

Idaho's Man-made and Private Waterways Rule Provisions



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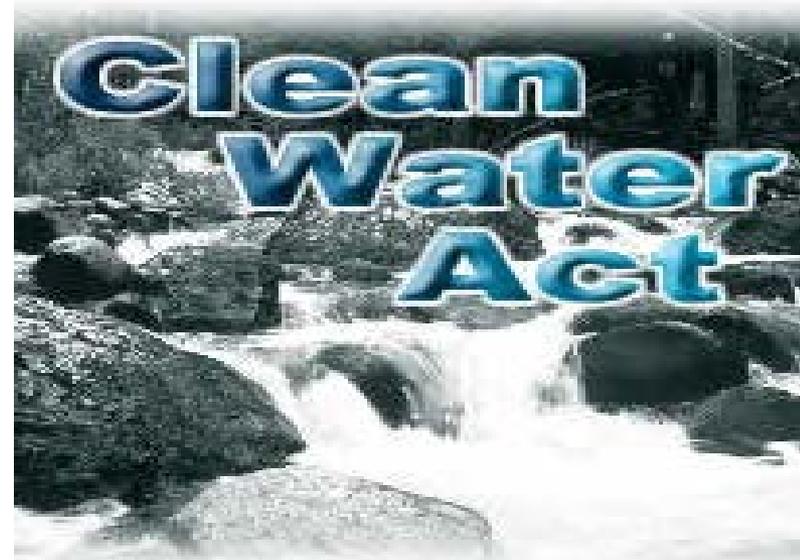
Overview

Key Requirements

- Clean Water Act
- Federal Water Quality Standards Regulations

Idaho's Man-made Waters

Idaho's Private Waters



What does the Clean Water Act require?



CWA Section 101(a):

Objective is to restore and maintain the chemical, physical and biological integrity of the Nation's waters

National Goal of the CWA

Section 101(a)(2) Fishable/Swimmable Uses

It is the national goal that wherever attainable, an interim goal of water quality shall be achieved which provides for:

- protection and propagation of fish, shellfish, and wildlife and
- recreation in and on the water



Federal Water Quality Standards Requirements

131.6(a) and 131. 10 requirements:

- Waters must be designated fishable/ swimmable, unless a UAA demonstrates fishable/ swimmable uses are not attainable (and the use is not existing)

Federal Water Quality Standards Requirements, continued

131.10(k)

- A State is not required to conduct a UAA when designating uses which include fishable/ swimmable

131.10(b)

- In designating uses and setting criteria, the State shall consider water quality standards of **downstream waters** and ensure the attainment and maintenance of downstream standards

Idaho's Man-made Waterways Provision

DEQ Interpretation

- “*Man-made waterways are to be protected for the use they were developed*” - water conveyance, protected only for agricultural water supply use

CWA/Regulatory Requirement

- 101(a)(2) and 131.6 (a) 131.10 - Waters must be designated fishable/swimmable, unless a UAA demonstrates fishable/swimmable uses are not attainable
- Agricultural water supply use is not a fishable/swimmable use
- To date, DEQ has not completed a UAA to demonstrate that fishable/swimmable uses are not attainable

Idaho's Private Waters Provision

DEQ Interpretation

- Private waters are non-designated waters
- Not protected for any specific or general beneficial use
- Not protected for aquatic life or recreation uses

CWA/Regulatory Requirement

- As long as private waters are waters of the US, the same requirements apply
- Waters must be designated fishable/swimmable, unless a UAA demonstrates fishable/swimmable uses are not attainable

Idaho's Private Waters Provision

Idaho's previous and proposed private waters provision explicitly lacks use designations

EPA promulgated (1997) a federal rule for Idaho at 131.33(c) which provides fishable/swimmable

EPA can not withdraw the federal rule until Idaho adopts rules meeting requirements of CWA and federal regulations

Looking Ahead

Continue working with Idaho to develop WQS that protect Idaho waters consistent with the CWA and federal regulations

Work with DEQ and stakeholders

- explore potential paths forward
- ensure appropriate environmental protection
- provide certainty to the regulated community for permit/planning

Additional work to understand/develop an approach for manmade waters

- how to address existing uses
- explore if recreational and aquatic life uses are not attainable
- what category/subcategory of aquatic life use might be appropriate

