

August 26, 2015

**VIA E-MAIL**

Nicholas Von Stackelberg  
P.O. Box 144870  
Salt Lake City, UT 84114-4870  
[nvonstackelberg@gmail.com](mailto:nvonstackelberg@gmail.com),  
[nvonstackelberg@utah.gov](mailto:nvonstackelberg@utah.gov)

**Re: Comments on Version 2.0 of the Draft Antidegradation Implementation  
Guidance**

Dear Mr. Von Stackelberg:

The Division of Water Quality (DWQ) is accepting comments on Version 2.0 of the Utah Antidegradation Review (ADR) Implementation Guidance (Guidance). I am a member of the Water Quality Standards Workgroup and am submitting this letter to suggest a particular clarification/revision in the Guidance. The suggested revision (as documented in the following highlighted language) is an important addition to ensure the Guidance is consistent with the ADR rules.

Section 3.3.1 should be revised as follows:

“if a renewing permit maintains the status quo, no additional ADR is required. However, per UAC R317-2-3.5.a.1 (and unless the facility is specifically exempted from the Level II ADR), the Director may require a Level II ADR for any project, including renewing permits, if the proposed activity has the potential to cause a major impact to water quality.”

Utah’s ADR rules require that all discharging facilities conduct a Level 1 review (to ensure that existing uses of receiving water are maintained and protected). Utah Admin. R317-2-3.5. The rules also include introductory language establishing that “[t]he Director may conduct an ADR on any projects with the potential for major impact on the quality of waters of the state.” Utah Admin. R317-2-3.5.a.1. That general rule provision is, in turn, modified by subsequent rule provisions specifically exempting certain limited types of activities/circumstances from triggering a Level II ADR. Utah Admin. R317-2-3.5.b. Those circumstances include, for example, where “a UPDES permit is being renewed and the proposed effluent concentration and loading limits are equal to or less than the concentration and loading limits in the permit; or a

Nicholas Von Stackelberg  
August 26, 2015  
Page Two

loads that have been observed, including variability.” Utah Admin. R317-2-3.5.b.1.(b)(c); See generally Utah Admin. R317-2-3.5.b.1-4 (enumerating circumstances where a Level II ADR is not required).

The language of the ADR rule does not provide the Director discretion to require a Level II ADR review if that particular facility is exempted consistent with the referenced Level II ADR “off ramp” provisions. Because the exemptions specify circumstances modifying the general rule language, the specific provisions apply (and override the general rule language).

From a practical perspective, the requested clarification could be important in establishing appropriate certainty for the regulated community regarding the scope of the Level II ADR requirements. Of course, the recommended Guidance clarification is consistent with the well-recognized notion that specific rule exemptions override an earlier, more general rule provision, a well-established legal principle and canon of construction.<sup>1</sup>

Please let me know if you have any questions.

Sincerely,

PARSONS BEHLE & LATIMER



Lisa A. Kirschner

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<sup>1</sup> Any reference to Class 1C drinking water requirements for Level II ADRs as evidence of the overriding authority of the cited general rule provision is inapposite since Class 1C waters are specifically addressed by unique rule provisions requiring Level II ADRs. See generally Utah Admin. R317-2-3.5.d (identifying special procedures for drinking water sources).