

## Khan, Faizan

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**From:** CPP-antideg-comments  
**Sent:** Thursday, October 1, 2020 7:58 AM  
**To:** Carroll, Zachary; McWilliams, Carrie; Khan, Faizan; Leamons, Bryan  
**Subject:** FW: AIM and CPP Public Notice Comments - Attachments  
**Attachments:** ADA - NRD (AIM Comments).pdf; ADA - NRD (CPP Comments).pdf

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**From:** Breegan Andersen  
**Sent:** Thursday, October 1, 2020 7:58:02 AM (UTC-06:00) Central Time (US & Canada)  
**To:** CPP-antideg-comments  
**Subject:** AIM and CPP Public Notice Comments - Attachments

Hello,

The Arkansas Department of Agriculture, Natural Resources Division appreciated the opportunity to participate in stakeholder meetings to provide comments about the proposed Antidegradation Implementation Methodology (AIM) and the Continuing Planning Process (CPP). Attached you will find our comments for the AIM and CPP, respectively.

Best,

**Breegan Andersen**  
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**Natural Resources Division**

The Arkansas Department of Agriculture appreciates the opportunity to participate in a series of stakeholder meetings to discuss the proposed changes to water policy in Arkansas. We offer the following comments on the proposed Antidegradation Implementation Methodology (AIM):

### **General Comments**

#### **Comment 1: History of Arkansas's Nonpoint Source Program**

In January of 1990, in a letter to the U.S. Environmental Protection Agency (EPA), Gov. Bill Clinton designated the Arkansas Soil and Water Conservation Commission (ASWCC) as the lead agency for agriculture nonpoint source pollution management in the state. This designation was for three years. Before the governor's designation, the Arkansas Department of Pollution Control and Ecology (ADPC&E) was beginning to develop a Nonpoint Source (NPS) Management Program. Due to constraints in the capability of auditing local in-kind funds and generating the matching funds required to secure Clean Water Act 319 funding, the ADPC&E asked ASWCC to be designated the lead agency for agricultural NPS management. After the designation, ASWCC and EPA developed a work plan for grant funding under Section 319 of the Clean Water Act. In 1993, the state re-evaluated the NPS Management Program and Gov. Jim Guy Tucker extended ASWCC's responsibility for agriculture NPS Management another three years. In 1996, Tucker ultimately designated the Arkansas Department of Agriculture Natural Resources Division, ASWCC's successor, as the lead agency for agriculture NPS Management in the state. In September 1996, the Arkansas Natural Resources Commission (ANRC), what is now known as the Arkansas Department of Agriculture's Natural Resources Division (ANRD), submitted a holistic draft of an NPS Management Program to EPA. Upon agreement from EPA, Gov. Mike Huckabee gave ANRD the responsibility of coordinating the NPS Management Program for all categories of NPS Pollution. ANRD developed a holistic NPS Management Program using the same management process as used with agriculture: a non-regulatory voluntary approach.

As the lead agency for Nonpoint Source Management in the State of Arkansas, the Arkansas Department of Agriculture Natural Resources Division (ANRD), previously known as the Arkansas Natural Resources Commission, has developed the Arkansas 2018 – 2023 Nonpoint Source (NPS) Management Plan. The plan's purpose is to provide an overarching guide to develop, coordinate, and implement Watershed Management Plans, programs, and projects to reduce, manage, control, or abate NPS pollution. This NPS plan provides a focal point for public agencies, nonprofit organizations, interest groups, and citizens to discuss and address NPS pollution together. The plan provides the basis (a decision support matrix) that allows stakeholders to periodically evaluate, add to, and rank risk factors influencing the potential outcome of alternative NPS management and investment strategies.

#### **Comment 2: Arkansas Department of Agriculture's Existing Nonpoint Source Management Program**

The Arkansas Department of Agriculture Natural Resources Division (ANRD) receives funding through an Assistance Agreement from the Environmental Protection Agency (EPA) to enact and maintain the NPS Program. Funds are received from EPA yearly, and the EPA allocation varies but is generally between \$2 - \$3 million. ANRD maintains a highly trained staff of environmental professionals whose expertise is in review and inspection of nonpoint source practices in the State. We also maintain an excellent working relationship with all entities doing nonpoint source work.

## **Antidegradation Implementation Methodology Specific Comments**

### **Comment 3: Definitions – Section 1**

Currently, the AIM defines an existing activity as “NPDES permits, state permits, any activity having a CWA § 401 certification, or any activity that threatens the highest attainable use or results in significant degradation, at the time the baseline water quality is determined.”

We recommend clarifying how the phrase “...results in significant degradation...” would be determined. If the phrase “significant degradation” is referring to AIM’s current definition of significant lowering of water quality, we recommend replacing “...results in significant degradation” with “...results in significant lowering of water quality...” to maintain consistency.

### **Comment 4: Baseline Water Quality – Section 8**

The DEQ indicated that baseline water quality (BWQ) will be established at the time of a NPDES permit application and will be required by the applicant to determine. We agree with other stakeholders that the BWQ should be calculated prior to the new NPDES applications whenever possible. This approach would allow DEQ staff to calculate current assimilative capacity while accounting for current NPDES permittees, and potentially, areas contributing to nonpoint source pollution.

The DEQ also maintains a long-term ambient monitoring network which collects important water quality data. This information should be evaluated to help establish BWQ prior to any pending NPDES applications.

### **Comment 5: Implementation of Controls for Nonpoint Pollution Sources – Section 9**

The second paragraph in Section 9 of the Antidegradation Implementation Methodology (AIM) currently states:

*“DEQ and the Arkansas Department of Agriculture provide cooperative oversight of nonpoint pollution sources and water that are impaired by nonpoint sources. Nutrient Management Plans for permits/activities are one of the avenues used for addressing nonpoint pollution from liquid animal waste in nutrient surplus areas. The Arkansas Department of Agriculture requires waste management plans for non-liquid systems. The controlling agencies assure compliance through regulatory programs applicable to such activities...”*

The Arkansas Department of Agriculture is the lead Nonpoint Source Pollution agency as described in the general comments above. We also recommend the following revision to better describe the implementation of potential controls for nonpoint sources of pollution:

*“...Avenues for addressing nonpoint source pollution include, but are not limited to (1) if eligible, applying for CWA Section 319 funding through the Arkansas Department of Agriculture’s Nonpoint Source Management Program to develop, coordinate, and implement Watershed Management Plans, programs, and projects to reduce, manage, control, or abate nonpoint sources of pollution and/or (2) having a certified nutrient management planner (Ark. Code Ann. § 15-20-1106; Title XX) prepare a nutrient management plan detailing the management and disposal of non-liquid wastes generated*

*in a confined animal operation in designated Nutrient Surplus Areas (Ark. Code Ann. § 15-20-1104). Per the Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 5, waste management plans for the management and disposal of liquid animal wastes is regulated and approved by the DEQ.”*

## **Other**

### **Comment 6: Exclusion of Reservoirs**

Currently, the proposed AIM does not clearly provide antidegradation procedures for reservoirs. Reservoirs still must meet all applicable water quality standards [Rule 6.401(C)].

### **Comment 7: Applicability of Waters**

As other stakeholders called attention to, we also suggest not to narrow the scope of applicable waters by linking antidegradation to the federal definition of a Water of the United States (WOTUS). Ephemeral streams (and other excluded bodies of water) should be applicable to antidegradation review because they are critical to the physical, chemical, and biological integrity of downstream waters.