MEMO

To: Doug Hoelscher, State-Federal Liaison

From: Jon Tack, Bureau Chief, Water Quality Bureau, IDNR

Date: January 23, 2017 – updated January 25, 2017

Re: EPA Disapproval of Iowa Antidegradation Rules

On January 19, 2017, on the eve of the change in federal administration, U.S. EPA issued a decision disapproving the changes Iowa adopted in 2016 to the State's antidegradation water quality rules. Generally speaking, the antidegradation requirements of the Clean Water Act dictate the level of treatment technology that must be installed when a community or business requests permission for a new or increased discharge of pollutants. In Iowa, these requests are usually associated with the construction of treatment plant upgrades to meet more stringent wastewater discharge limits.

Although antidegradation is a complicated matter (the denial package runs to 583 pages), the current dispute over Iowa's 2016 rulemaking is very simple and can be summed up as follows:

1. Federal antidegradation rules require that a community install a less polluting treatment alternative if it is "practicable".
2. The federal rules define "practicable" as "technologically possible, able to be put into practice, and economically viable."
3. The federal rules do not define "economically viable" but EPA has repeatedly and publically indicated that it means something more than affordable.
4. Iowa adopted an alternatives analysis that requires an option to be chosen if it is feasible, economically efficient, and affordable.
5. The new Iowa rules set a bright line standard for the economic efficiency of an alternative. If the cost of a less degrading option is within 15% of the lowest cost compliance option, a community must choose the less degrading option. If the cost is higher, they don't have to choose it.
6. The result is that Iowa rules define "economically viable" to mean affordable and economically efficient, as limited by the 15% cap.
7. Under Iowa's rules, no option is federally "practicable" if doesn't meet these tests.
8. EPA has disapproved Iowa's rules on the basis that "practicable" alternatives might be excluded by Iowa's 115% of cost bright line standard.
9. EPA's argument must logically be premised upon some definition of "economically viable" that differs from and contradicts Iowa's lawfully adopted rules.

10. Nothing in EPA's letter or the federal statutes or rules tells us what that definition of "economically viable" might be.
11. Without a legally adopted federal definition of "economically viable", there is no rational basis for EPA's disapproval determination.

This action by EPA creates great uncertainty for Iowa's towns and businesses and places them at risk of significantly greater financial burdens in their attempts to upgrade and improve the quality of Iowa waters. EPA should be required to reverse this unsupported and harmful decision.

It should also be noted that the disapproval letter offensively asserts that the Iowa rules will not allow Iowans to choose to spend more to achieve a higher level of water quality. Antidegradation is about what the federal government will force Iowa communities to spend, not what they can spend. Iowa has chosen to legally define the limits of the federal power through a proper and public rule adoption process which defines the terms that EPA has failed to define. Iowans can make decisions within their community to spend such additional funds as they have available and feel it would be wise to spend. An assertion that this election eve attempt to overturn Iowa law has been done on behalf of Iowan's is wholly inappropriate.

A reconsidered approval of Iowa's submission can be based upon the significant information previously provided by IDNR and can acknowledge that EPA failed to understand that no federally practicable alternative can exist as the federally undefined terms have been clarified by Iowa law. Because no practicable alternative is excluded by the Iowa rules, such rules are clearly compliant with the federal requirements.