



Maryland Department of the Environment  
**Antidegradation Tier II Review**  
**Frequently Asked Questions**



**Q: When is an antidegradation Tier II review required?**

**A:** The Tier II review is required for new or modified National Pollutant Discharge Elimination System (NPDES) permit applications, Nontidal Wetlands and Waterways permits, and activities requiring a 401 Water Quality Certification (also issued by the MDE Nontidal Wetlands and Waterways Program). Additionally, the review is required for Water and Sewer Plan Amendment reviews. Other MDE environmental reviews that may result in future permitting, for example Interagency Clearinghouse Reviews, may also identify related projects that may need to undergo a Tier II review, and potentially require Tier II review information at that time.

**Q: When should I contact MDE about a potential Tier II review requirement?**

**A:** It is strongly recommended that applicants contact MDE to discuss Tier II review project requirements before submitting an application. This will provide an opportunity for MDE to review drafts, and identify any special conditions, like monitoring or special studies, that may apply. Applicants seeking modifications to wastewater treatment discharge permits are required to contact MDE regarding the Tier II review at least 18 months before submitting an application. If you are conducting a feasibility study, it would be beneficial to include Tier II waters avoidance analysis into selection criteria.

**Q: What are the steps in the Tier II review?**

**A:** The review consists of 2-3 basic steps: a no-discharge alternatives analysis, a minimization alternatives analysis, and, if there is no [assimilative capacity](#) remaining in the Tier II water, a social and economic justification for impacts to Tier II waters.

**Q: How do I determine what forms to submit to complete the Tier II review?**

**A:** First, determine if your project does not require further review by using the [Tier II Review Determination Form V1.0](#). If MDE concurs, no further documentation is needed.

If the above does not apply, then you will have to complete the [Tier II No-Discharge Analysis Form V1.2](#), and the [Tier II Minimization Alternative Analysis Form V1.1](#).

If there is no assimilative capacity remaining in the Tier II water(s) affected by your project, you will have to complete a social and economic justification (SEJ). The SEJ outline for public entities can be found [here](#), while the SEJ outline for private entities is found [here](#).

10/29/2020

**Q: What counts as mitigation; what doesn't count towards mitigation?**

**A:** Impacts to stream characteristics like temperature, pH, dissolved oxygen, etc., are mitigated through treatments such as stream dosing, stream buffers, stream improvements to increase aeration, or other management plans. Preferred mitigation for stream buffer impacts include increasing buffers up or downstream of the permanently disturbed stream section. Preferred mitigation for net forest loss or net impervious cover (IC) increases (not treated with ESD), is in-kind reforestation, 1:1 for each acre of forest lost, or increase in IC. Other forms of acceptable mitigation include off-site riparian buffer improvements, stream restoration, and retrofits. Conservation may be considered if it is offered along with other forms of mitigation. To count, mitigation must occur within the effected Tier II watershed.

**Q: What happens if I cannot mitigate impacts to Tier II waters?**

**A:** If you conducted a robust alternatives analysis, and determine that mitigation is not possible, MDE will require additional justification before completing the Tier II review, regardless of assimilative capacity. Sufficient documentation must be provided to MDE to demonstrate that all potential mitigation opportunities were exhausted before the Department can make a final decision. MDE may require additional analysis to support this demonstration.

**Q: What should be included in the social and economic justification document?**

**A:** At a minimum, each SEJ should include the economic contributions of the project such as job creation, tax revenue, as well as other social benefits gained by the affected community located in the watershed of the Tier II water. The SEJ should also discuss the loss in value of the Tier II water as well as the economics of restoration of lost water quality.

**Q: How should I contact someone for more information or assistance in competing necessary analysis or documentation?**

**A:** Please direct any questions or comments concerning Maryland's Antidegradation program to Angel Valdez at [angel.valdez@maryland.gov](mailto:angel.valdez@maryland.gov) or 410-537-3606. Email is the preferred option to provide project information, availability, and questions. Virtual meetings are scheduled upon request.

**Q: What are the reasons, due to the Tier II review, why my permit or authorization may be denied?**

**A:** MDE may deny your permit if you fail to adequately complete any portion of the required analysis or justification. If you provide all analysis and justification materials, but the justification does not show that the public benefit of your project overrides the value of the Tier II water, MDE will deny.