

Regulatory Basis for Instream Flow Protection

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Tennessee Water Quality Control Act

- **69-3-102. Declaration of policy and purpose.**
 - Recognizing that the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state, it is declared to be the public policy of Tennessee that the people of Tennessee, as beneficiaries of this trust, have a **right to unpolluted waters**. In the exercise of its public trust over the waters of the state, **the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right.**

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- **69-3-102. Declaration of policy and purpose.**
 - It is further declared that the purpose of this part is to abate existing pollution of the waters of Tennessee, to reclaim polluted waters, to prevent the future pollution of the waters, and to plan for the future use of the waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters.

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- **69-3-103. Part definitions.**

- “Pollution” means such alteration of the physical, chemical, biological, **bacteriological**, or radiological properties of the waters of this state, including, but not limited to, changes in temperature, taste, color, turbidity, or odor of the waters that will:

- (A) Result or will likely result in harm, potential harm or detriment to the public health, safety, or welfare;

- (B) Result or will likely result in harm, potential harm or detriment to the health of animals, birds, **fish, or aquatic life**;

- (C) Render or will likely render the waters substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other reasonable uses; or

- (D) Leave or likely leave the waters in such condition as to violate any standards of water quality established by the board;

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- **69-3-107. Duties and authority of the commissioner.**
 - Exercise general supervision and control over the quality of all state waters, administer and enforce all laws relating to pollution of such waters, and administer and enforce this part, and all standards, policies, rules, and regulations promulgated under this part;

Federal Clean Water Act

- **DECLARATION OF GOALS AND POLICY**

- SEC. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—
 - (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;
 - (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;
 - (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;
 - (4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;
 - (5) it is the national policy that areawide treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;
 - (6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone and the oceans; and
 - (7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution

CHAPTER 1200-4-3 GENERAL WATER QUALITY CRITERIA

- **1200-4-3-.06 ANTIDegradation STATEMENT**
 - From (1): Where the quality of Tennessee waters is better than the level necessary to support propagation of fish, shellfish, and wildlife, and recreation in and on the water, that quality will be maintained and protected unless the state finds, after intergovernmental coordination and public participation, that **lowering water quality** is necessary to accommodate important economic or social development in the area in which the waters are located.
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CHAPTER 1200-4-3 GENERAL WATER QUALITY CRITERIA

- **1200-4-3-.04 (4) (Excerpt)**

- De Minimis – Alterations, other than those resulting in the condition of pollution or new domestic wastewater discharges, that represent either a small magnitude or a short duration shall be considered a **de minimis** impact and will **not be considered degradation** for purposes of implementing the antidegradation policy...
- Water withdrawals will be considered de minimis if less than **five percent of the 7Q10** flow of the stream is removed (the calculations of the low flow shall take into account existing withdrawals). Habitat alterations authorized by an Aquatic Resource Alteration Permit (ARAP) are de minimis if the division finds that the impacts are offset by a combination of impact minimization and/or insystem mitigation.

CHAPTER 1200-4-3 GENERAL WATER QUALITY CRITERIA

- **1200-4-3-.06 ANTIDegradation STATEMENT**

- From (3): In **available conditions**, new or additional degradation for that parameter will only be allowed if the applicant has demonstrated to the department that reasonable alternatives to degradation are not feasible.

(a)2: For water withdrawals, alternatives include water conservation, water reuse or recycling, off-stream impoundments, water harvesting during high flow conditions, regionalization, withdrawing water from a larger waterbody, use of ground water, connection to another water supply with available capacity, and pricing structures that encourage a reduction in consumption.

(a)3: For activities that cause habitat alterations, alternatives that minimize or avoid degradation should be explored and explained by the applicant.