Antidegradation & Minimal Impact Design Standards

MIDS Work Group Meeting
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What We'll Cover…

- Antidegradation background
- Proposed changes to current rule and implementation
- How antidegradation, storm water and MIDS intersect
- Questions/discussion

Clean Water Act

- Objective:
  - "…restore and **maintain** the chemical, physical, and biological integrity of the Nation's waters."
- Authorizes states to establish water quality standards including:
  - Designated uses
  - Water quality criteria necessary to support designated uses
  - Antidegradation provisions

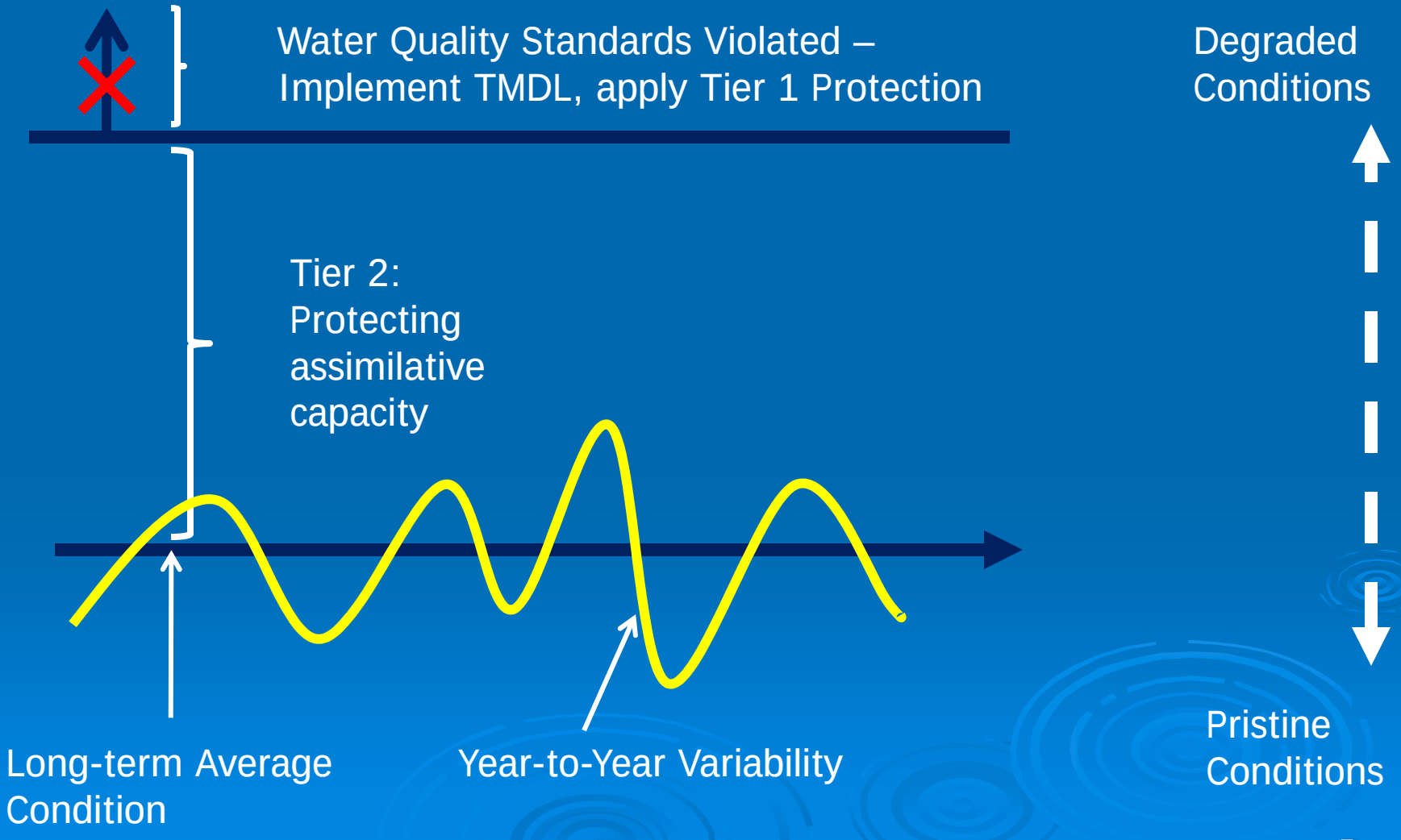
Antidegradation Levels of Protection

Existing Uses

High Water Quality

Outstanding Resources

Tier 2 Protection Goal: Prevent Degradation of High Water Quality



Review Process

Review Trigger

Is there a net increase in permitted loading?

Alternatives Analysis

Is increased loading necessary? What are the options?

Social or Economic Justification

Is increased loading important for social or economic development?

Rule & Implementation Changes

- Nondegradation becomes antidegradation
- Broaden scope beyond wastewater treatment
- Eliminate significance test used to trigger review (no authorized *de minimis* discharges)
- Greater emphasis on alternatives analysis
  - Include non-degrading alternatives analysis
  - Identify Parameters of Concern

Rule & Implementation Changes

- More assessment requirements before allowing lowering of water quality
- Develop procedures for applying antidegradation through general permits
- Improve public participation

Milestones for Rule Adoption

- Stakeholder input, Jun. 2008 – Jun. 2009
- Respond to stakeholder questions, Oct. 2009
- Water Quality Forum input, Nov. – Dec. 2009
- Initiate internal review of positions, Jan. 2010
- Initiate external review of positions, July 2010
- Request Board adoption, Sept. 2011
- Rule submitted to EPA for approval, Dec. 2011

Review Trigger

- Issuance of a control document where there is potential for a net increase in permitted loading to waters of the state
- Net increase = increase beyond baseline
- Baseline =
  - Condition as of rule adoption date (1988 for All Waters, Tier 2)
  - Condition “allowed” through review
  - Condition where improvements are made through loading reductions

Review Process

- Alternatives Analysis
  - Identify parameters of concern
  - Evaluate options that avoid, minimize or mitigate increased loading
- Social or Economic Justification
  - Required when increased loading cannot be avoided to high water quality
  - Compare benefits of development with loss of water quality
- Public Participation

Applying Antidegradation to Regulated Storm Water

- Changes in land use triggers review
- General permits – Agency conducts alternatives analysis at time of permit development
- MS4s
  - Jurisdictional responsibility for protecting individual receiving waters
  - Ability to mitigate, e.g., offsets that are "upstream and prior to"
- Pollution control regulated through BMPs
  - Adaptive management

MIDS and Antidegradation

- MIDS considered in the alternatives analysis
- Where MIDS avoids increased loading on a project scale, no further review (i.e., demonstration of importance) will be required
- MIDS works in concert with antidegradation for water quality protection

Some Challenges…

- Timing of MIDS development, Phase II MS4 permit reissuance and rule adoption
- For each type of activity we need to define “avoid”
- Developing reasonable alternatives to meet a wide range of conditions
- Insuring individual water bodies are protected


Questions
&
Discussion
Nondegradation Rulemaking Web Page:
http://www.pca.state.mn.us/water/
nondegradation-rule.html