

Water Quality Standards Academy

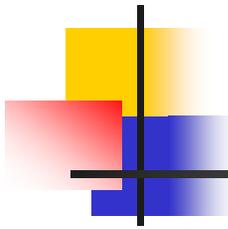
Module 3

Designated Uses



Module Outline

- What are they? Why are they important?
- What is the statutory and regulatory basis for them?
- What are some examples of designated uses?
- What are my options for changing them?
- What are existing uses?
- What is a use attainability analysis?



Designated Uses: Definition

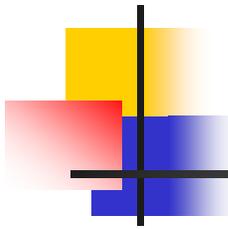
(see 40 CFR 131.3(f))

Regulatory:

- Those uses specified in state or tribal water quality standards regulations for each water body or segment, whether or not they are being attained.

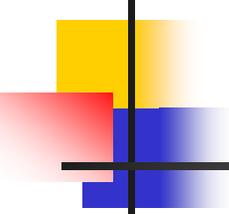
Plain language:

- A concise statement of management objectives and expectations for each of the individual surface waters under state/tribal jurisdiction.



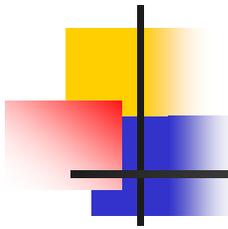
Why are Designated Uses Important? (1)

- Getting water quality standards right is critical to achieving CWA goals and restoring water quality
- Getting WQS right starts with getting designated uses right



Why are Designated Uses Important? (2)

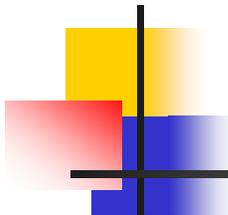
- Establish water quality goals for a specific water body
- Determine criteria needed to protect use
 - Criteria are the regulatory basis for management actions like attainment decisions, Total Maximum Daily Loads, and NPDES permit limits



Where Does the CWA Talk About Uses? (1)

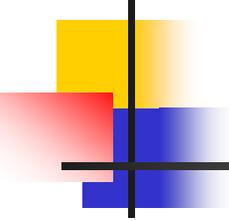
- CWA 101(a)(2) sets a national goal that, wherever attainable, water quality provides for the protection and propagation of fish, shellfish and wildlife, and recreation in and on the water
 - Includes protection of aquatic life for human consumption

Where Does the CWA Talk About Uses?(2)



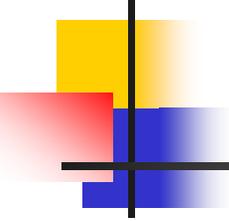
- CWA 303 (c)(2)(a): water quality standards shall serve the purposes of the [Act] and consider the *use* and value for public water supplies, propagation of fish and wildlife, recreational, agricultural, industrial and other purposes, and...navigation

(italics added)



What Does the Act Mean by “use” ?

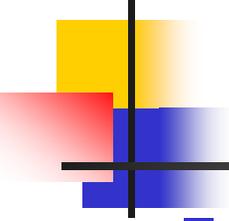
- A function of, or activity in, a water that is supported by a level of water quality



The WQS Regulation

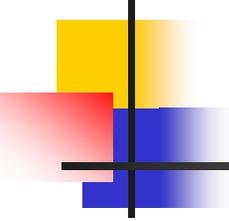
40 CFR 131.10(j); 40 CFR 131.10(k)

- The regulation effectively establishes a “rebuttable presumption” that CWA 101 (a)(2) uses are attainable
- Regulations require appropriate documentation to show such uses are not attainable (i.e. Use Attainability Analysis or UAA)
- States and Tribes have the primary role in establishing uses and in weighing evidence regarding their attainability



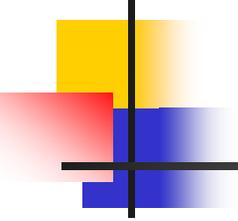
Categories of Designated Uses

- Protection and Propagation of fish, shellfish and wildlife
- Recreation in and on the water
- Public Water Supply
- Agricultural
- Industrial
- Navigation
- Other Purposes



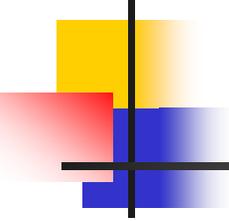
Other Designated Uses

- Ceremonial Uses
- Shellfish Harvesting Areas
- Wildlife Protection
- Endangered Species Protection
- Drinking Water Source Protection
- Hydroelectric Power



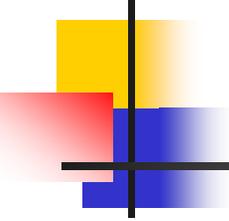
Expectations for Designated Uses (1)

- Be Specified in State and Tribal WQS Regulations (40 CFR 131.10(a))
- Consider all uses identified in CWA 101(a) and 303(c) (40 CFR 131.10(a))



Expectations for Designated Uses (2) 40 CFR 131.10(d)

- Do not provide for waste transport or assimilation
40 CFR 131.10(a)
- Provide for the attainment and maintenance of the water quality standards of downstream waters
40 CFR 131.10(b)



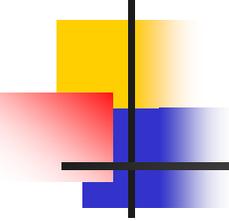
Expectations for Designated Uses (3)

- Protect uses that can be achieved, at a minimum, by the imposition of:
 - Technology based effluent limits on point sources and
 - Cost effective and reasonable best management practices on non point sources

40 CFR 131.10(d)

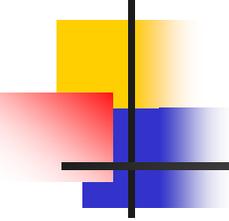
- Established through a public process.

40 CFR 131.10(e)



What is a Use Refinement?

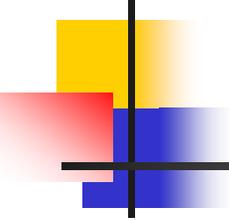
- States may refine their designated uses to reflect more specific goals and what is attainable.
- Use refinement – broad term relating to any activity to review and revise the designated uses.
 - Subcategorization – refining by subdividing into smaller more similar categories
 - similarities in natural conditions (e.g. water body type)
 - anthropogenic disturbance history, resulting biological condition, and potential to recover.



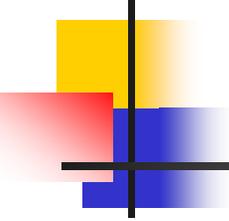
Why are Refinements to Designated Uses Important ?

- Describe the expected condition more accurately.
 - waterbody type / ecoregion
 - human caused conditions that cannot be remedied
- Provide clear articulation of management objectives and expectations
- Facilitate adoption of more effective criteria and thus appropriate endpoints for permits and TMDLs
- Capture incremental improvements over time

To Refine Designated Uses, States/Tribes May...

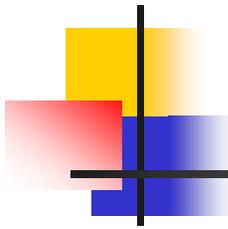


- Adopt seasonal uses 40 CFR 131.10 (f) **AND/OR**
- Adopt sub-categories of a use 40 CFR 131.10(c)
 - appropriate criteria may be set to reflect the “varying needs” of such uses
 - when adopting subcategories with less stringent criteria, a UAA is required



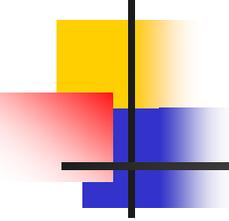
Sub-Categories of Uses (1): CWA 101(a)

- Protection and propagation of fish, shellfish and wildlife:
 - Simple
 - Coldwater fishery/Warmwater fishery
 - 40 CFR131.10 (c)
 - Complex
 - Ecologically defined uses in Ohio and Maine



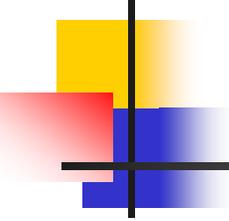
Sub-Categories of Uses (2): CWA 101(a)

- Recreation in and on the water
 - Primary Contact Recreation
 - Seasonal Primary Contact Recreation
 - MN: Primary Contact Recreation May 1 – Oct 1
 - Secondary Contact Recreation (after UAA)
 - CSO-impacted waters (after UAA)



Refining Uses With More Specific Subcategories (1)

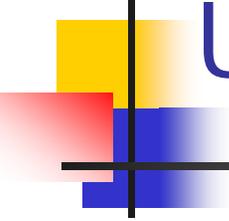
- Classification based on natural differences in expected condition:
 - Lakes and Streams
 - Ecoregions
- Classification based on intensity of use
 - Low Frequency Swimming Area



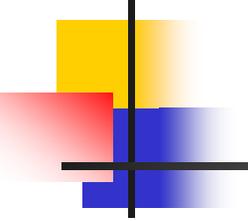
Refining Uses With More Specific Subcategories (2)

- Different expectations because of human caused conditions
 - Urban Spillway
- Advantage: Better describe use allowing tailored criteria for more specific levels of protection

Boundaries on Refining Designated Uses



- May not remove an existing use
- Must be supported by a use attainability analysis under conditions specified in 40 CFR 131.10(j).
- Must reflect the highest attainable use.



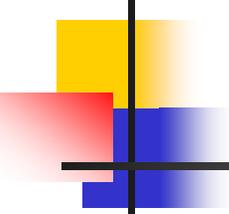
Existing Uses: Definition

Regulatory:

- Those uses actually attained in a waterbody on or after November 28, 1975, whether or not they are included in the water quality standards (40 CFR 131.3 (e))

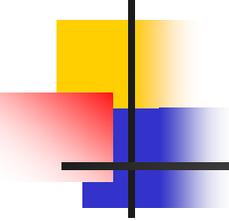
Plain Language:

- Defines an absolute “floor” or minimum use and necessary level of water quality



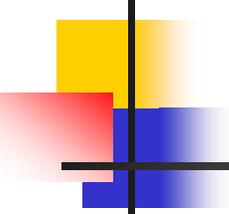
What is an Existing use (1)?

- Actually attained
 - The use **and** the water quality necessary to support the use
- Regulations require protection of *uses*, not specific water quality parameters
- Existing uses are not generally adopted into state/tribal law nor is it required
- State and tribes are not bound to describe existing uses in the same way their WQS articulate designated use.
- States and tribes can articulate existing uses more specifically than designated use to reflect the degree of use that has actually been attained.



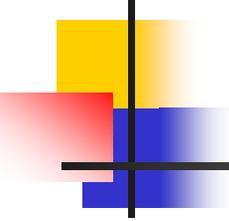
What is an Existing use ? (2)

- Not intended to apply where the state or tribe wishes to remove a use if the removal would result in improving the condition of a waterbody (e.g. adding a more stringent use or a use more reflective of the expected condition).



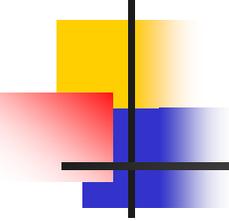
How Do I Determine an Existing Use?

- Made on a site-specific basis
- Consider the quantity, quality, and reliability of different types of available data
- Determine the extent to which water quality since 1975 has supported an actual use occurring in the water
- States/tribes have flexibility to determine existing uses where:
 - Use has not occurred, but water quality is sufficient to support it; or
 - Data are inconclusive or lacking
 - There is a lack of data



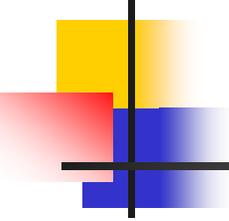
What is the difference between Existing uses and Designated uses?

- The existing use identifies a minimum use and level of water quality that must be maintained to protect uses that have already been attained
- A designated use, on the other hand, expresses the state/tribal objectives (i.e., the highest attainable uses) for a waterbody.
 - designated use may or may not have actually been attained in the waterbody



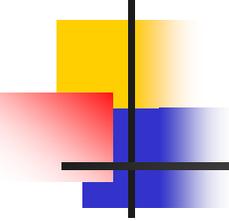
Study Question 1

- A designated use must apply to an entire waterbody.
 - True
 - False



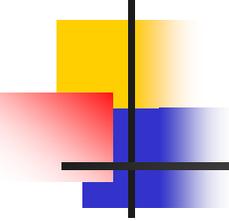
Study Question 2

- Which of the following cannot be a State/Tribal designated use?
 - a. navigation
 - b. boating
 - c. propagation of fish
 - d. waste transport
 - e. drinking water
 - f. swimming



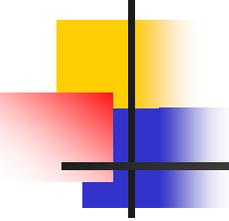
Study Question 3

- What is the minimum designated use(s) expected by the Water Quality Standards regulations?
 - a. Fishing
 - b. propagation of fish, shellfish, wildlife and recreation in and on the water
 - c. drinking water
 - d. navigation
 - e. agriculture



Study Question 4

- A use must be attained before the State or Tribe can designate it for a particular waterbody.
 - True
 - False



Study Question 5

- Recreation is often divided into what two subcategories?
 - a. primary contact/secondary contact
 - b. fishing/swimming
 - c. boating/wading
 - d. summer/winter