

7050.0305 PROCEDURES FOR SECTION 401 CERTIFICATIONS OF GENERAL SECTION 404 PERMITS.

Subpart 1. **Antidegradation procedures required.** The antidegradation procedures in this part apply to section 401 certifications of new, reissued, or modified general section 404 permits that the commissioner anticipates will result in net increases in loading or other causes of degradation to surface waters, unless the federal permitting authority is notified that the commissioner is waiving the agency's authority to certify the permit under part 7001.1460.

Subp. 2. **Antidegradation review.** Upon public notice of a draft general section 404 permit, the commissioner shall review the determinations specified in Code of Federal Regulations, title 33, part 320, subpart 4, and Code of Federal Regulations, title 40, part 230, subpart 7. The purpose of the antidegradation review is to evaluate whether issuing the section 401 certification for the general section 404 permit will satisfy the antidegradation standards in part 7050.0270.

Subp. 3. **Preliminary antidegradation determination.** Based upon the review described in subpart 2, the commissioner shall prepare a written preliminary antidegradation determination as to whether the antidegradation standards described in part 7050.0270 are satisfied or can be satisfied by issuing a section 401 certification with conditions. The preliminary antidegradation determination must be included with the commissioner's preliminary determination to issue or deny the section 401 certification according to part 7001.0100 and, if applicable, include the conditions necessary to satisfy antidegradation standards. If, in the commissioner's judgment, the antidegradation standards are not satisfied, reasons why they are not satisfied must be included in the preliminary antidegradation determination.

Subp. 4. **Opportunity for comment.** The commissioner shall prepare and distribute a public notice of the preliminary antidegradation determination with the preliminary determination to issue or deny the section 401 certification through the procedures described in part 7001.1440, except that part 7001.1440, subpart 2, does not apply.

Subp. 5. **Final antidegradation determination.** The commissioner shall consider information received under subpart 4 before preparing a written final antidegradation determination. The final antidegradation determination must include a statement of whether issuing the general section 404 permit achieves or fails to achieve the antidegradation standards specified in part 7050.0270. The final antidegradation determination must be included with the commissioner's final determination according to part 7001.1450.

Subp. 6. **Further antidegradation procedures not required.** Except as provided in part 7050.0325, if the commissioner's final antidegradation determination states that issuing a general section 404 permit will achieve the antidegradation standards specified in part 7050.0270, further antidegradation procedures are not required when a person seeking

coverage under the general section 404 permit certifies that the permit conditions can and will be met.

Statutory Authority: *MS s 115.03; 115.44*

History: *41 SR 545*

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