

Negotiated Rulemaking

Revisions and Attainability of Beneficial Uses

May 19, 2015



Idaho Department of Environmental Quality



Overview

- Response to Comments
 - General Comments
 - Comments suggesting change to rule language
- EPA
 - Jurisdictional determination process
 - Man-made and private waters concerns
- Draft rule language Section 101 options
- Draft rule language Section 102 review



Summary of Comments

- Association of Idaho Cities
- EPA Region 10
- Idaho Conservation League
- Idaho Fish and Game
- Idaho Water Users Association
- Sawtooth Law Offices



General Comments

- Second meeting
- No support
 - 101.01
 - 101.02
 - 101.03
- Exceeding the scope
 - OPE report
 - Timely
- Support of considering other options



General Comments

- Definitions
 - Waste
 - Waste Transport
 - Waste Assimilation
 - Water body
 - Waste: refuse from places of human or animal habitation: as (1) : garbage, rubbish (2) : excrement —often used in plural (3) : sewage
 - Transport: to transfer or convey from one place to another
 - Assimilation: to take in and utilize as nourishment : absorb into the system



General Comments

- A UAA may only remove designated uses
- Existing uses may not be removed
- Existing uses are protected wherever they are found
- Downstream beneficial uses are protected
 - Man-made waters
- Permit holder to monitor discharge effluent
 - Not determine existing use



General Comments

- UAA process
 - If a more stringent use is observed after a UAA it should be protected
 - UAA required anytime less protective criteria are adopted
 - 102.02(e)
 - Presumed → Designated
 - Review required every three years
 - Only if use is not fishable/swimmable



General Comments

- Cost
 - Incurred by party seeking the change
- Permission to access
 - No regulatory authority
 - *“This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits, including without limitation, the approval from the owner of a private water conveyance system, if one is required, to use the system in connection with the permitted activities.”*



General Comments

- Economics
 - 102.01(iv) The economic impact of the designation and the economic costs required to fully support the beneficial uses;
 - Idaho Code 39-3604
 - 102.02(a)vi – addresses economic considerations requiring a UAA
 - Substantial and widespread economic and social impact
 - *Interim Economic Guidance for Water Quality Standards*



General Comments

- Use of the term “nonpoint source *control*” in subsection 102.01(a)vii “At a minimum, that beneficial uses are deemed attainable if they can be achieved by the imposition of effluent limits required under sections 301(b) and 306 of the federal Clean Water Act and cost-effective and reasonable best management practices for nonpoint source control”
 - 40 CFR 131.10(d)
 - Does not require nonpoint source controls



General Comments

- Use of the term “water conservation *requirements*” in 102.02(a)ii “Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met”
 - 40 CFR 131.10(g)2
 - Does not invoke any requirements on water use



General Comments

- Use of the term “*more stringent*” in 102.02(a)vi “Controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act would result in substantial and widespread economic and social impact”
 - 40 CFR 131.10(g)6
 - Implies if controls were to be more stringent it would qualify for a UAA



Comments Resulting in Draft Rule Language Changes

- Aquatic life and recreation
 - 101(a)2 uses
 - “protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water”
 - 102.02 (d) i., ii. and (e) i., ii.



Additional Items

- EPA
 - Jurisdictional determination process
 - Man-made and private waters concerns
- Draft rule language Section 101 options
- Draft rule language Section 102 review



Comments

**Comments due:
June 19, 2015**

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Water Quality Standards

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