



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# Antidegradation Implementation/Discussion of Arkansas Division of Environmental Quality's Draft Proposal: Mitchell Williams Environmental Insights Webinar – August 19th

08/10/2020

Mitchell Williams will hold another webinar in its Environmental Insights Series on August 19th.

The title of the webinar is:

*Antidegradation Implementation: Overview and Discussion of DEQ's Draft Proposal ("Webinar")*

A focus of the *Webinar* will be the Arkansas Department of Energy and Environment – Division of Environmental Quality ("DEQ") draft Antidegradation Implementation Methodology ("Draft").

Section 303 of the Clean Water Act requires that each state develop water quality standards ("WQS") for jurisdictional waters of the United States within their borders. They establish the water quality goals for a specific body of waters and also serve as a regulatory basis for the development of water-quality based effluent limits and strategies for individual points of discharge. WQS consists of three parts:

1. The designated use of a waterbody;
2. the water quality criteria that are necessary to protect existing uses and to attain the beneficial uses designated by the state; and
3. an antidegradation statement or policy to protect existing uses in high quality water.

Federal Clean Water Act regulations require that states maintain existing uses of all navigable waters. These include provisions restricting to a certain extent the ambient degradation of waterbodies. These restrictions are variously referenced as "antidegradation" provisions. Antidegradation provisions are intended to serve the purpose of ensuring that bodies of water which have had their quality improved through years of anti-pollution efforts have limited ability to backslide except under limited circumstances.

A WQS antidegradation policy or regulation must ensure the maintenance of the level of water quality necessary to protect existing uses. Limited degradation of ambient water quality may be allowed if certain

procedural requirements required by the state's planning process are undertaken. The amount of degradation permitted depends upon the tier "applied to the waterbody." The tiers generally include:

1. Existing in-stream water uses, and the level of water quality necessary to protect them
2. Requires a waterbody better than necessary to protect fishable and swimmable uses
3. Protection of outstanding national resource waters

Arkansas's antidegradation provisions are found in Arkansas Pollution Control and Ecology Commission Regulation No. 2.

The August 19th *Webinar* will discuss the draft implementation methodology which is deemed one of the most important developments in Clean Water Act National Pollution Discharge Elimination System permitting in Arkansas in decades. It is described as establishing a process for determining when, and to what extent, a new or expanded point source discharge may degrade the quality of the waterbody that will receive the proposed discharge.

The *Webinar* presenters will include:

- Allan Gates, Mitchell Williams Law Firm
- Jordan Wimpy, Mitchell Williams Law Firm
- Shon Simpson, GBMc & Associates, Inc.
- Ray Wieda, FTN Associates, Ltd.

Issues addressed will include:

- Legal authority and limits of antidegradation policy
- Timeline for developing DEQ's implementation policy
- Key concepts and critical issues posed by the draft implementation methodology

Information regarding registration, which is required, can be found [here](#).