



Use Attainability Analysis

A designated use of a water body that is shown to not be an existing use may be changed if it is not attainable. A use attainability analysis (UAA) is a structured scientific assessment of the beneficial uses a water body could support, given application of required effluent limits and implementation of cost-effective and reasonable best management practices.

A UAA is required anytime a state or tribe designates a use that does not include the "fishable/swimmable" goals of the Clean Water Act or changes a use to one that would apply less stringent criteria than the current use. If a use is designated that does not include the "fishable/swimmable" goals, that use designation and the rationale behind it need to be revisited every three years to see if circumstances have changed.

Waters must be protected for the most sensitive of their uses. Most streams have overlapping or competing uses. When this is the case, the most sensitive use is that which requires better water quality (the use with the most stringent criteria). If an existing use is "better" than the designated use, the existing use must be protected and that use must become the designated use. Uses that currently exist, or have existed since November 25, 1975, cannot be removed or downgraded through a UAA.

Process for Changing a Use Designation

The process for changing a use designation requires rulemaking by DEQ. Therefore, parties interested in changing designated uses should involve the agency early in the process. Simply put, the first part of the process is to determine what the existing uses for the water body segment are. If the existing uses have associated criteria that are less stringent than the designated uses, then the next step is determining if the designated uses are attainable if all cost-effective and reasonable best management practices are in place and effective and that all effluent limits are being met. If the designated use is shown to be unattainable, the final step is to determine what the highest attainable use would be if all those practices and effluent limits were in place. This process constitutes the body of the UAA and is followed by the agency's rulemaking process to change the designated use(s).

According to federal regulations, only six allowable reasons exist for changing a current use designation:

1. Naturally occurring pollutant levels prevent attainment of the use.

2. Natural ephemeral, intermittent, or low flow prevents attainment of the use.
3. Human-caused pollution prevents attainment and cannot be remedied without causing worse environmental harm.
4. Dams, diversions, and other hydrologic modifications prevent attainment and it is not feasible to restore the water or operate the modification in a way that would result in attainment.
5. Natural physical features prevent attainment.
6. Controls more stringent than required effluent limitations or new source performance standards would be necessary to attain the use and would result in substantial and widespread social and economic hardship.

In Idaho, rulemaking is, at a minimum, a several-month process that requires public comment and response, Board of Environmental Quality approval, and legislative approval. Use changes are subject to EPA review and approval before becoming effective for Clean Water Act purposes (e.g., discharge permits, total maximum daily loads, §303(d) listing decisions). The entire process—developing the UAA and undergoing rulemaking—could take at least two years and possibly more to craft a structured scientific assessment to change a designated use.

In some instances, the criteria for determining if a designated use is fully supported are not appropriate for a particular water body. A state may reduce the stringency of the criteria for use attainment assigned to a water body by revising its water quality criteria (site-specific or statewide). This action can only occur where scientific understanding supports the position that a less stringent criterion is still fully protective of the designated uses. This can occur in instances where natural background conditions that support designated uses exceed the water quality criteria.