



Region 7

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Fact Sheet

July 2003

EPA Revises Kansas Water Quality Standards

– Final Rule was published July 7 –

Summary

In response to a court order, EPA's Administrator signed a final rule promulgating revised water quality standards for Kansas, designating recreational uses for some water bodies in the state. The standards were published in the *Federal Register* on July 7, 2003.

EPA is promulgating "primary contact recreation use" designations for 1,062 waters; an "aquatic life use" designation for one of those primary contact recreation use waters; and "secondary contact recreation use" designations for 225 waters. These use designations supersede the designations adopted by Kansas for those waters, but disapproved by EPA in 1998.

Background

EPA's water quality standards regulations require states to designate uses for all water bodies within their jurisdiction.

- Designated uses determine what water quality criteria apply to specific water bodies. EPA's regulations interpret the Clean Water Act's goal of "...water quality which provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water ..." by requiring that water quality standards provide for "fishable/swimmable" uses, unless they have been shown to be unattainable through a use attainability analysis (UAA).

- When EPA disapproves a state or tribal water quality standard, and the state or tribe does not make appropriate changes, EPA's Administrator must propose and promulgate revised standards.

EPA disapproved portions of Kansas' water quality standards submission in February 1998. Kansas corrected, and EPA approved, some of the disapproved provisions and submitted the revised water quality standards in 1999.

The Kansas Natural Resource Council and Sierra Club sued EPA in August 1999, claiming that EPA failed to promptly propose revised standards in Kansas for the remaining disapproved issues. EPA entered into a consent decree with the plaintiffs and published a proposed rule on July 3, 2000, addressing the six remaining issues. Since then, Kansas resolved all the remaining issues except EPA's outstanding disapproval of 1,456 waters without UAAs demonstrating primary contact recreation is not attainable.

The plaintiffs sued EPA on December 13, 2000, requesting that the Court order EPA to take final action on those 1,456 waters.

About This Action

On March 31, 2003, the Court ordered EPA to take final action on those 1,456 waters by promulgating a final rule for Kansas within 90 days (by June 30, 2003).

In its decision, the Court held that EPA must, where appropriate, use the “rebuttable presumption” approach contained in the regulations (i.e. in the absence of data, EPA presumes that water bodies are able to attain “fishable/swimmable” uses).

Under state statute, Kansas is required to conduct use attainability analyses for all state waters by October 2005. Kansas has completed 523 UAAs for waters that were subject to EPA’s July 2000 proposal.

EPA evaluated these UAAs when determining which waters should be included in the final regulation. A total of 164 use designations adopted by Kansas for waters with completed UAAs have been approved by EPA, thus removing them from our promulgation action.

EPA’s federal designations of primary contact recreation use for 1,062 waters; an aquatic life use for one of those primary contact recreation waters; and secondary contact recreation use for 225 waters will ensure that the water quality will be appropriately protected for recreation and aquatic life, unless an analysis is provided to EPA showing that the water body cannot achieve the water quality necessary to protect for that designated use.

In its decision, the Court recognized that the order “may result in bodies of water being given a primary contact recreation designation when a use attainability analysis might rebut such a designation.”

Next Steps

Kansas is continuing to perform UAAs for recreation uses to comply with the statute. Once Kansas has completed the necessary UAAs and any corresponding changes to its water quality standards, and EPA has approved those changes, EPA will initiate a rulemaking to withdraw the federally promulgated designated uses.

This rule does not impose any direct cost on any entity. Facilities discharging to waters included in the rule may need to alter their pollution control measures to ensure that the discharges do not degrade the designated use. EPA expects that Kansas will continue its efforts to ensure that the designated uses for the waters are appropriate and work with any potentially impacted facilities to determine any necessary changes to their pollution control measures.

We do not expect this rule to impact the actions of Kansas and its citizens to protect water quality. In addition, nothing in this rule affects private property rights of landowners or prevents them from controlling public access to their property, according to state law.

Public Record Availability

The public record for this rulemaking has been established and is located at the Information Resource Center, U.S. EPA Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Hours are between 8 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. For further information regarding access to the docket materials, call (913) 551-7241. (You may have to pay a reasonable fee for copying.)

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*** The Federal Register notice is available on the EPA Web site at:**

www.epa.gov/waterscience/standards/actions.htm