

Negotiated Rulemaking

Revisions and Attainability of Beneficial Uses

April 7, 2015



Idaho Department of Environmental Quality



Proposal

1. Incorporate Use Attainability Analysis language from CFR
 1. [§131.3](#)
 2. [§131.10](#)
2. Idaho Code
 1. [39-3604](#)
 2. [39-3607](#)
3. Rules
4. Additional language specific to Idaho



Background

- Why are we undertaking a rulemaking
 - Office of Performance Evaluations Report (2014)
 - Federal Regulations
 - Guidance Document
- Role of a UAA
 - Designate water body for uses that *do not* include 101(a)2 uses
 - Remove aquatic life or recreation use
 - Remove or designate less stringent subcategory



White Papers

- Existing Uses
- Manmade Waters
- Attainability



White Papers

-Existing Uses

- Existing Uses
 - *Those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules, IDAPA [58.01.02](#), and “Water Quality Standards.”*
- May not be removed
- *Highest Degree of Use
- Minimum use protection
- Multiple categories, multiple uses



White Papers

-Designated Uses

- Those beneficial uses assigned to identified waters in Idaho Department of Environmental Quality Rules, IDAPA [58.01.02](#), “Water Quality Standards and Wastewater Treatment Requirements,” Sections 110 through 160, whether or not the uses are being attained
- Designation may not have ever been achieved
- May be downgraded or removed



White Papers

-Designated Uses

- Designated Use Categories vs Existing Use Categories
 - Not necessarily the same
 - Criteria
- Uses are designated at the WBID level unless designated otherwise
 - Existing Uses



White Papers

-Man-made Waters

Canals, flumes, ditches, wasteways, drains, laterals, and/or associated features, constructed for the purpose of water conveyance. This may include channels modified for such purposes prior to November 28, 1975. These waterways may have uniform and rectangular cross-sections, straight channels, follow rather than cross topographic contours, be lined to reduce water loss, and be operated or maintained to promote water conveyance ([58.01.02.010.58](#))



White Papers

-Man-made Waters

- *Man-made waterways are to be protected for the use for which they were developed, unless designated in Sections 110 through 160*
- No presumed use protection
 - Current Policy
 - Proposed Rule



White Papers

-Attainable

- 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. ([101\(a\)2](#))
- An attained use is an existing use
- Both Existing and Designated uses have elements of attained
 - Existing uses are those uses actually attained
 - Designated uses are assigned to waters whether or not the uses are or have been attained



White Papers

-What is Attainable

- At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under sections 301(b) and 306 of the Act and cost-effective and reasonable best management practices for nonpoint source control ([CFR 131.10\(d\)](#))
 - 301(b)
 - existing sources
 - 306
 - new sources
- Nonpoint source BMPs as defined [58.01.02.010.16](#)
 - Idaho Forest Practices Act, Agricultural Pollution Abatement Plan, etc...



White Papers

-Highest Attainable Use

- Proposed definition in Federal Register 2014
- The aquatic life, wildlife, and/or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, as determined using best available data and information through a use attainability analysis defined in § [131.3\(g\)](#)
- *UAA should identify HAU
- Determined with same consideration of factors used in UAA



White Papers

-What is NOT Attainable

- A use is only considered **unattainable** if it meets one of the six factors at [131.10\(g\)](#)
 - Naturally occurring pollutant
 - Flow
 - Human caused conditions cannot be remedied
 - Dams
 - Physical conditions related to natural conditions
 - More stringent control would result in widespread impact



Comments

Comments due:
April 21, 2015

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