny the permit application. If the tentative determination is made to issue a permit, the notice of tentative determination shall state that these waters are designated as Tier II and, if applicable, that a social and economic justification is available for review.

(4) Existing in-stream water uses and the level of water quality necessary to protect existing uses shall be maintained and protected.

(5) All required point and nonpoint source controls under State statutes and regulations shall be achieved.

NM. Public Participation.

(1) Public participation for a permit to discharge to a Tier II water is the same as that required for any permit subject to the Administrative Procedure Act or the requirements of Environment Article, Title 1, Subtitle 6, Annotated Code of Maryland.

(2) If an SEJ is not required, the public notice shall reflect the Tier II status of the waterbody and note that an SEJ is not required and note the justification.

(3) If an SEJ is required, the public notice shall reflect the Tier II status of the waterbody and note that an SEJ is required, and the Department shall make the SEJ available for review.