ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7069.

SUPPLEMENTARY INFORMATION: The Spuyten Duyvil Bridge, across the Harlem River, mile 7.9, at New York City, New York, has a vertical clearance in the closed position of 5 feet at mean high water and 9 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.789(f).

The owner of the bridge, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation to facilitate scheduled bridge maintenance, the replacement of the bridge protective fender system at the west end.

Under this temporary deviation in effect from January 10, 2008 through April 14, 2008, the Spuyten Duyvil Bridge need not open for the passage of vessel traffic from 6 a.m. to 1:30 p.m. and from 3 p.m. to 9 p.m. The draw shall open on signal one time each day to accommodate vessel traffic between 1:30 p.m. and 3 p.m., after at least a one-hour notice is given by calling the number posted at the bridge. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operation schedule.

Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

Dated: December 4, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–24049 Filed 12–11–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2007–0259; FRL–8504–9]

Water Quality Standards for Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating water quality standards that establish methods to implement Puerto Rico's existing antidegradation policy for waters in the Commonwealth of Puerto Rico. EPA was required to propose antidegradation implementation methods under court order. The Clean Water Act requires that all States, Territories, and authorized Tribes develop water quality standards that include the designated use or uses of the water, water quality criteria to protect those uses, and an antidegradation policy and implementation methods. Through this promulgation, the federal antidegradation implementation methods are added to Puerto Rico's water quality standards.

DATES: This final rule is effective January 11, 2008.

ADDRESSES: The public record for this rulemaking is located at USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and EPA Region 2, 290 Broadway, New York, New York 10007, and can be viewed between 8:30 a.m. and 4:30 p.m. at both locations.

FOR FURTHER INFORMATION CONTACT: For further information concerning today's final rule, contact Wayne Jackson, U.S. EPA Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 (telephone: 212–637–3807 or e-mail: *jackson.wayne@epa.gov*) or Lauren Wisniewski, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue, NW., Mail Code 4305T, Washington, DC 20460 (telephone: 202–566–0394 or e-mail: *wisniewski.lauren@epa.gov*).

SUPPLEMENTARY INFORMATION: This section is organized as follows:

Table of Contents

I. General Information
A. What Entities May Be Affected by this Action?
B. How Can I Get Copies of This Document and Other Related Information?
II. Background
A. What Are the Applicable Federal Statutory and Regulatory Requirements?
B. Why Is EPA Promulgating Federal Antidegradation Implementation Methods for the Commonwealth of Puerto Rico?
III. This Final Rule
A. What Are the Federal Antidegradation Implementation Methods to Protect Puerto Rico's High Quality Waters?
B. How Will Puerto Rico Implement the Federal Antidegradation Implementation Methods?
C. What Are the Cost Implications of the Final Rule?
D. Comments Received in Response to EPA's May 2007 Proposal
IV. Statutory and Executive Order Reviews
A. Executive Order 12866 (Regulatory Planning and Review)
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132 (Federalism)
F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)
G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)
H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution or Use)
I. National Technology Transfer and Advancement Act of 1995
J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)
K. Endangered Species Act
L. Congressional Review Act

I. General Information

A. What Entities May Be Affected by This Action?

Citizens concerned with water quality in Puerto Rico may be interested in this rulemaking which establishes federal antidegradation implementation methods by regulation for waters in the Commonwealth of Puerto Rico (hereafter, ''the Commonwealth'' or ''Puerto Rico''). Entities discharging pollutants to the surface waters of Puerto Rico could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits, CWA section 404 dredge and fill permits, and other activities requiring CWA section 401 certification. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Puerto Rico.
Municipalities	Discharges to surface waters in Puerto Rico from publicly owned facilities such as publicly owned treatment works and water filtration facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES-regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's proposed rule. If you have questions regarding the applicability of this action to the particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket Id. No. [EPA–HQ–OW–2007–0259]. The official public docket consists of the document specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Quality Standards for Puerto Rico docket located at both U.S. EPA Region 2, 290 Broadway, New York, New York 10007, and the OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. These Docket Facilities are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone numbers are 212–637–3807 and 202–566–1744, respectively. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through one of the Docket Facilities identified in Section I.B.1.

II. Background

A. What Are the Applicable Federal Statutory and Regulatory Requirements?

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or ''the Act'') directs States, Territories, and authorized Tribes (hereafter referred to as ''States''), with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for navigable waters of the United States within the State. Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State and Tribal water quality standards to include the designated use or uses to be made of the water, the water quality criteria necessary to protect those uses and an antidegradation policy. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards.

Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that EPA has disapproved or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements. In a February 14, 2007, Opinion and Order from the United States District Court for the District of Puerto Rico in the case of *CORALations and the American Littoral Society* v. *United States Environmental Protection Agency, et al.* (No. 02–1266 (JP) (D. Puerto Rico)), the Court ordered EPA to ''prepare and publish new or revised water quality standards identifying antidegradation methods for Puerto Rico within 60 days'' (April 17, 2007). The Court granted EPA's motion for an additional 30 days. EPA proposed Federal water quality standards for these waters in Puerto Rico on May 17, 2007.

As one of the minimum elements that must be included in a State's water quality standards, antidegradation is an important tool for States and authorized Tribes to use in meeting the CWA's requirement that water quality standards protect public health or welfare, enhance the quality of water and meet the objective of the CWA to restore and maintain the chemical, physical and biological integrity of the nation's waters. Antidegradation requirements help ensure that any degradation in water quality is subject to review and approval by the State even in cases where the existing water quality far exceeds the water quality criteria and designated use applicable to individual waters.

EPA's regulation at 40 CFR 131.12 requires that States and authorized Tribes adopt antidegradation policies and identify implementation methods to provide three levels or tiers of water quality protection. The first level of protection at 40 CFR 131.12(a)(1), also known as Tier 1 of antidegradation, requires the maintenance and protection of existing instream water uses and the level of water quality necessary to protect those existing uses. Protection of existing uses is the floor of water quality protection afforded to all waters of the United States. Existing uses are ''* * * those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards'' (40 CFR 131.3(e)).

The second level of protection, or Tier 2 of antidegradation, is for high quality waters. High quality waters are defined in 40 CFR 131.12(a)(2) as waters where the quality of the waters is better than the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. This water quality is to be maintained and protected unless the State or authorized Tribe finds, after public participation and intergovernmental review, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing lower water quality, the State or authorized

Tribe must assure water quality adequate to protect existing uses. Further, the State or authorized Tribe must ensure that all applicable statutory and regulatory requirements are achieved for all new and existing point sources and all cost-effective and reasonable best management practices are achieved for nonpoint source control.

Finally, the third and highest level of antidegradation protection, or Tier 3, is for outstanding national resource waters (ONRWs). If a State or authorized Tribe determines that the characteristics of a water body constitute an outstanding national resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, and designates a water body as such, then that water quality must be maintained and protected (see 40 CFR 131.12(a)(3)).

In addition to requiring States and authorized Tribes to adopt an antidegradation policy, 40 CFR 131.12 requires States to identify methods for implementing such a policy. Such methods are not required to be contained in the State's regulation, but because they inform EPA's judgment regarding whether the State's antidegradation policy is consistent with the Federal regulations at 40 CFR 131.12, they are subject to EPA review. Where the State chooses to make such methods part of its water quality standards regulations, section 303(c)(3) of the CWA and EPA's implementing regulations require them to be submitted to EPA for review and approval. When a State or authorized Tribe chooses to develop such methods as guidance or outside of regulation, EPA reviews the methods in the context of determining whether the State's antidegradation policy as interpreted and implemented through the methods, is consistent with 40 CFR 131.12.

EPA's regulations at 40 CFR 131.12 provide a great deal of discretion to States regarding the amount of specificity required in a State's antidegradation implementation methods. The regulations do not specify minimum elements for such methods, but do require that such methods not undermine the intent of the antidegradation policy. *See* Advanced Notice of Proposed Rulemaking, 63 FR 36742, 36781, July 7, 1998.

B. Why Is EPA Promulgating Federal Antidegradation Implementation Methods for the Commonwealth of Puerto Rico?

Puerto Rico has an existing EPA-approved antidegradation policy, which was adopted on October 27, 1990, and approved by EPA on March 28, 2002. This antidegradation policy mirrors that of the federal regulation. The policy states the following:

''It is the policy of the Government of Puerto Rico to conserve and protect the existing uses of the Waters of Puerto Rico. The water quality necessary to protect the existing uses, including threatened and endangered species shall be maintained and protected.

In those water bodies where the quality exceeds levels necessary to support propagation of fish, shellfish, wildlife, desirable species including threatened or endangered species and recreation in and on the water, that quality shall be maintained and protected. A lower water quality may be allowed when the [Environmental Quality Board of the Commonwealth of Puerto Rico] finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Board's Continuing Planning Process that allowing lower water quality is necessary to accommodate important economic or social development in the area where the waters are located. In allowing such lower water quality, the Board shall require a water quality level adequate to protect existing uses fully. Further, the Board will require that:

(1) The highest statutory and regulatory requirements for all new and/or existing point sources be achieved and

(2) All cost-effective and reasonable best management practices for non-point source control be implemented.

Where high quality waters constitute an outstanding national resource, such as waters of El Yunque National Forest and State parks, wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

Where potential water quality impairment is associated with a thermal discharge, this thermal discharge must comply with Section 316 of the Clean Water Act as amended.''

The Environmental Quality Board of the Commonwealth of Puerto Rico (EQB or Board) first adopted an antidegradation policy in its water quality standards regulation in June 1973. EQB is responsible, in part, for developing and recommending to the Governor public policy to encourage and promote the improvement of environmental quality so as to meet the conservation, social, economic, health and other requirements and goals of the Commonwealth. One of the specific functions of EQB is to develop and adopt water quality standards, which are intended to ''enhance, maintain and preserve the quality of the waters of Puerto Rico compatible with the social and economic needs of Puerto Rico.'' This antidegradation policy was approved by EPA on November 15, 1973. Puerto Rico's antidegradation policy statement remained unchanged until 1990. In August 1990, the Commonwealth of Puerto Rico adopted revisions to the Puerto Rico Water Quality Standards Regulation (PRWQSR). These were sent to EPA Region 2 on September 21, 1990, with the caveat from the Chairman of the EQB that the transmittal may not be the final submittal, since EQB was going to hold additional public hearings on November 1, 1990, regarding certain aspects of the revisions. Because of this caveat, and because the requisite certification from the Commonwealth's Secretary of Justice was not submitted with the revisions as required by 40 CFR 131.6(e), EPA did not act on these revisions immediately.

From 1991 to 1993, EPA Region 2 worked with EQB on a series of subsequent draft revisions to the PRWQSR. These drafts were never adopted by Puerto Rico.

The requisite certification from the Commonwealth's Secretary of Justice was ultimately submitted to EPA on February 25, 2002. Upon receipt of this certification EPA took final action on all new and revised provisions of the 1990 PRWQSR on March 28, 2002. These revisions included the above-referenced revisions to the Puerto Rico antidegradation policy.

Prior to October 2001, Puerto Rico had antidegradation implementation methods set forth in a document known as its Continuing Planning Process (CPP). In the fall of 2001, EPA commenced work with the Puerto Rico EQB to enhance their antidegradation implementation methods. EQB submitted its first reasonably complete draft of its consolidation of antidegradation implementation methods on September 3, 2003.

On February 20, 2002, CORALations, American Littoral Society, and the American Canoe Association filed a complaint in the U.S. District Court for the District of Puerto Rico. In this action, the plaintiffs alleged, among other things, that a September 4, 1992 letter from a EPA Region 2 Division Director to the EQB had triggered a mandatory duty under section 303(c)(4) of the CWA for EPA to prepare and propose regulations for Puerto Rico setting forth a revised water quality standard for antidegradation implementation methods.

In October and December 2003, EQB submitted two revised drafts of its consolidation of antidegradation implementation methods. The December 2003 draft was submitted under cover of a letter dated December 16, 2003, from Ruben Gonzalez Delgado, Director of EQB's Water Quality Area, to Walter Mugdan, Director of the EPA

Region 2's Division of Environmental Planning and Protection. This letter stated that it was EQB's intent to promulgate this consolidation as part of the PRWQSR in order to consolidate EQB's existing antidegradation implementation methods ''either explicitly or by reference, into one document so that it is readily accessible to the public and the regulated community.''

On June 17, 2004, EQB submitted to EPA its final revised consolidation document. This consolidation document, however, was not adopted as a regulation. In a letter dated July 9, 2004, from Mr. Mugdan to EQB's President, Esteban Mujica Cotto, EPA stated that these methods meet the requirements of the Clean Water Act and 40 CFR 131.12(a).

On February 14, 2007, the U.S. District Court of Puerto Rico issued an opinion ruling that EPA had failed to execute a mandatory duty to propose antidegradation implementation methods for Puerto Rico and ordered EPA to prepare and publish new or revised water quality standards identifying antidegradation implementation methods for Puerto Rico within 60 days. The court granted a 30-day extension and EPA proposed federal water quality standards identifying methods for implementing Puerto Rico's antidegradation policy on May 17, 2007.

III. This Final Rule

EPA is promulgating federal water quality standards identifying methods for implementing Puerto Rico's antidegradation policy. If Puerto Rico adopts antidegradation implementation methods and EPA approves Puerto Rico's action, EPA will initiate withdrawal of its corresponding federal water quality standards.

A. What Are the Federal Antidegradation Implementation Methods To Protect Puerto Rico's High Quality Waters?

The federal antidegradation implementation methods are the same as the implementation methods Puerto Rico provided to EPA in 2004. EPA reviewed those and on July 9, 2004, sent a letter from Walter Mugdan, Director of EPA Region 2's Division of Environmental Planning and Protection Division to Esteban Mujica Cotto, President of Puerto Rico's Environmental Quality Board stating that these methods meet the requirements of 40 CFR 131.12(a). (It should be noted that subsequent to the issuance of EPA's July 9, 2004 letter, EQB incorporated some non-substantive updates to its consolidation of implementation methods. The purpose of these updates is to reflect the fact that the Puerto Rico Environmental Public Policy Act (12 LPRA 8001 et. seq.), which is one of the referenced documents in the consolidation document, was amended and re-issued on September 22, 2004. The June 17, 2004 version of the consolidation document had referenced the previously applicable version of the Puerto Rico Environmental Public Policy Act. The methods EPA is promulgating reflect this update).

Consistent with Puerto Rico's antidegradation implementation methods, the federal methods provide that all point sources would be subject to antidegradation review. The CWA and EPA's regulations leave to the States and authorized Tribes the decision whether to regulate nonpoint sources by requiring that they undergo antidegradation review *(American Wildlands* v. *Browner,* 260 F.3d 1192, 1198 (10th Cir. 2001)). To date, Puerto Rico has not chosen to subject nonpoint sources to antidegradation review. As a result, EPA is not applying Puerto Rico's methods to sources other than point sources.

In addition, as envisioned by Puerto Rico, the federal methods provide that the antidegradation review would occur as part of Puerto Rico's CWA section 401 certification process. EPA issues all of the National Pollutant Discharge Elimination System (NPDES) permits under CWA section 402 for the Commonwealth of Puerto Rico. As part of this process, Puerto Rico must certify under CWA section 401 that those permits comply with Puerto Rico's water quality requirements. Conducting the antidegradation review process during this certification is a logical time for this review to occur, since this is the time when EQB conducts its formal analysis to determine, in part, if a proposed action will comply with all aspects of the Puerto Rico Water Quality Standards Regulation (PRWQSR).

To implement Tier 1, it is important to explain what is meant by the term ''existing in-stream water use'' (40 CFR 131.12 (a)(1)) and explain how the level of water quality will be identified that is required to allow an existing use to continue to occur. Section 131.3 of the federal regulations defines existing uses as ''those uses actually attained in the water body on or after November 28, 1975* * *''. The proposed methods provide that where there are concentrations or levels of a particular pollutant that have caused a waterbody to be listed as impaired under section 303(d) of the CWA, no additional degradation may occur in the waterbody. Puerto Rico's methods provide that this would be assured through water quality-based effluent limits meeting water quality criteria ''end-of-pipe''. EPA believes this approach will protect the quality of water in the waterbody from further degradation, which will lead to the protection of the existing uses.

EPA has articulated that states may take one of two approaches in identifying their high quality waters, also known as Tier 2 of antidegradation: a parameter-by-parameter approach or a waterbody-by-waterbody approach. Under the parameter-by-parameter approach, States and authorized Tribes determine whether water quality is better than the applicable criteria for a specific parameter or pollutant that would be affected by a new discharge or an increase in an existing discharge of the pollutant. The water body-by-water body approach weighs the chemical, physical, biological, or other factors to judge a water body's overall quality. In EPA's Advanced Notice of Proposed Rulemaking (ANPRM), EPA discussed the advantages and disadvantages to both approaches to designating high quality waters. 63 FR 36782, 36783, July 7, 1998. EPA also discussed these issues in the preamble to its proposed rule regarding antidegradation implementation methods for Kentucky. 67 FR 68971, 67798–99, November 14, 2002. EPA interprets its regulation to authorize either approach. Consistent with the implementation methods identified by Puerto Rico, EPA is today requiring that antidegradation reviews for high quality waters in Puerto Rico occur on a parameter-by-parameter basis.

Under the federal methods, Puerto Rico must implement protection of waters it identifies as ONRWs, also known as Tier 3 of antidegradation, through a requirement that prohibits point source discharges in ONRWs. As described earlier in this section, the federal methods mirror those methods already identified by Puerto Rico for implementing its antidegradation implementation policy. EPA believes this approach is more than sufficient to meet the federal requirements at 40 CFR 131.12(a)(3) to maintain and protect the water quality of waters identified as ONRWs and is consistent with Puerto Rico's preferred approach.

Consistent with the antidegradation methods identified by Puerto Rico, this final rule includes methods for implementing Puerto Rico's antidegradation policy for permits issued under section 404 of the CWA or permits issued under section 10 of the

River and Harbors Act. The federal methods require that the discharge of dredged or fill material not have an unacceptable adverse impact either individually or in combination with other activities affecting the wetland before they can be allowed to discharge. Further, the federal methods provide that any proposed discharge will not be allowed if there is a practicable alternative that would have less adverse impact. With regard to how the permits for these types of activities will be implemented in waters identified by Puerto Rico as ONRWs, the federal methods provide that any proposed permitted activity under these sections of the statutes be treated the same as NPDES-permitted dischargers, that is, that these types of activities will be prohibited. This approach, also contained in Puerto Rico's methods, will assure that the water quality in waters identified as ONRWs be maintained and protected.

B. How Will Puerto Rico Implement the Federal Antidegradation Implementation Methods?

Puerto Rico will implement the federal antidegradation implementation methods through its ongoing CWA section 401 certification process. As described earlier in Section III.A., EPA Region 2 issues the NPDES permits for the Commonwealth of Puerto Rico. The permit issuance and preparation of the water quality certification occurs sequentially as described below.

Section 6.11 of the PRWQSR describes how the EQB will issue CWA section 401 Water Quality Certifications (WQC) for federally-issued permits, such as NPDES permits. This provision provides, in part, that when requesting a WQC, an applicant must submit, as part of the application, all relevant information to demonstrate to the satisfaction of the Board that the proposed action will not cause a violation of any applicable water quality standards in the receiving water body.

Puerto Rico's requirements for conducting CWA section 401 certifications, which include antidegradation reviews, are found in Resolution R–89–2–2 of the Governing Board of EQB—February 2, 1989, and are summarized as follows.

1. EPA Region 2 (the Region) receives an application from a discharger for a NPDES permit, or for the renewal or modification of an existing NPDES permit. The applicant also submits a copy of the application to the EQB.

2. The Region reviews the application, and, if necessary, obtains additional information from the applicant. After all information is submitted, and EPA completes its review, EPA solicits certification from EQB in accordance with 40 CFR Part 124.

3. EQB evaluates the application/draft permit and issues or denies a 401 certification, or waives the right to review the permit. (EQB will not waive the right when an initial environmental assessment indicates that the discharge for which a permit is sought will have a significant impact on the environment, triggering the need for an antidegradation review.) In summary, if EQB plans to certify the discharge, an intent to issue a WQC will be prepared. If EQB plans to deny the certification, an intent to deny a WQC will be prepared, including the basis of the determination that the discharge will not comply with applicable water quality standards. A copy of the intent to issue or deny a WQC, whichever the case, will be sent to EPA and the petitioner. A public notice and comment period follows. EQB then decides to issue the WQC or denial. Petitioners have the ability to seek reconsideration before the WQC decision becomes final.

4. In conducting an antidegradation review as part of the CWA section 401 certification process, EQB first determines which level of antidegradation applies based upon a review of existing water quality data, and other required information, to be provided by the applicant. Based upon this review, EQB then determines if additional information is necessary in order to make a determination. In the case of Tier I waters, a determination is made as to whether a discharge would lower water quality such that it would no longer be sufficient to protect and maintain the existing and designated uses of that water body. When the assimilative capacity of a water body is determined to be insufficient to protect existing and designated uses with an additional load to the water body, EQB does not allow a discharge increase by requiring that the applicable water quality standards be met at the end of the pipe. In order to allow the lowering of water quality in Tier 2 waters, EQB evaluates the existing and protected quality of the receiving water on a parameter-by-parameter basis. In those cases where a potential increase in loading from a discharge may result in the lowering of water quality, the applicant must show and justify the necessity for such lowering of water quality. As part of the Tier 2 antidegradation review process, EQB provides a public comment period of at least 30 days. In the case of Tier 3 waters, no point source discharge will be allowed.

5. If EQB issues a 401 certification, then EPA Region 2 incorporates the WQC into the draft permit and issues public notice of its intention to issue a final permit pursuant to 40 CFR Part 122.

C. What Are the Cost Implications of the Final Rule?

Puerto Rico's existing antidegradation implementation methods are the same as the antidegradation methods set forth in this final rule. Thus, while not in regulation, these implementation methods are already in place in Puerto Rico and as such, EPA's federal antidegradation methods are not expected to result in any additional monetary costs. Nonetheless, EPA prepared an analysis to evaluate potential impacts to the Commonwealth of Puerto Rico associated with future implementation of EPA's federal standards. This analysis is documented in the ''Economics Analysis of Antidegradation Implementation Methods for the Commonwealth of Puerto Rico,'' which can be found in the record for this rulemaking and concludes that the total annualized costs of EPA's final rule for both the Commonwealth and the point source dischargers could range from $14,500 to $32,900.

Any NPDES-permitted facility that discharges to water bodies affected by this final rule could potentially incur costs to comply with the rule's provisions. The types of affected facilities may include industrial facilities and publicly owned treatment works (POTWs). EPA did not consider the potential costs for nonpoint sources, such as agricultural and forestry-related nonpoint sources, because EPA's final rule would only require that antidegradation be applied to point sources. In addition, EPA did not address the potential monetary benefits of this final rule for Puerto Rico.

1. Identifying Affected Entities

EPA identified approximately 265 point source facilities that may be affected by the rule. Of these potentially affected facilities, 76 are classified as major dischargers, and 189 are minor dischargers.

Exhibit 1 provides a summary of facilities that are currently permitted to discharge to Puerto Rico surface waters, as identified in EPA's Permit Compliance System (PCS). There are a total of 265 facilities, 71 percent of which are minor dischargers.

EXHIBIT 1.—POTENTIALLY AFFECTED INDIVIDUAL NPDES PERMITTED DISCHARGERS IN PUERTO RICO

Facility type	Number of Facilities		
	Majors [1]	Minors [2]	Total
Municipal	36	33	69
Industrial	40	156	196
Total	76	189	265

Sources: U.S. EPA (2007) and U.S. EPA Region 2 (2007).
[1] Major dischargers are facilities discharging greater than 1 million gallons per day (mgd) and likely to discharge toxic pollutants in toxic amounts.
[2] Minor dischargers are defined as facilities discharging less than 1 million gallons per day (mgd) and not likely to discharge toxic pollutants in toxic amounts.

In the case of Tier 1 waters, EQB would make a determination as to whether a discharge would lower water quality such that it would no longer be sufficient to protect and maintain the existing and designated uses of that water body. For Tier 2 waters, EQB would evaluate the existing and protected quality of the receiving water on a parameter-by-parameter basis. Under this approach, EQB would determine whether water quality is better than the applicable criteria for a specific parameter or pollutant that would be affected by a new discharge or an increase in an existing discharge of the pollutant. In addition, no point source discharges would be allowed to Tier 3 waters.

2. Method for Estimating Potential Compliance Costs

EPA Region 2 indicates that is has received five antidegradation review requests within the last five years, or approximately one request per year. This includes antidegradation reviews for both existing and new facilities. EPA assumed that each type of facility (*e.g.*, major municipal, minor municipal, major industrial, and minor industrial) is equally likely to request an antidegradation review.

Costs for the final antidegradation implementation methods include costs to facilities for preparing the review material and necessary data, and costs associated with the Commonwealth's review of the facility information and certification process. The cost incurred by facilities represents the cost of a preliminary engineering analysis and the subsequent financial analysis for which EPA provides guidance and a workbook. This analysis could cost between one percent and three percent of the installed cost of additional pollution controls.

The cost potentially incurred by Puerto Rico's Environmental Quality Board (EQB) represents the cost of reviewing the engineering cost analysis and financial impact analysis, validating source data and checking calculations, evaluating the engineering design and the conclusions regarding potential financial and community impacts, evaluating the information provided regarding the importance of the proposed development to the economic and social conditions of the affected community, and reviewing and responding to comments from the public. EPA estimated the total time requirement to process each request to be 140 hours.

3. Results

Based on the potential number of antidegradation requests, EPA estimated that point source dischargers may incur total annual costs from $9,200 to $27,600 per year. EPA also estimated that Puerto Rico's EQB may incur annual costs to review the requests of approximately $5,300. Thus, total annual costs of the final rule could be $14,500 to $32,900.

D. Comments Received in Response to EPA's May 2007 Proposal

EPA solicited written public comment on the federal antidegradation methods proposed in the **Federal Register** on May 17, 2007 and held a public hearing on Monday, June 4, 2007 in Puerto Rico. No public comments were received.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

Puerto Rico is already implementing the antidegradation methods set forth in this final rule. Therefore, these EPA methods are not expected to result in any additional monetary costs. However, EPA has prepared an analysis of the costs of the Puerto Rico antidegradation policy and methods. This analysis is contained in the ''Economic Analysis of Antidegradation Implementation Methods for the Commonwealth of Puerto Rico.'' A copy of the analysis is available in the docket for this action and is briefly summarized in Section III.C of today's notice.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995. It does not include any information collection, reporting or recordkeeping requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities

include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering these economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Puerto Rico's existing antidegradation implementation methods are the same as the antidegradation implementation methods set forth in this final rule. Thus, while not in regulation, the implementation methods are already in place in Puerto Rico and, as a result, this regulation is not expected to result in any additional monetary costs. Nonetheless, EPA prepared an analysis to evaluate potential impacts to the Commonwealth of Puerto Rico associated with future implementation of EPA's federal standards. This analysis is documented in the ''Economic Analysis of Antidegradation Implementation Methods for the Commonwealth of Puerto Rico,'' which can be found in the record for this rulemaking.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this rule is not subject to the requirements of section 203 of the Unfunded Mandates Reform Act.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not affect the nature of the relationship between EPA and States generally, for the rule only applies to waters within Puerto Rico's jurisdiction. Further the final rule does not substantially affect the relationship of EPA and the Commonwealth of Puerto Rico, or the distribution of power or responsibilities between EPA and the various levels of government. Because Puerto Rico is already implementing these antidegradation methods, this final rule does not change the Commonwealth's ability to implement these methods. Further, this final rule does not preclude Puerto Rico from adopting its own antidegradation methods that meet the requirements of the CWA into its own regulations. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this final rule, EPA did consult with the Commonwealth of Puerto Rico in developing this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175, because no Indian Tribal Governments exist in Puerto Rico. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant and EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act of 1995

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The antidegradation implementation methods set forth in this final rule are the same as the implementation methods Puerto Rico provided to EPA in 2004, which Puerto Rico is already implementing.

K. Endangered Species Act

EPA transmitted the proposed rule to the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) for review and comment concurrent with its publication in the **Federal Register** on May 17, 2007. That transmittal constituted EPA's initiation of informal consultation with the Services on this rulemaking, pursuant to section 7 of the Endangered Species Act and its implementing regulations. EPA received concurrence from the FWS on June 18, 2007, that the rule is not likely to adversely affect federally-listed species in the Commonwealth of Puerto Rico. EPA also received a similar concurrence from the NMFS on September 18, 2007.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). This rule will be effective January 11, 2008.

List of Subjects in 40 CFR Part 131

Environmental protection, Antidegradation, Water quality standards.

Dated: December 6, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, EPA amends 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

■ 2. Section 131.42 is added to read as follows:

§ 131.42 Antidegradation Implementation Methods for the Commonwealth of Puerto Rico.

(a) General Policy Statement.

(1) All point sources of pollution are subject to an antidegradation review.

(2) An antidegradation review shall be initiated as part of the Section 401—''Water Quality Certification Process'' of the Clean Water Act.

(3) The 401 Certification Process shall follow the procedures established by the February 2, 1989 Resolution R–89–2–2 of the Governing Board of the Puerto Rico Environmental Quality Board (EQB).

(4) The following are not subject to an antidegradation review due to the fact that they are nondischarge systems and are managed by specific applicable Puerto Rico regulations:

(i) All nonpoint sources of pollutants.

(ii) Underground Storage Tanks.

(iii) Underground Injection Facilities.

(5) The protection of water quality shall include the maintenance, migration, protection, and propagation of desirable species, including threatened and endangered species identified in the local and federal regulations.

(b) Definitions.

(1) All the definitions included in Article 1 of the Puerto Rico Water Quality Standards Regulation (PRWQSR), as amended, are applicable to this procedure.

(2) High Quality Waters:

(i) Are waters whose quality is better than the mandatory minimum level to support the CWA Section 101(a)(2) goals of propagation of fish, shellfish, wildlife and recreation in and on the waters. High Quality Waters are to be identified by EQB on a parameter-by-parameter basis.

(ii) [Reserved].

(3) Outstanding National Resources Waters (ONRWs):

(i) Are waters classified as SA or SE in the PRWQSR, as amended, or any other water designated by Resolution of the Governing Board of EQB. ONRWs are waters that are recreationally or ecologically important, unique or sensitive.

(ii) [Reserved].

(c) Antidegradation Review Procedure

(1) The antidegradation review will commence with the submission of the CWA Section 401 water quality certification request. EQB uses a parameter-by-parameter approach for the implementation of the anti-degradation policy and will review each parameter separately as it evaluates the request for certification. The 401 certification/antidegradation review shall comply with Article 4(B)(3) of the

Puerto Rico Environmental Public Policy Act (Law No. 416 of September 22, 2004, as amended (12 LPRA 8001 *et seq.*)). Compliance with Article 4(B)(3) shall be conducted in accordance with the Reglamento de la Junta de Calidad Ambiental para el Proceso de Presentación, Evaluación y Trámite de Documentos Ambientales (EQB's Environmental Documents Regulation). As part of the evaluation of the Environmental Document an alternatives analysis shall be conducted (12 LPRA 8001(a)(5), EQB's Environmental Documents Regulation, e.g., Rules 211E and 253C), and a public participation period and a public hearing shall be provided (12 LPRA 8001(a), EQB's Environmental Documents Regulation, Rule 254).

(2) In conducting an antidegradation review, EQB will sequentially apply the following steps:

(i) Determine which level of antidegradation applies

(A) Tier 1—Protection of Existing and Designated Uses.

(B) Tier 2—Protection of High Quality Waters.

(C) Tier 3—Protection of ONRWs.

(ii) [Reserved].

(3) Review existing water quality data and other information submitted by the applicant. The applicant shall provide EQB with the information regarding the discharge, as required by the PRWQSR including, but not limited to the following:

(i) A description of the nature of the pollutants to be discharged.

(ii) Treatment technologies applied to the pollutants to be discharged.

(iii) Nature of the applicant's business.

(iv) Daily maximum and average flow to be discharged.

(v) Effluent characterization.

(vi) Effluent limitations requested to be applied to the discharge according to Section 6.11 of the PRWQSR.

(vii) Location of the point of discharge.

(viii) Receiving waterbody name.

(ix) Water quality data of the receiving waterbody.

(x) Receiving waterbody minimum flow (7Q2 and 7Q10) for stream waters.

(xi) Location of water intakes within the waterbody.

(xii) In the event that the proposed discharge will result in the lowering of water quality, data and information demonstrating that the discharge is necessary to accommodate important economic or social development in the area where the receiving waters are located.

(4) Determine if additional information or assessment is necessary to make the decision.

(5) Prepare an intent to issue or deny the 401 water quality certificate and publish a notice in a newspaper of wide circulation in Puerto Rico informing the public of EQB's preliminary decision and granting a public participation period of at least thirty (30) days.

(6) Address the comments received from the interested parties and consider such comments as part of the decision making process.

(7) Make the final determination to issue or deny the requested 401 certification. Such decision is subject to the reconsideration procedure established in Law 170 of August 12, 1988, *Ley de Procedimiento Administrativo Uniforme del Estado Libre Asociado de Puerto Rico* (3 LPRA 2165).

(d) Implementation Procedures.

(1) Activities Regulated by NPDES Permits

(i) Tier 1—Protection of Existing and Designated Uses:

(A) Tier 1 waters are:

(1) Those waters of Puerto Rico (except Tier 2 or Tier 3 waters) identified as impaired and that have been included on the list required by Section 303(d) of the CWA; and

(2) Those waters of Puerto Rico (except Tier 2 and Tier 3 waters) for which attainment of applicable water quality standards has been or is expected to be, achieved through implementation of effluent limitations more stringent than technology-based controls (Best Practicable Technology, Best Available Technology and Secondary Treatment).

(B) To implement Tier 1 antidegradation, EQB shall determine if a discharge would lower the water quality to the extent that it would no longer be sufficient to protect and maintain the existing and designated uses of that waterbody.

(C) When a waterbody has been affected by a parameter of concern causing it to be included on the 303(d) List, then EQB will not allow an increase of the concentration of the parameter of concern or pollutants affecting the parameter of concern in the waterbody. This no increase will be achieved by meeting the applicable water quality standards at the end of the pipe. Until such time that a Total Maximum Daily Load (TMDL) is developed for the parameter of concern for the waterbody, no discharge will be allowed to cause or contribute to further degradation of the waterbody.

(D) When the assimilative capacity of a waterbody is not sufficient to ensure maintenance of the water quality standard for a parameter of concern with an additional load to the waterbody, EQB will not allow an increase of the concentration of the parameter of concern or pollutants affecting the parameter of concern in the waterbody. This no increase will be achieved by meeting the applicable water quality standards at the end of the pipe. Until such time that a TMDL is developed for the parameter of concern for the waterbody, no discharge will be allowed to cause or contribute to further degradation of the waterbody.

(ii) Tier 2—Protection of High Quality Waters:

(A) To verify that a waterbody is a high quality water for a parameter of concern which initiates a Tier 2 antidegradation review, EQB shall evaluate and determine:

(1) The existing water quality of the waterbody;

(2) The projected water quality of the waterbody pursuant to the procedures established in the applicable provisions of Articles 5 and 10 of the PRWQSR including but not limited to, Sections 5.2, 5.3, 5.4, 10.2, 10.3, 10.4, 10.5, and 10.6;

(3) That the existing and designated uses of the waterbody will be fully maintained and protected in the event of a lowering of water quality.

In multiple discharge situations, the effects of all discharges shall be evaluated through a waste load allocation analysis in accordance with the applicable provisions of Article 10 of the PRWQSR or the applicable provisions of Article 5 regarding mixing zones.

(B) In order to allow the lowering of water quality in high quality waters, the applicant must show and justify the necessity for such lowering of water quality through compliance with the requirements of Section 6.11 of the PRWQSR. EQB will not allow the entire assimilative capacity of a waterbody for a parameter of concern to be allocated to a discharger, if the necessity of the requested effluent limitation for the parameter of concern is not demonstrated to the full satisfaction of EQB.

(iii) Tier 3—Protection of ONRWs:

(A) EQB may designate a water as Class SA or SE (ONRWs) through a Resolution (PRWQSR Sections 2.1.1 and 2.2.1). Additionally, any interested party may nominate a specific water to be classified as an ONRW and the Governing Board of EQB will make the final determination. Classifying a water as an ONRW may result in the water being named in either Section 2.1.1 or 2.2.2 of the PRWQSR, which would require an amendment of the PRWQSR. The process for amending the PRWQSR, including public participation, is set forth in Section 8.6 of said regulation.

(B) The existing characteristics of Class SA and SE waters shall not be altered, except by natural causes, in order to preserve the existing natural phenomena.

(1) No point source discharge will be allowed in ONRWs.

(2) [Reserved].

(2) Activities Regulated by CWA Section 404 or Rivers and Harbors Action Section 10 Permits (Discharge of Dredged or Fill Material)

(i) EQB will only allow the discharge of dredged or fill material into a wetland if it can be demonstrated that such discharge will not have an unacceptable adverse impact either individually or in combination with other activities affecting the wetland of concern. The impacts to the water quality or the aquatic or other life in the wetland due to the discharge of dredged or fill material should be avoided, minimized and mitigated.

(ii) The discharge of dredged or fill material shall not be certified if there is a practicable alternative to the proposed discharge which would have less adverse impact on the recipient ecosystem, so long as the alternative does not have other more significant adverse environmental consequences. Activities which are not water dependent are presumed to have practicable alternatives, unless the applicant clearly demonstrates otherwise. No discharge of dredged and fill material shall be certified unless appropriate and practicable steps have been taken which minimize potential adverse impacts of the discharge on the recipient ecosystem. The discharge of dredged or fill material to ONRWs, however, shall be governed by paragraph (d)(1)(iii) of this section.

[FR Doc. E7–24097 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–P