



Tier II Review – Nontidal Wetlands and Waterways Construction

What You Need to Know

The purpose of the Tier II antidegradation review is to prevent degradation to high quality waters due to permitted activities. To protect downstream resources, the Tier II review is implemented at the watershed scale. This means that permitted activities occurring anywhere upstream of, and including, the designated stream segment may be subject to review. Avoiding, minimizing, and mitigating or offsetting the environmental impacts associated with permitted activities are necessary to protect Tier II waters.

Regulatory Responsibility

Federal antidegradation regulations (40 C.F.R. 131.12) require states to develop and adopt a statewide antidegradation policy that protect all Waters of the U.S. from degradation. These regulations also require states to maintain the condition of high quality (i.e. Tier II) waters that have water quality that is better than the minimum standard necessary to meet designated uses. The Maryland antidegradation implementation procedures are found in the Code of Maryland Regulations (COMAR) 26.08.02.04-1.

Avoidance

Applicants must consider alternatives that avoid or limit environmental impacts to Tier II waters. This may include:

- Alternate facility or structure locations outside of the Tier II watershed,
- Alternate routes for roads or pipelines, and
- Alternate stream crossing methods.

Minimization

Applicants must consider and implement alternatives that will minimize unavoidable impacts to key resources that support high quality waters. This means giving special attention to maintaining sufficient stream buffers, and avoiding both cumulative decreases in forest cover, and increases in impervious cover that is not treated using environmental site design practices.



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Mitigation and Offsets

Land use conversion, especially loss of forest, contribute to, or directly cause cumulative water quality degradation. Under certain circumstances, when a project results in the net reduction of forest cover and/or the net increase impervious cover within the Tier II watershed, mitigation is an option to help offset unavoidable impacts. The preferred mitigation method is 'in-kind'. This means that the amount of forest restored within the Tier II watershed should equal the amount of forest lost due to the permitted activity.

Social and Economic Justification

If no assimilative capacity remains, and impacts cannot be fully avoided, minimized, or mitigated, the applicant will have to provide MDE with a social and economic justification (SEJ). The SEJ must demonstrate that an economic hardship and/or public benefit overrides the value of the ecological services or water quality benefit that the Tier II water segment provides. The applicant must also provide documentation to show that all reasonable avoidance, minimization, and mitigation alternatives have been considered, and where economically feasible, implemented.

Other Potential Requirements

Permits for complex Tier II reviews may contain special conditions like water quality monitoring. Special permit conditions could include monitoring for basic water chemistry parameters like temperature or pH, or it may be more involved, requiring biological monitoring.

Please direct any questions or comments concerning Maryland's Antidegradation program to Angel Valdez at Angel.Valdez@maryland.gov or 410-537-3606.