

2009 Review of the Clean Water Act Assurances for Forest Practices

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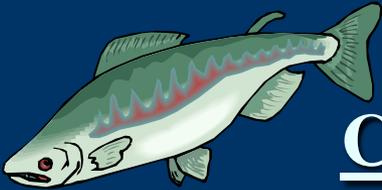
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History of Forests and Fish Rules

- Landowners wanted one set of rules that complied with both the federal CWA and ESA.
 - A multi-party effort was established to evaluate the science and policy issues and develop rules that would get federal assurances.
- Forests and Fish Report (FFR) developed in 1999 and adopted into regulation (rules) in 2000.
 - FFR rules strengthened forestry requirements,
 - Created an adaptive management program to test the rules and their underlying assumptions, and
 - Established the desired federal assurances.

The Four Forest & Fish Goals



Compliance with CWA

Compliance with ESA

Harvestable Runs of Fish

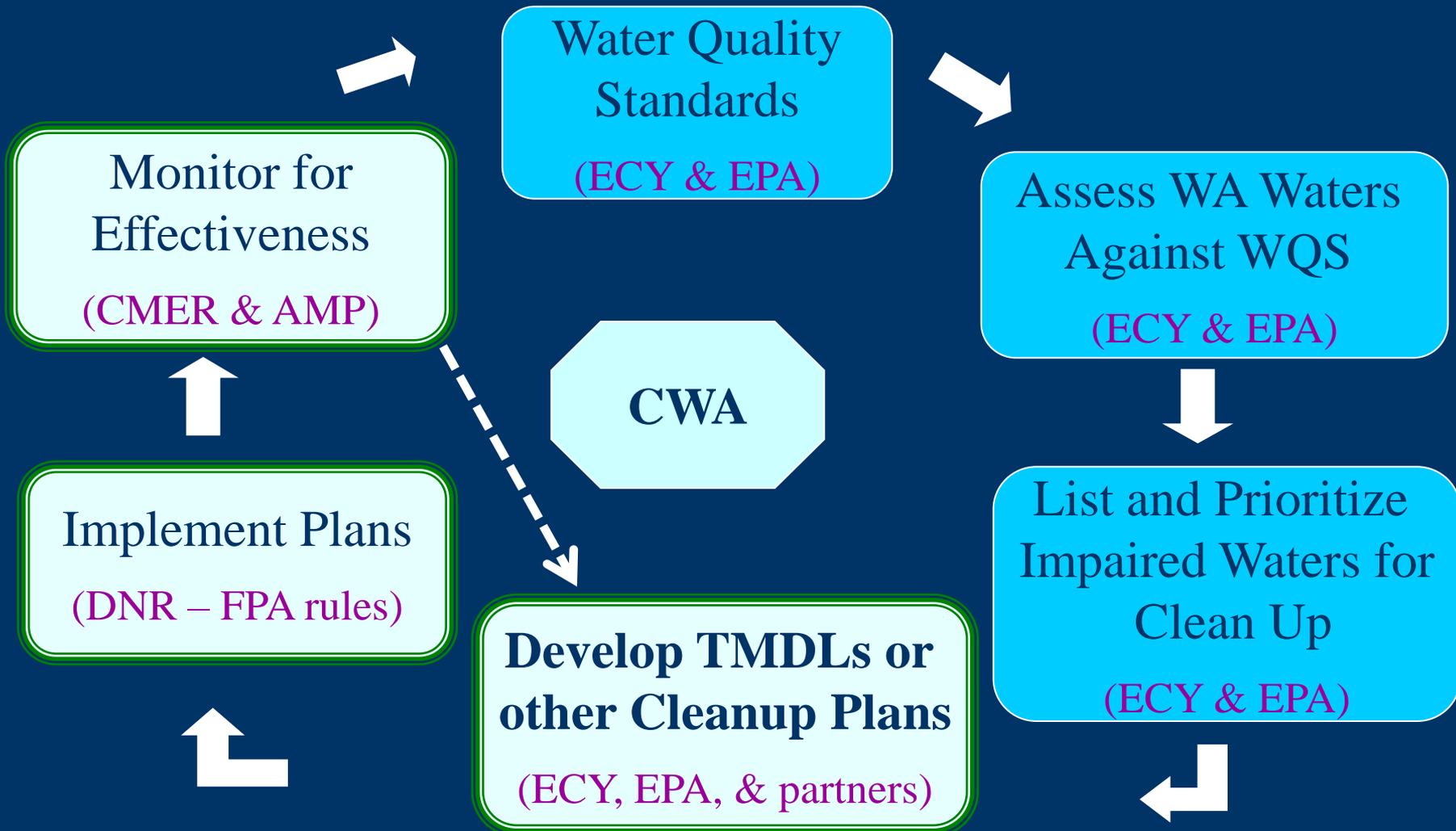
Viable Timber Industry



What are the CWA Assurances?

- TMDLs treated as a low priority in watersheds where forest practices are the primary human activity affecting WQ.
- For TMDLs prepared in *mixed-use watersheds*, implementation will use forest and fish rules.
- No more stringent CWA requirements will be established (unless through the formal AMP)

Water Quality Based Approach



Application of CWA Assurances and the adaptive management program

Why Were CWA Assurances Granted?

- Ecology recognized FFR rules significantly improved WQ protection and may meet WQS long term.
 - Reducing the urgency to develop TMDLs.
- A formal adaptive mgmt program was established to test the effectiveness of the rules.
 - 10 yrs (2009) established as check in date on the success of the program in moving waters into compliance.
- A series of conditions and performance objectives were established to address areas of concerns.

Linkages between FPA & CWA

- State law directs that forest practices must meet the state water quality standards.
- Forest practices program serves as the main mechanism for bringing forestry into compliance.
- DNR has lead for implementation, compliance & enforcement; **however:**
 - Ecology has co-jurisdiction over the WQ-related forestry rules, and retains independent enforcement discretion over threats to water quality.

Purpose of 2009 Review

- Assess if the FP program should continue to be relied upon to protect WQ and to bring degraded waters into compliance with state WQS.

And more specifically:

- For Ecology to decide whether to withdraw, extend, or augment the existing assurances.

Key Questions for 2009

- Were Forest and Fish commitments been met?
- What level of compliance is there state-wide?
- Is the adaptive management process working?
- Have studies tested the F&F assumptions?
- Are waters on a trajectory towards WQS?

Ecology's 2009 Findings

Based on a comparison with the list of performance conditions established with the FFR Report:

- Good progress was made on:
 - Adopting the directed rules, manuals, training
 - Conducting compliance monitoring on FPAs
 - Creating a structured adaptive management program

- Ecology was most concerned about:
 - Lack of information showing prescriptions will result in compliance with water quality standards

Ecology decided to extend the assurances past 2009 based on the forest practices programs meeting specific milestones of accomplishment.

- A final report with milestones was completed on July 15, 2009.
 - Milestones create a work plan for keeping the assurances.
 - 21 specific programmatic and operational milestones were established, along with a dated work plan for moving WQ AMP studies from initiation to completion.

Conclusions

- With improvements in performance the existing programs can be relied on bring forested lands into compliance with the CWA.
- A tough schedule of milestones has been established to bring about the needed improvements and accomplishments.
 - Ecology will consider the basis for missing any milestone, but will reconsider continuing the assurances at that time.
- While achievable, the milestones will only be met if there is strong cooperation by all stakeholders.

Questions & Answers



FFR Schedule M-2

CWA Section 303 Assurances

1. Listings affected by forestry a lower priority for ten years
 - 303d lists will reflect this lower priority
 - EPA & ECY will not add new requirements prior to 2009 except through adaptive management or changes required by federal laws or regulations
2. Support alternatives to TMDLs if allowed by EPA rules & consistent with HCP timeframe
3. Develop TMDLs 2009 – 2013
 - Landowners may request earlier TMDLs
 - If prescriptions differ from FPB, submit as an alternate plan
4. TMDL allocations may be expressed in surrogate measures

FFR Schedule M-2

CWA Section 303 Assurances

5. TMDLs in mixed use watersheds
 - Landowners will participate
 - Forest practices not more stringent except through adaptive management and reopeners
 - Same assurances in mixed and single use watersheds
6. EPA and ECY will attempt to integrate the CWA and ESA
 - Coordinate progress reviews
 - At least one review every 5 years
7. Assume that listed waters will remain so until WQS met
8. Landowners with HCPs may petition for CWA assurances
 - Meet or exceed FFR prescriptions
 - Meet WQS in reasonable timeframe

FFR Schedule M-2 Reopeners

1. New WQS will be accommodated through adaptive management. FFR anticipates:
 - Revisions to sediment and temperature criteria
 - Narrative criteria for aquatic habitat
 - Antidegradation
2. Failure to implement for any reason, including:
 - Significant loss of funding
 - Lack of enforcement
 - Broad scale landowner non-compliance with FFR
 - Lack of final regulations consistent with FFR

FFR Schedule M-2 Reopeners

3. Weakening of enabling state statutes or regulations which affect FFR
4. Failure to upgrade FFR based on adaptive management; including failure to develop agreed upon resource objectives, research priorities, and compliance monitoring programs
5. Court orders, changes to CWA, or other state or federal regulatory changes that cannot be otherwise addressed