

## TESTIMONY OF

**Karl Rockeman, Director of Water Quality**

Good morning Chairman Devlin and members of the Administrative Rules Committee. My name is Karl Rockeman, and I am the Director of the Division of Water Quality within the North Dakota Department of Environmental Quality (NDDEQ). The Division of Water Quality protects and monitors our water resources to ensure surface and groundwater quality for the public's use. The Department is proposing to amend the North Dakota Administrative Code 33.1-16-02.1. The amendments are proposed to improve the functionality of the rules, reflect the most current science, and satisfy the Clean Water Act requirements of periodically revising and updating the standards as required under 40 CFR 131 Water Quality Standards.

As part of the EPA's federal delegation of Clean Water Act primacy to the state, 40 CFR 131.20 requires the state to review our water quality standards at least once every three years, adopt any new or updated criteria or explain why such adoption is not necessary. The Department completed the last triennial review in 2018.

The current triennial review of the standards began July 23, 2019, with a Public Notice of intent to review the Water Quality Standards soliciting public comment on the current rules and holding a public hearing on August 17, 2019. The Department received no public comment. On August 24, 2020, we issued a second public notice that included proposed amendments, fiscal notes and taking assessments. A hearing was held on October 12, 2020. We received no public comments at the hearing, but three members of the public provided written or telephone comments, in addition to comments provided by the US EPA. In response to the public comments, the Department changed some items and on March 10, 2021, they were presented to the NDDEQ Environmental Review Advisory Council.

**Changes**

The Department updated the following criteria to the current recommendation:  
Ammonia, pH, selenium in fish tissue and mercury

Other areas were updated to provide current contact information, to provide clarifying footnotes, example calculations and to improve general readability.

**Comments**

As mentioned, the department received comments from three individuals, in addition to the comments from the US EPA. One comment noted a typographical error in the ammonia criteria, which was corrected. Another comment asked for clarification regarding actions taken in response to a spill or discharge. Additional language was added clarifying which actions were contingent,

and which were required. The third comment expressed concerns about the increase in the mercury criteria. The department reviewed the basis for that criteria. We noted that the proposed change follows the EPA recommended criteria and is based on more recent analysis than the existing criteria and is still protective of human health.

### **Analysis**

A regulatory analysis was not required but was conducted and found no impacts over \$50,000.

A takings assessment was conducted and found a taking was unlikely.

The Department prepared a small entity economic impact statement and regulatory analysis.

No changes to state revenues or expenditures are expected due to this rule change.

The cost of administrating the rulemaking process includes providing public notice and is approximately \$1,900, not including staff time.

Mr. Chairman and committee members, this concludes my testimony. I would be happy to answer any questions.