

# Water Management in the ACT & ACF Basins

Clean Water Act &  
Water Quality Standards



# US EPA Region IV



# Water Quality Standard Elements

- Designated Uses
- Criteria Necessary to Support the Designated Uses
- Antidegradation Policy

# Designated Uses

- Define the uses of a water body or portion thereof  
40 CFR 131.3 (f)
- Are used to meet the goals of CWA 101(a) ‘fishable - swimmable’  
40 CFR 131.2
- Include ‘fishable’ uses must provide for the protection and propagation of fish, shellfish, and wildlife  
40 CFR 131.2

# Designated Use Examples

- AL – Fish & Wildlife 335-6-10.03(4)
- FL – Class III waters 62-302.400(1)
- GA – Fishing, Propagation of Fish, Shellfish, Game and Other Aquatic Life 391-3-6-.03(4)(C)

# Criteria

- Numeric

40 CFR 131.11(b)(1)

- Pollutant Specific Concentration related to exposure durations

- Narrative

40 CFR 131.11(b)(2)

- ‘Free froms’

# Criteria Examples

- Narrative (free from)
  - All surface waters of the State shall at all places and at all times be **free from**: (1) Domestic, industrial, agricultural, or other man-induced non-thermal components of discharges which alone or in combination with other substances or in combination with other components of discharges: (c) Produce color, odor, taste, turbidity or other conditions in such degree as to create a nuisance FL 62-302.500(1)(c )

# Criteria Examples

- Numeric
  - Dissolved Oxygen: For a diversified warm water biota, including game fish, daily dissolved oxygen concentrations shall not be less than 5 mg/l at all times....AL 335-6-10-.09
  - Freshwater Chronic Arsenic  $\leq 36$  ug/L.  
AL 335-6-10.07, Table 1

# Antidegradation Policy

- Minimum of a three tiered approach
  - Existing instream water uses and level of water quality necessary to protect the existing uses shall be maintained and protected
  - Lowering of water quality where existing water quality is better than minimum levels must ensure existing uses are fully protected
  - Outstanding National Resource Waters shall be maintained and protected
    - GA 361-3-6.0(b) & 40 CFR 131.12

# Antidegradation Policy

- Existing Uses: Are those water uses actually attained in the water body on or after November 28, 1975 whether or not it is reflected in a State's designated use classification. 40 CFR 131.3(e)
- Fish, shellfish, and aquatic life, and recreational uses are uses of a water body if they existed as of or after 1975.

# Statutory Authorities

- CWA 101(a)(2)
- CWA 303(c ), - 40 CFR § 131
- CWA 101(g) & CWA 510(2)

# CWA 101(a)(2)

The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters....

It is the national goal that 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 be achieved.

# CWA 303(c) – 40 CFR § 131

## Water Quality Standards

- 40 CFR § 131.10 – Designated Uses
- 40 CFR § 131.11 – Criteria
- 40 CFR § 131.12 – Antidegradation Policy
- 40 CFR § 130.03(e) – Existing Uses

# CWA 101(g) & 510(2)

Wallup Amendment: 101(g) amendment was added to ‘clarify existing law’ CWA § 510(2) which provides that the states’ water rights are not impaired “except as expressly provided by this Act.”

Senator Wallup’s floor statements emphasize certain provisions: “Legitimate water quality measures authorized by this act may at times have some effect on the method of water usage....It is not the purpose of this amendment to prohibit these incidental effects.”

# H2O Quality and Quantity

- Jefferson v Washington – Supreme Court
- State Minimum Flow Considerations
- Tools of the Trade

# Jefferson v Washington

- PUD NO. 1 of Jefferson County and City of Tacoma, Petitioners v Washington Dept of Ecology et al. No. 92-1911
- FERC License Modified by a State's CWA §401 WQS Certification to require minimum flows to protect existing and designated uses.

# Jefferson v Washington

The Court noted that at a minimum, Section 401(d) allows a State to include conditions to protect its water quality standards approved by EPA under Section 303. 511 U.S. 700, 712

The Court noted that State Certification may include conditions to ensure compliance not only with a State's criteria, but also with its designated uses and antidegradation policy 511 U.S. 700, 714, 718

# Jefferson v Washington

- The Court recognized that a 1987 amendment to the CWA “makes clear that §303 also contains an ‘antidegradation policy’” and “that the State’s minimum stream flow condition was a proper application of the state and federal antidegradation regulations....” 511 U.S. 700, 705, 719

# Jefferson v Washington

- “In many cases, water quality is clearly related to water quantity; a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses....”

– 511 U.S. 700, 719

# State H2O Quantity Minimum Flow Parameters Withdrawal Issues

- FL – Annual Average Flow FAC 62.302.200(2)
- GA – Interim Minimum Stream Flow Protection Policy  
Public Law 92-500, CWA 303 & OCGA 12-5-31(g) – April 1, 2001
  - Monthly 7Q10 Minimum Flow Option
  - Site-Specific Instream Flow Study Option
  - Mean Annual Flow Options (Mean Annual Average Flow)
- GA – Previous Regulations Grandfathered Projects prior to April 1, 2001
  - 7Q10 constant
- AL – In development AL Commission on Environmental Initiatives

# How H2O Quality and Quantity Work Together

- TOOLS USED TO DATE:
  - IHA
  - HEC-5
  - DSS
  - Unimpaired Flows
  - FWS & EPA Instream Flow  
Guidelines for ACT-ACF Basins

# Impacts to CWA State Programs

- State Water Quality Standards
  - Changes to Designated Uses
    - Use Attainability Analysis
    - Antidegradation Policy Analysis
- State CWA Programs
  - 303(d) Lists
    - Next Cycle
  - TMDL
    - Revisit previously approved or established
  - NPDES Permit
    - Determine if critical conditions are adequate
    - Modify permit conditions
    - Compliance schedules

# CWA Use to the Compacts

- Help identify flows needed for various uses
- Help identify Hydraulic parameters important to various uses
- Help determine if Compact results are consistent with this Federal law
- Help ensure implementation of Compact results is consistent with this Federal law