



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

January 24, 2025

**TO:** Forest Practices Board

**FROM:** Chris Briggs, Forestry Policy Lead, Washington Department of Ecology *CB*

**SUBJECT:** Progress Update: Tier II Antidegradation Analysis for western Washington Type Np Waters Buffer Rule

This memo provides a summary of progress and next steps on Ecology's Clean Water Act/Water Quality Standards Tier II Antidegradation Analysis for the Forest Practices Board's draft western Washington Type Non-fish, Perennial (Np) Waters Buffer rule. There are specific requirements we must follow under the Washington State Administrative Procedure Act (APA) (RCW 34.05.328) rule development process and for the Tier II analysis (WAC 173-201A-320). Ecology's goal is to release the draft Tier II analysis at the same time DNR releases the rule package for concurrent public comment following a Board-directed CR102 action.

The draft Western Washington Type Np Tier II Analysis will consist of 1) an evaluation of whether the proposed rule has the potential to cause a measurable change to water quality, 2) consideration of alternatives, and 3) if applicable, a necessary and overriding public interest determination.

To develop the draft analysis, in recent months, Ecology staff have:

- Participated in DNR's Type Np Stakeholder Workgroup and provided feedback on development of draft rule language.
- Reviewed Spatial Analysis work conducted by Four Peaks Environmental and provided comments to DNR through the stakeholder review process.
- Reviewed Industrial Economics Incorporated's *Proposed Methods and Data Sources and Preliminary Findings of the Economic Analyses of the Proposed Type Np Water Buffer Rule* and provided feedback to DNR through the Type Np Economic Workgroup.
- Held monthly Type Np Rule/Tier II Analysis coordination meetings with DNR Board staff.

- Scoped the framework of the draft Western Washington Type Np Waters Buffer Rule Tier II Antidegradation Analysis.

In the coming months, we will:

- Continue to work with DNR Board staff to coordinate our analysis and DNR's development of APA rulemaking materials ahead of the May Board meeting.
- Rely on APA rulemaking materials assembled by DNR to inform the western Washington Type Np Tier II Analysis. Receiving the final Cost Benefit Analysis and Small Business Economic Impact Statement is important to informing the Tier II analysis and a potential necessary and overriding public interest determination, if Ecology determines one is required per WAC 173-201A-320(4).
- Request time at the May 2025 Board meeting to provide another update. This update will include a summary of the preliminary findings of the Tier II Analysis for the draft western Washington Type Np Waters Buffer rule.
- Should the Board decide to move forward with a CR102 for the western Washington Type Np Waters Buffer Rule at the May 2025 meeting, Ecology will coordinate with DNR staff to release the draft western Washington Type Np Tier II Analysis for Tribal and public review concurrent with the CR102 filing, as required by WAC 173-201A-320(2).
- Following a Tier II public review process, Ecology will notify the Board of any significant changes to the analysis. Ecology will publish the final analysis prior to the Board voting on final rule adoption.

Ecology continues to view the Board's rulemaking efforts to adopt new prescriptions for the protection of western Washington Type Np streams as necessary for maintaining the Clean Water Act Section 303 Assurances. Progress on a draft and final rule is critical for improving water quality protections on Forest Practices HCP-covered lands.

Enclosed for reference is the October 11, 2023, letter sent to the Board from Water Quality Program Manager Vincent McGowan describing the integration of the APA and Tier II review process.

Please contact me if you have any questions or concerns at (360) 890-5882.

cc: Vincent McGowan, ECY Water Quality Program Manager  
Saboor Jawad, DNR Forest Regulation Division Manager  
Dan Brown, EPA Northwest Forest Geographic Program Lead

Enclosure: October 11, 2023, letter to Forest Practices Board from Vincent McGowan



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October 11, 2023

Forest Practices Board  
Department of Natural Resources  
PO Box 47012, Olympia, WA 98504  
Sent via email to Patricia Anderson: [patricia.anderson@dnr.wa.gov](mailto:patricia.anderson@dnr.wa.gov)

**Re: Coordinating Antidegradation Tier 2 analysis and Type NP rule development**

Dear Forest Practices Board:

In light of the conversation and questions raised during the August 9, 2023, Forest Practices Board meeting, I thought it would be helpful to clearly communicate the process that the Department of Ecology will follow for the Type Np rule package Tier 2 antidegradation analysis.

The enclosed table identifies the process as laid out in statute in the Washington State Administrative Procedures Act (RCW 34.05) and promulgated in rule as the antidegradation policy (WAC 173-201A-300 to 330), focusing on Tier 2 review steps.

My primary goal is to highlight key points where the Department of Natural Resources and Ecology will need to coordinate on this important forest practices rulemaking. As well as to clarify opportunities for public review and comment throughout the process, and which agency is lead on providing those opportunities. Each agency will have additional internal steps that are not shown in the table.

I recommend that our two agencies coordinate in development of a detailed schedule as a next step for this rule process. A well-coordinated effort will be crucial for this rulemaking.

Sincerely,

Vincent McGowan, P.E.  
Water Quality Program Manager  
Enclosure

cc: Alex Smith, Deputy Supervisor, Department of Natural Resources  
Marc Engel, Senior Policy Advisor, Department of Natural Resources

## Enclosure

Table 1. Washington State rule development process and required Antidegradation Tier 2 analysis.

Rulemaking process steps under the Washington State Administrative Procedures Act	Tier 2 antidegradation review process under Washington’s Water Quality Standards
<p>1. <b>File preproposal statement of inquiry (CR-101).</b> The CR-101 announces that an agency is planning to write rules on a particular subject and invites the public to take part in the rulemaking process.</p> <p><b>The CR 101 for the Type Np Rule was filed on November 30, 2021.</b></p> <p>CR 101 notes:  <i>The Forest Practices Board’s rules pertaining to water quality protection must be in agreement with the Director of the Department of Ecology or the director’s designee on the Board (RCW 76.09.040).</i></p>	
<p>2. <b>The Agency adopting the rule develops the draft rule package. Specifically, DNR develops the rule on behalf of the Board. The draft package includes the following support documentation:</b></p> <ul style="list-style-type: none"> <li>• DRAFT Rule Language</li> <li>• State Environmental Protection Act determination</li> <li>• Preliminary documentation under the Washington Administrative Procedure Act (RCW 34.05.328) and the Washington Regulatory Fairness Act (RCW 19.85) <ul style="list-style-type: none"> <li>○ Preliminary Cost-Benefit Analysis</li> <li>○ Preliminary Least-Burdensome Alternative Analysis</li> </ul> </li> </ul>	<p><b>DNR provides the draft rule and draft supporting documents to the Department of Ecology.</b> Ecology will conduct the Tier 2 Antidegradation review in accordance with WAC 173-201A-300 and 320.</p> <p><b>This will happen prior to the formal draft rule package</b> going out for public comment so that Ecology’s Tier 2 analysis can be completed and ready for public review concurrently with the formal draft Rule package.</p> <p><b>The timing and coordination on this effort, prior to the CR-102, is important to ensuring a transparent and inclusive process.</b></p>

Rulemaking process steps under the Washington State Administrative Procedures Act	Tier 2 antidegradation review process under Washington’s Water Quality Standards
<ul style="list-style-type: none"> <li>○ Administrative Procedure Act Determinations</li> <li>○ Regulatory Fairness Act Compliance information</li> </ul>	
<p>3. <b>DNR files Notice of Proposed Rule (CR-102) and begins public review and comment on draft rulemaking packet.</b></p>	<p>Department of Ecology issues the draft Tier 2 antidegradation analysis for public review and comment <b>concurrent</b> with the CR 102 rule package.</p>
<p>4. <b>DNR accepts public comments on the draft rule package.</b></p>	<p>Ecology accepts comments on the draft Tier 2 antidegradation analysis.</p>
<p>5. <b>DNR updates items in the rule package based on public comment.</b></p> <p>DNR informs Ecology of any final rules changes they are making based on public comment.</p>	<p>Ecology reviews comments received on the antidegradation analysis along with any changes that DNR is making to the rule package based on comments.</p> <p>After reviewing this information Ecology makes necessary updates to the Tier 2 antidegradation determination.</p> <p><b>Ecology Notifies the Board of any significant changes to the antidegradation Tier 2 analysis and provides the final determination prior to the Board directing adoption of a final rule.</b></p>
<p>6. <b>DNR files a rulemaking order to adopt the rule (CR-103) OR goes back out with an updated CR-102 package.</b></p>	<p>Ecology publishes the final determination OR repeats the process above with an updated CR-102.</p>