

82a-2005. Publication of attainability analysis protocols; review of use attainability analysis; updating of Kansas surface water register. (a) Prior to December 1, 2001, the secretary shall publish as guidance designated use attainability analysis protocols for the revision and adoption of designated uses of classified stream segments to protect the public health or welfare and to enhance the quality of classified stream segments. The secretary shall take into consideration the uses and values of such waters for public water supplies, propagation of fish and wildlife, navigation and recreational, agricultural, industrial and other purposes.

(b) The designated use attainability analysis protocols shall include, if applicable for the respective designated use, procedures for:

- (1) Review of physical, chemical, biological and economic and social factors affecting attainment of a use or uses;
- (2) review of naturally-occurring pollutant concentrations and conditions affecting attainment of a use or uses;
- (3) review of natural, ephemeral, intermittent or low flow conditions or water levels affecting attainment of a use or uses;
- (4) review of human conditions that prevent attainment of a use or uses, including state laws, and that cannot be remedied or that would cause more damage or an inproportionate cost to remedy than to leave in place;
- (5) review of hydrologic modifications such as dams and diversions affecting attainment of a use or uses;
- (6) review of physical conditions related to natural features such as lack of proper substrate, cover, flow, depth, pools, riffles and other stream morphology affecting attainment of a use or uses;
- (7) identification and description of cost-effective and reasonable best management practices for non-point source pollutant control where such control would be needed to attain a use or uses; and
- (8) qualified persons outside the department to conduct designated use attainability analyses.

(c) A use or uses shall not be designated unless it is demonstrated that such use or uses are actually existing and attainable, or unless it is demonstrated that the adverse social and economic impacts of designating a use or uses that are not actually existing are outweighed by the social and economic benefits resulting from the attainment of such use or uses.

(d) Within 60 days after receipt of submission of a use attainability analysis, the department shall review and provide a written determination of whether the documentation submitted is complete.

(e) Within 60 days after receipt of submission of a complete use attainability analysis, the department shall review and provide a written determination of whether revision of the designated use will be proposed as a rule and regulation. Any person aggrieved by such determination may make written request, within 30 days after receipt of such determination, for a meeting with the secretary or the secretary's designee to discuss the determination and exchange information.

(f) All proposed revisions to the surface water register shall be proposed for adoption in accordance with the rules and regulations filing act (K.S.A. 77-415, and amendments thereto).

(g) Following the promulgation of a revision of the surface water register as a rule and regulation pursuant to subsections (d) and (e), any person aggrieved by such promulgation, within 15 days after publication of the rule and regulation, may request a hearing by filing an application for an order under the Kansas administrative procedure act. Any action of the secretary in a proceeding pursuant to this subsection is subject to review in accordance with the Kansas judicial review act.

(h) The Kansas surface water register shall be updated and published annually.

History: L. 2001, ch. 100, § 5; L. 2010, ch. 17, § 222; July 1.